In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)

AMENDED POST-TRIAL MEMORANDUM
OF THE HOUSE OF REPRESENTATIVES[1]

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The United States House of Representatives

Dated: November 10, 2010

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[1] The House has been advised orally by Senate staff that the Senate Impeachment Trial Committee has ruled that citations to testimony of Constitutional scholars who appeared in the House proceedings are to be omitted from the House's Memorandum.

The House agrees that testimony of legal experts on the ultimate issue of whether Judge Porteous has committed a high Crime or Misdemeanor is inappropriate because it would encroach on the Senate's unique function. The House, however, believes that the testimony of these Constitutional experts on the issue of whether pre-federal bench conduct can be considered as a basis for removal from office should be available to the Senate and does not impinge on the Senate's role. Nevertheless, the House has amended its Post-Trial Memorandum in light of the directive set out above, and has, where possible, substituted different citations to the same scholars in support of its position. These include the treatise by Professor Michael Gerhardt that was also cited by Judge Porteous.

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I. INTRODUCTION

On March 11, 2010, by unanimous votes,[2] the House of Representatives (the "House") charged G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana, with four Articles of Impeachment, setting forth a range of misconduct demonstrating that Judge Porteous is not fit to be a federal judge. The evidence establishes that Judge Porteous exploited his judicial office to implement a kickback scheme involving his assignment of cases to attorneys, exploited his judicial office to solicit and accept cash and other things of value from attorneys and bail bondsmen, lied to the FBI and the Senate to obtain his judicial appointment and engaged in repeated dishonest acts in a federal bankruptcy proceeding, including filing under a false name – all actions in separate spheres of conduct that compel the conclusion that Judge Porteous should be removed from office.

In the brief that follows, the House summarizes the evidence that was adduced before the Senate Impeachment Trial Committee (SITC) on each Article of Impeachment. The facts are not complex, and indeed, much of the evidence is not in dispute. Rather, the true dispute is simply that Judge Porteous believes his conduct amounts to nothing more than an appearance problem, notwithstanding clear and indisputable evidence of his blatant corruption and dishonesty under oath.

For all the reasons set forth below, the House submits that the Senate should convict Judge Porteous on each of the four Articles of Impeachment now pending before it.

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[2] The votes were as follows: Article I: 412–0; Article II: 410–0; Article III: 416–0; and Article IV: 413–0.

II. EXECUTIVE SUMMARY

A. Procedural History

Prior to the unanimous votes in the House, Judge Porteous's conduct had been the subject of inquiry by both the Executive Branch and the Judicial Branch. In late 1999, the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") commenced a criminal investigation of Judge Porteous. The criminal investigation continued for several years, and ultimately ended in early 2007, without an indictment. In a letter dated May 18, 2007, the DOJ submitted a formal complaint of judicial misconduct to the Honorable Edith H. Jones, Chief Judge, United States Court of Appeals for the Fifth Circuit. The DOJ Complaint Letter described numerous instances of alleged misconduct by Judge Porteous that demonstrated his unfitness as a judge.

Upon receipt of the DOJ Complaint Letter, the Fifth Circuit appointed a Special Investigatory Committee to investigate the Department's allegations. The Special Committee conducted a hearing and issued a Report dated November 20, 2007, which concluded that Judge Porteous engaged in misconduct which "might constitute one or more grounds for impeachment." On December 20, 2007, by a majority vote, the Judicial Council of the Fifth Circuit accepted and approved the Special Committee's Report and likewise concluded that Judge Porteous "had engaged in conduct which might constitute one or more grounds for impeachment under Article I of the Constitution." The Fifth Circuit Judicial Council thereafter certified these findings and the supporting records to the Judicial Conference of the United States. On June 17, 2008, the Judicial Conference of the United States determined unanimously, upon recommendation of its Committee on Judicial Conduct and Disability, to transmit to the Speaker of the House a Certificate "that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted."

B. Facts

Article I alleges and the evidence establishes that Judge Porteous, while a state judge, initiated and implemented a corrupt "kickback" scheme with Robert Creely and the law firm of Amato and Creely whereby Judge Porteous assigned "curatorship" cases to Creely and the Amato and Creely law firm gave Porteous approximately half of the legal fees amounting to about $20,000 in cash. Thereafter, when Porteous became a federal judge, he presided over a non-jury case (Liljeberg) in which Amato entered his appearance six weeks before the scheduled trial date. When opposing counsel filed a motion to recuse Judge Porteous based on his close friendship with Amato, Judge Porteous deliberately misled the parties and did not disclose the corrupt financial relationship that had existed between the Judge and Amato and Creely.

Moreover, while the Liljeberg case was pending and had not yet been decided, Judge Porteous solicited and received a secret cash payment of at least $2,000 from Amato. Judge Porteous thereafter decided the Liljeberg case very favorably towards Amato's client. This decision was later reversed in large part in a scathing opinion by the appellate court which characterized the ruling by Judge Porteous as "inexplicable," "apparently constructed out of whole cloth," and "close to being nonsensical."

It is noteworthy that Judge Porteous, in response to questioning by the Special Investigatory Committee of the Fifth Circuit admitted the essential aspects of the corrupt relationship set forth in Article I. He acknowledged that he solicited and received money from Creely; that Creely ultimately balked at giving him money; that he sent curatorship cases to Creely; that "occasionally" he received money after the curatorship cases were sent; and that he solicited and received cash from Amato while the Liljeberg case was pending before him.

Article II alleges and the evidence establishes that Judge Porteous, while a state judge and extending into his tenure as a federal judge, had a corrupt relationship with Louis and Lori

Marcotte, local bondsmen who operated in Louisiana. The evidence established that while Porteous was a state judge, Porteous would set bail bonds as directed by the Marcottes which were designed to maximize the premium the Marcottes could get from the person arrested. In return, the Marcottes took Judge Porteous to expensive restaurants and paid for numerous meals, paid for servicing and repairing his automobiles; replaced a damaged fence at his home, paid for one or more trips to Las Vegas for the Judge and his secretary, and provided other benefits to the Judge.

Of particular note in the relationship is the fact that Judge Porteous was pressured by Louis Marcotte to expunge the conviction of two Marcotte employees so they could be licensed as bail bondsmen. Judge Porteous obliged, but, significantly, told Marcotte that he would not expunge one of the convictions until after Senate confirmation of his position as a United States District Judge, because he did not want to jeopardize his "lifetime appointment." Shortly after Senate confirmation, but before he was sworn in as a federal judge, Judge Porteous did in fact set aside the conviction of Marcotte's employee, an act that was denounced when discovered as unlawful and unwarranted.

The evidence further established that after Judge Porteous became a federal judge he continued to be wined and dined by the Marcottes who wanted his help in recruiting state judges to assume Porteous's former role in setting bonds as requested by them. Judge Porteous obliged them by meeting with state judges and vouching for the Marcottes, thereby using the prestige of his federal office to foster these new corrupt relationships. It is noteworthy that two of those state court judges, Bodenheimer and Green, were ultimately convicted and incarcerated in part because of their corrupt relationships with the Marcottes which closely paralleled

Porteous's prior relationship. Both of the Marcottes ultimately entered pleas of guilty to federal corruption offenses premised on the factual pattern described above.

Article III alleges and the evidence established that Judge Porteous filed for personal bankruptcy in March, 2001. The evidence shows that Judge Porteous filed in a false name ("Ortous") and obtained and listed a post office box as his residence, all filed under penalty of perjury. The evidence further established that Judge Porteous engaged in a pattern of concealing assets so that he could continue to gamble, such as $4,100 tax refund, lying under oath about preferential payments to certain creditors, particularly casinos where he gambled, concealing gambling losses, and violating a court order which prohibited Judge Porteous from incurring new debt without permission. Judge Porteous blatantly and repeatedly violated the court order by incurring debt at several casinos and by obtaining and using a new credit card.

Article IV alleges and the evidence establishes that Judge Porteous repeatedly lied to the Federal Bureau of Investigation and to the United States Senate in responding to questions posed to him as part of the confirmation process. Judge Porteous was asked on two occasions by the FBI whether he had engaged in conduct whereby someone could influence, pressure, coerce or compromise him in any way, or that would impact negatively on his character, reputation, judgment or discretion. Both times Porteous said he had not engaged in any such conduct. That was clearly false given his corrupt relationship with attorneys Amato and Creely and his corrupt relations with the Marcottes and their bail bond business.

On the Supplement to the SF-86 Form, Judge Porteous was asked if there was anything in his personal life that could be used by someone to coerce or blackmail him or if there was anything that could embarrass Judge Porteous or the President if publicly known. Judge

Porteous responded "no" to this question and signed the Form under a warning that a false statement was punishable by law.

Judge Porteous's response was a clear lie given his corrupt relationship with attorneys Amato and Creely and his corrupt relationship with the Marcottes and their bail bond business.

The Senate Judiciary Committee's Questionnaire for Judicial Nominees posed the question to Judge Porteous whether any unfavorable information existed that could affect his nomination. Judge Porteous answered under oath that to the best of his knowledge there was no such information.

Judge Porteous's response was also plainly false given his corrupt relationship with attorneys Amato and Creely and his corrupt relationship with the Marcottes and their bail bond business. It is noteworthy that Porteous refused to set aside the conviction of a Marcotte employee until after his confirmation in order not to jeopardize his "lifetime appointment." There can be no doubt that Judge Porteous knew that he had to hide these corrupt relationships if he had any hope of being confirmed as a United States District Judge. Experts for the House and defense agreed that a truthful answer to those questions would have required Judge Porteous to disclose these corrupt relationships.

C. General Principles of Law Governing Impeachments and Removal[3]

By means of the impeachment and removal process, the Framers of the Constitution "sought to protect the institutions of government by providing for the removal of persons who

[3] The application of these principles, as well as other specific legal concerns that may be raised by the Articles, will be further discussed as applied to the respective articles. For example, the particular considerations associated with "pre-federal bench" conduct are discussed in connection with Articles II and IV, and the allegedly "personal" aspects of Judge Porteous's conduct in his bankruptcy proceeding are discussed in connection with Article III.

are unfit to hold positions of trust."[4] Justice Story similarly observed in the early nineteenth century that "an impeachment is a proceeding of a purely political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property; but simply divests him of his political power."[5] Indeed, the fact that the individual who is impeached and removed from office "shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law," makes it clear that impeachment is a remedial provision, not a punitive one.[6] In this way, the Founders intentionally broke from the British impeachment practice which, upon conviction imposed criminal penalties, up to and including death.[7] Indeed, any doubt as to whether impeachment proceedings were limited to criminal conduct was settled in the early impeachment inquiries, such as the impeachment and removal from office of Judge John Pickering in 1803 for performing his judicial functions while drunk and for acts of indecency.[8]

Congress has consistently interpreted the Constitution's definition of impeachable conduct – "treason, bribery or other high Crimes and Misdemeanors" – in light of the "fitness for office" determination that is at the core of the impeachment inquiry. The Report accompanying

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4 H.R. Rep. No. 101-36, Impeachment of Walter L. Nixon, Jr., Report of the Committee on the Judiciary to Accompany H. Res. 87 (hereinafter "Nixon Impeachment Report"), 101st Cong., 1st Sess. at 3–4 (1989). *See also id.* at 5 ("The House and Senate have both interpreted the phrase broadly, finding that impeachable offenses need not be limited to criminal conduct.").

5 Joseph Story, Commentaries on the Constitution § 801 (1833).

6 U.S. CONST. art. I, § III, cl. 7.

7 *See* MICHAEL J. GERHARDT, THE FEDERAL IMPEACHMENT PROCESS, A CONSTITUTIONAL AND HISTORICAL ANALYSIS (Princeton University Press) (1996).

8 *See* Articles of Impeachment of Judge John Pickering, *reprinted in* IMPEACHMENT: SELECTED MATERIALS, 93d Cong., 1st Sess. at 131 (1973), *as reprinted in,* U.S. IMPEACHMENT: SELECTED MATERIALS, 105th Cong., 2d Sess. at 1267 (1998).

the 1989 Resolution to Impeach United States District Court Judge Walter L. Nixon summarized the British precedents for impeachment, the events at the Constitutional convention leading to the adoption of the "high Crimes and Misdemeanors" formulation for impeachable conduct, and the interpretation of that term in the 12 judicial impeachments that had occurred prior to 1989. In its summary of the historical meaning of the term, the Report noted:

> The House and Senate have both interpreted the phrase broadly, finding that impeachable offenses need not be limited to criminal conduct. Congress has repeatedly defined "other high Crimes and misdemeanors" to be serious violations of the public trust, not necessarily indictable offenses under criminal laws. [9]

That portion of the Report concluded:

> Thus, from an historical perspective the question of what conduct by a federal judge constitutes an impeachable offense has evolved to the position where the focus is now on public confidence in the integrity and impartiality of the judiciary. When a judge's conduct calls into question his or her integrity or impartiality, Congress must consider whether impeachment and removal of the judge from office is necessary to protect the integrity of the judicial branch and uphold the public trust.[10]

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[9] Nixon Impeachment Report, *supra* note 3, at 5. To illustrate the "non-criminal" nature of the "high Crimes and Misdemeanors" standard, the Nixon Impeachment Report further stressed that the term "Misdemeanor" as used in the Constitution was not intended to denote a minor criminal offense, but rather focused on the behavior of the judge, that is, whether the judge "misdemean[ed]" and thus should be removed.

> Indeed, when the phrase "high crimes and misdemeanors" first appeared during the impeachment of the Earl of Suffolk in 1386, the term "misdemeanor" did not denote a violation of criminal law. In the context of impeachment, the word focuses on the behavior of a public official, i.e., his demeanor. Gouverneur Morris, a member of the Committee on Style and Revision of the Constitutional Convention and one of the founding fathers responsible for the final revisions to the Constitution, explained the use of the term "Misdemeanor": "[T]he judges shall hold their offices so long as they demean themselves well, but if they shall misdemean, if they shall, on impeachment, be convicted of misdemeanor, they shall be removed."

Id.

[10] Nixon Impeachment Report, *supra* note 4, at 12.

To the same end, the Report that accompanied the Alcee Hastings impeachment resolution stated that the phrase "high Crimes and Misdemeanors" "refers to misconduct that damages the state and the operations of governmental institutions, and is not limited to criminal misconduct."[11] That Report stressed that impeachment is "non-criminal," designed not to impose criminal penalties, but instead simply to remove the offender from office,[12] and that it is "the ultimate means of preserving our constitutional form of government from the depredations of those in high office who abuse or violate the public trust."[13]

Thus, "high Crimes and Misdemeanors" include "serious violations of the public trust" as well as "conduct that calls into question [the judge's] integrity or impartiality" such that "impeachment and removal of the judge from office is necessary to protect the integrity of the judicial branch and uphold the public trust."[14] This understanding of the meaning of "high Crimes and Misdemeanors" in the context of the impeachment of a federal judge is not subject to any legitimate dispute.[15]

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[11] H.R. Rep. No. 100-810, "Impeachment of Alcee L. Hastings, Report of the Committee on the Judiciary to Accompany H. Res. 499 (hereinafter "Hastings Impeachment Report"), 100th Cong., 2d Sess., at 6 (1988).

[12] *Id.* at 7.

[13] *Id.*

[14] Nixon Impeachment Report, *supra* note 4, at 5 ("The House and Senate have both interpreted the phrase broadly, finding that impeachable offenses need not be limited to criminal conduct.").

[15] Indeed, counsel for Judge Porteous has adopted this view on more than one occasion. He has stated that "[t]he judicial impeachment cases . . . reflect controversies that raise fundamental questions of legitimacy and conduct that is viewed as incompatible or demeaning to judicial office." *See* Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L. J. 1, 73–74 (1999). Counsel also recognized that impeachment proceedings have involved not only conduct that "relate[d] to the use of judicial power but . . . conduct that brought disrepute upon the office through personal or (non-judicial) criminal misconduct." *Id.* at 67–68. On another occasion, counsel has written that "acts which

Some of Judge Porteous's conduct occurred when he was a state judge, some during the confirmation process itself, and the rest while a federal judge. It is clear, however, that conduct which occurs prior to assuming federal office, particularly when the officeholder concealed such conduct during the confirmation process, is an appropriate basis for impeachment and removal from office. To conclude otherwise is to make the position of federal judge a lifetime safe harbor for someone who is able to hide his misdeeds and defraud the Senate into confirming him.

Thus, impeachment and removal is warranted upon proof of misconduct that by itself demonstrates a level of moral depravity and bad judgment, such that it is completely incompatible with the responsibilities of a judge. Say, for instance, that the offense was murder – it is as serious a crime as any, and its commission by a judge completely undermines both his integrity and the moral authority he must have in order to function as a federal judge. The timing of the murder is of less concern than the fact of it; this is the kind of behavior that is completely incompatible with the public trust invested in officials who are sufficiently high-ranking to be subject to the impeachment process. And, if the nominee lied to the Senate about this bad misconduct, then the nominee has not only done something morally reprehensible but he has also engaged in misconduct that directly undermines the integrity of the confirmation process itself. [16]

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undermine the integrity of government are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. . . . [T]he essential nexus . . . may be found in acts which, without directly affecting the governmental processes, undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government." *See Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Cong. 28 (1998) (testimony of J. Turley, George Washington University Law School).

[16] *See* GERHARDT, *supra* note 7, at 108–09. ("Particularly in cases in which an elected or confirmed official has lied … to get into their present position, the misconduct that was commited prior to entering office clearly bears on the integrity of the way in which the present officeholder entered office and the integrity of that official to remain in office.").

A similar conclusion would result from considering the circumstances of a person who bribes his very way into office. By definition, the bribery would have occurred prior to the commencement of office holding. But surely that fact cannot immunize the briber from impeachment and removal. Had the bribery not occurred, the person never would have been an officer in the first place. [17]

Similarly a corrupt arrangement with bail bondsmen, or accepting kickbacks for curatorships, are the kinds of misconduct that may be fairly characterized as violations of the public trust. Because impeachment is about the interests of the public, and not primarily about punishing wrongdoing, it is appropriate that a judgment of unfitness may be based on conduct that took place before an officer-holder's appointment. Wrongdoing before one enters office can demonstrate serious untrustworthiness just as can wrongdoing while in office, and the ultimate touchstone in impeachment is whether the people can trust the office holder. Thus, it is a gross mistake and terrible policy to conclude that federal officers may be impeached only for misconduct committed while in office or, even more strictly, for misconduct that they committed in their capacity as federal officers. The text of the Constitution has no such requirement, and structure and common sense demonstrate the absurdity of this position.

Judge Porteous's misconduct while a state judge, during the confirmation process, and while on the federal bench is so egregious and inimical to public confidence in the integrity and impartiality of the judiciary that he must be removed from office.

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[17] *See, e.g.* AKHIL REED AMAR, AMERICA'S CONSTITUTION – A BIOGRAPHY 201 (Random House) (2005). *See also* Akhil Reed Amar, *A Symposium On The Impeachment Of William Jefferson Clinton: Reflections On The Process, The Results, And The Future: On Impeaching Presidents*, 28 HOFSTRA L. REV. 291, 302 (1999) (using the example of a president who bribed his way into office as being subject to impeachment and removal, even though the conduct occurred prior to taking office).

III. ARTICLE I

A. Introduction

In the early 1970s, Judge G. Thomas Porteous, Jr. practiced law as a partner with Jacob Amato in the law firm Edwards, Porteous & Amato. Robert Creely was an associate who worked for the firm. Amato and Creely ultimately split off and formed an equal partnership. They each remained friends with Judge Porteous.

In 1984, Judge Porteous was elected judge of the 24th Judicial District Court in Jefferson Parish, Louisiana. He took the bench on August 24, 1984, and remained in that position until October 28, 1994 when he was sworn in as a United States District Judge for the Eastern District of Louisiana.

Judge Porteous's ten years as a state court judge were characterized by his dependence on others to provide for and subsidize his meals, entertainment, and lifestyle (including drinking and gambling), as well as essential expenses associated with maintaining his household. This dependence led him into corrupt relationships with attorneys Creely and Amato, described below, and with bail bondsman Louis Marcotte, described in Section IV of this brief.[18]

B. Judge Porteous's "Curatorship" Kickback Scheme with Creely and Amato

While he was a state court judge, there came a time when Judge Porteous began to ask Creely for money. At first, he asked for small amounts – $50 or $100, money that Creely had in

[18] The record is also clear that Judge Porteous took money from other attorneys as well. *See* Donald Gardner Senate Impeachment Trial Committee Hearing Testimony ("Gardner SITC") at 1585:14 – 1589:4. Those events are not charged as part of the Articles, but nonetheless corroborate and support the evidence related to Judge Porteous's financial relationship with attorneys Creely and Amato, and his relationship with bail bondsman Louis Marcotte.

his pocket. Judge Porteous would request the money "for various personal issues." "[I]t would be things like tuition, different things that he needed in his – in his personal life."[19]

At some point in the mid to late 1980s, Judge Porteous requested more significant sums from Creely – amounts in the range of $500 or $1,000. Creely resisted giving Judge Porteous the money that was being requested. As Creely testified: "I did tell him I was tired of giving him cash . . . . I felt put upon that he continued to ask – I thought it was an imposition on our friendship. . . . I told him a couple of times ['']I'm tired of giving you money, I'm tired of you asking for money. This isn't what friends are supposed to do to one another.['']"[20]

In response to Creely's resistance to giving Judge Porteous the money he sought, Judge Porteous conceived what was, in all material aspects, a kickback scheme, whereby Judge Porteous used the power of his judicial office to assign Creely "curatorships" and then requested and received from Creely (and Amato) a portion of the fees received by their law firm for handling those judicial appointments.[21] This corrupt scheme went on for years.

The proof of this series of events is evidenced by the interwoven and consistent testimony of Creely, Amato and Judge Porteous himself, who testified before a Special Committee of the

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19 *See* Robert Creely Senate Impeachment Trial Committee Hearing Testimony ("Creely SITC") at 257:16-18, 298:6-9. *See also* Robert Creely 5th Circuit Special Committee Hearing Testimony ("Creely 5th Cir.") at 199; Robert Creely House Impeachment Task Force Hearing Testimony ("Creely Task Force") at 20 (Judge Porteous would ask for money for "tuition" and "living expenses").

20 *See* Creely SITC at 258:4 – 259:16.

21 These were legal matters in which Creely was assigned to represent the interests of a missing party. The duties were largely ministerial, such as publishing notices in the newspaper and similar acts. Creely and his firm received a fixed fee of approximately $200, plus expenses, for each such appointment. Judge Porteous then asked Creely for money from those curatorship fees, and Creely in turn gave Judge Porteous cash as requested.

Fifth Circuit.[22] It is also corroborated by the court records evidencing the curatorships assigned by Judge Porteous to Creely. Finally, it is corroborated by evidence of Judge Porteous's similar conduct with bail bondsman Louis Marcotte, where Judge Porteous also used the power of his judicial office for personal financial gain.

Creely testified that after Judge Porteous started assigning the curatorships, "he then started calling and saying, [']Look, I've been sending you curators, you know, can you give me the money for the curators?[']" Although Creely sought to avoid linking the requests for cash with the assignment of curatorships, Creely understood that Judge Porteous "made [that] correlation."[23] Moreover, Creely all but expressly acknowledged the "kickback" essence of the scheme when he testified that Judge Porteous's assignment of the curatorships made it easier for Creely to give Judge Porteous cash since it "wasn't costing anything"[24] – *i.e.*, the money he was giving to Judge Porteous came from the curatorship fees. Creely confirmed that he told Amato of Judge Porteous's requests for the curatorship money, and that in response, Amato told Creely

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[22] In anticipation that he would assert his Fifth Amendment privilege, Judge Porteous was provided formal immunity, which provided that his testimony could not be used against him in any criminal proceeding. *See* HP Ex. 13 (Order, *In re Matters Involving U.S. District Judge G. Thomas Porteous*, Docket No. 07-05-351-0085 (5th Cir., Aug. 3, 2007)). The Senate Impeachment Trial Committee ruled in advance of the SITC evidentiary hearing in this case that Judge Porteous's Fifth Circuit testimony was admissible in this impeachment proceeding, which is not a criminal prosecution. *See* SITC Disposition of Pre-Trial Motions at 4–5 (Aug. 25, 2010).

[23] Creely SITC at 268:2-4, 17 (adopting grand jury testimony). *See also* Creely Task Force at 22 ("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."); *id.* at 23 (agreeing that Judge Porteous was taking official actions in appointing curatorships to enrich himself).

[24] Creely SITC at 271:3-8. *See also* Creely Task Force at 23 (curatorships were a "justification to help him out so that I didn't have to go and spend my own money on him"); Creely 5th Cir. at 209–10) (curatorships were "basically a way for me to supply him funds as before instead of coming out of my pocket. It was being provided through the curatorships.").

to "[k]eep paying him, it doesn't cost us anything, it's not costing us any money, just if he [Judge Porteous] asks for money from time to time, let's continue giving it to him."[25]

Amato – who split the payments to Judge Porteous with Creely 50-50 – corroborated Creely's account as to what occurred. Amato testified that Creely informed him "that the judge was sending curator cases to him and that he would, in turn, give money to the judge."[26] Amato testified that in his conversation with Creely they agreed they would split the net difference between themselves and the judge, and that "I told him I thought it was going to turn out bad."[27] Amato did not feel comfortable giving Judge Porteous cash from the curators, however, he was not "strong enough" to say no to what he understood to be a classic kickback arrangement.[28]

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[25] Creely SITC at 264:12-15.

[26] Jacob Amato, Jr. Senate Impeachment Trial Committee Hearing Testimony ("Amato SITC") at 124:25 – 125:2.

[27] Amato SITC at 125:19-24. Amato has testified consistently about his knowledge of the curatorships arrangement on three prior occasions, at each of which he was subject to cross-examination. *See, e.g.*, Jacob Amato, Jr. Senate Deposition ("Amato Sen. Dep.") at 32:5-8 ("Bob Creely came in my office one day, told me that Porteous was sending curatorships, and he wanted us to, you know, give him some money back, and I told him this is going to wind up bad."); Jacob Amato, Jr. House Impeachment Task Force Hearing Testimony ("Amato Task Force") at 99-100 ("Mr. Creely came to me one day and said that Tom - or Judge Porteous asked him for some money based upon sending curatorships. . . . Bob [Creely] 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. . . . [J]udge Porteous sent curator cases to Bob Creely and at some point asked that he ... receive some of that money."); Jacob Amato, Jr. 5th Circuit Special Committee Hearing Testimony ("Amato 5th Cir.") at 238 ("I know . . . from talking to Bob, that he had asked Bob to split curator fees with him some sort of way.").

[28] Amato SITC 125:23 – 126:4. *See also* Amato Task Force at 101 ("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."); *id.* at 127 (agreeing that this was a "classic kickback arrangement"); Amato Sen. Dep. at 73:21 – 74:2 (same).

Amato had "no doubt" that the money that he and Creely gave Judge Porteous came from the proceeds of the curatorships assigned to Creely by Judge Porteous.[29]

When Judge Porteous requested money, the two attorneys would take equal draws from the firm's operating account. They would put the cash in an envelope and give it to Judge Porteous. The money they received from the curatorships was treated by Creely and Amato as income and taxes were paid on those amounts – even though some portion was being provided to Judge Porteous.[30] They provided Judge Porteous cash every few months.[31] They gave him cash, as opposed to a check drawn on the firm's accounts, both "to avoid any kind of paper trail," and because "that's what Judge Porteous wanted,"[32] and because it was "part of the deceit."[33] In most instances, Creely gave the cash to Judge Porteous, however both Amato and Creely believed that on occasion Amato personally gave Judge Porteous cash as well.[34] In any event, Amato had "no doubt" that Judge Porteous knew that the monies he was soliciting and receiving through the curatorship scheme were coming from Amato as well as Creely.[35]

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29 Amato SITC at 127:1-4.

30 *See* Amato SITC at 129:7-10; Creely SITC at 268:8-10, 376:11.

31 *See* Creely SITC at 341:17 ("several months between requests"); Amato SITC at 241:15-16 ("two or three times a year").

32 Amato SITC at 128:13; Creely SITC at 363:17.

33 Amato Task Force at 120.

34 *See* Amato SITC at 216:25 – 217:1 (as to whether Amato gave the curator money on occasion to Judge Porteous: "I think so. I just don't recall. But I think so."). *See also* Creely SITC at 342:20-21, 342:24 – 343:2 ("either me or Jake" would give Judge Porteous the curator cash, and Amato "probably" did so).

35 Amato SITC at 217:2-5. Judge Porteous knew both men well and had previously been in a law partnership with Amato. In addition, as Amato explained. "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." *See* Amato Task Force at 100–01. Creely and

In his testimony at the Fifth Circuit Hearing, Judge Porteous confirmed the essential aspects of his receiving cash from Amato and Creely in connection with the curatorships he assigned to Creely. Judge Porteous admitted that: (1) he received cash from Creely; (2) at some point in time Creely expressed his displeasure with giving Judge Porteous cash; (3) thereafter Judge Porteous started assigning Creely curatorships; and (4) that Judge Porteous's receipt of cash from Creely and Amato followed his assigning Creely curatorships.

First, Judge Porteous testified that he received cash from Creely and Amato:

> 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.[36]

Judge Porteous confirmed that there came a time when Creely expressed resistance to giving Judge Porteous money before the curatorships started:

> 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.[37]

Judge Porteous also admitted that his receipt of cash from Amato and Creely "occasionally" followed his assignment of curatorships to Creely.

> Q. And after receiving curatorships, Mr. -- Messrs. Creely and/or Amato and/or their law firm would give you money; correct?

Amato also owned real estate together and had the firm's name – Amato & Creely – on the building they owned. *Id.*

[36] Judge G. Thomas Porteous, Jr. 5th Circuit Special Committee Hearing Testimony ("Porteous 5th Cir.") at 119.

[37] *Id.* at 134.

A. Occasionally.

Q. During the time you were giving Creely and Amato and the law firm curatorships and you were getting cash back, was that cash you received a kickback for the curatorship, in your mind?

A. No, sir.[38]

Though Judge Porteous took issue with the label "kickback" to describe the arrangement, he did not dispute – indeed he accepted – the description of the arrangement that he had with Creely and Amato as one where he gave "Creely and Amato and the law firm curatorships and [was] getting cash back."[39] Similarly, at a different part of his testimony, Judge Porteous was asked a series of questions by Judge Benavides as to whether he received all the fees from the curatorships he assigned the firm, or just a portion of them. Judge Porteous responded: "I don't know if it matched each time. That's all I can tell you Judge. I just don't know."[40] Significantly, Judge Porteous again accepted the fundamental premise of the question – that he received fees from the curatorships – but professed simply not to know whether the monies he received from the two attorneys matched the curatorship fees "each time."

In addition to the testimony of Creely, Amato, and Judge Porteous, the House located close to 200 judicial orders signed by Judge Porteous assigning Creely "curatorships." As described in the following chart, these curatorships would have generated fees of nearly $40,000 to the firm.

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38 *Id.* at 132–33.

39 *Id.* at 133.

40 *Id.* at 130–33.

Year	Number of Curatorships Assigned by Judge Porteous to Creely/Fee Amount per Curatorship	Total Dollar Amount
1988	18 x $150, or 18 x $200	$2,700 – $3,600
1989	21 x $200	$4,200
1990	33 x $200	$6,600
1991	28 x $200	$5,600
1992	44 x $200	$8,800
1993	28 x $200	$5,600
1994	20 x $200	$4,000
TOTAL	**192**	**$37,500 – $38,400**

Thus, Judge Porteous assigned curatorships to Creely resulting in the firm of Amato & Creely receiving fees amounting to at least $37,500 from 1988 through 1994.[41]

Both Creely and Amato have testified consistently that they gave Judge Porteous approximately $10,000 each, or approximately $20,000.[42] For his part, Judge Porteous testified that he had "no earthly idea" how much Creely and Amato gave him, though he did not deny the total could have been more than $10,000. Judge Porteous testified as follows:

> 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.

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[41] *See* House Chart 40; HP Ex. 188 (Letter from Jefferson Parish Court Clerk re: curator fee amounts), HP Exs. 189(1)–(226) (Curatorships).

[42] *See* Amato SITC at 131:19-22 ("Over time my best, not estimate but guesstimate would be something under 20,000 or around $20,000 over a period of 10, 12 years, 15 years, I don't know."); Creely SITC at 272:2-4 ("[M]y best estimate of what I gave Judge Porteous was $10,000, while he was on the state bench."); Amato Task Force at 101, 108) (agreeing that the total amount was "in the neighborhood of 10 [thousand] to 20 thousand [dollars]"); Amato 5th Cir. at 242, 247).

* * *

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.[43]

On October 28, 1994, Judge Porteous was sworn in as a federal district judge. Judge Porteous was no longer in a position to refer curatorships to Creely and Amato, and he stopped (for the time being) asking them for cash.[44] The fact that Judge Porteous's requests for cash from Creely and Amato came to an end at the same time he could no longer assign curatorships to them constitutes additional powerful evidence that those two actions were inextricably connected.

C. Lunches, Trips, Expenses and Parties

While Judge Porteous was a state judge, both Amato and Creely each frequently took Judge Porteous to lunch. Amato testified that he took Judge Porteous to lunch "on a regular basis . . . a couple of times a month," amounting to "potentially hundreds of lunches."[45] The restaurants to which Amato took Judge Porteous included the Beef Connection, the Red Maple, Bertucci's, Ruth's Chris Steak House, Antoine's, Smith & Wolensky's and Galatoire's.[46] As Amato testified: "We liked to eat well."[47] Amato paid for food and drink – typically "at least two" vodka drinks for Judge Porteous and sometimes more.[48] Amato, or other attorneys who

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43 Porteous 5th Cir. at 118–19.

44 *See* Amato SITC at 130:17-23; Creely SITC at 275:9-12.

45 Amato SITC at 119:6-12, 122:7-9.

46 *Id.* at 119:18-25.

47 Amato SITC at 119:13-14. *See also* Amato Task Force at 104 (describing his lunches with Judge Porteous spanning the entirety of their relationship: "[W]e had a good time.").

48 Amato SITC at 121:9-15.

may have been in attendance, paid for all but a handful of these lunches, with Judge Porteous paying "rarely," that is, a "couple of times, two, three times out of a hundred."[49]

While Judge Porteous was a state court judge, Creely also took Judge Porteous to lunch approximately twice a month. Creely believed that Amato took Judge Porteous out to lunch more frequently than he (Creely) did. When Creely and Judge Porteous went to lunch together, either Creely paid, or someone else paid, but "[n]ot Judge Porteous."[50]

In addition, the two men hosted Judge Porteous on a variety of hunting and fishing trips, and arranged those trips, some of which involved air travel to Mexico, so that Judge Porteous never paid.[51] In the summer of 1994, when Judge Porteous's son Timothy was in Washington D.C. for an "externship," Judge Porteous, through his secretary Rhonda Danos, solicited and received money from Creely and Amato to help pay for Timothy's expenses.[52]

Amato and Creely also paid several hundred dollars toward a party for Judge Porteous to celebrate his becoming a federal judge in 1994.[53]

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[49] Amato SITC at 122:16, 210:12-13. *See also id.* at 119:9-12, 122:7-9, 121:9-11, 122:16; Amato 5th Cir. at 255; Amato Task Force at 104 (recalling that that he had taken Judge Porteous to restaurants "hundreds of times" and that Judge Porteous bought lunch "at least on one occasion.").

[50] Creely SITC at 254:9. *See also id.* at 252:5-15, 254:5-9.

[51] *See* Creely SITC at 254:17 – 257:5; Amato SITC at 122:19 – 124:5.

[52] *See* Timothy Porteous Senate Impeachment Trial Committee Hearing Testimony ("T. Porteous SITC") at 1243:25 – 1244:9 ("I remember the conversation [Judge Porteous] had had, that he came home and said Bob [Creely] and Uncle Jake [Amato] gave you some money, and they said to have a great time and enjoy the experience."); Rhonda Danos Senate Impeachment Trial Committee Hearing Testimony ("Danos SITC") at 872:19 – 874:5 (describing her phone calls to attorneys, including Amato and Creely, and others seeking money for Timothy Porteous's externship); Amato Task Force at 104 (confirming that he contributed money for Judge Porteous's son).

[53] *See* Danos SITC at 872:2-15 (estimating the attorneys put in about "$500 each" toward the party).

D. Judge Porteous's Handling of the Liljeberg Case

1. Introduction

On January 16, 1996, as a federal judge, Judge Porteous was assigned a complicated civil action, Lifemark Hospitals of La., Inc. ["Lifemark"] v. Liljeberg Enterprises, Inc. ["Liljeberg" or "the Liljebergs"]. The case was scheduled for a non-jury trial in November of 1996. Amato entered his appearance on behalf of the Liljebergs in September of 1996 – approximately six weeks prior to the trial date. Thereafter, Judge Porteous presided over the Liljeberg case without disclosing his corrupt relationship with Amato. Indeed, in 1999, while Amato was awaiting Judge Porteous's decision – a verdict that was worth hundreds of thousands of dollars to Amato and his firm – Judge Porteous solicited two thousand dollars in cash from Amato. Amato acknowledged that he complied with Judge Porteous's request in part because of the financial leverage that Judge Porteous then enjoyed over him. Ultimately, Judge Porteous issued an opinion benefiting Amato in the Liljeberg case that was so bereft of legal support that the Fifth Circuit Court of Appeals, in reversing Judge Porteous, described it as "inexplicable," "a chimera," "constructed entirely out of whole cloth," "nonsensical," and "absurd."[54]

2. The Recusal Hearing in the Liljeberg Case

The Liljeberg case involved a dispute between a hospital (Lifemark) and a pharmacy (Liljeberg), and involved antitrust law, bankruptcy law, real estate law, and contract law. The case was filed in 1993, and had been assigned to other judges before being transferred to Judge

[54] HP Ex. 63 (*In the Matter of Liljeberg Enterprises Inc.*, 304 F.3d 410, 428–29, 431–32 (5th Cir. 2002) ("5th Cir. *Liljeberg* Opinion")).

Porteous in January 1996. The matter was particularly contentious, with millions of dollars at stake.[55]

The case was set for a non-jury trial before Judge Porteous, to commence November 4, 1996. On September 19, 1996, approximately six weeks prior to the scheduled trial date, the Liljebergs filed a motion to enter the appearances of Amato and Leonard Levenson (another of Judge Porteous's friends) as their attorneys. Judge Porteous granted the motion on September 26, 1996.[56]

Amato was hired on a contingent fee basis, which provided that his law firm would receive 8% of any award. Amato estimated that if the Liljebergs prevailed in the case, he would have received between $500,000 and $1,000,000, but would receive nothing if the Liljebergs lost.[57] The motion to enter Amato's appearance clearly identified him with the firm "Amato and Creely."[58] Amato knew that one of the reasons he was retained was because of his friendship with Judge Porteous – "I'm sure my relationship with Judge Porteous had something to do with it."[59]

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55 *See* Joseph Mole Senate Impeachment Trial Committee Hearing Testimony ("Mole SITC") at 379:13-15; Amato SITC at 189:14-19. *See also* HP Ex. 50 (Pacer Docket Report *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP, at p. 5 (Docket No. 1), p. 20 (Docket No. 190) ("Pacer Docket Report")).

56 *See* HP Ex. 51(a) (Liljebergs' Motion to Substitute Counsel, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Sept. 19, 1996) ("Motion to Substitute")) ; HP Ex. 51(b) (Order *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Sept. 23, 1996)).

57 *See* Amato SITC at 132:33 – 133:11, 134:8-15. Mole SITC at 382:19-22 (describing the contingency arrangement).

58 *See* HP Ex. 51(a) (Motion to Substitute), *supra* note 56 (listing Amato as being with the law firm Amato & Creely, P.C.)

59 Amato SITC at 220:4-16.

After Amato and Levenson entered their appearances on behalf of the Liljebergs, Lifemark's lead counsel, Joseph Mole, inquired of others as to their relationship with Judge Porteous. After speaking to several individuals, Mole "developed some serious concerns that Mr. Amato and Mr. Levenson's presence in the case would be a problem that would keep the case from having a fair result."[60]

On October 1, 1996, Mole, on behalf of his client Lifemark, filed a motion to recuse Judge Porteous. Mole drafted the motion carefully based on his limited understanding of the facts, alleging in substance "that there was a close relationship between Judge Porteous and Mr. Amato and Mr. Levenson, that they were known to socialize together, that Amato and the judge had been law partners and that the timing created suspicion that it was the best thing for the judge to do, to avoid the appearance of impropriety, to step aside."[61]

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[60] Mole SITC at 383:11-14. The Liljebergs' motives for hiring Amato, and the reasons for Mole's concerns, were corroborated by former state judge Bodenheimer, who informed the FBI, and confirmed in his trial testimony, that Judge Porteous had a reputation for awarding verdicts to his friends. *See, e.g.*, Ronald Bodenheimer Senate Impeachment Trial Committee Hearing Testimony ("Bodenheimer SITC") at 1306:19 – 1309:1 (testifying that he previously made a statement to the FBI that was recorded as follows:

> Bodenheimer would describe Porteous as corrupt because any time certain lawyers were in Porteous's court, a verdict in that lawyer's favor was assured, which constituted corruption in Bodenheimer's mind. Bodenheimer had heard that type of corruption had continued in Porteous's federal courtroom with Gardner and Levenson and with Amato & Creely to a lesser extent.

Bodenheimer affirmed that he, in fact, "had heard that." *Id.*

[61] Mole SITC at 385:16-23. *See also id.* at 384:18-23, 385:3-7, 432:22-23 (stating that "[t]his is the only motion to recuse I've ever been involved with"). *See also* HP Ex. 52 (Lifemark's Memorandum in Support of Motion to Recuse, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Oct. 1, 1996)); Joseph Mole House Impeachment Task Force Hearing Testimony ("Mole Task Force") at 141-42 (describing his motion as arguing "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,

Mole had no idea that Amato, along with his partner Creely, had actually given Judge Porteous cash pursuant to the curatorship kickback arrangement, nor did he know about the other things of value that Amato or his partner Creely had provided Judge Porteous. If Mole had known those facts, he would have raised them in his motion to recuse.[62]

On October 16, 1996, after the parties filed their respective written pleadings, Judge Porteous held a hearing on the recusal motion.[63] Both Amato and Levenson were present. During that hearing, Judge Porteous did not disclose the kickback arrangement that he had previously enjoyed with Amato and his partner. Instead, he made a series of misleading statements that characterized his relationship with Amato in benign terms, essentially as being no different than his relationship with countless other friends and members of the Bar:

> The Court: Let me make also one other statement for the record 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. Is that sufficient? . . . So if that is an issue at all, it is a non-issue.

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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").

[62] *See* Mole SITC at 385:24 – 386:10; Joseph Mole 5th Circuit Special Committee Hearing Testimony ("Mole 5th Cir.") at 169-70.

[63] The Liljebergs filed their Opposition, dated October 9, 1996, which was signed by Mr. Levenson; Lifemark filed its Reply to the Opposition, dated October 11, 1996; and the Liljebergs filed a Memorandum in Opposition to Lifemark's Reply, dated October 15, 1996, again signed by Mr. Levenson. *See* HP Ex. 53 (Liljebergs' Opposition to Lifemark's Motion to Recuse, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Oct. 9, 1996)); HP Ex. 54 (Lifemark's Reply to Liljebergs' Opposition, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Oct. 11, 1996)); HP Ex. 55 (Liljebergs' Opposition to Lifemark's Reply, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Oct. 15, 1996)). That final pleading attacked Lifemark's factual allegations, not because they were untrue, but because they were unproven, lacked specificity, and, in essence, alleged nothing more than the existence of "a friendly relationship." HP Ex. 55 (Liljebergs' Opposition to Lifemark's Reply at 2).

* * *

Mr. Mole: I am happy to tell the Judge what the public perception is of the relationship.

* * *

Mr. Mole: 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. 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.

* * *

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…

* * *

The Court: <u>The first time I ran, 1984, I think is the only time when they gave me money.</u>

* * *

The Court: [T]his is the first time a motion for my recusal has ever been filed. . . . I guess it got my attention. But does that mean that any time a person I perceive to be friends who I have dinner with or whatever that I must disqualify myself? I don't think that's what the rule suggests. . . . Courts have held that a judge need not disqualify himself just because a friend, even a close friend, appears as a lawyer.

* * *

The Court: Well you know the issue becomes one of, I guess the confidence of the parties, not the attorneys. . . . My concern is not with whether or not lawyers are friends. . . . My concern is that the parties are given a day in court which they can through you present their case, and they can be adjudicated thoroughly without bias, favor, prejudice, public opinion, sympathy, anything else, just on law and facts. . . .

> 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. . . .
>
> [In the Bernard case] the court said Section 450 requires not only that a Judge be subjectively confident of his ability to be even handed but [that an] informed, rational objective observer would not doubt his impartiality. . . . I don't have any difficulty trying this case. . . .
>
> [I]n my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right."[64]

At one point in the hearing, Judge Porteous discussed the issue of whether the attorneys had given him campaign contributions and chastised Mole on that issue:

> [D]on'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.[65]

Amato never uttered a word at the recusal hearing about the kickbacks he paid to the Judge, nor did Judge Porteous. Amato described the consequences, were he to have made such a disclosure, as follows: "I would be disbarred, my law partner would be disbarred and that the judge would be sanctioned or defrocked, derobed by the judicial commission. At the time they

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64 HP Ex. 56 (Recusal Hearing Transcript, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP at 4, 6–7, 8, 10–11, 17–19 (E.D. La. Oct. 16, 1996) ("Recusal Hearing Transcript")) (emphasis added). Among the many devious ploys Judge Porteous utilized at this hearing, one in particular involved his dancing around the issue of disclosure. Mole, for his part, sought for Judge Porteous to make a full disclosure, diplomatically suggesting: "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." *Id.* at 6. In response, Judge Porteous went on the attack, essentially attacking Mole for mischaracterizing the nature of certain campaign contributions that were given. *Id.* at 9–10. Judge Porteous thus side-tracked the hearing into an irrelevant inquiry where he could be on the offense so as to discredit Mole.

65 *See* HP Ex. 56 (Recusal Hearing Transcript at 10), *supra* note 64.

were two of my best friends." Amato thus left the decision as to what would be disclosed to Judge Porteous, because "[t]he judge knew as much as I knew."[66]

With Amato (and Levenson) remaining silent in the courtroom, the few factual disclosures about the relationship between Judge Porteous and Amato (and Levenson) were made by Judge Porteous, and, as noted above, these were limited to the statements that he was "a friend with Mr. Amato and Mr. Levenson," had been a former law partner with Amato, had "gone along to lunch with them," but had not "been to either one of them's house," and that the first time he ran for judge in 1984 was "the only time when they gave me money." Judge Porteous did not admit that Amato, through his firm Amato & Creely, had given him approximately $20,000 in cash, including monies funded by Judge Porteous's assignment of curatorships to Creely. Judge Porteous did not address Mole's specific statement that he [Mole] had heard that Judge Porteous had traveled with the attorneys, and thus did not disclose, for example, that he had been hunting and fishing with Amato and Creely as their guest on several occasions. Judge Porteous also did not disclose that Amato and Creely had helped pay for his party to celebrate his appointment to the federal bench or had given money to help support Judge Porteous's son's 1994 summer externship.

The dishonesty in Judge Porteous's handling of the recusal hearing is manifest. Even Amato has testified that Judge Porteous was at that time "obligated" to have disclosed their prior financial relationship, that Judge Porteous's failure to disclose that financial relationship at the recusal hearing was "dishonest," and that Judge Porteous's statements concerning the fact that the only time he received cash from Amato and Levenson involved modest campaign

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[66] Amato SITC at 139:4-8, 138:17-18. *See also* Amato Task Force at 103; Amato 5th Cir. at 248–49.

contributions, were "misleading" in that Judge Porteous did not disclose the cash he had received directly from Creely and Amato.[67]

Judge Porteous's statements minimizing his relationship with Amato – by denying he had ever been to his house, or asserting that they had "gone along to lunch" – depicted a relationship that was totally at odds with the truth. Judge Porteous trivialized Mole's motion by comparing it to the following: "But does that mean that any time a person I perceive to be friends who I have dinner with or whatever that I must disqualify myself? I don't think that's what the rule suggests . . . ."[68] By suggesting merely that he had "dinner with" or "gone along to lunch with" Amato, with no elaboration, he affirmatively concealed the truth: that Amato (and his partner Creely) had paid for hundreds of Judge Porteous's lunches and dinners at expensive restaurants for a decade or longer, for which Judge Porteous virtually never reciprocated. But more fundamentally, these were attorneys who, for years, paid him thousands in kickbacks. Judge Porteous affirmatively diverted the hearing from the true issues raised in the recusal motion by focusing on whether the attorneys had given him campaign contributions – denying that fact – and criticizing Lifemark's attorney for raising the issue.[69]

Finally, Judge Porteous made several "lulling" statements – stressing his awareness of and sensitivity to his ethical concerns associated with recusal issues, and suggesting his comfort

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67 Amato SITC at 230:3-6, 138:1-2, 144:10-13. *See also* Mole SITC at 385:24 – 387:1 (at the time he filed the recusal motion, Mole was unaware that Amato and Creely had given Judge Porteous cash from curatorship cases); Amato Task Force at 103 (agreeing that monies given from Amato and Creely to Judge Porteous was a "material fact that would have been relevant to Joseph Mole and Lifemark").

68 *See* HP Ex. 56 (Recusal Hearing Transcript at 11), *supra* note 64.

69 *See* HP Ex. 56 (Recusal Hearing Transcript at 8–10), *supra* note 64.

with the issue having been raised. The most significant example of this tactic was Judge Porteous's statement:

> 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.[70]

This self-serving statement purported to demonstrate the Judge's sensitivity to his ethical responsibilities and thus bolstered the factual and legal record for appellate review.

Judge Porteous denied the recusal motion after the argument in open court on October 16, 1996 and issued a one paragraph written order that he signed the following day. [71] Lifemark sought a writ of mandamus from the Fifth Circuit. That petition was also denied.[72]

Lifemark, having lost the recusal motion, felt that it was necessary to "level the playing field," and thus hired Don Gardner, another close friend of Judge Porteous, to be part of its trial team. Lifemark's pleading to the court entering the appearance of Gardner was date-stamped March 11, 1997. Mr. Gardner, who had little to no federal court / complex litigation experience, was brought in solely because he was a friend of the judge.[73]

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70 *See* HP Ex. 56 (Recusal Hearing Transcript at 18), *supra* note 64.

71 HP Ex. 57 (Judgment, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP at 1 (E.D. La. Oct. 17, 1996)). The written Order merely stated: "On Wednesday, October 16, 1996, the court heard oral argument on Lifemark Hospitals, Inc.'s Motion to Recuse. The Court, having reviewed the motion to recuse, the opposition, the reply, and the response to the reply and having heard oral argument, for reasons stated in open court denies the Motion to Recuse."

72 *See* HP Ex. 58 (Lifemark's Petition for Writ of Mandamus, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Oct. 24, 1996)); HP Ex. 59 (Order, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. Oct. 28, 1996)).

73 *See* Mole SITC at 390:5-7, 390:9 – 392:8; Mole 5th Cir. at 174, 177–80); HP Ex. 60(a) (Motion of Lifemark to Enroll Additional Counsel of Record, *Lifemark Hospitals, Inc. v. Liljeberg Enters., Inc.*, Case No.: 2:93-cv-01794-GTP (E.D. La. March 11, 1997)).

E. Judge Porteous's Relationship with Amato and the Firm Amato & Creely While the Liljeberg Case Was Pending

Judge Porteous conducted a bench trial in the Liljeberg case in June and July 1997.[74] At the conclusion of the trial in July of 1997, Judge Porteous took the case under advisement. He did not issue his opinion until April 26, 2000, nearly three years after trial.[75]

1. Meals

Amato and Creely continued to take Judge Porteous to lunches after the Liljeberg trial ended and prior to Judge Porteous issuing his written decision in that case. The restaurants where Amato took Judge Porteous included Ruth's Chris Steak House, the Beef Connection, Andrea's, and Emeril's.[76] From May 1999 to April 2000 (during which time the Liljeberg case was pending), the following chart reflects some of the meals attended by Judge Porteous and paid for by Amato, as reflected on Amato's credit card statements and his calendars for that period, which were produced to the Department of Justice pursuant to a grand jury subpoena.[77]

Date	Restaurant	Amount	Calendar Notes
05/05/99	Sal and Sam's Metairie	$56.45	"Tom Porteous"
05/26/99	Cannon's Restaurant	$28.40	"GTP Parking $5"
06/16/99	Ruth's Chris #2 Steak House	$154.57	"G.T.P. Parking $7" [PAID BY CREELY]
06/22/99	Ruth's Chris #1 Steak House	$98.06	"Tom Porteous Parking $3"
06/29/99	Red Maple Restaurant	$52.48	"GTP" [PAID BY CREELY]

74 *See* HP Ex. 50 (Pacer Docket Report at pp. 39-41), *supra* note 55.

75 *See* HP Ex. 50 (Pacer Docket Report at p. 44 (Docket Nos. 471-72)), *supra* note 55.

76 Amato Task Force at 103-04.

77 *See* HP Ex. 21(b) (Jacob Amato calendars, 1999–2001); HP Ex. 21(c) (Jacob Amato credit card records).

Date	Restaurant	Amount	Calendar Notes
07/29/99	Sal and Sam's Metairie	$37.50	"GTP"
08/02/99	Omni Hotels	$45.82	"G.T.P. – $4 Parking"
08/12/99	Crescent City Brewhouse (3 separate charges)	$242.03, $29.64, $30.46	"G.T.P Parking $8"
09/13/99	Metro Bistro	$44.00	"GTP – Parking $5"
10/04/99	Andrea's Restaurant	$244.78	"GTP – Parking $15"
12/06/99	Ruth's Chris #1 Steak House	$299.41	"GTP Parking $10"
12/28-29/99	Canon's Restaurant	$80.24	"G.T.P" [Calendar entry unclear as to which date]
01/12/00	Beef Connection	$206.68	"G.T.P."
01/25/00	Dickie Brennan Steak	$233.50	"G.T.P.– Parking $4"
02/09/00	Bruning's Restaurant	$60.61	"Porteous"
03/01/00	Dickie Brennan Steak	$124.29	"G.T.P. $5"
03/29/00	Red Maple	$160.83	GTP
04/05/00	[no corresponding restaurant charge in New Orleans]		"GTP & Crew $145"
04/17/00	Beef Connection	$101.37	"G.T.P" [PAID BY CREELY]

2. May 1999 – Creely's Payments for Judge Porteous in Las Vegas

In May 1999, while the Liljeberg case was pending his decision, Judge Porteous went on a trip to Las Vegas, Nevada with several friends, including Creely and Gardner, for his son's bachelor party. Creely paid for Judge Porteous's hotel room and some incidental room charges. He also paid for a portion of Timothy Porteous's bachelor party dinner at the Golden Steer. These payments amounted to more than $1,100. During that trip, Creely accompanied Judge

Porteous and others to a strip club, where Creely gave a club employee $200 to pay for a lap dance for Judge Porteous and a courthouse employee.[78]

Judge Porteous admitted in his Fifth Circuit testimony that Creely paid for his hotel room and a portion of the dinner on the May 1999 Las Vegas trip.[79]

3. June 1999 – Judge Porteous Solicits and Receives Approximately $2000 from Amato

On June 29, 1999 – prior to Judge Porteous issuing his decision in Liljeberg – Judge Porteous solicited approximately $2,000 to $2,500 from Amato while the two men were on a fishing trip. Amato described the incident as follows:

> We were standing on the front of Mitch Martin's boat, his rather large boat, and we were both drinking, the judge was not hysterical, but he was very upset that his son's wedding was coming up soon and that he didn't have enough money to put the kind of wedding on that he thought he should. I don't know if he was – for the – half the rehearsal party or whatever. But he had some – some wedding-related reason why he needed some cash to go farther with the wedding plans.[80]

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[78] *See* Creely SITC at 289:23 – 290:2, 289:17-22, 354:1-10, 291:7-18. *See also* HP Ex. 377 (Caesars Palace Record reflecting that Creely signed for Judge Porteous's room charges); HP Ex. 378 (consisting of: (1) Caesars Palace records including Judge Porteous's room charges of $86.11, $86.11 and $378.70, and (2) the Amato & Creely corporate American Express statement for May 1999 showing charges for $86.11, $86.11, and $378.70 – from Judge Porteous's hotel room at Caesars Palace – and for $560.58 – from Creely's payment at the Golden Steer bachelor party dinner – for a total in excess of $1,100). At the SITC trial, Creely expressed confusion at separating out Judge Porteous's charges on his credit card statement from other charges he incurred on that trip, but those charges are readily identifiable by reference to Judge Porteous's room statement, which is part of HP Ex. 378, and the charges clearly total more than $1,100.

[79] Porteous 5th Cir. at 140 ("It appears Mr. Creely paid for [my room].").

[80] Amato SITC at 141:5-14. *See also* Amato Task Force at 104–05 ("It was a weekday, and a friend of mine has a fairly large boat . . . . 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?"); Amato 5th Cir. at 240; HP Ex. 283 (Amato's June 1999 calendar showing the name "Mitch Martin" written in the box for June 29, 1999).

Amato subsequently obtained approximately half that amount ($1,000) from Creely, and gave Judge Porteous $2,000 in cash in an envelope.[81]

Creely recalled the incident in similar terms as Amato. Creely testified:

> A. There was a fishing trip that I wouldn't go on, didn't want to go on. And Judge Porteous and Amato went on this fishing trip. In general - I don't remember word for word how it went. It was 11 years ago. But the judge and he ended up in some sort of a conversation, either on the front or the back of the boat where the judge became - loss of words, became emotional about not being able to satisfy or pay for the obligation that he needed money for and asked Jake Amato to help him out. And that was what was related to me. . . .
>
> Q And both of you decided that if you were going to give money to the judge, it was going to come from you both equally?
>
> A. Yeah. That's what Mr. Amato decided, that we would give half the money to the judge, and I eventually did it.[82]

Judge Porteous, testifying in the Fifth Circuit hearing, confirmed the essence of Amato's recollections of events surrounding the request for money on the fishing trip. Judge Porteous admitted that he received cash from Amato for the purposes Amato described, and that cash was received in an envelope.

> Q. Do you recall in 1999, in the summer, May, June, receiving $2,000 for [sic: should be "from"] them?
>
> A. I've read Amato's grand jury testimony. It says we were fishing and I made some representation that I was having difficulties and that he loaned me some money or gave me some money.
>
> Q. You don't – you're not denying it; you just don't remember it?
>
> A. I just don't have any recollection of it, but that would have fallen in the category of a loan from a friend. That's all.
>
> * * *

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81 *See* Amato SITC at 141:23-24.

82 Creely SITC at 294:4-22.

Q. [W]hether or not you recall asking 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.

* * *

Q. Wait a second. Is it the nature of the envelope you're disputing?

A. No. Money was received in [an] envelope.

Q. And had cash in it?

A. Yes, sir.

Q. And it was from Creely and/or -

A. Amato.

Q. Amato?

A. Yes.

Q. And it was used to pay for your son's wedding.

A. To help defray the cost, yeah.

Q. And was used -

A. They loaned - my impression was it was a loan.

Q. And would you dispute that the amount was $2,000?

A. I don't have any basis to dispute it.

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?

A. No, I didn't. I declared bankruptcy in 2001; and, of course, I didn't list it.[83]

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[83] Porteous 5th Cir. at 121, 136–38. Judge Porteous's Fifth Circuit testimony, that he considered the $2,000 a "loan," is obviously not true. In the entire history of the relationship

At the time of Judge Porteous's request of Amato for money, Judge Porteous had the Liljeberg case under advisement, with his decision in that case still to be rendered. Depending on how Judge Porteous chose to rule, Amato and his firm could receive up to a million dollars – or get nothing.[84] The case was exceptionally important to Amato, who had put his practice on hold for almost two years to handle this demanding contingency case. The leverage that Judge Porteous had over Amato at the time of this request – where Judge Porteous had the power to enrich Amato many times over the amount that he was requesting of Amato – was apparent. Amato was blunt that Judge Porteous's role as a judge, with the Liljeberg case pending before him, was a factor that influenced Amato's willingness to give Judge Porteous cash.

> Q. Let me ask you now, Amato, did the fact that you stood to make a lot of money enter your head when he asked you for the cash?
>
> A. It did, yes, it did.[85]

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between Judge Porteous and attorneys Amato and Creely, there is no evidence whatsoever that any of the cash they gave Judge Porteous was ever considered or treated as a loan, or that Judge Porteous ever repaid anything to them.

Notwithstanding that Judge Porteous swore under oath before the Fifth Circuit that this transaction was "a loan," Judge Porteous, through his attorneys, came up with an entirely different explanation for this transaction at the SITC trial, during which the payment was described as a "wedding gift": "It was a gift, a wedding gift from long–standing friends." Jonathan Turley SITC Opening Statement at 76. This description of the transaction is equally far-fetched and disingenuous. The payment of $2,000 from Amato and Creely to Judge Porteous bore no semblance whatsoever to a common understanding of the term "wedding gift." For one, the cash was provided to the father of the groom – not the groom; for another, it was provided not as a result of any charitable impulse but in response to a specific request for cash. If those reasons were not enough to render the "wedding gift" explanation fictive, both Amato and Creely specifically denied that the cash was intended to constitute such a gift. *See* Amato SITC at 231:3-22 (Amato gave the groom a different wedding present); Creely SITC at 359:25 – 360:8 ("It wasn't a wedding present."). It is inferable that Judge Porteous and his attorneys have resorted to "false exculpatory" explanations for the conduct because the truth is so truly damning and reveals what was, in substance, Judge Porteous's shakedown of Amato for cash.

[84] *See* Amato SITC at 132:22 – 133:11.

[85] Amato SITC at 142:23 – 143:1.

* * *

Q. So you understood that this was something of critical importance to him?

A. Yes.

Q. Now, you testified on cross that you gave him the money, but influencing the judgment was not the primary reason; is that right?

A. Yes, that's correct, it wasn't the primary reason, a moving reason. It was because of my friendship, and I really felt sad for him. Now, I did consider that, you know, I had a case in front of him.

Q. In the House I think I asked you to break down –

A. Yes.

Q. -- how you weighted this, how much of your motivation to give him the money was based on your friendship and how much was based on the fact that this was a federal judge sitting on a case worth a potential half million to a million to you. How did you break that down?

A. 20 percent because he was a federal judge, the rest because of friendship and because I really felt sorry for him. I know what it's like to raise a bunch of kids, you know?

Q. But 20 percent was because he had a case worth a fortune to you, wasn't it?

A. Yes, and I – biggest mistake I ever made.

Q. You didn't believe it would influence the judge's decision necessarily, but you weren't willing to take the risk that it might?

A. That's correct.[86]

The shakedown quality to Judge Porteous's request is obvious and was perceived as such by Amato. It was inconceivable that with the case pending, Amato would "take the risk" of turning down Judge Porteous's request for cash where the matter was of "critical importance" to the judge.[87] Thus, the evidence established beyond a doubt that in the midst of presiding over a

[86] Amato SITC at 232:20 – 233:25 (emphasis added).

[87] *Id.* at 232:20-22.

case, at a critical stage where he had the case under advisement, Judge Porteous solicited and received cash from one of the attorneys for one of the parties. Judge Porteous's solicitation of cash from Amato demonstrates Judge Porteous's egregious misuse of his judicial power to enrich himself. A judge who engages in such conduct is unfit to continue to hold the office of United States District Judge.

4. Other – Amato's and Creely's Payment for Five Year Anniversary Party

In late 1999, still while Judge Porteous had the Liljeberg case under advisement, Amato and Creely paid for a party for Judge Porteous to celebrate his fifth year on the federal bench, at the French Quarter Restaurant and Bar, to which his present and former clerks and other attorneys were invited. Amato estimated they paid between $1,000 and $1,500.[88]

F. Procedural History of the Liljeberg Case – 1997 to 2002

Notwithstanding Judge Porteous's statement at the October 16, 1996 recusal hearing that: "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," he did not notify Mole of any of his post-recusal hearing and post-trial contacts with Amato or Creely which would have provided Mole the opportunity to renew his motion to recuse.[89] Specifically, Judge Porteous did not inform attorney Mole of the meals, the payments of expenses in Las Vegas, the $2,000 cash payment, or Amato and Creely's payment towards Judge Porteous's fifth year anniversary party.

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88 *See id.* at 145:12-21; Danos SITC at 871:17-24; Amato Task Force at 105 (estimating $1,700).

89 *See* Mole SITC at 399:2-19; Mole 5th Cir. at 193 (testifying that he would have been "very alarmed to find out that Jake was giving money to the judge during the case as being under submission for decision by Judge Porteous"); Mole Task Force at 145 ("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.").

On April 26, 2000, Judge Porteous issued a written opinion in the Liljeberg case. By that time, Judge Porteous's financial situation was desperate. He had nearly depleted his IRA account, had over $100,000 in credit card debt, and was just weeks away from meeting with a bankruptcy attorney. He knew that he had turned to Amato and Creely as sources of financial support in the past, and there is every reason to conclude that he would have expected such a relationship to continue in the future. Judge Porteous – who had taken judicial actions in the past so as to enrich himself – had powerful financial motives not to burn his bridges with Amato and Creely and, instead, to curry their favor and stoke their generosity.

Thus, Judge Porteous ruled in all major aspects for Amato's and Levenson's clients, the Liljebergs. According to Lifemark's counsel, this was a "resounding loss" for Lifemark,[90] and Lifemark appealed Judge Porteous's decision to the Fifth Circuit Court of Appeals.[91]

In August of 2002, the Fifth Circuit Court of Appeals reversed Judge Porteous's decision in most significant aspects. In doing so, the Fifth Circuit characterized various aspects of Judge Porteous's ruling as "inexplicable," "a chimera," "constructed entirely out of whole cloth," "absurd," "close to being nonsensical," and "not supported by law."[92]

After the case was reversed by the Fifth Circuit and remanded back to Judge Porteous, the parties settled because Mole's client did not want to go back before Judge Porteous.[93]

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90 Mole SITC at 400:17-18. Such a verdict was consistent with Judge Porteous's reputation of awarding verdicts to his friends. *See* Bodenheimer SITC at 1308:16 – 1309:1.

91 *See* Mole SITC at 401:5-7.

92 HP Ex. 63 (Fifth Cir. *Liljeberg* Opinion at 428–29, 431–32), *supra* note 54.

93 *See* Mole SITC at 404:6-11.

G. Judge Porteous Should Be Convicted and Removed from Office for Engaging in the Conduct Set Forth in Article I

The House has clearly proved the allegations set forth in Article I. That conduct constitutes a "high Crime and Misdemeanor" warranting Judge Porteous's conviction and removal from the office of United States District Judge.

The conduct at issue warrants conviction and removal for several independent reasons. First, at its core, the conduct demonstrates Judge Porteous's breach of the public trust by his abuse of his judicial office for personal gain. He did so while a state judge by assigning Creely curatorships in order to enrich himself; he did so as a federal judge by dishonestly conducting a recusal hearing for personal purposes, the effect of which was that he would control a case vital to his close friend and financial benefactor; he did so by soliciting cash of Amato at a time when he had enormous economic leverage and power over Amato; and ultimately, he did so by issuing an unsupported, result-oriented decision that would have greatly enriched Amato and Creely.

Second, the conduct at issue demonstrates Judge Porteous's utter lack of integrity and lack of fitness to hold the office. This is apparent from the blatant corruption at the heart of the curatorship kickback scheme. It is also manifested by the dishonest way Judge Porteous handled the recusal hearing. He denied a fair hearing to Lifemark; he denied Lifemark a fair record on which they could base their appeal; and he prevented the Court of Appeals from having a fair record on which it could consider the appeal. Judge Porteous's conduct was a total and knowing corruption of the judicial process.

Third, the conduct at issue brings disrepute to the federal judiciary and undermines public confidence in it. No one could possibly conclude that the verdict in the Liljeberg case was fair and impartial given the undisclosed relationship between Judge Porteous and the lawyers for the Liljebergs, including Judge Porteous's solicitation of cash during the pendency of the case.

Further, the damage to public confidence in the judiciary going forward is immense: Judge Porteous's handling of the Liljeberg case sends the clear message that to prevail in his courtroom, it is necessary to give him things, or to hire attorneys who have given him things, and that the actual merits of the case are not determinative to a just outcome.[94] Judge Porteous so warped and corrupted the judicial process that both parties in the Liljeberg case felt it necessary (and who, unknown to the parties, had provided Judge Porteous with cash) to hire attorneys who were his friends, and, after the case was reversed and remanded on appeal, Lifemark decided to settle rather than go back to such a biased judge.

Thus, applying all the recognized and established grounds for conviction and removal – "abuse of position of trust," "lack of integrity," and "bringing disrepute to the judiciary and undermining public confidence in it" – Judge Porteous's conduct requires conviction and removal.

IV. ARTICLE II

A. Introduction

Starting in the early 1990s (while he was a state court judge), and continuing while on the federal bench, Judge Porteous maintained a corrupt relationship with bail bondsman Louis Marcotte. While on the state court, Judge Porteous solicited and accepted things of value from Marcotte (and from Louis Marcotte's sister, Lori Marcotte), and took a series of judicial actions – both in the nature of setting bonds as they requested (at amounts they recommended) and in setting aside and expunging felony convictions of two of their employees – that benefited the

[94] Creely and Amato each turned in their law licenses rather than face disciplinary proceedings for their conduct in connection with Judge Porteous. *See* Amato SITC at 150:7-13; Creely SITC at 294:23 – 295:6.

Marcottes. Judge Porteous's conduct was willfully corrupt, and was the same sort of conduct for which other state judges were ultimately convicted and imprisoned.

Even after he became a federal judge and could no longer set bonds for the Marcottes, Judge Porteous continued to maintain a corrupt relationship with them. He continued to accept expensive lunches from them, and, in particular, would go out to lunch with them when the Marcottes sought to impress and recruit others to their corrupt scheme. He willingly vouched for the bond practices of the Marcottes to state judges, knowing full well that the Marcottes were corrupt. By virtue of his influential position as a federal judge, Judge Porteous was particularly instrumental in the case of former state judge Ronald Bodenheimer, who kept his distance from Louis Marcotte until Judge Porteous spoke to him on Marcotte's behalf. Bodenheimer thereafter entered into a corrupt relationship with the Marcottes that was comparable to that of Judge Porteous when he was a state judge, and which ultimately resulted in Bodenheimer's guilty plea and incarceration.

Judge Porteous's conduct *vis-à-vis* the Marcottes constituted an abuse of his position of public trust and demonstrates Judge Porteous's lack of integrity. Further, Judge Porteous disgraces the federal judiciary as he continues to wear the robe of a federal judge after he has been exposed for having engaged in the same conduct which resulted in other state judges being sent to jail.

B. Overview – The Role of Louisiana State Judges in the Bail Bonds Business

In the 24th Judicial District Court (the "24th JDC"), where Judge Porteous presided as a state judge until October 1994, the bond-setting practices of the state judges had enormous financial impact on Louis Marcotte's bail bond business. If a judge were to set a bond so high that the prisoner could not afford to pay the premium to the bondsman (typically 10% of the bond), Marcotte would make nothing and the prisoner would remain in jail. If the bond was set

too low or if the prisoner was released on his personal promise to reappear, Marcotte would also make little or no money.[95] Thus, Marcotte wanted bonds to be set at the highest amount for which the individual who was arrested could afford to pay the premium – even if a lower bond was sufficient to secure their appearance in court. If, for example, the most money a prisoner could come up with to pay a premium was $10,000, then Louis Marcotte wanted bond set at $100,000.

When a person was arrested, the Marcottes (or their employees or agents) would interview him or her in jail, find out identifying information, the nature of the crime, and the prisoner's record. The Marcottes would also locate relatives or persons capable of posting the bond, run credit reports, and ultimately determine the maximum premium the prisoner could pay. The Marcottes would use that information in making a recommendation to one of the judges in the 24th JDC as to the amount of bond that the judge should set.[96] However, a judge's purpose in setting a bond amount should be to secure the defendant's presence in court, not necessarily to exhaust a defendant's (or his family's) resources – and certainly not to maximize a bail bondsman's profits.

Although the procedures in the 24th JDC during the early 1990s called for bond to be initially set by a sitting magistrate assigned to that duty, any judge in the courthouse could set bond. Accordingly, if the Marcottes thought that the sitting magistrate would set the bond "too high" or "too low" – something other than the "profit-maximizing" level – they would seek out a judge to set the bond at their recommended level. As Louis Marcotte explained: "[I]f the

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95 *See* Louis Marcotte Senate Impeachment Trial Committee Hearing Testimony ("Louis Marcotte SITC") at 506:22 – 507:3.

96 *Id.* at 504:20 – 505:3, 523:9-14. *See also* Louis Marcotte House Impeachment Task Force Hearing Testimony ("Louis Marcotte Task Force") at 42.

magistrate wasn't favorable, we would start calling the judges at home, you know, real early before the magistrate got there. And then, if we couldn't get in touch with them, we would go shopping in the courthouse before the magistrate set the bond."[97] Every time a judge set bond at the Marcottes' request, the Marcottes maximized their profits.[98]

C. The Relationship Between Judge Porteous and the Marcottes

In order to maximize his profits, Louis Marcotte needed judges who would be receptive to his bond requests. Judge Porteous, with expensive habits (alcohol and gambling), needed financial support. Each of these men quickly understood what the other could do for him, and they formed a mutually beneficial, corrupt relationship.

1. Meals

The Marcottes started to develop a relationship with Judge Porteous in the early 1990s. They met him through Adam Barnett, another bondsman who on occasion worked with the Marcottes. Barnett was close to Judge Porteous, and the Marcottes initially used Barnett to approach Judge Porteous to set bonds.[99] After the Marcottes got to know Judge Porteous, they dealt with him directly, and began to take Judge Porteous to lunch, along with his secretary, Rhonda Danos. The meals were expensive and involved "lots of drinking" by Judge Porteous.[100]

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97 Louis Marcotte Task Force at 43. *See also* Lori Marcotte Senate Deposition ("Lori Marcotte Sen. Dep.") at 49:2-4 ("[Sometimes] we didn't even call the magistrate if we knew it was someone that wouldn't help us."); Louis Marcotte Senate Deposition ("Louis Marcotte Sen. Dep.") at 139:22 – 140:11 (Louis went to Judge Porteous if he thought he could do better with Judge Porteous than the Magistrate, not just if the Magistrate were unavailable).

98 *See* Louis Marcotte SITC at 523:2-5, 524:11-16, 508:25 – 509:3.

99 *Id.* at 509:7-20, 560:12 – 561:10. *See also* Lori Marcotte Sen. Dep. at 10:14-18; Louis Marcotte Sen. Dep. at 18:12-18, 23:2-4.

100 *See* Louis Marcotte SITC at 509:21-25, 510:16-25, 511:1-7, 512:1-7 ("lots of drinking"); Jeffery Duhon Senate Impeachment Trial Committee Hearing Testimony ("Duhon SITC") at

The best evidence suggests that the Marcotte lunches with Judge Porteous started in or around 1992.[101]

Louis Marcotte estimated that the lunches with Judge Porteous occurred "around once a week and sometimes twice a week" and identified the restaurants as including the Beef Connection, Ruth's Chris Steak House, and other "high-end restaurants."[102] To arrange these lunches, Louis Marcotte would sometimes call Judge Porteous, and Judge Porteous would sometimes call Louis Marcotte. On some occasions, the Marcottes would call Judge Porteous's secretary Danos and she would set up the lunch.[103]

661:12-16, 663:18-25; Danos SITC at 892:12-20 ("a few times a month"); Lori Marcotte Sen. Dep. at 22:1-3.

[101] *See* Lori Marcotte Sen. Dep. at 15:23 – 16:25, 60:16-25. It should be noted that former state judge Alan Green was elected as a 24th JDC judge in October of 1992, and Lori Marcotte specifically recalled a lunch with Green soon after he was elected. *See* PORT Ex. 1007 (list of judges who served on the 24th JDC). In questioning Lori Marcotte during the SITC trial, Judge Porteous's attorney represented that Green was elected in November 1993. In response, Lori. Marcotte testified: "I thought it was sooner." *See* Lori Marcotte SITC at 646:15-19. That colloquy confirms not only the specificity and certainty of Lori Marcotte's recollection as to dates that the Marcottes' relationship with Judge Porteous and the lunches began, but the accuracy of her recollection that they started in 1992, especially in the face of a mistaken representation of fact by counsel for Judge Porteous. Judge Porteous has sought through questioning to suggest that his relationship with the Marcottes did not begin until after a derogatory newspaper article appeared in fall 1993.

[102] Louis Marcotte SITC at 512:8-17. *See also* Louis Marcotte Task Force at 44; Lori Marcotte Sen. Dep. at 66:13 – 67:6 (Ruth's Chris Steak House, the Beef Connection, and the Red Maple).

[103] *See* Louis Marcotte SITC at 510:11-15; Louis Marcotte Task Force at 44 ("It started out with me calling him for lunch. And then, as we got closer and developed a relationship, he would call and then I would call.")

Louis Marcotte paid for the lunches with Judge Porteous through his company, Bail Bonds Unlimited ("BBU"). Judge Porteous never paid for a lunch that he attended with the Marcottes.[104]

The Marcottes wanted there to be a lot of people at the lunches they hosted for several reasons. First, Judge Porteous liked to have people around him, and the Marcottes wanted him to have a good time. They allowed Judge Porteous to bring whomever he wanted to the lunches. In addition, it helped the Marcottes for other judges who were guests at their lunches to see them with Judge Porteous, because it made Louis Marcotte "look like a businessman instead of a bondsman."[105] However, no matter how many people were in attendance at the lunches, the Marcottes viewed the monies they spent on the lunches as money spent on and for the benefit of Judge Porteous, and, of course, to benefit their business.[106] For Marcotte, these lunches were business, not pleasure. He often preferred to be working at his office rather than sitting around drinking in the middle of the day, but these lunches were his investment to make money.[107]

Lori Marcotte, in her Task Force testimony, specifically described one of the Judge Porteous lunches at which then newly elected state judge Alan Green was in attendance, as follows:

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104 *See* Louis Marcotte SITC at 514:7-16 ("none," "never"); Louis Marcotte Task Force at 45 (Of a hundred lunches that Judge Porteous may have attended with Louis Marcotte, Judge Porteous "didn't pay for any").

105 Louis Marcotte SITC at 511:8-18. *See also* Lori Marcotte Sen. Dep. at 61:4-11, 61:22 – 62:2, 62:15-20 (describing how a lunch would come about: "As soon as a judge gets elected, let's try to get him at the table. Let's try to train him. And that was an opportunity for Judge Porteous to have an entourage with him too. Let's invite two or three judges and their staff and the table would be big like this.").

106 *See* Louis Marcotte SITC at 514:17-20; Lori Marcotte Sen. Dep. at 122:13 – 123:1.

107 *See* Louis Marcotte Sen. Dep. at 38:5 – 39:1, 137:14-21 (Louis became tired of drinking in the middle of the day when he needed to work at his business).

> I remember setting up a lunch with some other judges and some attorneys and Judge Porteous and Rhonda, and we had - they had invited or we had invited Judge Green who was newly elected. And, I mean, it is pretty clear because that was really the first lunch where Judge Porteous had explained the concept of splitting bonds. That was kind of like the stage for everything else that would happen.[108]

Green was ultimately convicted of a federal corruption offense and incarcerated as a result of his relationship with the Marcottes.

2. Car Repairs

When Louis Marcotte was first dealing with Judge Porteous through Adam Barnett and did not have direct contact with the judge, Barnett would ask Louis Marcotte to share the expenses associated with taking care of Judge Porteous's cars. On occasion, there was a kickback quality to these requests, as a portion of the bond premium for a bond set by Judge Porteous for Barnett and the Marcottes would be used to pay for car repairs.[109] Louis Marcotte ultimately "edge[d] Adam [Barnett] out" of the relationship with Judge Porteous, and began to deal with Judge Porteous directly,[110] so he could be sure that he was getting credit with Judge Porteous for the repairs. Louis Marcotte described his involvement in taking care of Judge Porteous's cars as follows:

> Q. Okay. And let me turn now to the subject of automobiles. Did you have anything to do with Judge Porteous's cars in the time period prior to 1994?
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> A. You know, it's hard to say, the time frame, was it '92, '92, yes. What I can say is I fixed cars for he and his family.
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> Q. And what do you mean by that, fixing cars?

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[108] Lori Marcotte Task Force at 57. *See also* Lori Marcotte Sen. Dep. at 58:15-21.

[109] *See* Louis Marcotte SITC at 515:12-20; Louis Marcotte Sen. Dep. at 23:23 – 24:4, 95:4-12, 34:3-20, 45:4-12, 134:12-20 ("Adam and I would share the costs of the car but Porteous didn't know it was coming from me. He just thought Adam was doing it.").

[110] Louis Marcotte SITC at 515:12-20.

A. Tires, radios, transmissions, body work. Every time I took one of his cars, I filled it up with gas and washed it as well.

Q. All right.

A. I mean, I really wanted to make a statement, you know, when I did something for him.[111]

Louis Marcotte would make repairs to Judge Porteous's cars – which he described as "old and kind of beat up" – "once a month or once every three months."[112] Marcotte would have his employees, Jeff Duhon and Aubry Wallace, pick up the cars for repairs and servicing. On occasion, Duhon would go to Judge Porteous's chambers to pick up the keys so he could take care of the cars.[113] Judge Porteous gave Aubry Wallace the security code to the courthouse parking lot, and Wallace would get the keys to Judge Porteous's car from under the floor mat.[114] In addition to the more significant repairs, Louis Marcotte (mainly through Wallace) would regularly pick up Judge Porteous's car to have it washed, detailed and filled up with gas.[115] Louis Marcotte, through BBU, paid for all Judge Porteous's car repairs. Judge Porteous never reimbursed him.[116] On several occasions when Wallace returned the car to Judge Porteous, the

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111 *Id.* at 514:23 – 515-10.

112 *Id.* at 516:13-15. *See also* Duhon SITC at 658:10-16; Lori Marcotte Sen. Dep. at 60:20-24) ("His car was broken a lot.").

113 *See* Duhon SITC at 657:19-20; Darcy Griffin Senate Impeachment Trial Committee Hearing Testimony ("Griffin SITC") at 1842:7-19 ("I know [the Marcottes] were coming to get the keys" to do something with Judge Porteous's cars).

114 *See* Aubry Wallace Senate Impeachment Trial Committee Hearing Testimony ("Wallace SITC") at 682:14-19.

115 *See* Louis Marcotte SITC at 515:4-7, 516:4-11; Duhon SITC at 657:10-17 ("brakes, air conditioning, transmission and things like that"); Louis Marcotte Task Force at 45–46); Lori Marcotte Sen. Dep. at 85:11-16.

116 *See* Louis Marcotte SITC at 517:25 – 18:3.

Marcottes would leave presents in the car for Judge Porteous, such as liquor and coolers of shrimp.[117]

3. Trip to Las Vegas with Judge Giacobbe and Other Attorneys

In or about 1992, Lori Marcotte took Rhonda Danos to Las Vegas. Judge Porteous did not attend this trip.[118] Thereafter, in approximately 1993 or 1994, Louis Marcotte took Judge Porteous on a trip to Las Vegas. Also in attendance was another state judge, George Giacobbe. Louis Marcotte also included some attorneys on the trip because he knew that bail bondsmen do not enjoy a great reputation and it would not look good for Judge Porteous to be going to Las Vegas only with him.[119]

Louis Marcotte and Lori Marcotte split the costs of Judge Porteous's trip with the attorneys and gave Rhonda Danos cash in Judge Porteous's chambers to reimburse her for the cost of the trip.[120] Lori Marcotte recalled "standing in [Danos's] office, with another attorney, handing her the money."[121] The Marcottes paid for the trip in cash "to hide it from the world."[122]

4. Home Repairs

In or about 1994 – while Judge Porteous was still a state judge – Judge Porteous told Louis Marcotte that a storm blew down an 85 foot section of his wooden fence. Marcotte sent

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117 *See* Wallace SITC at 685:23 – 686:11.

118 *See* Lori Marcotte SITC at 610:7-17.

119 *See* Louis Marcotte SITC at 518:21 – 520:5; Lori Marcotte SITC at 610:16 – 611:2; Louis Marcotte Task Force at 46.

120 *See* Lori Marcotte SITC at 611:5-14.

121 Lori Marcotte Task Force at 56. *See also* Danos SITC at 876:20-21 (recalling being reimbursed by Marcottes for a trip, but not recalling if it was Louis or Lori who reimbursed her, or whether the reimbursement was by check or cash).

122 Louis Marcotte SITC at 520:6-17.

Duhon and Wallace to do repairs on the fence at Judge Porteous's house. Duhon purchased the necessary materials, consisting of poles, concrete, two by fours, and boards. Louis Marcotte paid for the materials, and Duhon estimated that the project took about three days.[123]

5. Other – Taking Rhonda Danos to Las Vegas

The Marcottes also invited and paid for Rhonda Danos to go on trips with them to Las Vegas, and paid for her entertainment on those trips, both when Judge Porteous was a state judge and when he was a federal judge. They did so because she was the "gatekeeper" to Judge Porteous and because she herself handled matters associated with the bond setting process. The Marcottes would never have paid for those trips but for Ms. Danos's status as Judge Porteous's secretary. Judge Porteous knew that the Marcottes were paying for Ms. Danos's trips.[124]

D. Judge Porteous's Bond Setting for the Marcottes

The Marcottes gave Judge Porteous things of value so that they would have access to him to set bonds as they requested.[125] The Marcottes would go to Judge Porteous to reduce bonds in cases where the bonds were set too high, or when the bonds had not been set at all and they needed him to set bond as an initial matter.[126] They would produce a "worksheet" that would

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123 *See* Louis Marcotte SITC at 18:4-8; Duhon SITC at 660:17-20, 660:24-25, 659:19 – 660:6; Wallace SITC at 686:12 – 687:3; Louis Marcotte Task Force at 46.

124 *See* Danos SITC 895:19 – 896:18; Lori Marcotte Sen. Dep. at 22:4-22, 26:17-21 ("[W]e wanted to spend money to make her happy."), 110:4-24 (1992 Las Vegas trip with Danos during which they flew over the Grand Canyon), 111:21 – 112:15 (provided Danos things of value because she controlled access to Judge Porteous, was the "gatekeeper," and because she helped them with bond matters). *See also* HP Ex. 371 (containing, among other records, Lori Marcotte's credit card statement containing charges for air travel to Las Vegas purchased for Danos in 1998, Lori Marcotte's credit card statement containing charges for air travel to Las Vegas purchased for Danos in 1996, and the Golden Nugget Casino room statement for Danos for February 1996 (charged to the BBU address)).

125 *See* Louis Marcotte SITC at 520:21 – 521:1.

126 *Id.* at 521:9-18; Louis Marcotte Sen. Dep. at 74:4-8.

reflect what the defendant could afford, and they would ask Judge Porteous to approve the worksheet. The conversations often involved specific references to what prisoners could afford to pay, rather than what was necessary to secure their presence in court.[127]

As a general matter, only the Marcottes (and their employees) and Judge Porteous were present during these conversations. Typically, no defense attorney or representative from the District Attorney's Office was involved.[128] The testimony of the John Mamoulides, the District Attorney for Jefferson Parish at that time, could not be more clear: "[M]y office didn't participate in the setting of bonds and all." "[W]e stayed away. We wouldn't recommend bond . . . . [Bond setting] was always done without a DA there. That could be in the middle of the night or whatever." "[W]e didn't recommend bonds unless we were specifically asked by the sheriff's office or somebody on a flight problem or whatever. It was done without us being there before we even got a charge. And I didn't want my people participating in that."[129]

In contrast to Judge Porteous's willingness to deal directly with the Marcottes – who would walk back to his chambers with Duhon or Wallace in tow – there were other judges of the 24th JDC who would not deal with the Marcottes.[130]

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[127] Louis Marcotte SITC at 521:19-24 ("We would get the bond set to the amount the defendant could make."), 523:2-7, 524:17 – 525:1; Duhon SITC at 662:11-21.

[128] *See* Louis Marcotte SITC at 508:22-24. Judge Porteous's counsel represented in his opening statement that Judge Porteous would consult with the District Attorney's Office before setting bond. *See* Turley SITC Opening Statement at 88:21-25.

[129] John Mamoulides Senate Impeachment Trial Committee Hearing Testimony ("Mamoulides SITC") 1768:22-23, 1800:8-11, 1802:15-20. *See also* Lori Marcotte Sen. Dep. at 113:9 – 114:4 (no District Attorney involvement in the "vast, vast, majority of the bonds that Judge Porteous set"); Louis Marcotte Sen. Dep. at 14:7-14.

[130] *See* Griffin SITC at 1844:16 – 1845:7 (mentioning three judges in particular among others who would "work with the lawyers rather than the bondsmen."). Similarly, former District Attorney Mamoulides's testimony reflects his understanding that bond matters were

Judge Porteous thus took numerous actions in his judicial capacity that he knew were calculated to maximize the financial benefit to the Marcottes in their business – after all, that's why they were there asking him to set or reduce bonds.[131] Judge Porteous would make himself available to set bonds, and the Marcottes enjoyed easy access to him (whereas there were numerous judges who did not want to deal with bond matters at all, or did not want to deal with the Marcottes directly, preferring instead to deal with attorneys for those who were arrested). The Marcottes would go by his chambers, would drop off paperwork with Rhonda Danos, or call at his house.[132] Judge Porteous would set bonds for the Marcottes that other judges did not want to handle.[133] He would devote extra effort to figure out ways to set or reduce bonds and exercise his discretion in ways to set bonds that would be of financial value to the Marcottes. He would be inventive and take political risks in "splitting bonds."[134]

An inevitable consequence of Judge Porteous's willingness to set bonds at levels requested by the Marcottes was the financial squeezing of families, who, as a result of the conspiratorial relationship, paid more than they otherwise would have paid to secure the liberty of the arrestee pending trial. Thus, for example, if the Marcottes anticipated that a given prisoner would be released by the magistrate with no commercial bond, the Marcottes would go to Judge Porteous to set a commercial bond, permitting the Marcottes to earn some money in the form of a

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typically handled by defense attorneys looking out for the best interests of their clients, not by the bail bondsmen seeking to maximize profits. *See* Mamoulides SITC at 1777:11-17.

131 *See* Louis Marcotte SITC at 525:2-5.

132 *Id.* at 521:25 – 522:5; Duhon SITC at 661:21 – 662:10; Wallace SITC at 682:2-6 (Judge Porteous "was a judge that Mr. Marcotte would frequently interact with bonds")

133 *See* Louis Marcotte SITC at 525:9 – 526:2.

134 *See* Lori Marcotte SITC at 650:10-19; Lori Marcotte Sen. Dep. at 53:5-10, 57:3-19, 114:25 – 115-14.

premium, rather than nothing at all. Senator Risch accurately described the corrupt and insidious nature of the Judge Porteous-Marcotte relationship in the following observations when former State Judge Bodenheimer was on the stand:

> [I]t appears to me the bail bondsmen came to you, they had already interviewed the family, they knew what they could get out of the family. And according to the indictment, you and the bail bondsman conspired to see that the family would have to pay the maximum you could possibly soak out of them. That's what I get out of this.[135]

E. August 1994 – Louis Marcotte's Statements to the FBI in Connection with the FBI's Background Check of Judge Porteous

The corrupt relationship between Louis Marcotte and Judge Porteous played out further in the summer of 1994, when Judge Porteous was undergoing his background check investigation in connection with his potential nomination to be a federal judge. At that time, Louis Marcotte was interviewed by the FBI, and lied, not only to help Judge Porteous become a federal judge, but to protect Judge Porteous (and himself) from the exposure of their corrupt relationship.

On August 1, 1994, Louis Marcotte was interviewed by the FBI for the first time as part of the background check of Judge Porteous. Judge Porteous told him that the FBI was going to be coming to interview him.[136] As to Judge Porteous's drinking and financial situation, the FBI write-up of that interview reports:

> He [MARCOTTE] advised that the candidate will have a beer or two at lunch, but has never seen him drunk. He has no knowledge of the candidate's financial situation.[137]

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135 Bodenheimer SITC (questioning by Senator Risch) at 1323:2-16.

136 *See* Louis Marcotte SITC at 532:10-15; HP Ex. 69(b) at PORT 503–04 (FBI Background Check of Judge Porteous).

137 HP Ex. 69(b) at PORT 504 (FBI Background Check of Judge Porteous).

And, as to Judge Porteous's general integrity, the FBI write-up reports:

> He is not aware of anything in the candidate's background that might be the basis of attempted influence, pressure, coercion or compromise or that would impact negatively on the candidate's character, reputation, judgement or discretion.[138]

Louis Marcotte's statement that Judge Porteous "will have a beer or two at lunch" was false. In truth and in fact, Louis Marcotte had seen Judge Porteous drink "five, six, seven Absolut [vodka] straight up." Marcotte testified that he deliberately lied to the FBI to help Judge Porteous.[139]

Louis Marcotte's statement to the FBI that he had no knowledge of the candidate's financial situation was also false. Marcotte knew that Judge Porteous was having financial problems. Marcotte drew that conclusion from Judge Porteous's beat up cars that Judge Porteous asked him to repair, and his knowledge of Judge Porteous's costly lifestyle, including the fact that Judge Porteous gambled and drank.[140]

Finally, Louis Marcotte's statement that he was "not aware of anything in [Judge Porteous's] background that might be the basis of attempted influence, pressure, coercion, compromise, or that would impact negatively on [Judge Porteous's] character, reputation, judgement, or discretion" was also false. First and foremost, Louis Marcotte was aware of his own relationship with Judge Porteous, and knew it was improper. He knew he was in a position

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138 *Id.*

139 *See* Louis Marcotte SITC at 531:16 – 532:16; Louis Marcotte Task Force at 49; Louis Marcotte Sen. Dep. at 39:16-21 (four or five Absolut Vodkas), 139:3-5 (Louis Marcotte had never seen anybody drink as much as Judge Porteous at the lunches).

140 *See* Louis Marcotte SITC at 532:23 – 533:8; Louis Marcotte Task Force at 49 ("[B]y looking at the surroundings and the problems with the drinking and the cars and asking people for repairs and stuff like that, you know, one would think that, hey this guy is struggling. And by looking at the cars, you could see that he was struggling.").

to "destroy Judge Porteous."[141] Nonetheless, Louis Marcotte lied to the FBI to protect Judge Porteous and help him get his lifetime appointment, because Judge Porteous had been good to him, and because Marcotte wanted to protect himself.[142]

Louis Marcotte's false statements to the FBI on Judge Porteous's behalf were part of the corrupt relationship between Marcotte and Judge Porteous, characterized by Marcotte doing things for Judge Porteous and Judge Porteous doing things for Marcotte. Louis Marcotte met with Judge Porteous soon after the FBI interviews and told Judge Porteous, in substance, "thumb's up" or that he (Marcotte) had given Judge Porteous "a clean bill of health."[143]

F. Judge Porteous's October 1994 Set-Aside of Aubrey Wallace's Felony Conviction

1. Background – Judge Porteous's 1993 Expungement of Jeffery Duhon's Conviction.

In 1993, at Marcotte's request, Judge Porteous expunged the burglary conviction of Jeffery Duhon, a Marcotte employee who was also married to Louis's other sister (and who also did personal services for Judge Porteous). Louis Marcotte wanted Duhon to obtain a bail bondsman's license, but Duhon was not eligible because of the burglary conviction. Marcotte approached Judge Porteous and asked him to expunge the conviction – "To be honest with you, I rode hard on him, you know, for maybe a couple months, hey, when are you going to do it, when

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141 Louis Marcotte SITC at 533:14 – 534:2, 603:12-17. *See also* Louis Marcotte Task Force at 50 (acknowledging that he "was lying" not only because of his knowledge of Judge Porteous's "actions with the gambling, the drinking" but because of Louis Marcotte's knowledge of his own relationship with Judge Porteous, which gave him leverage over Judge Porteous).

142 *See* Louis Marcotte SITC at 532:16-22, 533:9-13.

143 Louis Marcotte SITC at 535:13-22. *See also* Louis Marcotte Task Force at 51, 64 (shortly after the FBI interview, Marcotte met with Judge Porteous and "told him [Judge Porteous] everything that they asked about" and that he had given Judge Porteous "a clean bill of health.").

are you going to do it, when are you going to do it, and at some point he did it."[144] Pursuant to Louis Marcotte's request, Judge Porteous expunged the conviction.[145] Judge Porteous's action in expunging Duhon's conviction was particularly noteworthy because Duhon had been sentenced by Judge E. V. Richards, not Judge Porteous, "[s]o what [Judge Porteous] did was he took the conviction out of another section and brought it in his section and then expunged the record."[146]

2. Judge Porteous's Set-Aside of Aubrey Wallace's Burglary Conviction

At around the time of Judge Porteous's nomination to be a federal judge, in late summer 1994, Louis Marcotte asked Judge Porteous to set aside the felony burglary conviction of Aubry Wallace, one of his employees. [147] Wallace had provided personal services to Judge Porteous – taking care of Judge Porteous's cars and doing repairs at his house – at Louis Marcotte's direction. Louis Marcotte asked Judge Porteous, in substance, "could you get this guy's record expunged so he can become a licensed bail agent," and pressed Judge Porteous to set aside

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144 Louis Marcotte SITC at 530:4-5.

145 *Id.* at 530:8-10.

146 *Id.* at 528:10 – 530:20. *See also* Duhon SITC at 655:10-15; Louis Marcotte Task Force at 48; Lori Marcotte Sen. Dep. at 100:12-18 ("My brother was the hound, keep going, let's get it done, let's get it done, let's get it done.").

Duhon had nothing to do with getting the expungement done or paying the lawyer who handled the paperwork. Louis Marcotte told Duhon that he (Marcotte) had taken care of it. Duhon had no recollection of a lawyer filing papers on his behalf. *See* Duhon SITC at 665:22 – 666:16, 670:4-8. The fact that a different Judge may have set aside the conviction prior to Judge Porteous expunging it does not materially impact the fundamental fact that upon Louis Marcotte's request, Judge Porteous took a judicial action. For whatever reasons, Judge Richards, to whom Duhon's case was assigned, had not expunged or would not expunge the conviction, so Judge Porteous – at Marcotte's request – took that judicial action. Further, though the terms "setting aside" and "expunging" are used to describe judicial acts which have some similarity, expunging a conviction is certainly a qualitatively different act, as it results in even the arrest records being destroyed.

147 *See* Louis Marcotte SITC at 535:23 – 536:6. This incident is also discussed in Section VI of this brief, which addresses Article IV of the Articles of Impeachment.

Wallace's conviction.[148] Judge Porteous agreed to do so but only after he was confirmed by the Senate, because he did not want to jeopardize his "lifetime appointment."[149] Marcotte testified:

> Q. And do you recall Judge Porteous's response [to Marcotte's request to set aside Wallace's conviction]?
>
> A. He kind of put me off and put me off. And he said look, Louis, I'm not going to let anything stand in the way of me being confirmed and my lifetime appointment, so after that's done I will do it.

In fact, that is what Judge Porteous did. He set aside Wallace's conviction on October 14, 2001, only after he had been confirmed by the Senate but prior to being sworn in as a federal judge.[150]

The proof that Judge Porteous undertook this judicial action at Louis Marcotte's request is supported by overwhelming evidence, including the testimony of Louis Marcotte, Wallace, and Wallace's attorney.[151] Louis Marcotte's testimony that Judge Porteous told him that he (Judge Porteous) would set aside Wallace's conviction after Judge Porteous was confirmed is corroborated by the very fact that Judge Porteous did in fact set aside the conviction only after confirmation. Further, the understanding of Judge Porteous's judicial action as arising from his corrupt conspiratorial relationship with Louis Marcotte is underscored by the fact that the set-aside was unsupported as a matter of law, nor defensible as an act of discretion. The facts and

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148 Louis Marcotte SITC at 536:4-7.

149 The significance of the timing of the set-aside is further discussed later in this brief, in connection with the discussion of Article IV and Judge Porteous's concealing material facts from the Executive Branch and the Senate in connection with his nomination and confirmation.

150 *See* Louis Marcotte SITC at 536:8-12. This incident is discussed in Section VI, dealing with Article IV.

151 *See* Wallace SITC at 690:1-6, 690:11-23; Robert Rees Senate Impeachment Trial Committee Hearing Testimony ("Rees SITC") at 1975:3-8, 1975:22-25 (agreeing that Marcotte had discussed Wallace's set-aside with Judge Porteous).

circumstances of this set-aside illustrate the nature and extent that Judge Porteous was beholden to Louis Marcotte.

The most significant aspect of the set-aside is that it reflects Judge Porteous's undertaking a judicial action at the request of Louis Marcotte during his last days as a state judge. However, a consideration of the laws and facts further demonstrates Judge Porteous's judicial action in setting aside Wallace's conviction was an ill-motivated, corrupt judicial act, that violated the law and was not justified by any sound considerations of policy.

Judge Porteous's set-aside of Wallace's conviction was unlawful for two reasons. First, in order to set aside the conviction, Judge Porteous had to amend the underlying sentence, from a sentence that did not authorize the set-aside to one that did. However, over four years had elapsed since Judge Porteous sentenced Wallace in 1990, and the Louisiana sentencing laws imposed strict time limits that prohibited Judge Porteous from amending the sentence. The pertinent sentencing laws ("Article 881") permitted a judge to amend a sentence only prior to its execution.[152] Judge Porteous not only did not amend Wallace's sentence prior to its execution,

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[152] Article 881, entitled "Amendment of sentence," provided: "Although the sentence imposed is legal in every respect, the court may amend or change the sentence, within the legal limits of its discretion, prior to the beginning of execution of the sentence." *See* HP Ex. 69(d) at PORT 672 (LOUISIANA CODE OF CRIMINAL PROCEDURE, Art. 881A (1994 ed.)) (emphasis added).

The Notes that accompany that provision make it clear that the law operates as a strict time limit on when a judge may amend a sentence. The "Official Revision Comment" states that the Louisiana district judges were "strongly against any provision, such as [Rule 35 of the Federal Rules of Criminal Procedure], which authorized reduction of a sentence after the beginning of its execution. Such a procedure can subject the sentencing judge to continuous harassment by the defendant's relatives, friends and attorneys, and would virtually constitute the judge a 'one man pardon board' as several of the judges aptly point out." By limiting the power of judges to amend sentences prior to their execution, the provision permits some reconsideration in exceptional cases, without subjecting the sentencing judge to a substantial period of harassment and pressures. *See also* Mamoulides SITC at 1814:23-24 ("I don't think you can change a sentence after they started serving the sentence under Louisiana law.").

he amended it after Wallace had completed the sentence.[153] Thus, notwithstanding that he had no power to do so, Judge Porteous amended the sentence so that Wallace was purportedly eligible to have his conviction set aside.

Second, Wallace did not meet the standards for set aside even under the amended sentence. Article 893E of the pertinent sentencing laws – pursuant to which Wallace's sentence purported to comply after it was amended – permitted the sentencing judge to set aside a conviction only if the defendant completed probation satisfactorily.[154] However, Wallace had not completed probation satisfactorily. To the contrary, Judge Porteous had terminated Wallace's probation unsatisfactorily due to Wallace's conviction and incarceration on unrelated drug charges.[155] Thus, the set-aside was unlawful even under the amended sentence. The degree

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[153] Wallace was arrested on burglary charges on May 8, 1989; he pleaded guilty to the felony charge of simple burglary on June 26, 1990; he was sentenced by Judge Porteous the same day to a suspended sentence of three years incarceration and placed on probation for two years. At the time of his May 1989 burglary arrest, Wallace was under indictment for felony drug charges (PCP and cocaine) – an offense alleged to have occurred on December 15, 1988. At the time of his burglary guilty plea and sentencing, the drug charges were outstanding. Judge Porteous did not sentence Wallace under the Article 893E of the Louisiana Code of Criminal Procedure that would permit the sentence to be set aside if Wallace successfully completed probation. The fact that Wallace had an outstanding drug case at the time of the burglary sentence may explain why Judge Porteous did not want to give Wallace the benefit of an 893E sentence. *See* Mamoulides SITC at 1814:11-17.

[154] Article 893E provided, in pertinent part: "When the imposition of a sentence has been suspended by the court for the first conviction only, as authorized by this Article, and the court finds at the conclusion of the probationary period that the probation has been satisfactory, the court may set the conviction aside and dismiss the prosecution." *See* HP Ex. 69(d) at PORT 676 (LOUISIANA CODE OF CRIMINAL PROCEDURE, Art. 893E (1994 ed.)) (emphasis added).

[155] On February 26, 1991, while he was on probation for the burglary conviction, Wallace pleaded guilty to the felony drug charges of possession of over 28 grams of cocaine and possession of PCP and was sentenced to five years incarceration. As a result of Wallace's incarceration on the drug charges, Judge Porteous entered an order dated December 11, 1991:

> IT IS HEREBY ORDERED BY THE COURT that the subject's probation is hereby terminated unsatisfactorily.

that Judge Porteous had to ignore state law underscores his willingness to take judicial actions for the benefit of Louis Marcotte.

At the time Judge Porteous set aside Wallace's conviction, the evidence is overwhelming that Judge Porteous undertook this action at Louis Marcotte's insistence, at a time when Marcotte had leverage over Judge Porteous by virtue of Marcotte's knowledge of their corrupt relationship, and at a time when Judge Porteous was indebted to Marcotte as a result of Marcotte's lies on Judge Porteous's behalf during the background check process. In short, Judge Porteous's judicial action in setting aside Wallace's conviction was a corruptly motivated judicial act that violated the law and was not justified by any sound considerations of policy.[156]

G. November 1994 – Judge Porteous's Interview by the Metropolitan Crime Commission

In October of 1994, Mike Reynolds, the prosecutor in the courtroom in connection with the Wallace set-aside proceedings, complained to the Metropolitan Crime Commission (MCC) – a citizen's watchdog group – that Judge Porteous had illegally set aside the conviction of Aubry

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See HP Ex. 81 (*State v. Wallace*, Case No. 89-001 (case file for drug case)); HP Ex. 82 (*State v. Wallace*, Case No. 89-2360 (case file for burglary case)).

The defense has argued that Judge Porteous had to make subtle rulings against a complex landscape. There is no legal ambiguity in the provisions of law at issue, and, as discussed in the next Section, Judge Porteous admitted that he acted unlawfully as to the timing of his act in amending the sentence. There is no evidence in any of the proceedings that Judge Porteous made the subtle rulings that the defense now claims were at issue.

[156] *See* Louis Marcotte SITC at 547:6-9; Wallace SITC at 690:11 – 691:18, 714:4-7; Louis Marcotte Task Force at 51) ("Q. Was there any question in your mind that he set aside the conviction as a favor to you? A. Yes, he did it for me.").

Wallace.[157] After receiving the allegation, Rafael Goyeneche, the President of the MCC, researched the procedural and legal background of the Wallace case.[158]

On November 8, 1994, eleven days after Judge Porteous was sworn in as a federal judge, Goyeneche, along with a colleague, interviewed Judge Porteous in his chambers in the federal court building.[159] Goyeneche reduced that interview to a memorandum shortly after the interview took place.[160]

At the outset of the interview, Judge Porteous stated: "[L]ets not sugar coat anything, in other words you guys think I'm dirty."[161] Judge Porteous thereafter falsely denied having "frequent" lunches with the Marcottes, falsely denied that the Marcottes paid his way to Las Vegas, and falsely and "vehemently" denied that he amended Wallace's sentence out of friendship or at the request of Louis Marcotte. Those portions of the interview were memorialized as follows:

> The Judge freely admitted that he has known Mr. Marcotte for a number of years and considers him to be a friend. We asked the Judge if he frequently ate lunch with Mr. Marcotte and provided him with the name of the two restaurants they frequent. He admitted that he has had several lunches with Mr. Marcotte, but he didn't know if he would term his lunches with Marcotte as "frequent." Additionally, we asked if he had traveled to Las Vegas with Mr. Marcotte and he confirmed that he had. The Judge stated that six or seven people went as a group to Vegas and Marcotte was a member of the group. The Judge when asked did

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157 *See* Rafael Goyeneche Senate Impeachment Trial Committee Hearing Testimony ("Goyeneche SITC") at 719:6-14.

158 *See id.* at 721:17 – 722:14.

159 *See id.* at 727:6-22. *See also* HP Ex. 69(b) at PORT 594–597 (FBI Background Check of Judge Porteous).

160 *See* Goyeneche SITC at 727:24 – 728:5, 728:24 – 729:13, 730:5-15.

161 *See* Goyeneche SITC at 728:9-18; HP Ex. 69(d) at PORT 594 (MCC Intelligence Report).

> Marcotte pay his way, quickly changed the subject. Porteous when asked a second time advised that Marcotte did not pay his way to Vegas.
>
> * * *
>
> The Judge vehemently denied that he amended the sentence out of friendship for or at the request of Louis Marcotte.[162]

Goyeneche specifically raised the issue of the lawfulness of the set-aside. Goyeneche informed Judge Porteous that he (Goyeneche) believed that Judge Porteous's action in amending Wallace's sentence was unlawful and not permitted under the Louisiana sentencing laws (Article 881), which provided authority for a Judge to amend a sentence only before the sentence was executed, and in this instance Judge Porteous amended Wallace's sentence after it was completed.[163] In response, "[Judge Porteous] admitted that his actions were contrary to Article 881 but defended his actions by stating that the assistant district attorney who was present in the Court should have objected to the amendment of Wallace's sentence."[164] The judge made this claim notwithstanding the District Attorney's policy of not interfering in a judge's sentencing decision.[165]

Judge Porteous ended the interview by telling Goyeneche to "do what you think you have to do."[166]

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[162] HP Ex. 69(d) at PORT 594-597 (MCC Intelligence Report). *See also* Goyeneche SITC at 731:13 – 732:10.

[163] *See* Goyeneche SITC at 735:4-23; HP Ex. 69(d) at PORT 672 (Sentencing Laws).

[164] HP Ex. 69(d) at PORT 597 (MCC Intelligence Report). *See also* Goyeneche SITC at 736:5-16.

[165] *See* Mamoulides SITC at 1815:11-22.

[166] HP Ex. 69(d) at PORT 597 (MCC Intelligence Report). *See also* See Goyeneche SITC at 737:7-11.

The events surrounding the Wallace set aside were reported in the New Orleans Times-Picayune in a March 19, 1995 article:

> U.S. District Judge Thomas Porteous, while serving his final weeks on the state bench in Jefferson Parish, illegally amended a convicted drug offender's burglary sentence and then removed it from the man's record, according to the Metropolitan Crime Commission.[167]

H. Judge Porteous's Relationship with Louis Marcotte and Lori Marcotte While He Was a Federal Judge

1. Continuation of the Relationship

Though the Marcottes' relationship with Judge Porteous changed when he became a federal judge, it did not come to an end.[168] The Marcottes continued to maintain an association with Judge Porteous, and continued to take him to lunch, although not at the same frequency as when he was a state judge.

In particular, the Marcottes would bring Judge Porteous to lunch with them when they sought to recruit other state judicial officers to take his place in a similar corrupt scheme, or to impress business executives. On these occasions, Judge Porteous "brought strength to the table" by his presence and his assistance. As Louis Marcotte explained: "It would make people respect me because, you know, I am sitting with a Federal judge."[169] As Lori Marcotte described: "So

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[167] *See* HP Ex. 119(a) (Times-Picayune article: "Amending Sentence Questioned, Federal Judge Defends Actions").

[168] *See* Louis Marcotte SITC at 537:21 – 538:20.

[169] Louis Marcotte Task Force at 52. In his Task Force hearing testimony, Marcotte was asked why he wanted to maintain a relationship with Judge Porteous after he became a federal judge:

> Mr. MARCOTTE. Because, number one, he was a Federal judge. Right there, that brings strength to the table whenever he sits down with me.
>
> * * *

going to lunch with Judge Porteous as a federal judge, other judges in the 24th Judicial Court would view us as trusted people because we were hanging around with a federal judge."[170]

2. Actions by Judge Porteous for the Marcottes

a. Judge Porteous Assists the Marcottes with State Judge Ronald Bodenheimer

Judge Porteous had direct, first-hand knowledge that the Marcottes dealt with judges in a corrupt manner. Nevertheless, he used the power and prestige of his office as a federal judge to help the Marcottes by vouching for their honesty, vouching for their practices, and helping to recruit his successor.[171]

In 1999, Louis Marcotte asked Judge Porteous to speak to newly elected state judge Ronald Bodenheimer on the Marcottes' behalf so that Bodenheimer could "step into [Judge Porteous's] shoes."[172] He told Judge Porteous: "Judge, tell this guy [Bodenheimer] I am a good

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> Mr. MARCOTTE. It would make people respect me because, you know, I am sitting with a Federal judge.
>
> * * *
>
> Mr. DUBESTER. And were there people who you deliberately wanted to have Judge Porteous at the table with when you had a lunch or a meeting with?
>
> Mr. MARCOTTE. Yes, I wanted to try to get as many people to the table with Porteous when I was there, because, again, he brought strength to the table. And I also wanted him to groom the people that I was at the table with. I wanted those guys to do bonds, as well.

Id.

[170] Lori Marcotte SITC at 611:25– 612:10.

[171] Judge Porteous could not report to law enforcement his knowledge that racketeering activity was rampant at the 24th JDC without incriminating himself. So, for years, while a federal judge, Judge Porteous remained silent as to his knowledge, thus permitting the Marcottes to operate corruptly in that courthouse without law enforcement interference.

[172] Louis Marcotte SITC at 538:24 – 539:12.

guy. Tell him that commercial bonds is the best thing for the criminal justice system and that – ask him would he take – ask him would he take your spot when – because you left now and I needed somebody to step in to Porteous's shoes so I can get the same things done that I got done when Porteous was there."[173]

At Louis Marcotte's request, Judge Porteous spoke to Judge Bodenheimer. Prior to that conversation, Bodenheimer "kind of stayed away from Louis Marcotte intentionally" because, at that time, according to Bodenheimer, "the rumor was that [Marcotte] was doing drugs." During his conversation with Bodenheimer, Judge Porteous spoke highly of Louis Marcotte's honesty in the bond business. Bodenheimer took Judge Porteous's statements seriously. As a result of that conversation, Bodenheimer began to set bonds for the Marcottes.[174]

The Marcottes and Bodenheimer gradually developed a relationship that took on the characteristics of the relationship that had previously existed between Judge Porteous and the Marcottes. The Marcottes began providing Bodenheimer meals, house repairs, and a trip to the Beau Rivage casino, and Bodenheimer "became helpful to the Marcottes in setting bonds."[175]

Bodenheimer pleaded guilty in March of 2003 to a federal corruption count arising from his corrupt relationship with the Marcottes. The charges in the Information, and the facts admitted as part of the factual proffer, describe criminal conduct committed by Bodenheimer that was comparable in material respects to that committed by Judge Porteous in his dealing with the Marcottes. Among the overt acts charged in the Information was that Bodenheimer:

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173 Louis Marcotte Task Force at 53.

174 *See* Bodenheimer SITC at 1255:7 – 1256:6, 1257:24 – 1258:1, 1260:7-10.

175 Louis Marcotte SITC at 539:25 – 540:10. *See also* Louis Marcotte Task Force at 53; Lori Marcotte Sen. Dep. at 74:13-16) ("some repairs on his house"); Louis Marcotte Sen. Dep. at 86:5-8, 115:21 - 116:5.

> regularly set, reduced, and split bonds underwritten by a Jefferson Parish bail bonding company in criminal cases pending before him and other judges, irrespective of whether he was scheduled for "magistrate duty". . . . BODENHEIMER routinely set the bonds at a level requested by the bail bonding company in a manner which would tend to maximize the company's profits; that is, by securing the maximum amount of premium money available from the criminal defendant and his family.[176]

The factual proffer signed by Bodenheimer stated that he "enriched[ed] himself by setting, reducing, and splitting bonds in various criminal matters pending before him as well as other judges on terms most advantageous to the bail bonding company in exchange for things of value, including meals, trips to resorts, campaign contributions, home improvements, and other things of value."[177]

On April 28, 2004, Bodenheimer was sentenced to 46 months incarceration on the corruption count, to run concurrently with two other felony offenses to which he pleaded guilty.[178]

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[176] HP Ex. 88(d) (*United States v. Bodenheimer*, Case No. 02-219, Superseding Bill of Information at 3). *See also* Bodenheimer SITC at 1296:4-19.

[177] HP Ex. 88(f) (*United States v. Bodenheimer*, Case No. 02-219, Factual Basis at 10). *See also* Bodenheimer SITC 1298:12 - 1299:8.

[178] *See* HP Ex. 88(h) (*United States v. Bodenheimer*, Case No. 02-219, Judgment and Probation/Commitment Order).

Similarly, Judge Alan Green was convicted on charges arising from his corrupt relationship with the Marcottes. See, e.g., Mamoulides SITC at 1779:19-1780:3. As discussed, Judge Porteous (as he did with Bodenheimer and at the request of the Marcottes) played an instrumental role in assisting the Marcottes in forming a relationship with Green when he was a state judge. Judge Green's conduct on behalf of Marcottes was no different from that of Judge Porteous of former Judge Bodenheimer. As Lori Marcotte testified:

> Q. And in your mind, is Judge Porteous' conduct any different, than you know, than that of Judge Bodenheimer or Judge Green, in terms of the quality and quantity of what you gave and what he did for you?
>
> A. [Lori Marcotte]. It was no different.

b. Justice of the Peace Kerner, Justice of the Peace Centanni, and Insurance Company Representative Stotts

Judge Porteous's help with Bodenheimer – which proved to be a boon for the Marcottes – was similar to the actions he took on their behalf with others.

The Marcottes sought to get close to Justice of the Peace Charlie Kerner, and they set up a lunch with Kerner and Judge Porteous at the Beef Connection in 1997. At that lunch, Judge Porteous vouched for the Marcottes, telling Justice of the Peace Kerner that he could trust the Marcottes and that the Marcottes were good people. At that luncheon, Louis Marcotte took out a Louisiana law book and started telling Kerner how he could set bonds. Kerner was uncomfortable in the relationship Judge Porteous was encouraging him to form with the Marcottes and decided that he had no interest in pursuing that relationship and "got up at that lunch and left."[179]

Similarly, Judge Porteous also attended a lunch with Justice of the Peace Kevin Centanni and Lori Marcotte. However, Centanni was not interested in setting commercial bonds and nothing resulted from that lunch.[180]

Lori Marcotte Sen. Dep. at 125:23-126:3. See also, HP Ex. 71(a) (United States v. Marcotte, Case No. 4-061, Bill of Information at 4 (March 3, 2004)) (charging, as part of the Racketeering Conspiracy, that: "in return for things of value, certain judges would make themselves available to BBU; quickly respond to the requests of BBU; and set, reduce, increase, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition").

[179] Lori Marcotte SITC at 612:11 – 613:8. *See also* Lori Marcotte Sen. Dep. at 117:12-25); Louis Marcotte Sen. Dep. at 110:12 – 111:1, 112:24 – 113:1; Lori Marcotte Task Force at 56–57 ("We had Rhonda set up a lunch and had Judge Porteous attend. And we went to the Beef Connection and we showed up. My brother had the law book in his hand, and we had instructed Judge Porteous to explain about the power of the Justice of the Peace being able to set bonds. And he did.").

[180] *See* Lori Marcotte Sen. Dep. at 118:9-15.

The Marcottes also took Judge Porteous out to several lunches with Norman Stotts, who was the Marcottes' "boss" at the insurance company on behalf of which the Marcottes wrote bonds. Stotts had the responsibility and authority to decide what type of bond writing authority the Marcottes were allowed to have, and was thus critical to the Marcottes' business. The Marcottes brought Judge Porteous to meals with Stotts "to develop trust, reputation, stability on our part, that was a good way for the insurance company to give us a high writing level." As Lori Marcotte described: having Judge Porteous present "made us look important." [181]

3. Meals and Other Hospitality Provided by the Marcottes to Judge Porteous After He Became a Federal Judge

As part of its investigation of the Marcottes, the Department of Justice obtained records from the "Beef Connection" starting in 1997 and obtained some work calendars of the Marcottes starting in the 1999 time frame. The following chart reflects lunches at the Beef Connection, at which Judge Porteous was in attendance, in the period for which records exist and were obtained.[182]

[181] Lori Marcotte SITC at 613:9 – 614:11.

[182] *See* HP Ex. 372(a) (August 6, 1997); HP Ex. 372(b) (August 25, 1997); HP Ex. 372(c) (November 19, 1997); HP Ex. 372(d) (August 5, 1998). The exhibits for the last two dates also include the pertinent pages from a BBU calendar that contain a reference to Judge Porteous on the given date. *See* HP Ex. 373(c) (February 1, 2000); HP Ex. 373(d) (November 7, 2001). The exhibits supporting the first four dates include, for each date, a copy of the meal check from the Beef Connection and the pertinent page from Lori Marcotte's American Express Card monthly statement. The meal checks reflect the purchase of "Abs" or "Abso" – short for "Absolut" – Judge Porteous's drink of choice.

Date	Calendar Entry	Restaurant	Credit Card	Amount
8/6/97	No calendars located	Beef Connection	Lori Marcotte American Express	$287.03
8/25/97	No calendars located	Beef Connection	Lori Marcotte American Express	$352.42
11/19/97	No calendars located	Beef Connection	Lori Marcotte American Express	$395.77
8/5/98	No calendars located	Beef Connection	Lori Marcotte American Express	$268.84
2/1/00	"Lunch w/Portious [sic] @ Beef Connection"	Beef Connection	Lori Marcotte American Express	$328.94
11/7/01	"12:00 - Giacobbe & Porteous @ Beef Connection"	Beef Connection	Norman Bowley (BBU employee)	$635.85

The Marcottes were also instrumental in arranging for Judge Porteous to be a speaker at the Professional Bail Agents of the United States ("PBUS") Conventions. In July 1996, the PBUS held its annual convention at the Hotel Sonesta in New Orleans, at which the Marcottes arranged for Judge Porteous to be a speaker. The convention was hosted by the Marcottes, who paid for many of the expenses of that convention, including food and drinks for Judge Porteous.[183] In July 1999, the PBUS held its annual convention at the Beau Rivage resort in Biloxi, Mississippi. Again, the Marcottes arranged for Judge Porteous to attend and be a speaker at that convention and paid for some of the events and entertainment at that convention.[184]

[183] *See* Lori Marcotte SITC at 614:12-25; HP Ex. 90(a) (Professional Bail Agents of the United States ("PBUS") Mid–Year Conference Program).

[184] *See* Lori Marcotte SITC at 615:1-12; HP Ex. 90(b) (Professional Bail Agents of the United States Mid–Year Conference Program).

Judge Porteous did not disclose the fact that the PBUS paid for his hotel or any other reimbursement in connection with the July 1999 PBUS convention in his Financial Disclosure Report for calendar year 1999. In contrast, Judge Porteous *did* disclose on his 1999 Financial Disclosure Report the following comparable events for which he was reimbursed: (1) "Jefferson

4. Louis Marcotte's April 2003 Affidavit for Judge Porteous

On April 17, 2003, one month after Bodenheimer pleaded guilty, Louis Marcotte signed an affidavit prepared by Judge Porteous's attorney, and at the lawyer's request, which was designed to exculpate Judge Porteous. That affidavit stated, in pertinent part:

> At no time have I ever given money or anything of value to Judge Porteous for reducing or altering any bond.[185]

Louis Marcotte believed that the affidavit was "completely false" "[b]ecause all of the meals and the cars and the wining and dining, the trips, all that was for him to do bonds."[186] Louis Marcotte knowingly signed the false affidavit to protect and help Judge Porteous.[187] Indeed, that affidavit, which ended up in the hands of the FBI, was really no different in substance that Louis Marcotte's false statements to the FBI in 1994 – motivated by Marcotte's desire to conceal from law enforcement Judge Porteous's corrupt conspiratorial relationship with Louis Marcotte. Each set of false statements had their own pernicious consequences – the 1994 false statements helped Judge Porteous become a federal judge; this 2003 false affidavit was part of an effort to obstruct justice at the behest of Judge Porteous (or his agent) and was designed to permit Judge Porteous to evade prosecution, and, presumably, to permit him to maintain his

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Bar Association, 4/15/99, Speaker CLE Seminar, Biloxi, Mississippi (Hotel);" (2) "Louisiana State Bar Association, 6/9–6/12/99, Speaker CLE Seminar, Destin Fla. (Hotel, Food and Mileage);" and, (3) "LSU Trial Advocacy Program, 8/9–8/11/99, Faculty Member, Baton Rouge, La (Hotel, Food and Mileage)." HP Ex. 105(a) (1999 Financial Disclosure Form). *See also* Agreed Stipulation of Fact 160. Judge Porteous makes much of the fact that he was an expert in bond matters. There would have been no reason not to disclose the fact that he spoke at this convention other than the fact that it would bring attention to his on-going relationship with the Marcottes.

185 HP Ex. 280 (Louis Marcotte Affidavit). *See also* Louis Marcotte SITC at 544:2 – 545:2.

186 Louis Marcotte SITC at 545:3-6.

187 *See* Louis Marcotte SITC at 545:7-20.

position as a federal judge. In both instances, nearly a decade apart, the acts of Marcotte in making false statements to the FBI constitute conduct fairly attributable to Judge Porteous – who knew that Marcotte was lying on his behalf in furtherance of their ongoing corrupt conspiratorial relationship.

I. Summary

Louis Marcotte needed a judge to set bonds as he requested and a judge who would legitimize Louis Marcotte's role and burnish his reputation – a need that Judge Porteous could and did satisfy. In return, Judge Porteous sought a lifestyle he could not afford, and Louis Marcotte provided him with food and drink, car repairs, home repairs, and travel (to Las Vegas) – cash substitutes that Louis Marcotte would and did willingly provide. Thus, the relationship between the things solicited and received by Judge Porteous and his judicial acts in setting bonds for the Marcottes, and expunging and setting aside convictions, was a classic "on the take" corruption scheme.

When John Mamoulides became the District Attorney in the same judicial district, he and his assistants had the power to set bonds. At some point after he became the District Attorney, Mamoulides received a gift certificate from a local bail bondsman, Rock Hebert. He returned it and instituted a policy that prohibited his assistants from accepting things of value from bail bondmen. Mamoulides did not want the assistants beholden to the bail bondsmen and thought there was something potentially corrupting in the bondsmen giving gifts to public officials who could set bail.[188]

Such a conclusion is obvious, and it does not take a District Attorney to spell out the reasons why. Moreover, these concerns with a bond-setting official receiving things from the

[188] *See* Mamoulides SITC 1795:10 – 1798:1.

bail bondsman applies to the same or even greater extent when that official is a judicial officer who has routine, daily and familiar interactions with the bail bondsman. If Mamoulides had been informed that Judge Porteous was taking judicial actions to benefit the Marcottes, who were doing him favors, he would have told Judge Porteous that it was wrong.[189]

Indeed, there can be little pretense that the Judge Porteous–Louis Marcotte relationship was anything other than a corrupt business relationship. They were not friends as that term would have been understood – they had little or nothing in common other than their financial needs. The only reason the Marcottes took him to lunch, took him to Las Vegas, fixed his cars, or fixed his house was because he was assisting them in setting bonds and using the prestige of his office to recruit other judges to the same corrupt scheme.[190] Louis Marcotte described the relationship for what it was, that he gave Judge Porteous things of value because: "I wanted service, I wanted access, and I wanted to make money." As Louis starkly put it: "He would do more when we would do more for him," [191] and described that after the Marcottes took Judge Porteous to lunch or took care of his car, Judge Porteous would be "more apt to do things" for them.[192]

This conspiratorial relationship encompassed not only the things that Marcotte gave Judge Porteous and the bonds that Judge Porteous set while he was a state judge, but the full range of acts they took for each other, spanning Judge Porteous's tenure on the federal bench.

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189 *Id.* at 1806:17 – 1807:6.

190 *See* Louis Marcotte SITC at 537:12-20.

191 Louis Marcotte Task Force at 47. *See also* Louis Marcotte Sen. Dep. at 62:20-21, 123:10-25.

192 Louis Marcotte SITC at 528:8-10, 603:3-7. *See also* Lori Marcotte Sen. Dep. at 123:2-6 (agreeing that "because of those things [the Marcottes] were doing, Judge Porteous took the extra step every time he could exercise discretion in [their] behalf").

This included statements that Marcotte made for Judge Porteous to help him become a federal judge, statements Marcotte made for Judge Porteous to help him stay a federal judge (and avoid prosecution), the continued actions by Marcotte to take Judge Porteous to expensive lunches, and the continued public vouching by Judge Porteous for his co-conspirator. Indeed, Judge Porteous could hardly refrain from vouching for Marcotte – he could not tell the truth, because to do so would incriminate himself.

J. Louis Marcotte's and Lori Marcotte's Guilty Pleas

In March 2004, Louis Marcotte pleaded guilty to a racketeering conspiracy that commenced prior to 1991. The temporal scope of the scheme is consistent with the inception of the corrupt relationship between the Marcottes and Judge Porteous and encompassing that relationship while he was on the 24th JDC. The Information's elaboration of the acts of the judicial conspirators describes the actions of Judge Porteous. The Information described the racketeering conspiracy, in pertinent part, as follows:

> 3. It was a further part of the conspiracy that, in return for things of value, certain judges would make themselves available to BBU; quickly respond to the requests of BBU; and set, reduce, increase, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.
>
> 4. It was a further part of the conspiracy that, to allow BBU to maximize profits, the conspirator judges would engage in the practice of "bond splitting". . . At BBU's request, the conspirator judge would set the commercial portion of the bond at an amount the defendant could afford and would set the balance in some other manner. BBU would then post the commercial portion of the bond and collect a percentage of that bond as commission. This practice allowed BBU to maximize its profit and minimize its liability.[193]

[193] HP Ex. 71(a) (*United States v. Marcotte*, Case No. 4-061, Bill of Information at 4 (March 3, 2004)).

Louis Marcotte was sentenced August 28, 2006 to 38 months incarceration, followed by three years of supervised release.[194] Lori Marcotte pleaded guilty at the same time as Louis Marcotte to conspiracy to commit mail fraud.[195] She was sentenced August 28, 2006 to three years probation, including six months of home detention.[196]

Louis Marcotte described Judge Porteous's overall impact on the Marcottes' business as follows:

> Q. Was there any judge in the courthouse who was more helpful to you in your bail bonds business than Judge Porteous?
>
> A. I would think for the duration of the time, it would be Porteous, then it would be Green and Bodenheimer. Bodenheimer and Green were running pretty close neck and neck.
>
> Q. And Bodenheimer and Green, did they both end up going to jail?
>
> A. Yes they did.[197]

K. Judge Porteous Should Be Convicted and Removed from Office Based on the Allegations and Proof of Conduct Charged in Article II

1. The Conduct Constitutes "High Crimes and Misdemeanors"

The corruption and the abuse of the judicial position at the heart of the Judge Porteous–Marcotte relationship demonstrate that Judge Porteous is not fit to be a judge. He repeatedly accepted things of value from Louis Marcotte and took a series of judicial actions (setting bonds, expunging and setting aside convictions) that benefited the Marcottes. The relationship resulted

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194 *See* HP Ex. 71(e) (*United States v. Marcotte*, Case No. 4-061, Judgment in a Criminal Case (Sept. 8, 2006)).

195 *See* HP Ex. 71(a) (*United States v. Marcotte*, Case No. 4-061, Bill of Information at 14–15 (March 3, 2004)).

196 *See* HP Ex. 73(d) (*United States v. Marcotte*, Case No. 4-061, Judgment in a Criminal Case (Aug. 28, 2006)).

197 Louis Marcotte Sen. Dep. at 120:24 – 121:11.

in Marcotte, on two occasions (in 1994 and 2003), lying for his co-conspirator to the FBI, and in Judge Porteous, among other things, setting aside or expunging the convictions of two Marcotte employees who were doing home and car repairs for Judge Porteous. Moreover, Judge Porteous had economic power over the Marcottes – he could sign or reject their bond requests; he could make himself available or unavailable; he could use his influence and leadership to help them with other judges or to exercise a leadership role in refusing to deal with them. On every occasion, he used his judicial power to curry their favor, encourage their generosity, enrich himself and support his vices.

In critical ways this relationship did not end when Judge Porteous moved to the federal bench. He helped the Marcottes where he could, especially in the recruitment of new conspirators, like Judge Bodenheimer. And he maintained his silence as to his knowledge of their corrupt activities. Similarly, while Judge Porteous was a federal judge, the Marcottes continued to wine and dine him and maintained their silence as to his corrupt activities, to the point that Louis Marcotte even signed a false affidavit on his behalf at the request of Judge Porteous's attorney – in effect obstructing justice as part of their conspiratorial relationship.

Judge Porteous's conduct with the Marcottes has brought profound disrepute to the federal bench. The record is clear that Judge Porteous was the most significant of the state judges who had corrupt relationships with the Marcottes. But, instead of being criminally prosecuted – as happened to former state judges Green and Bodenheimer – Judge Porteous occupies a place on the federal bench.[198] Judge Porteous's continued presence on the federal

[198] Judge Porteous's attorney has attempted to blunt the conclusion that Judge Porteous engaged in criminal misconduct with Louis Marcotte by stressing that he was never prosecuted for it by the Department of Justice. In his opening statement, counsel stated: "[D]espite the fact that Judge Porteous waived the statute of limitations on crimes, no indictment was ever brought against him, after years of inquiry." *See* Turley SITC Opening Statement 67:5-8. Counsel's statement flatly misstates the terms of the waiver signed by Judge Porteous.

bench, now that his corruption has been revealed, brings a stain to the judiciary that can be been cleansed only by his removal from office.

2. Judge Porteous Should Be Convicted and Removed from Office. The Fact That Some Portion of the Conduct Alleged in Article II Occurred Prior to Judge Porteous Becoming a Federal Judge Is Irrelevant.

a. Introduction

Judge Porteous, through his counsel, has argued on several occasions, including his opening statement before the SITC, that since some portion of the conduct alleged and proven in Article II occurred while he was a state judge ("pre-federal bench conduct"), such conduct cannot constitute a basis for conviction and removal.

This argument fails for several reasons. First and foremost, the conspiratorial relationship encompassed Judge Porteous's conduct while a federal judge and included "overt acts" by the two men while Judge Porteous was a federal judge. Also, Judge Porteous's contention that pre-federal bench conduct – no matter how serious – cannot support

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Judge Porteous's statue of limitations waiver did nothing more than toll the running of the statute of limitations for any offenses as to which the statute of limitations had not already run as of April 5, 2006. The waiver did not revive the ability of the Department of Justice to prosecute offenses – including corrupt conduct while he was a state judge – as to which the statute of limitations had long since run and for which prosecution was therefore barred. The scope of the waiver was explicit: "[N]othing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006." *See* PORT Exhibit 1003 (Statute of Limitations Waiver). *See also* Title 18, United States Code, Section 3292 (five year statute of limitations for criminal offenses). Whether intentional or inadvertent, counsel's suggestion that Judge Porteous's waiver opened the door for the Department to prosecute him for any state court conduct was simply wrong and misstates the plain terms of the waiver.

The Department has formally represented that the statute of limitations was in fact an obstacle to its bringing charges against Judge Porteous, stating: "Although the investigation developed evidence that might warrant charging Judge Porteous with violations of criminal law relating to judicial corruption, many of those incidents took place in the 1990's and would be precluded by the relevant statutes of limitations." *See* HP Ex. 4 (Letter from John C. Keeney, Deputy Assistant Attorney General, U.S. Department of Justice, to Hon. Edith H. Jones, Chief Judge, U.S. Court of Appeals for the Fifth Circuit, Re: Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr. at 1 (May 18, 2007)).

impeachment, does not survive scrutiny. No reading of the Constitution or any other legal authority supports Judge Porteous's argument. To the contrary, pre-federal bench conduct as a basis for impeachment finds support in three distinct places: (1) the Constitution; (2) the impeachment proceedings involving Judge Robert W. Archbald; and (3) the history of judges who were either prevented from or dissuaded from ascending to the federal bench because of corrupt pre-federal bench conduct.

b. The Constitution, in Providing for Impeachment for Treason, Bribery and High Crimes or Other Misdemeanors, Provides No Time Limit as to When Impeachable Conduct Must Occur

Nothing in the text of the Constitution supports Judge Porteous's position that pre-federal bench conduct cannot be a basis for impeachment and removal from office. As noted in the House Report accompanying the Articles, the Constitution describes certain types of conduct for which impeachment is warranted ("Treason, Bribery, or other high Crimes and Misdemeanors"); it does not say when the misconduct must have been committed, and it certainly does not require that such conduct occur during the tenure of the federal office from which impeachment is sought.[199] The ultimate "fitness for office" decision by the Senate as to whether the conduct rises to the level of "high Crimes or Misdemeanors" and warrants the judge's removal does not turn on when that conduct occurred, but instead on whether that conduct so undermines the public trust that the judge must be removed from office.

Further, there is no policy justification for a blanket prohibition on considering pre-federal bench conduct as a ground for impeachment and removal. The logic of Judge Porteous's position is that even if a federal judge were later found to have committed espionage or murder prior to taking the federal bench, he could not be removed from his lifetime appointment as a

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[199] *See* H.R. Rep. No. 111-427, Impeachment of G. Thomas Porteous, Jr., Judge of the United States District Court for the Eastern District of Louisiana, *Report of the Committee on the Judiciary to Accompany H. Res. 1031* ("Porteous Impeachment Report"), 111th Cong., 2d Sess. at 19 (2010).

federal judge, notwithstanding that proof of such conviction would clearly demonstrate his unfitness for the job and would result in incalculable injury to the reputation of the federal judiciary.

Take but one obvious example: say, for instance, that the offence was murder—it is as serious a crime as any, and its commission by a judge completely undermines both his integrity and the moral authority he must have in order to function as a federal judge. The timing of the murder is of less concern than the fact of it; this is the kind of behavior that is completely incompatible with the public trust invested in officials who are sufficiently high-ranking to be subject to the impeachment process.

A similar conclusion would pertain in the case of a person who bribed his very way into office. By definition, the bribery occurred prior to the commencement of office holding. But surely that fact cannot immunize the bribery from impeachment and removal. Had the bribery not occurred, the person never would have been an officer in the first place.

Because impeachment is about the interests of the public, and not primarily about punishing wrongdoing, it is appropriate that a judgment of unfitness may be based on conduct that took place before an office-holder's appointment. Wrongdoing before one enters office can demonstrate serious untrustworthiness just as can wrongdoing while in office, and the ultimate touchstone in impeachment is whether the people can trust the office-holder. Thus, a quid pro quo arrangement with bail bondsmen is the kind of corruption that fairly may be characterized as a violation of the public trust. It makes no difference if it occurred prior to Judge Porteous taking the federal bench.

Professor Gerhardt, in his definitive treatise on impeachment, addresses the particular circumstance of impeachment and removal for wrongdoing committed before one assumes

office. He sets this up as a "on the one hand and on the other" discussion, in which he summarizes the arguments against impeachment – i.e., those advanced by Judge Porteous – and then explains why those arguments are not persuasive. Thus, Professor Gerhardt stated that:

> Congress's failure to impeach someone for something they did prior to entering federal office is not surprising, especially when one considers that this situation is likely to be quite rare . . . . Indeed, if Congress's failure to bring certain kinds of impeachments permanently precluded their initiation, then Congress could never impeach someone on grounds that any reasonable person would accept as legitimate, such as an impeachable official's commission of a murder while in office. [200]

c. The Archbald Conviction on the "Omnibus" Count Supports the Impeachment and Removal of Judge Porteous

The impeachment of Judge Robert W. Archbald raised the issue of whether prior conduct could serve as the basis for impeachment and removal from office.[201] Thirteen Articles of Impeachment were brought against Archbald. Six Articles accused him of misconduct on the

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[200] *See* GERHARDT, *supra* note 7, at 108.

[201] Judge Archbald was, at the time of his impeachment, a Judge on the Third Circuit Court of Appeals assigned to the Commerce Court. In considering whether to impeach Judge Archbald, the House carefully considered the propriety of bringing pre-Commerce Court charges. The House ultimately concluded that such charges were proper, and in its Report accompanying the Articles, set forth it reasoning for doing so in terms that are particularly apt in considering the conduct of Judge Porteous in this case:

> It is indeed anomalous if the Congress is powerless to remove a corrupt or unfit Federal judge from office because his corruption or misdemeanor, however vicious or reprehensible, may have occurred during his tenure in some other judicial office under the Government of the United States prior to his appointment to the particular office from which he is sought to be ousted by impeachment, although he may have held a Federal judgeship continuously from the time of the commission of his offenses. Surely the House of Representatives will not recognize nor the Senate apply such a narrow and technical construction of the constitutional provisions relating to impeachments.

See H.R. Rep. No. 946, Impeachment of Robert W. Archbald, Judge of the United States Commerce Court, Report of the Committee on the Judiciary (hereinafter "Archbald Impeachment Report"), *reprinted in* IMPEACHMENT: SELECTED MATERIALS, 93d Cong., 1st Sess. at 175 (1973), *as reprinted in*, U.S. IMPEACHMENT: SELECTED MATERIALS, 105th Cong., 2d Sess. at 11311 (1998).

Commerce Court where he was then assigned at the time of his impeachment and trial; six Articles accused him of misconduct on the district court – his prior judicial appointment. Article XIII set forth allegations that involved his conduct on both courts, and thus is similar to Articles I and II against Judge Porteous, in that the articles refer to conduct which occurred both before and after the judge in question assumed the current judicial position. The Senate convicted Judge Archbald on Article XIII.

Because debate was closed during the floor vote in the Archbald impeachment, there was no formal debate or discussion about the Senate's jurisdiction to convict based upon conduct occurring prior to holding the office in question. [202] The Senators were not required to state their reasons for their votes, but a small number of Senators did so, and divided equally on the issue of whether prior conduct could be the basis for removal, with approximately six expressing the view one way and approximately six the other. For example, Senator Owen stated:

> Mr. Owen: Impeachment is the exercise of political power and not the exercise of mere judicial authority under a criminal code. Impeachment is the only mode of removing from office those persons proven to be unfit because of treason or high crime[s] or misdemeanors.
>
> Whether these crimes be committed during the holding of a present office or a preceding office is immaterial if such crimes demonstrate the gross unfitness of such official to hold the great offices and dignities of the people.
>
> A wise public policy forbids the precedent to be set that promotion in office of a criminal precludes his impeachment on the ground of his discovered high crimes and misdemeanors in a previous office from which he has just been promoted.
>
> For these reasons it is my judgment that articles 7, 8, 9, etc., in so far as they charge crimes committed by Robert W. Archbald while United State district

[202] *See* Proceedings of the U.S. Senate and the House of Representatives in the Trial of Impeachment of Robert W. Archbald, 62d Cong., Sen. Doc. 1140, at 1620–78 (1913).

> judge, comprise impeachable offense and may be alleged against him as judge of the Commerce Court.[203]

Though some Senators argued against impeachment on the district court counts, the fact that the Senate ultimately acquitted on those counts means little because the proof on those counts was apparently very weak. One Senator specifically noted that he was voting not guilty on all but one of the district court counts, but that his vote should not be misinterpreted as suggesting that charging prior conduct was improper. Senator Cullom stated:

> I have voted "not guilty" on articles 4, 6, 7, 8, 10, 11 and 12, believing that they do not constitute the offense of high crimes and misdemeanors, and not because the acts were committed while the respondent was a judge of the district court. In my opinion the Senate would have jurisdiction to try respondent if the articles should warrant such action.[204]

Although it is impossible to determine what motivated the votes of a majority of Senators in the Archbald case, one conclusion is beyond question: the Senate voted to convict Archbald

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[203] *Id.* at 1647. Several other Senators made similar statements. Senator Poindexter stated that:

> [A]lthough the offenses were committed while the respondent was a district judge and before he was appointed circuit judge, yet, since the penalty for impeachable offenses is not only forfeiture of office, but disqualification to hold office thereafter, I am of [the] opinion that the offense charged in these articles, although committed before respondent's appointment as circuit judge, nevertheless disqualify him, on impeachment therefor [sic], from holding office as such circuit judge or as a Judge of the Commerce Court. There is no statute of limitations nor law of limitations in impeachment proceedings.

Id. at 1648. Senator Elihu Root stated: "I have no doubt that respondent is liable to impeachment for acts done while he was a judge of the district court and that the Senate has jurisdiction to try him for such acts." *Id.* at 1650. Senator Gronna stated: "While Judge Archbald was not at the time of the impeachment holding the identical office which he did when the offenses referred to were committed, the office is closely linked to the one he previously held, and the duties he was called on to perform were of the same general nature." *Id.* at 1653.

[204] *Id.* at 1663.

on the one count that most closely resembles Articles I and II against Judge Porteous in that it alleges conduct both prior to and during his tenure in the current office.

d. Corrupt Pre-Federal Bench Conduct Has Prevented or Dissuaded Judges Throughout History from Ascending to the Federal Bench And Caused Others to Resign Rather Than Be Impeached

It is hardly surprising that impeachments typically have involved conduct during the course of the judicial tenure. As a general matter, persons of dubious integrity are not considered for federal judgeships, and there have only been fifteen judicial impeachments in this nation's history. Moreover, those individuals who are selected have to survive an FBI background check – a process that is intended to weed out applicants with significant misconduct in their backgrounds. In addition, applicants with material derogatory information in their backgrounds are likely to self-select out of the process to avoid an inquiry or examination, which may expose wrongdoing they wish to keep concealed, and to avoid having to answer forms falsely under oath or make false statements in order to secure the position of federal judge.[205]

In two instances where it has been discovered that a federal judge has taken the bench with previously unknown corrupt behavior in his background, the judge has resigned, thus eliminating the need for Congress to consider whether that misconduct warranted impeachment. A consideration of the facts associated with those two instances demonstrates that impeachment would have been warranted, and indeed inevitable, if they had not resigned.

One example of a judge who voluntarily resigned to avoid impeachment is Judge Otto Kerner. After Kerner became a judge on the Seventh Circuit Court of Appeals, he was prosecuted, convicted, and sentenced to jail for his conduct in accepting bribes as the Governor of Illinois, well before he assumed the federal bench. Upon his conviction, Members of

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[205] *See* discussion in Section VI, dealing with Article IV.

Congress and the press called for him to resign or be impeached.[206] Those calls for resignation or impeachment reflect a commonsense recognition that a judge who committed egregious ethical misconduct before he assumed the bench, in this case involving bribery, must be removed from the bench. The point in time when that conduct occurred was not important. As one author bluntly stated: "[J]udge Otto Kerner, Jr., of the United States Court of Appeals for the Seventh Circuit resigned before inevitable impeachment after he was convicted for conduct that preceded his service."[207]

Another example is that of Judge Hebert Fogel of the Eastern District of Pennsylvania, who resigned as a way of avoiding scrutiny for pre-federal bench conduct. As described in one law review article:

> [J]udge Hebert Fogel of the Eastern District of Pennsylvania remained in office for more than a year after he was investigated in 1976 by the Justice Department for business irregularities occurring before he ascended to the bench. Judge Fogel invoked the Fifth Amendment when questioned before a grand jury about his role in a questionable government contract deal involving his uncle. The New York Times reported in November of 1976 that "deputy Attorney General Harold R. Tyler, Jr. has let it be known to Judge Fogel that it would be best for the reputation of the federal judiciary if he left the bench voluntarily." Judge Fogel resigned about a year later and returned to private practice."[208]

The possibility that Judge Fogel, if he had in fact engaged in corrupt government contract deals prior to taking the bench, would henceforth be beyond the reach of impeachment was not suggested or considered

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[206] Although some small portion of the counts of conviction involved post-Federal bench actions (perjury or false statements), the calls for resignation or impeachment did not focus on that conduct.

[207] *See* Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, *supra* note 15, at 67 (footnote omitted) (emphasis added).

[208] *See* Emily Field Van Tassel, *Resignation and Removals: A History of Federal Judicial Service – and Disservice – 1789–1992*, 142 U. PA. L. REV. 333, 385 (1993).

Because it would be a rare situation in which serious pre-federal bench misconduct would come to light after confirmation, this issue would, by definition, seldom arise. Judge Porteous's case constitutes precisely that rare situation.

By concealing critical information (discussed further in connection with the discussion of Article IV), Judge Porteous sneaked through the background investigation process. His pre-federal bench misconduct in Article II only emerged as a result of FBI inquiries into the misconduct of other state judges several years after Judge Porteous had left the state court bench. Unlike Judges Kerner and Fogel, he has not resigned, but claims that no matter how egregious his pre-federal bench conduct, and no matter if his conduct brings the federal courts into disrepute, Congress lacks the power to remove him. Though this is an unusual circumstance, it is not one that is beyond Congress's Constitutional impeachment and removal power to address and remedy.

e. The Constitution's "Good Behavior" Language Does Not Set Forth a Substantive Standard of Conduct, But Instead Was Intended to Provide for Life Tenure for Federal Judges

The Constitution's "good behavior" clause does not provide a substantive standard of conduct. Article III, Section 1, of the Constitution provides:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behavior . . . .

This provision means only that federal judges shall have life tenure – unless impeached. It does not set forth a separate standard for behavior, or in any way limit Congress's ability to impeach and remove for high crimes and misdemeanors – no matter when they occurred.

First, it would be incongruous for the Constitution to set forth specific grounds for impeachment in Article I (treason, bribery, and high crimes and misdemeanors), while at the

same time providing for a separate and far more vague standard for removal in Article III (failing to engage in "good behavior").

Second, there is no basis in constitutional history or in the plain reading of the Constitution itself that suggests that the "good behavior" clause was intended to limit Congress in considering when conduct must take place to warrant impeachment. If that were the Framers' intent, then the constitutional definition of impeachable conduct could have provided that such conduct must occur while the judge is in the office from which impeachment is sought. Or, the temporal limitation as to impeachable conduct that Judge Porteous contends is provided by the "good behavior" clause would have been found in Article I (which defined impeachable conduct), and not in Article III (which establishes the judiciary). Judge Porteous's interpretation of the reach of the good behavior clause would not permit impeachment for treason or bribery that was not disclosed prior to a judge's appointment to the bench. It is an untenable position and should be rejected by the Senate.

In explaining why the "good behavior clause" should be understood as meaning only "that federal judges shall hold tenure for life unless impeached,"[209] Professor Michael Gerhardt stressed two points. He noted that the Framers "included the phrase 'during good behavior' in the Constitution to contrast the unlimited term of federal judges with the fixed terms for the president, vice-president and members of Congress."[210] Second, he noted that the "good behavior" language is a lesser standard of conduct than the grounds for impeachment set forth in Article I, and that the Framers had rejected "maladministration" as a ground for removal because it was so vague. Thus, it would conflict with the structure of the Constitution and the Framers'

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209 GERHARDT, *supra* note 7, at 83.

210 *Id.*

desire for an independent federal judiciary designed to protect citizens from potential overreaching of the federal government if so vague a standard as "good behavior" (in Article III) were read to make it easier to remove federal judges than the "high crimes and misdemeanor" standard in Article I.[211] As Gerhardt concluded: "It defies common sense for the framers to have taken great pains to have purposefully designed such an awkward system for remedying judicial misconduct but then implicitly left Congress and the president free to remove judges on identical or more lenient grounds through some other, nonspecified, more efficient devices."[212] Accordingly, no article of impeachment against any judge has ever stated that the allegedly impeachable conduct failed to constitute "good behavior" and thus warranted the judge's removal from office.

Applying all the recognized and established grounds for conviction and removal – abuse of position of trust, lack of integrity, and bringing disrepute to the judiciary and undermining public confidence in it – Judge Porteous's conduct warrants conviction and removal for the conduct alleged in Article II and which was established by the evidence.

V. ARTICLE III

A. Introduction

In the late 1990s, Judge Porteous's credit card debt soared and he began to draw down on his Individual Retirement Account ("IRA"). As discussed above, in the summer of 1999, he solicited and received $2,000 from Amato; by the end of 1999, he owed over $100,000 in credit card debt. In the summer of 2000, Judge Porteous consulted with a bankruptcy attorney. In March of 2001, he filed for Chapter 13 bankruptcy.

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211 *Id.* at 84.

212 *Id.* at 85.

Judge Porteous's handling of his bankruptcy is characterized by repeated acts of calculated and premeditated dishonesty, reflecting contempt for the judicial process from the very outset. He filed his initial bankruptcy petition under a false name – "G. T. Ortous" – and used a Post Office Box as his home address. He signed this petition in two places: once over penalty of perjury, the other over the typed name "G.T. Ortous."

Further, Judge Porteous dishonestly concealed his gambling activities from the bankruptcy court on the various forms and schedules that he signed under oath, which unambiguously called for disclosure of financial activities encompassing his gambling. Judge Porteous also lied on the various bankruptcy forms in order to conceal income, assets, and accounts from the bankruptcy court so that he would have the means to gamble while in bankruptcy. He also incurred gambling debts while in bankruptcy in violation of the clear order of the bankruptcy court that he not do so. As the House stated at the outset of the trial: "The single organizing principle that arranges this pattern of false statements is Judge Porteous's desire to conceal assets and to conceal his gambling so that he could gamble while in bankruptcy without interference from the court or the creditors or even his lawyer."[213]

The actual documents that were filed were physically prepared by Judge Porteous's attorney, Claude Lightfoot. Some of the false statements in the bankruptcy were part of a joint scheme between Judge Porteous and his counsel, such as filing in a false name. In other areas, such as his gambling, Judge Porteous deliberately kept his attorney in the dark.

Judge Porteous's conduct in bankruptcy (as with his conduct with Creely and Amato and the Marcottes) reflects a willingness to be dishonest and to lie when it was to his advantage. The fact that he was a federal judge at the time of his bankruptcy, and behaved dishonestly in a

[213] Congressman Bob Goodlatte Senate Impeachment Trial Committee Opening Statement at 54:11-16.

federal judicial proceeding, compounds the wrongfulness of his conduct and works a separate injury to the federal judiciary.

B. Judge Porteous's Financial Circumstances: 1996-2000

From 1996 through 2000, Judge Porteous's financial circumstances deteriorated substantially. During this time, his outstanding credit card balances increased steadily and exceeded $180,000 by year-end 2000.[214]

The evidence reflects that a major reason for Judge Porteous's financial problems was his gambling. By the time Judge Porteous took the federal bench in October 1994, he had a history of gambling and was a "rated player" at the Grand Casino Gulfport in Gulfport, Mississippi, where he held a $2,000 line of credit (allowing him to take out $2,000 worth of markers at the casino). After becoming a federal judge, and prior to filing for bankruptcy in March 2001, Judge Porteous became a rated player and opened up lines of credit at 7 other casinos.[215] Casino records and witness testimony reflect regular gambling activities from the time Judge Porteous

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[214] *See, e.g.*, HP Ex. 38 (Porteous IRA records); HP Ex. 127 (*In the Matter of Porteous*, Case No. 01-12363, Porteous Bankruptcy Schedules and Statement of Financial Affairs at SC0092 (Bankr. E.D. La. Apr. 9, 2001) ("Bankruptcy Schedules and Statement of Financial Affairs")) (showing Judge Porteous's liabilities owed to unsecured creditors to be $198,246.73).

[215] The casinos where he was a "rated player" were: (1) Beau Rivage Casino in Biloxi, Mississippi, (2) Caesar's Palace in Las Vegas, Nevada, (3) Caesar's Tahoe, in Lake Tahoe, Nevada, (4) Casino Magic in Bay St. Louis, Mississippi, (5) Grand Casino Biloxi in Biloxi, Mississippi, (6) Isle of Capri in Biloxi, Mississippi, and (7) Treasure Chest Casino in Kenner, Louisiana. His credit limits ranged from $2,000 to $5,000. *See* HP Ex. 326 (Porteous Central Credit Inc. Gaming Report).

An "established player" or "rated player" at a casino is a player who has filled out a credit application with the casino in order to open up a line of credit. Casinos will thereafter rate that player, "meaning they will keep track of how much he bets, how much he wins, how much he loses." Rated players are thereafter able to draw on their line of credit at the casino to gamble and are also provided with "comps" from the casinos, in the form of complimentary or reduced rates on hotel rooms, or free meals and drinks. *See* FBI Agent Wayne Horner Senate Impeachment Trial Committee Hearing Testimony ("Horner SITC") at 999:4-25; FBI Agent Wayne Horner House Impeachment Task Force Hearing Testimony ("Horner Task Force") at 23.

was a state judge and up to and including 2001–2002, when, now on the federal bench, Judge Porteous was in Chapter 13 bankruptcy.[216] In reviewing Judge Porteous's financial records, the FBI identified over $66,000 in cash withdrawals at casinos drawn on his credit card accounts and over $27,000 in checks to and cash withdrawals at casinos from his checking account from July 1996 through July 2000.[217]

Not only did his debts increase, but during the 1997–2000 time frame, Judge Porteous made a series of withdrawals from his IRA, causing his IRA account balance, which was approximately $59,000 at year-end 1996, to drop to approximately $9,000 by the time he filed for bankruptcy in March 2001. On several occasions, Judge Porteous used the funds he withdrew from his IRA to pay gambling debts by depositing the IRA funds into a Fidelity money market account and writing checks on that account to casinos.[218]

C. Concealment of Liabilities on Financial Disclosure Reports

From 1997 to 2000, Judge Porteous signed and filed on an annual basis false Financial Disclosure Reports with the Administrative Office of the United States Courts.[219] Although

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216 *See* Horner SITC at 999:25 – 1000:17; Horner Task Force at 8–9. *See also e.g.*, HP Exs. 302–323 (various casino records of Judge Porteous between March 2, 2001 and July 4, 2002); HP Ex. 326 (Central Credit Inc. Gaming Report); HP Ex. 337 (FBI Chart of Porteous Gaming Losses (03/28/2000 – 03/28/2001)).

217 *See* Horner Task Force at 9–12. Horner further testified that this was an incomplete list, and that there were "probably some additional credit cards that were not included." *Id.* at 9.

218 *See* Horner SITC at 996:9 – 997:6; HP Ex. 383 (Porteous IRA records); HP Ex. 529 (House Chart 16 ("Judge Porteous's Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts")). That chart sets forth six pre-bankruptcy checks from 1998 to 2000 to casinos, written from Judge Porteous's Fidelity account.

219 Under the Ethics in Government Act of 1978, federal judges are required by law to file annual public reports with the Judicial Conference of the United States, disclosing certain personal financial information. *See* 5 U.S.C. app. §§ 101(a), 101(b), and 101(f)(11)–(12). Public financial disclosure was intended to "deter some persons who should not be entering public service from doing so," and to subject a judge's financial circumstances to "public scrutiny."

these reports required Judge Porteous to disclose his liabilities, in filing the forms he concealed his increasing credit card debts.[220] By year-end 1999, for example, Judge Porteous had over $100,000 in credit card debt on five credit cards, but only reported having two credit cards, with a maximum debt of $30,000 total. Judge Porteous personally instructed his secretary, Rhonda Danos, as to how that portion of the form (Part VI – "Liabilities") should be filled out. She testified: "He'd fill out the portion and I'd just copy it. . . . I'd just put exactly [on the Report] what was given to me." [221]

The following chart sets forth the liabilities actually disclosed by Judge Porteous by letter code – "J" (signifying liabilities less than $15,000) and "K" (signifying liabilities between $15,000 to $50,000) – as well his actual liabilities along with what he should have reported if he had filed a truthful form.[222]

See S. Rpt. 95–170, Senate Committee on Governmental Affairs, *Report to Accompany S. 555, "Public Officials Integrity Act of 1977,"* 95th Cong. 1st Sess. 21-22 (1977). (This Act became the "Ethics in Government Act" in its final form.)

220 Part VI of the Financial Disclosure Report required Judge Porteous to report liabilities by means of a letter code, the pertinent categories being "J" for liabilities of $15,000 or less, and "K" for amounts between $15,001 and $50,000. He was required to list all liabilities to credit card companies where the balance exceeded $10,000 at any point in the year, and to list those liabilities as of the close of the calendar year for which the Report was filed. *See* Horner SITC at 969:1 – 971:7. *See also, e.g.*, HP Ex. 103(b) ("Filing Instructions for Judicial Officers and Employees"); House Chart 34 ("Instructions as to the Reporting of Liabilities on the Financial Disclosure Forms").

221 *See* Danos SITC at 879:23 – 880:8.

222 *See* Horner SITC at 971:11 – 977:3; HP Exs. 102(a), 103(a), 104(a) and 105(a) (Judge Porteous's Financial Disclosure Reports for 1996, 1997, 1998 and 1999, respectively); HP Exs. 167, 168, 159 and 170 (credit card statements for year end 1996, 1997, 1998 and 1999 respectively showing balances due); House Charts 30–33 (re: Judge Porteous's non-disclosure of credit card debts on his Financial Disclosure Forms).

Year	Actually Disclosed	Not Disclosed (December Balance)
1996	Box Checked: "None (No reportable liabilities)"	1) Citibank account, 0426 ($14,846.47) – J [less than $15,000]
1997	Box Checked: "None (No reportable liabilities)"	1) MBNA MasterCard 0877 ($15,569.25) – K [between $15,001 and $50,000] 2) MBNA MasterCard 1290 ($18,146.85) – K 3) Travelers 0642 ($11,477.44) – J
1998	1) MBNA – J 2) Citibank – J	1) MBNA MasterCard 0877 ($16,550.08) – K 2) MBNA MasterCard 1290 ($17,155.76) – K
1999	1) MBNA – J 2) Citibank – J	1) MBNA MasterCard 0877 ($24,953.65) – K 2) MBNA MasterCard 1290 ($25,755.84) – K 3) Citibank 0426 ($22,412.15) – K 4) Citibank 9138 ($20,051.95) – K 5) Travelers 0642 ($15,467.29) – K

The Financial Disclosure Reports were signed by Judge Porteous on a signature line directly below the following certification:

> I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Below Judge Porteous's signature is the following additional warning in capital letters:

> NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS[223]

Judge Porteous's conduct in filing false financial disclosure forms is significant for two reasons. First, it demonstrates that his false statements to the bankruptcy court (discussed below) that concealed his gambling were not by inadvertence, accident or mistake, but rather were part of his common plan or scheme to conceal gambling-related financial information. Second, it

[223] *See e.g.*, HP Ex. 105(a) (Judge Porteous's Financial Disclosure Report (calendar year 1998), filed May 13, 1999).

reflects Judge Porteous's intent – he would lie on financial forms to protect his ability to gamble without interference.

D. Judge Porteous's Financial Activities and Relationship with Lightfoot June 2000 – March of 2001

In the summer of 2000, Judge Porteous retained attorney Claude Lightfoot as his bankruptcy counsel. Lightfoot had never met Judge Porteous prior to representing him.[224]

Lightfoot compiled information and documentation regarding the Porteouses' assets and debts for the purpose of developing a "workout" proposal for their creditors, in an effort to avoid a bankruptcy filing.[225] The workout plan would have entailed a partial payment to all creditors.[226] Lightfoot gave Judge Porteous worksheets to fill out. Lightfoot's worksheets sought information that would ultimately be contained in a bankruptcy filing.[227] Among the documents that Judge Porteous provided Lightfoot in the summer of 2000 was a pay stub from May 2000 that showed Judge Porteous's net monthly income to be $7,531.52.[228]

Lightfoot told Judge Porteous, as he told all his clients, not to incur any new debts, because, in Lightfoot's view, "it is not good faith for such a person [considering bankruptcy] to continue making debt."[229] Nonetheless, Judge Porteous had overriding personal objectives that he did not share with Lightfoot, namely, to continue to gamble, both in the "workout" period and

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224 *See* Claude Lightfoot Senate Impeachment Trial Committee Hearing Testimony ("Lightfoot SITC") at 1072:24 – 1073:1; Claude Lightfoot House Impeachment Task Force Hearing Testimony ("Lightfoot Task Force") at 41.

225 *See* Lightfoot SITC at 1073:21-23; Lightfoot Task Force at 42.

226 *See* Lightfoot SITC at 1071:22 – 1072:23, 1073:18 – 1075:10.

227 *See* Lightfoot SITC at 1073:21-23, 1074:22-24, 1076:4-7; Lightfoot Task Force at 42.

228 *See* Lightfoot SITC at 1073:23-24, 1087:23 - 1088:6.

229 Lightfoot Task Force at 42–43.

then while in bankruptcy. That goal trumped any considerations of candor toward the Bankruptcy Court.

Judge Porteous knew that if his gambling were made known to the bankruptcy court, his ability to gamble in the future would be threatened. As Lightfoot testified, if he had known that Judge Porteous gambled, he would have asked Judge Porteous many more questions about that topic because "[i]f there are gambling debts, they have to be listed, and you must tell me about them. If you have markers that haven't been redeemed, you could have a bad check problem when they try to pass the marker through as a bad check. So it gives me an opportunity to have a conversation about all those concerns of mine."[230]

Accordingly, during the entire course of their attorney-client relationship, Judge Porteous concealed not only from the court, but from his own attorney the pervasive and ongoing nature of his gambling activities. Lightfoot's testimony on this point was clear:

> Q. [Mr. Goodlatte] [D]id he [Judge Porteous] ever tell you that he gambled or had any gambling debts?
>
> A. [Lightfoot] No, sir. [231]

Lightfoot's SITC testimony is consistent with his prior testimony on this issue. At the Fifth Circuit Hearing, in response to questioning by Chief Judge Jones, Lightfoot testified that he had no knowledge of Judge Porteous's gambling:

> Q. [Chief Judge Jones] And you're telling us, as his counsel, in whom he confided for months and months before the time that he was - that he filed this petition, when he continued to gamble almost every week before and after he filed bankruptcy, that you had no earthly idea that this was because of gambling?

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230 Lightfoot SITC at 1173:13-19. *See also* Lightfoot Task Force at 64.

231 Lightfoot SITC at 1074:25 – 1075:2. *See also id.* at 1076:21 - 1077:2, 1091:17-19; Lightfoot Task Force at 42–43, 65 ("I didn't know [Judge Porteous] gambled . . . whatsoever.")

> A. [Lightfoot] I didn't. I never knew him before, and I - I really didn't know that gambling was an issue with the judge.[232]

Thus, during the "workout" period, even though Judge Porteous regularly updated Lightfoot on his various credit card debts, so that Lightfoot would have up to date information in dealing with Judge Porteous's creditors,[233] Judge Porteous failed to disclose to Lightfoot that he continued to gamble, that he had taken out debt from casinos, or that he repaid those debts in full.[234] Judge Porteous also failed to disclose to Lightfoot the existence of his Fidelity money market account, which he used to pay significant casino debts (including debts in this workout period).[235]

On December 21, 2000, Lightfoot sent Judge Porteous a copy of the workout letters that had been sent to all but one of Judge Porteous's unsecured creditors. The workout letters listed thirteen debts owed to ten different creditors, totaling $182,330.23, and offered to pay them

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232 Claude Lightfoot 5th Circuit Special Committee Hearing Testimony ("Lightfoot 5th Cir.") at 453.

233 *See* Lightfoot SITC at 1105:14-18; Lightfoot Task Force at 43.

234 In August of 2000, shortly after Judge Porteous began consulting with Lightfoot for the purpose of attempting a workout of Judge Porteous's debts, Judge Porteous requested a credit limit increase at the Treasure Chest Casino from $2,500 to $3,000. *See* HP Ex. 326 (Porteous Central Credit Inc. Gaming Report). On September 28, 2000, Judge Porteous wrote a check drawn on his Fidelity money market account in the amount of $490 to Casino Magic. *See* Horner SITC at 996:12 – 997:1; HP Ex. 529 (checks written to casinos from Judge Porteous's Fidelity account); House Chart 16 ("Judge Porteous's Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts"). On November 30, 2000, Judge Porteous wrote a check drawn on his Fidelity money market account in the amount of $1,600 to pay the Treasure Chest Casino. To fund that check, Judge Porteous withdrew $3,000 (paying a 20% penalty) from his IRA and deposited the proceeds of the IRA withdrawal – a $2,400 check – into his Fidelity account. *See* Horner SITC at 996:12 -–997:6; HP Ex. 383 (Porteous IRA records).

235 *See* Lightfoot 5th Cir. at 436, 448.

approximately 20% of what they were then owed, unlike casinos which Judge Porteous paid in full.[236]

At the same time that Lightfoot was working to have the creditors accept 20 cents on the dollar that Judge Porteous owed them from years of accumulated debt, Judge Porteous was in fact incurring new debt from casinos that he repaid in full.[237] Indeed, on December 26, 2000 – five days after Lightfoot sent Judge Porteous a copy of the workout letters – Judge Porteous traveled to Caesars Lake Tahoe and took out a $3,000 gambling marker. Judge Porteous did not tell Lightfoot about this gambling trip or the $3,000 extension of credit. Instead, he made a conscious choice to favor casinos over his other creditors as meriting repayment in full.[238]

E. Judge Porteous's Conduct in the Weeks Immediately Preceding His March 28, 2001 Filing of His Initial Petition

In or about late February to early March 2001, Lightfoot concluded that he would be unable to accomplish a workout. He and Judge Porteous decided that Judge Porteous would file for Chapter 13 bankruptcy.[239]

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236 *See* HP Ex. 146 (December 21, 2000 Letter from Lightfoot to the Porteouses).

237 *See* HP Ex. 380 (Caesars Lake Tahoe Records).

238 It is inconceivable that a creditor would have accepted Lightfoot's proposal had it known that it was receiving 20% of what Judge Porteous owed, while casinos which had extended credit to Judge Porteous had received repayment in full.

239 *See* Lightfoot SITC at 1075:21-25; Lightfoot Task Force at 43.

Chapter 13 bankruptcies are sometimes described as "wage earner's plans," in that they are only available to individuals who are receiving a monthly income. There is no liquidation in a Chapter 13, and a debtor is therefore allowed to keep his property. In exchange for that opportunity, debtors must provide the bankruptcy trustee "with at least as much in value as they would have received had it been a liquidating Chapter 7 bankruptcy." *See* The Honorable Duncan Keir Senate Impeachment Trial Committee Hearing Testimony ("Keir SITC") at 1184:7-12; the Honorable Duncan Keir House Impeachment Task Force Hearing Testimony ("Keir Task Force") at 68.

Once the decision to file for bankruptcy was made, in the period from approximately February 27 through March 27, 2001, Judge Porteous engaged in a series of actions to arrange his financial affairs with the following goals: (1) to pay casinos any outstanding indebtedness so he would not have to list them as unsecured creditors; and (2) to structure certain other financial affairs in anticipation of filing for bankruptcy so as to preserve ways and means of gambling after he filed his petition. The conduct culminated in Judge Porteous's filing for bankruptcy under a false name on March 28, 2001, and filing a series of false financial schedules and a statement of financial affairs (concealing these transactions, his gambling activities and other assets) on April 9, 2001.

1. Judge Porteous's Motives to Conceal Gambling Activities

Casinos have their own credit systems and share credit information with each other. Casinos will run a "central credit report" which is "a credit report specifically aimed at gamblers and casinos and it tracks gaming activity of the casino's customers. With the central credit report a casino can determine whether or not a gambler has a good credit history at the casinos or a bad credit history at casinos."[240] Judge Porteous had gambled at casinos for years, had filled out numerous applications at casinos, had taken out credit at casinos, and had casinos run his credit history. Judge Porteous understood that it would impact his ability to obtain credit from casinos in the future, and thereby impact his ability to gamble, if he were to default on any casino debts or if the casinos were to know that he had filed for bankruptcy.[241] Accordingly, Judge Porteous's conduct prior to and while in Chapter 13 bankruptcy reflects his concern that every casino debt be paid in full.

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[240] Horner Task Force at 25-26.

[241] *See id.* at 19 ("[I]f a gambler gets a negative history on his central credit report, what happens is the other casinos generally cut him off.").

2. Incurring and Paying off Gambling Debt – Grand Casino Gulfport

On February 27, 2001, Judge Porteous gambled at the Grand Casino Gulfport ("Grand Casino") and took out two $1,000 markers.[242]

On March 27, 2001 – the day before he filed for bankruptcy and while the $2,000 in Grand Casino markers was still outstanding – Judge Porteous deposited $2,000 into his personal Bank One checking account. That account otherwise would not have had sufficient funds to have paid the markers at that time. Judge Porteous made sure the deposit was exactly $2,000 – the amount of the outstanding markers – by including a $40 check drawn on his Fidelity account along with a $1,960 cash deposit.[243]

The Grand Casino Gulfport markers cleared Judge Porteous's Bank One account on April 5 and 6, 2001, a week after he filed for bankruptcy.[244] Thus, Grand Casino Gulfport was an

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242 *See* Horner SITC at 983:22 – 984:1; HP Ex. 301(a) (Grand Casino Gulfport Patron Transaction Report).

243 *See* Horner SITC at 983:22 – 986:16, 1003:19 – 1005:7; HP Ex. 301(a) (Grand Casino Gulfport Patron Transaction Report); HP Ex. 144 (Porteous Bank One Records); HP Ex. 143 (Fidelity Money Market Statement, including $40 check); House Chart 6 ("Undisclosed Creditor (Grand Casino Gulfport)".

Grand Casino records reflect that the casino deposited the markers for collection at some point prior to March 24, 2001, and that Judge Porteous's balance as of March 24, 2001 was $0. However, the markers were returned as "uncollected," and the Grand Casino records reflected $2,000 due and owing as of April 3, 2001. FBI Agent Horner determined that there was a problem with Judge Porteous's bank account number on the markers. Notwithstanding the ambiguity in the casino records that suggested a $0 balance on March 28, 2001, Judge Porteous in fact owed, and knew that he owed, the casino $2,000 when he filed for bankruptcy on March 28, 2001. As discussed in the text, Judge Porteous deposited $2,000 into his Bank One account on March 27, 2001 – a transaction that (1) can only be explained by a desire to make sure that there were funds in the account sufficient to pay the markers and (2) reflects his knowledge of the existence of that debt on March 27, 2001.

244 *See* Horner SITC at 985:6-7, 1003:19 – 1004:13; HP Ex. 301(a) (Grand Casino Gulfport Patron Transaction Report); HP Ex. 144 (Porteous Bank One Records); HP Ex. 143 (Fidelity Money Market Statement, including $40 check); House Chart 6 ("Undisclosed Creditor (Grand Casino Gulfport)").

unsecured creditor on March 28, 2001, when he filed for bankruptcy. Unlike other creditors, Grand Casino was paid in full.

3. Incurring and Paying off Gambling Debt – Treasure Chest Casino

On March 2, 2001, Judge Porteous gambled at Treasure Chest and took out seven $500 markers. He repaid four markers in chips that same day and left the casino owing $1,500.[245] (This was in addition to the $2,000 he owed Grand Casino at that time.)

On March 27, 2001, Judge Porteous paid $1,500 in cash to the Treasure Chest Casino to pay off his outstanding indebtedness.[246] This transaction occurred the same day as Judge Porteous's $2,000 deposit into his Bank One checking account to cover the Grand Casino markers.[247] Thus, Treasure Chest was a preferred creditor which, as will be discussed, should have been disclosed by Judge Porteous in his bankruptcy filings.

4. Filing for an Income Tax Return

On March 23, 2001, the Porteouses signed their income tax return for the year 2000 and claimed a tax refund in the amount of $4,143.72.[248] This was an asset that was specifically required to be disclosed on his bankruptcy filings. It was not disclosed.

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245 *See* Horner SITC at 986:18 – 987:6; HP Ex. 302 (Treasure Chest Customer Transaction Inquiry); House Chart 2 ("Undisclosed Payments to Creditors Within 90 Days of Bankruptcy - Treasure Chest Casino").

246 *See* Horner SITC at 987:6-8; HP Ex. 302 (Treasure Chest Customer Transaction Inquiry); House Chart 2 ("Undisclosed Payments to Creditors within 90 Days of Bankruptcy - Treasure Chest Casino").

247 One troubling aspect of this flurry of activities to pay off gambling debts is that it reflects Judge Porteous's ready access to cash when he needed it, notwithstanding that he was filing for bankruptcy the next day. It is unknown where he got the cash.

248 *See* HP Ex. 141 (Judge Porteous's 2000 Tax Return); Horner SITC at 990:2-25; House Chart 3 ("Judge Porteous's Undisclosed Tax Refund").

5. Paying Fleet Credit Card in Full

On March 23, 2001, Judge Porteous asked his secretary, Rhonda Danos, to write a check out of her personal checking account, in the amount of $1,088.41, to pay his wife's Fleet credit card bill in full. Judge Porteous never disclosed to Ms. Danos that he was filing for bankruptcy; she only discovered this information after it was disclosed in the local newspaper.[249]

The March 23, 2001 credit card payment to Fleet was handled by Judge Porteous in a manner that was inconsistent with the payments in prior months. The Porteouses had paid but a portion of the amounts owing to Fleet on their January and February statements, had made those payments from their personal checking account, and had made the payments several weeks after the statements had been issued. In contrast, Judge Porteous paid the March statement in full, out of Danos's account, four days after it was issued. It is reasonable to infer that he did this so that it would be paid prior to filing for bankruptcy in order to avoid disclosing Fleet as an unsecured creditor.[250] This payment to Fleet, like his payment, to Treasure Chest, made Fleet a "preferred creditor" that should have been disclosed. That payment was not disclosed.

F. March 28, 2001 – Judge Porteous Files His Initial Voluntary Bankruptcy Petition Under the False Name "G.T. Ortous" Using a Post Office Box Address

On March 28, 2001, Judge Porteous filed a Petition for Chapter 13 bankruptcy (the "Initial Petition") in the United States Bankruptcy Court for the Eastern District of Louisiana.[251]

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249 *See* Danos SITC at 877:14 – 878:10.

250 *See* Horner SITC at 992:3 – 994:17; HP Ex. 140 (Fleet credit card statements); HP Ex. 144 (Bank One records); HP Ex. 329 (Fleet credit card statement, with accompanying check written by Rhonda Danos).

251 *See* HP Ex. 125 (*In the Matter of Porteous*, Case No. 01-12363, Voluntary Petition (Bankr. E.D. La. March 28, 2001) ("Initial Petition")).

At some point shortly prior to filing for bankruptcy, Judge Porteous and his counsel agreed on a scheme to file under a false name.[252] Lightfoot explained that the local newspaper published the names of people who file bankruptcy and that this way they could keep Judge Porteous's name out of the paper.[253]

Judge Porteous willingly agreed to the scheme and did not protest in any way, nor did he suggest that it would be wrong for a federal judge to file an official court document, signed under penalty of perjury, with a false name.[254]

As part of his effort to conceal his identity, on March 20, 2001, Judge Porteous opened a post office box. The purpose of opening the post office box was to use that address in his bankruptcy filing.[255]

Judge Porteous's Initial Petition was filed with the false names "G.T. Ortous" and "C.A. Ortous" as the debtors and also listed the P.O. Box address instead of Judge Porteous's actual residential address. Judge Porteous signed the petition twice – once over the typed name "G.T. Ortous" and the other "under penalty of perjury that the information provided in this petition is true and correct."[256] Judge Porteous admitted at the Fifth Circuit Hearing that the names used in the Initial Petition were false.[257]

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252 *See* Lightfoot SITC at 1079:22 – 1080:7; Lightfoot Task Force at 44; Lightfoot 5th Cir. at 435.

253 *See* Lightfoot SITC at 1080:2-13; Lightfoot Task Force at 44.

254 *See* Lightfoot SITC at 1080:20 – 1081:10.

255 *Id.* at 1082:9-21. *See also* HP Ex. 145 (Porteous P.O. Box Application).

256 *See* HP Ex. 125 (Initial Petition), *supra* note 251; Lightfoot Task Force at 44.

257 Porteous 5th Cir. at 55.

Though Judge Porteous has sought to blame Lightfoot for this chain of events, Lightfoot's actions neither excuse nor mitigate the wrongfulness of Judge Porteous's conduct. Judge Porteous's filing for bankruptcy in a false name constituted perjury for which "advice of counsel" is simply no defense. There is never an excuse for knowingly lying on a document that is being signed under penalty of perjury in a bankruptcy proceeding.[258] As an attorney, and, as a federal judge, Judge Porteous is not in the same position *vis-à-vis* his attorney as a lay client being advised about arcane procedures of bankruptcy law. Finally, as a purely factual matter, Judge Porteous had his own agenda throughout the bankruptcy process and was making strategic decisions, including concealing material facts from the Bankruptcy Court, independent of his attorney's advice or knowledge, to conceal his gambling. The fact that his attorney was a willing participant in this fraudulent filing does not absolve Judge Porteous of responsibility. Even if his attorney was willing to subvert his own legal and ethical obligations, that does not mitigate the wrongfulness of Judge Porteous's conduct. This was collusion with counsel, not advice of counsel.[259]

Federal Rule of Bankruptcy 1005 requires that the caption of a bankruptcy petition include the name of the debtor and "all other names used by the debtor within six years before filing the petition." FED. R. BR. P. 1005 (1975).

[258] *See* Keir SITC at 1186:7-13, 1187:19 – 1188:3; Henry Hildebrand Senate Impeachment Trial Committee Hearing Testimony ("Hildebrand SITC") at 1883:14-17.

[259] Lightfoot testified that he is under scrutiny by the Louisiana State Bar for his actions on behalf of Judge Porteous. *See* Lightfoot SITC at 1180:3-20.

G. April 9, 2001 – Judge Porteous Files His Amended Petition, Accompanying Schedules, and Statement of Financial Affairs

1. The Amended Petition

Judge Porteous amended his Initial Petition on April 9, 2001, two weeks after it was filed, replacing the false names and listing his actual residential address.[260]

2. The Bankruptcy Schedules and Statement of Financial Affairs

Along with the Amended Petition, Judge Porteous filed his Bankruptcy Schedules and his Statement of Financial Affairs on April 9, 2001. Judge Porteous's Bankruptcy Schedules required him to set forth such items as assets, debts, income, and other miscellaneous financial matters. Judge Porteous's Statement of Financial Affairs consisted of a series of questions requiring disclosure of specific financial activities. Judge Porteous signed each document under penalty of perjury. Though they were filed April 9, 2001, these forms should have disclosed Judge Porteous's financial affairs as they existed on the date of the Initial Petition – March 28, 2001.[261]

Prior to filing the Bankruptcy Schedules and Statement of Financial Affairs, Lightfoot provided Judge Porteous with draft copies and specifically reviewed them with Judge Porteous "at least twice" and "at length." Judge Porteous then signed both his Bankruptcy Schedules and

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260 *See* HP Ex. 126 (*In the Matter of Porteous*, Case No. 01-12363, Amended Petition (Bankr. E.D. La. Apr. 9, 2001) ("Amended Petition")). Mr. Lightfoot told the bankruptcy trustee, S.J. Beaulieu, that the false name on the Initial Petition was a typographical error. *See* S.J. Beaulieu Senate Impeachment Trial Committee Hearing Testimony ("Beaulieu SITC") at 1524:8-22.

261 *See* HP Ex. 127 (Bankruptcy Schedules and Statement of Financial Affairs), *supra* note 214; HP Ex. 345 (2001 Instructions for Completing Bankruptcy Schedules at p. 45).

his Statement of Financial Affairs under penalty of perjury, declaring that the documents were true and correct.[262]

Judge Porteous nevertheless failed to disclose the various transactions described above involving the Grand Casino Gulfport, the Treasure Chest Casino, and Fleet credit card, nor did Judge Porteous disclose filing for a tax refund, notwithstanding the fact these disclosures were clearly required by those forms. He also failed to disclose other assets and gambling activities in response to specific questions on the forms requiring their disclosure.

3. False Representations on the Bankruptcy Schedules

a. Failure to Disclose the March 23, 2001 Claim for a Tax Refund

Judge Porteous failed to disclose his claim for a tax refund. The Bankruptcy Schedules required Judge Porteous to disclose "other liquidated debts owing debtor including tax refunds." (emphasis added). Notwithstanding the fact that Judge Porteous had filed for a $4,143.72 federal income tax refund on March 23, 2001 – five days before filing his Initial Petition – the box "none" was marked with an "X" in response to the question about tax refunds. Judge Porteous signed that form under penalty of perjury.[263]

During his Fifth Circuit testimony, Judge Porteous acknowledged that the "none" box was checked.[264] When confronted with the fact that the Schedule did not disclose the pending refund, Judge Porteous responded: "When that was listed, you're right."[265]

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[262] Lightfoot SITC at 1084:21 – 1086:2. *See also* Lightfoot Task Force at 46; HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at SC00111, SC00116.

[263] *See* HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at SC00096, SC00116. The Section at issues is Category 17 on Schedule B ("Personal Property").

[264] Porteous 5th Cir. at 80.

[265] *Id.* at 82.

The form is unambiguous in requiring the suggested tax refund to be reported. Further, according to Lightfoot, the tax refund should have been disclosed, and if he had known of the pending refund, he would have disclosed it.[266] Lightfoot also would have filed an amended schedule to disclose the refund if he had found out about it after the initial schedules were filed: "I would have amended this schedule to list it, had it been absent, and probably informed the trustee, particularly if the meeting of creditors hadn't been held yet. I would have mentioned it."[267]

On April 13, 2001 – just four days after the Bankruptcy Schedules were filed – Judge Porteous received his entire $4,143.72 federal tax refund by way of a direct deposit into his Bank One checking account. Judge Porteous acknowledged during his Fifth Circuit testimony that the $4,143.72 tax refund was deposited into his Bank One checking account on April 13, 2001.[268]

This tax refund was not only significant because it involved over $4,000 that could have potentially gone to creditors. In addition, S. J. Beaulieu, the Chapter 13 trustee who was assigned to Judge Porteous's case, stated that he would have considered the refund in deciding whether to approve the proposed Chapter 13 plan, and the size of the refund suggested that Judge Porteous was over-withholding and had access to disposable income that should have gone to the creditors. In response to questioning from Senator Whitehouse, Beaulieu explained:

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[266] *See* Lightfoot SITC at 1086:18 – 1087:7; Lightfoot Task Force at 46; Lightfoot 5th Cir. at 447.

[267] Lightfoot SITC at 1087:8-19. *See also* Lightfoot Task Force at 47. The instructions for completing Category 17 on Schedule B are clear: "Item 17 request [sic] the debtor to list all monies owed to the debtor . . . and specifically, any expected tax refunds." HP Ex. 345 (2001 Instructions for Completing Bankruptcy Schedules at 62) (emphasis added).

[268] Porteous 5th Cir. at 83. *See also* HP Ex. 141 (2000 Porteous Federal Tax Return); HP Ex. 144 (Porteous Bank One records).

Q. [Sen. Whitehouse.] Now, my question to you is would it have made any difference to the plan that you approved if you had known of the tax return and the other preferences. . . . Basically I'm trying to sort out did it, did it make a difference to anybody that these expenses or assets weren't properly listed since this was a Chapter 13?

A. [Beaulieu] $4000 [for the tax refund] means about $300 swing a month; $3600, or $4000 a [year]. So now you're talking about $12,000 going into the kitty.

Q. So that information [the undisclosed tax return] would have made a difference in the plan that you approved?

A. That and I - basically when you get a tax return with [that] dollar amount, . . . that means that the debtor is overdeducting from his paycheck, so that means the paycheck I'm reviewing is down $300 from the get-go.

So I would have to look at that and say, well, your income should be actually $300 more per month. So that's in a three-year period about $10,000, which in this case would be about a 10 percent turnaround

Q. And that's something you have taken into account in your decisions about the plan?

A. Yes sir.[269]

In his Fifth Circuit testimony, Judge Porteous claimed that he called Lightfoot when he received the refund, and that they discussed what he should do with it.[270] Lightfoot specifically

[269] Beaulieu SITC at 1549:4 – 1550:21. Chief Bankruptcy Judge Keir, who testified as an expert witness for the House, also made the point that the undisclosed tax refund had significance going forward in determining Judge Porteous's disposable income: "Not only was it an asset that should have come in . . . but in effect it affects the calculation of what is disposable income. If you claim no dependents, no deductions, and have them take out extra money, you can lower that take-home pay. All you are doing is putting it in your own savings account, if you are allowed to do that. Therefore, your monthly payment is also going to be less under this plan calculation." Keir Task Force at 77.

Judge Porteous's bankruptcy case was assigned to Bankruptcy Judge William Greendyke from Texas. Judge Greendyke's trustee, William Heitkamp, testified similarly to Beaulieu as to the significance of the tax refund, namely, that they were to be treated as "part of the Chapter 13 debtor's disposable income," which was "required to be committed to payments in Chapter 13 cases." *See* William Heitkamp 5th Circuit Special Committee Hearing Testimony ("Heitkamp 5th Cir.") at 397.

[270] *See* Porteous 5th Cir. at 83–84.

denied that such a call occurred. Rather, Lightfoot recalled a "conversation with the judge about a tax return for a later year, and not that particular year" where the issue was whether the tax refund had to have been turned over pursuant to Judge Greendyke's order.[271]

b. Omitted and Undervalued Financial Accounts

Judge Porteous also failed to provide truthful information about his Bank One checking account and his Fidelity money market account.

1. The Bank One checking account. The Bankruptcy Schedules (Question 2 on Schedule B ("Personal Property")) required Judge Porteous to list, among other assets, "checking, savings or other financial accounts" and their value. In response, Judge Porteous disclosed the current market value of his Bank One Checking Account – into which his monthly salary was deposited – as $100.

This "$100" answer was false, and the evidence establishes that Judge Porteous knew that it was false. First, the day prior to filing his Initial Petition (March 27, 2001), Judge Porteous deposited $2,000 into the account – the amount he owed on the Grand Casino markers – so he knew that the account held at least $2,000 – not the $100 he reported. Moreover, the opening balance in Judge Porteous's Bank One account for the period March 23, 2001 to April 23, 2001 (covering the time period of his bank statements) was $559.07, and the closing balance for the same time period was $5,493.91. At no time during that month did Judge Porteous's balance drop to as low as $100. [272]

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[271] Lightfoot SITC at 1141:15-17. *See also id.* at 1142:13-20 (Lightfoot recalled needing to "look to the confirmation order" since it was not a typical order issued in New Orleans); Lightfoot 5th Cir. at 437.

[272] *See* Horner SITC at 994:18 – 995:14; HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at SC00095; HP Ex. 144 (Porteous Bank One records); House Chart 5 ("Undisclosed Account Balance (Bank One Account)"); Porteous 5th Cir. Hrg. at 79–80 (acknowledging during

2. The Fidelity money market account. At the time of his bankruptcy filing, Judge Porteous also had a Fidelity money market account that he used regularly. As noted, he had paid gambling debts to casinos from that account (and did so in the fall of 2000). In the days immediately prior to filing for bankruptcy, Judge Porteous wrote numerous checks drawn on the Fidelity account, including a check the day before he filed his Initial Petition.[273]

Judge Porteous did not disclose his Fidelity money market account as required in response to the question concerning his accounts. Judge Porteous never told Lightfoot about this account, and he did not include it on the worksheets that he filled out and gave to Lightfoot in the summer of 2000.[274] Although there were but a few hundred dollars in the account at the time he filed for bankruptcy, Judge Porteous clearly did not overlook the account. He deliberately failed to report it, and it should have been disclosed. His reason for hiding the amount became clear after his Chapter 13 bankruptcy plan was approved. Judge Porteous thereafter secretly used this account to accumulate cash and pay gambling debts.[275]

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his Fifth Circuit testimony that he listed his Bank One checking account under Schedule B as having a balance of $100).

[273] *See* Horner SITC at 995:15 – 997:20; HP Ex. 529 (Fidelity checks); HP Ex. 143 (Fidelity money market statements); House Chart 16 ("Judge Porteous's Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts"); House Chart 4 ("Judge Porteous's Undisclosed Fidelity Money Market Account").

[274] *See* Horner SITC at 997:21-25; HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at SC00095; Lightfoot 5th Cir. at 436, 448; Porteous 5th Cir. at 85–87 (acknowledging in his Fifth Circuit testimony the existence of his Fidelity money market account, and acknowledging that it was omitted from his Schedule B).

[275] Counsel misconstrues the significance of this omission, and the collective falsehoods, in his opening statement: "[Judge Porteous] had $283.42 [in that account]. So let's round it upwards, shall we? Let's say it's $300. Is that going to be relied on for the removal of a federal judge after 16 years of service?" *See* Turley SITC Opening Statement at 103:13-18.

c. Understated Income

Judge Porteous did not disclose his true net income. The Schedule requiring disclosure of "Current Income" listed his monthly net income as $7,531.52 – the amount that was reflected on the pay stub Judge Porteous gave Lightfoot in the summer of 2000. That pay stub was attached to the Schedule. Judge Porteous never disclosed to Lightfoot that his judicial salary had increased in 2001 to $7,705.51 per month (take home). Therefore, Judge Porteous understated his net income by $173.99 a month, or $2,087.88 annually, or over $6,000 for the three year life of the proposed Chapter 13 Plan.[276]

Judge Porteous also had social security taxes withheld from his salary on a monthly basis until he reached a statutorily defined annual gross salary – referred to as the social security "wage base." He typically reached that income level in July or August of a calendar year, at which point, he was no longer subject to social security tax withholding, and his net monthly salary would increase substantially. In the summer of 2001, Judge Porteous's monthly net salary increased from about $7,705 per month to about $8,500 for the rest of the year – an amount roughly $1,000 per month more than he reported on his bankruptcy filing, or over $5,000 more for that year.[277] Because he received salary increases in 2002 and 2003, the difference between what he had reported to the bankruptcy court in 2001 as his net salary and what he actually received after the social security withholding stopped is even more pronounced. In 2002, after

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[276] Schedule I of the Bankruptcy Schedules, "Current Income of Individual Debtor(s)," required Judge Porteous to list his "current monthly gross wages, salary, and commissions (pro rate if not paid monthly)." *See* HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at SC00108-09; HP Ex. 144 (Porteous Bank One records); Lightfoot Task Force at 47.

[277] *See* Horner SITC at 1013:21 – 1014:12; HP Ex. 451 (Porteous Bank One records for Aug.-Sept. of 2001, 2002, and 2003); Horner Task Force at 26 (testifying that from "August through December [2001], the pay that is deposited in his account every month is about $8,500").

the social security withholding stopped, Judge Porteous received in excess of $8,600 per month (or over $1,000 more per month than what he reported on his Bankruptcy Schedule). In 2003 he received in excess of $9,000 per month after the social security withholding stopped. In total, Judge Porteous received thousands of dollars in disposable income for his own use that he never reported and that the creditors never saw.[278]

d. Schedule of Unsecured Creditors

Judge Porteous failed to disclose Grand Casino Gulfport among his unsecured creditors. As noted, Judge Porteous owed $2,000 to the Grand Casino Gulfport on March 28, 2001. The markers he had outstanding did not clear Judge Porteous's account until April 5-6, 2001. Though he listed numerous creditors on Schedule F – "Creditors Holding Unsecured Nonpriority Claims" – the Grand Casino Gulfport debt was not included.[279] For reasons already discussed, Judge Porteous sought and planned for that creditor to receive payment in full, while other creditors to whom he owed money on March 28, 2001 received only a fraction of what they were owed. Judge Porteous could not afford to be in default to any casino if he wanted to continue gambling.

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[278] *See* HP Ex. 451 (Porteous Bank One records for Aug.-Sept. of 2001, 2002, and 2003). Judge Porteous, through his attorney, has suggested that he paid even more than required to the trustee. Counsel for Judge Porteous stated in his opening statement: "[J]udge Porteous -- and I want to emphasize this -- paid more than he was scheduled to pay in bankruptcy. He paid more than what originally he was scheduled to pay his creditors." Turley SITC Opening Statement at 95:14-18. To the contrary, the absence of good faith reflected by Judge Porteous's receipt of thousands of dollars of income in excess of what he reported on his schedules and which were not known to the trustee or accounted for in his payment plan, is manifest. Judge Porteous's attorney asserted, in questioning Agent Horner, that the amounts at issue were "a few hundred dollars a month." *See* Horner SITC at 1054:11. That amount materially understates the impact of the "FICA effect."

[279] *See* Horner SITC at 983:22 – 984:16, 985:6-8, 1003:19 – 1005; HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at Schedule F at SC00102–105; HP Ex. 301(a) (Grand Casino Gulfport Patron Transaction Report); House Chart 6 ("Undisclosed Creditor (Grand Casino Gulfport)").

e. Signed Declaration

At the end of Judge Porteous's Bankruptcy Schedules, he signed a "declaration under penalty of perjury by individual debtor," which stated:

> I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 18 sheets plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief.[280]

In fact, the Schedules were not "true and correct to the best of [Judge Porteous's] knowledge, information and belief." They were false because they failed to report his pending tax refund, the true value of his Bank One checking account, the existence of his Fidelity money market account, his true net salary, and the existence of a casino as one of his creditors.

4. False Representations in the Statement of Financial Affairs

a. Undisclosed Payments to Preferred Creditors (Fleet and the Casinos) Within 90 Days of Filing for Bankruptcy

One of the questions on the Statement of Financial Affairs (Question 3) required Judge Porteous to "[l]ist all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case."[281] The reasons for such an inquiry are obvious – to ensure that the debtor is not picking and choosing whom to pay when he knows he is going into bankruptcy, thereby paying some creditors in full while other creditors receive a fraction of what they are owed. This, of course, is exactly what Judge Porteous had done by paying Treasure Chest and Fleet in full in the weeks prior to filing for bankruptcy.

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[280] *See* HP Ex. 127 (Bankruptcy Schedules), *supra* note 214, at SC00111.

[281] *See* HP Ex. 127 (Statement of Financial Affairs) *supra* note 214, at SC00112. The question thus seeks to inquire as to whether the debtor has favored or preferred some creditors over others, by paying some creditors in full to the detriment of others.

Relying on the information that Judge Porteous had provided, Lightfoot entered the answer: "normal installments" in response to Question 3– a term that "was intended to cover the normal installments on his two leased cars and his two home mortgages."[282] That answer – "normal installments" – was false, as a result of Judge Porteous's actions in the weeks and days immediately preceding filing for bankruptcy.

First, the Schedule failed to disclose Judge Porteous's payment to Treasure Chest. As noted, on March 2, 2001, Judge Porteous gambled at Treasure Chest and took out seven $500 markers, for a total extension of credit of $3,500. He repaid $2,000 with chips on March 3, 2001, but he did not repay the balance until March 27, 2001 (the day before his Initial Petition was filed), when he made a $1,500 cash payment to the casino – that is, he made a payment on a debt "aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case." Repayment of the markers to Treasure Chest should have been reported but, as with all of Judge Porteous's gambling activities, Lightfoot did not include it because he did not know about it.[283]

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[282] *See* HP Ex. 127 (Statement of Financial Affairs), *supra* note 214, at SC00112; Lightfoot Task Force at 48.

[283] *See* HP Ex. 127 (Statement of Financial Affairs), *supra* note 214, at SC00112; HP Ex. 302 (Porteous Treasure Chest Customer Transaction Inquiry); Horner SITC at 986:18 – 988:19; Lightfoot SITC at 1090:1 – 1091:2; Lightfoot Task Force at 48); House Chart 2 ("Undisclosed Payments to Creditors within 90 Days of Bankruptcy - Treasure Chest Casino").

Additionally, as discussed above, on February 26, 2001, Judge Porteous took out $2,000 in markers at the Grand Casino, which were in fact outstanding as of the date he filed for bankruptcy (March 28, 2001) and were not reported on the Schedule of Unsecured Creditors. However, if Judge Porteous believed that the markers had in fact been repaid prior to filing for bankruptcy (presumably on March 27, 2001, when he deposited cash for that purpose), that payment should have been disclosed in response to Question 3 on his Statement of Financial Affairs. Again, Lightfoot was unaware of the Grand Casino Gulfport markers.

Second, Judge Porteous also failed to disclose that on March 23, 2001, he had his secretary, Rhonda Danos, pay off his wife's Fleet credit card balance of $1,088.41.[284]

Trustee Beaulieu explained that though he could attempt to collect the preferred payments, doing so would "cost us money. I'd have to weigh the cost of going after the preferences."[285] Because it is unlikely that Beaulieu would have recovered these preferred payments, Judge Porteous has implied that his dishonesty in failing to disclose them has no significance. That argument is not defensible, nor does it excuse his not providing accurate information. The fact that Beaulieu concluded it was not worth his time to file a civil law suit on behalf of the creditors to collect the preferred payments does not render Judge Porteous's statements any less false or any less fraudulent; it just means that there was no practical remedy to cure the effect of the fraudulent misrepresentations.

b. Gambling Losses

Judge Porteous also lied in response to a specific question concerning his gambling. The Statement of Financial Affairs required Judge Porteous to "[l]ist all losses from . . . gambling

[284] Judge Porteous's March 23, 2001 payment to Fleet (by way of the Danos check) was credited by Fleet on March 29, 2001. Because this check was not received by Fleet until the day after Judge Porteous initially filed for bankruptcy, Judge Porteous could claim that the payment to Fleet was not in fact made within the 90 days preceding his bankruptcy filing, and thus it was not required to be reported on the Statement of Financial Affairs. However, if this were the case, then Judge Porteous should have listed Fleet as an unsecured creditor, which he did not *See* HP Ex. 127 (Bankruptcy Schedules and Statement of Financial Affairs), *supra* note 214, at Schedule F at SC00102-105 and at Statement of Financial Affairs at SC00112; HP Ex. 140 (Fleet credit card statements); HP Ex. 329 (Fleet credit card statement and check written by Danos); Horner SITC at 993:25 – 994:17; House Chart 1 ("Undisclosed Payments to Creditors within 90 Days of Bankruptcy - Fleet Credit Card").

[285] Beaulieu SITC 1549:24 – 1550:1. Judge Keir testified that if Judge Porteous had disclosed the preferred payments to creditors on his Statement of Financial Affairs, he would have run the risk that the trustee would have sought to void those transfers and bring those payments back into the bankruptcy estate. The casinos would thus be treated the same as other unsecured creditors, and would have received less than full payment on the markers. *See* Keir Task Force at 71–72.

within one year immediately preceding the commencement of this case or since the commencement of this case." In response, the box for "none" was checked. [286] However, an analysis by the FBI of Judge Porteous's gambling activities reflecting his "rated play" in the year prior to his bankruptcy filing revealed that Judge Porteous had gross losses of $12,700 and net losses of $6,233.20.[287]

During his Fifth Circuit testimony, Judge Porteous admitted that his response of "none" to the question concerning gambling losses was incorrect:

> Q. Judge Porteous, do you recall that in the - that your gambling losses exceeded $12,700 during the preceding year?
>
> A. I was not aware of it at the time, but now I see your documentation and that - and that's what it reflects.
>
> Q. So you - you don't dispute that?
>
> A. I don't dispute that.
>
> Q. Therefore, the answer "no" was incorrect, correct?
>
> A. Apparently, yes.
>
> Q. Even though this was signed under oath, under penalty of perjury, correct?
>
> A. Right.[288]

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286 *See* HP Ex. 127 (Statement of Financial Affairs), *supra* note 214, at SC00113.

287 *See* Horner SITC at 1000:1-14, 1001:5-12; HP Ex. 337 (FBI Gaming Losses Chart).

288 Porteous 5th Cir. at 99. There is no significance to the "net"/"gross" distinction in any event. The question calls for disclosure of "all losses." As Senator Risch observed, in questioning Agent Horner:

> You know, it seems to me, as I read that, that there's good reasons why that question is asked on the bankruptcy form, and it seems to me that they don't ask about a net gain or loss, it just says have they had losses. So if he won and he lost, regardless of what the net result is, the answer to that question should have been yes.

Horner SITC at 1066:3-11.

Though the "gambling" question would not necessarily result in additional money to Judge Porteous's creditors, a truthful answer to the question would have put the creditors and the court on notice of activities that could threaten the bankruptcy plan. As Lightfoot testified, that question "prompts many other questions for a trustee to ask in the examination of the case."[289]

c. Declaration

At the end of his Statement of Financial Affairs, Judge Porteous signed a declaration which stated:

> I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.[290]

Again, Judge Porteous's answers were not "true and correct." Judge Porteous concealed his payments to Treasure Chest (by cash) and Fleet (through Danos), and failed to disclose his gambling losses notwithstanding questions specifically calling for that information.

H. Judge Porteous's Post-Filing Activities and the Bankruptcy Creditors Meeting

1. Post-Filing Activities between March 28, 2001 and the Creditors Meeting on May 9, 2001

a. Beau Rivage and Repayment through Danos

Judge Porteous continued to gamble after filing for bankruptcy. On April 6, 2001 – subsequent to filing his Initial Petition (on March 28, 2001) and prior to filing his schedules and forms on April 9, 2001 – Judge Porteous gambled and incurred debt at Beau Rivage Casino.

Judge Porteous repaid the Beau Rivage debt by withdrawing funds from his IRA (in the form of a check), endorsing that IRA check to Danos and having her write a check to the casino. By repaying Beau Rivage in this matter, the payment to Beau Rivage avoided Judge Porteous's

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289 Lightfoot SITC at 1092:3-4. Judge Porteous would have well understood that the bankruptcy court and his attorney would have focused on gambling in the context of approving his Chapter 13 plan.

290 *See* HP Ex. 127 (Statement of Financial Affairs), *supra* note 214, at SC00116.

accounts altogether. This conduct further evidences his intent to hide gambling debts and is consistent with his behavior prior to filing for bankruptcy. Even if there were only a remote chance that the creditors would seek to review his accounts, by this activity, Judge Porteous made sure that neither his disclosed Bank One account nor his undisclosed Fidelity money market account reflected any payments to Grand Casino in this time frame.[291]

b. Treasure Chest and Harrah's

Judge Porteous continued to take out credit and incur debt after he filed his bankruptcy forms on April 9, 2001, and prior to the creditors meeting on May 9, 2001.

On April 10, 2001, the day after Judge Porteous filed his forms and schedules with the bankruptcy court, Judge Porteous took out $2,000 in markers at the Treasure Chest Casino. He paid all the markers back the same day in chips.[292]

On April 30, 2001, Judge Porteous submitted a casino credit application to Harrah's Casino and requested a $4,000 credit limit. This application lists "$0" for indebtedness. Judge Porteous signed the application. [293] On that same day, Judge Porteous took out $1,000 in

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[291] The sequence of events associated with this Beau Rivage debt is as follows: (1) On April 6, 2001, Judge Porteous requested a one-time credit increase at the Beau Rivage Casino from $2,500 to $4,000; (2) On April 7-8, 2001, Judge Porteous took out $2,000 in markers at the Beau Rivage Casino. He left the casino owing $1,000; (3) On approximately April 30, 2001, Judge Porteous withdrew $1,000 from his IRA, which was paid to him in the form of a check. He endorsed the check directly to Danos, and she deposited it into her personal bank account on May 1, 2001; (4) On April 30, 2001, Danos wrote a check payable to the Beau Rivage in the amount of $1,000. The memo line of that check referenced Judge Porteous. That payment was credited against Judge Porteous's Beau Rivage account on May 4, 2001. *See* HP Ex. 303 (Beau Rivage Credit History); HP Ex. 304 (Beau Rivage Balance Activity); HP Ex. 382 (records related to $1,000 Beau Rivage payment); House Chart 11 ("Judge Porteous's Use of Secretary Danos to Pay His Casino Debts in April 2001").

[292] *See* HP Ex. 305 (Treasure Chest Customer Transaction Inquiry).

[293] *See* Horner SITC at 1007:15 – 1008:5; HP Ex. 149 (Harrah's Casino Credit Application); HP Ex. 326 (Central Credit, Inc. Gaming Report for Judge Porteous).

markers at Harrah's Casino and wrote a check to pay these markers. Harrah's held the check for 30 days before depositing it, so the markers were not repaid until May 30, 2001.[294]

On May 7, 2001 Judge Porteous took out $4,000 in markers at the Treasure Chest Casino. He left the casino owing this amount and repaid the $4,000 two days later, on May 9, 2001 – the same day as the Creditors Meeting – in cash.[295]

2. Bankruptcy Creditors Meeting

On May 9, 2001, the Section 341 Creditors Meeting was held in Judge Porteous's bankruptcy case.[296] Bankruptcy trustee Beaulieu presided over the hearing, which was attended by Judge Porteous and attorney Lightfoot. As to incurring debt going forward, Judge Porteous was provided with a copy of a pamphlet entitled "Your Rights and Responsibilities in Chapter 13." During his testimony before the Fifth Circuit Special Committee, Judge Porteous acknowledged receiving the pamphlet from the bankruptcy trustee. Section 6 of this pamphlet discussed credit while in Chapter 13 and specifically provided:

> You may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy Court. This includes the use of credit cards or charge accounts of any kind. If you or a family member you support buys something on credit without Court approval, the Court could order the goods returned.[297]

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294 *See* HP Ex. 306 (Harrah's Patron Credit Activity).

295 *See* HP Ex. 307 (Treasure Chest Customer Transaction Inquiry).

296 *See* HP Ex. 129 (*In the Matter of Porteous*, Case No. 01-12363, Trustee's Memo to Record (Bankr. E.D. La. May 9, 2001)); Lightfoot Task Force at 49. *See also* 11 U.S.C. § 341 (2003). A Section 341 Creditors Meeting is a statutorily mandated meeting of creditors and equity security holders that is held by the bankruptcy trustee. The purpose of a Section 341 Creditors Meeting is to permit examination of the debtor under oath regarding his petition and bankruptcy schedules.

297 *See* HP Ex. 130 (Creditors Meeting Hearing Transcript); HP Ex. 148 (Chapter 13 "Rights & Responsibilities" Pamphlet); Porteous 5th Cir. at 60.

Judge Porteous was thereafter placed under oath and asked if everything in his bankruptcy filing was true and correct. Judge Porteous stated, "yes." Judge Porteous was also specifically asked if he listed all of his assets in his bankruptcy filing, and again he answered "yes." He also affirmed that his take home pay was "about $7,500 a month." [298]

Bankruptcy Trustee Beaulieu made it clear to Judge Porteous that he was no longer allowed to incur any new debt or to buy anything on credit. Specifically, the trustee told Judge Porteous that he was "on a cash basis now."

Judge Porteous did not disclose at the hearing that between the time of filing for bankruptcy and the date of the Creditors Meeting, he had incurred additional debt (some of which he had paid through Danos) by taking out markers at casinos. Nor did he disclose that he had increased a credit line at a casino, concealed a credit card in his bankruptcy filing, or that he had outstanding markers owed to Harrah's Casino on the date of the meeting. [299]

Between the Creditors Meeting on May 9, 2001 and the date the Confirmation Order was signed on June 28, 2001, Judge Porteous continued to gamble, take out casino markers, and incur new debt.[300]

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[298] *See* HP Ex. 130 (*In the Matter of Porteous*, Case No. 01-12363, Creditors Meeting Hearing Transcript (Bankr. E.D. La. May 9, 2001) at SC00595-96)).

[299] *Id.* at SC00598. As it turned out, the Creditors Meeting was perfunctory, and Judge Porteous's concerns that creditors or the trustee would seek to examine his bank statements were unnecessary. Nonetheless, Judge Porteous's repayment of casino debts by running IRA payments through Danos's accounts, or his various cash payments to the casinos prior to filing for bankruptcy, reflect the care he exercised to hide his gambling from the Bankruptcy Court and creditors.

[300] These activities included: (1) On May 16, 2001, Judge Porteous took out a $500 marker at the Treasure Chest Casino. He repaid the marker the same day in chips; (2) On May 26-27, 2001, Judge Porteous took out $1,000 in markers at the Grand Casino Gulfport. He paid back $900 on May 27, 2001 and paid back the remaining $100 on June 5, 2001; and (3) On June 20, 2001, Judge Porteous took out a $500 marker at the Treasure Chest Casino. He repaid the marker the same day in chips. *See* HP Ex. 308 (Treasure Chest Customer Transaction Inquiry);

I. The June 28, 2001 Confirmation of Judge Porteous's Bankruptcy Plan, and Judge Porteous's Subsequent Violations of the Confirmation Order

1. The Order's Prohibition Against Judge Porteous Incurring New Debt

On June 28, 2001, U.S. Bankruptcy Judge William Greendyke signed an Order Confirming the Debtor's Plan and Related Orders (the "Confirmation Order").

If Judge Greendyke had known of Judge Porteous's previously described actions in connection with his bankruptcy filing, Judge Greendyke would not have signed the Confirmation Order, and "would probably have sua sponte objected on the basis of lack of good faith."[301]

Among its terms, the Confirmation Order prohibited Judge Porteous from incurring new debt without the permission of the trustee:

> The debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable.[302]

During his Fifth Circuit testimony, Judge Porteous testified that he understood the Confirmation Order at the time the order was entered.[303] Judge Porteous's understanding that he needed the bankruptcy trustee's permission to incur new debt is evidenced by the fact that on at least two separate occasions he sought and received such permission.[304]

HP Ex. 309 (Grand Casino Patron Transaction Request); HP Ex. 310 (Treasure Chest Customer Transaction Inquiry).

[301] *See* William Greendyke 5th Circuit Special Committee Hearing Testimony ("Greendyke 5th Cir.") at 384–85. The good faith of the debtor is a confirmation requirement.

[302] *See* HP Ex. 133 (*In the Matter of Porteous*, Case No. 01-12363, Confirmation Order (Bankr. E.D. La. June 28, 2001) ("Confirmation Order")).

[303] Porteous 5th Cir. at 62.

[304] First, on December 20, 2002, the bankruptcy trustee granted Judge Porteous's request to refinance his home. And second, on January 2, 2003, the bankruptcy trustee granted Judge Porteous's request to obtain two new car leases. *See* Lightfoot Task Force at 49-50; HP Ex. 339 (Beaulieu letter approving home refinancing); HP Ex. 340 (Beaulieu letter approving new car leases).

2. Violations of the Confirmation Order

Judge Porteous was subject to the terms of his Chapter 13 repayment plan for three years. Notwithstanding Judge Greendyke's Confirmation Order that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee,"[305] Judge Porteous: (1) took out 42 markers over the course of fourteen different gambling trips at four different casinos, totaling over $33,000 in debt; (2) applied to increase his credit limit at one of those casinos and thereafter utilized his increased credit line; and (3) obtained and used a new credit card. Judge Porteous did not obtain the permission of the trustee or the bankruptcy court to engage in these activities.

a. Casino Markers

After the Confirmation Order was signed and issued, Judge Porteous continued to gamble on a regular basis and intentionally violated Judge Greendyke's Confirmation Order by incurring debt in the form of taking out casino markers without obtaining permission from the bankruptcy trustee. He obtained casino markers on his existing lines of credit at the casinos and sought an increase on one of his lines of credit.[306]

Judge Porteous took out at least 42 markers between July 19, 2001 and July 5, 2002. The following chart summarizes Judge Porteous's gambling activity during the first year following the Confirmation Order.

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305 *See* HP Ex. 133 (Confirmation Order), *supra* note 302.

306 *See* HP Ex. 149 (Harrah's Casino Credit Application); HP Ex. 326 (Central Credit, Inc. Gaming Report for Judge Porteous).

Date	Casino	Number of Markers	Total Dollar Amount	Repayment Date(s)
07/19/2001	Treasure Chest	1	$500	07/19/2001
07/23/2001	Treasure Chest	1	$1,000	07/23/2001
08/20–21/2001	Treasure Chest	8	$8,000	08/20-21/2001 ($5,000) 09/09/2001 ($2,000) 09/15/2001 ($1,000)
09/28/2001	Harrah's	2	$2,000	10/28/2001
10/13/2001	Treasure Chest	2	$1,000	10/13/2001
10/17-18/2001	Treasure Chest	9	$5,900	10/17/2001 ($1,500) 11/09/2001 ($4,400)
10/31/2001-11/01/2001	Beau Rivage	6	$3,000	11/01/2001
11/27/2001	Treasure Chest	2	$2,000	11/27/2001
12/11/2001	Treasure Chest	2	$2,000	12/11/2001
12/20/2001	Harrah's	1	$1,000	11/09/2002
02/12/2002	Grand Casino Gulfport	1	$1,000	02/12/2002
04/01/2002	Treasure Chest	3	$2,500	04/01/2002
05/26/2002	Grand Casino Gulfport	1	$1,000	05/26/2002
07/04-05/2002	Grand Casino Gulfport	3	$2,500	07/05/2002 ($1,200) 08/11/2002 ($1,300)
TOTAL		**42**	**$33,400**[307]	

Judge Porteous has attempted to suggest that there exists some legal ambiguity into whether borrowing money from casinos – evidenced by the "marker" – constituted a form of

[307] See Horner SITC at 1009:23 – 1011:2 (identifying table); House Table 7.

debt. However, there is no ambiguity in this concept. When Judge Porteous borrowed from the casino, or took out a marker, he was then indebted to the casino for the period of time that the marker was outstanding. This is well understood by Judge Porteous's attorney, Lightfoot, bankruptcy trustee Beaulieu, and expert witness Chief Bankruptcy Judge Keir – men who have handled thousands of bankruptcy cases.

In Lightfoot's opinion, a marker was a civil debt: "I believe a marker is at least a promise to pay. Promise to pay is a claim in bankruptcy."[308] Similarly: "[A] marker, to me, they look just like a check. And as I had researched it in the past, I found that it was – the big fight was whether or not it was a check. But it certainly was a debt in my – and it is a debt in my opinion. It's a promise to pay."[309]

Beaulieu testified that markers constituted indebtedness, and that Judge Porteous's taking out markers violated the confirmation order:

> Q. In your view, does a marker from a casino – is that a form of indebtedness for your purposes?
>
> A. Yes.
>
> Q. Now, you know the order that was filed by judge -- was signed by Judge Greendyke said that the debtor is not allowed to incur any new debt without the written permission of the trustee. Do you recall that?
>
> A. Yes, sir.
>
> Q. And the evidence is undisputed that in the year following the filing of the petition, and I believe after the order was entered, Judge Porteous, I believe the number – signed up for 42 markers amounting to roughly

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308 Lightfoot SITC at 1077:16 –1078:4.

309 *Id.* at 1179:3-24 *See also* Lightfoot Task Force at 53 ("I have had some cases involving gambling, people who had markers, and, of course, they are a civil liability. It is a debt like any other debt in that sense. So it has to be listed. I would have listed and do list anybody who has a casino-type debt."); *id.* at 64 ("Mr. GOODLATTE. And is there any question in your mind that a marker is a form of indebtedness? Mr. LIGHTFOOT. No doubt at all.")

> $30,000. I could be off in my numbers. But should that have been – first of all, did that violate the order?
>
> A. In my opinion, it does.[310]

Henry Hildebrand, a bankruptcy trustee called as an expert by Judge Porteous, and who has handled 150,000 cases, also testified that Judge Porteous's taking out gambling markers violated Judge Greendyke's Order.[311]

Finally, it is clear that Judge Porteous understood that borrowing from casinos – or taking out markers – constituted a form of debt. Judge Porteous accepted the following definition of a marker in his testimony before the Fifth Circuit Hearing:

> A marker is a form of credit extended by a gambling establishment, such as a casino, that enables the customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution. Should the customer not repay his or her debt to the casino, the marker authorizes the casino to present it to the financial institution or bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time.[312]

In addition, Judge Porteous's actions immediately preceding his bankruptcy, where he sought to repay his casino markers prior to filing for bankruptcy, make it clear that he understood the markers constituted reportable debt. Thus, notwithstanding Judge Porteous's experts, who sought to cast doubt on the proposition that taking out markers equates with taking out debt, the evidence is uncontested that Judge Porteous understood that a marker was debt for purposes of complying with the confirmation order.

The fact that Judge Porteous violated the confirmation order in taking out other debt by obtaining and using a credit card, as discussed in the next section, confirms Judge Porteous's

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310 Beaulieu SITC at 1540:22 – 1541:15.

311 Hildebrand SITC at 1846:18-22, 1885:13-15.

312 *See* Porteous 5th Cir. at 64–65.

willingness to violate the Confirmation Order. The fact that some of the markers were repaid the same day is not relevant to the conclusion that they constituted prohibited debt at the moment Judge Porteous received the chips for markers. As Chief Bankruptcy Judge Keir explained: "When the casino pushes the markers across the counter to the gambler, who doesn't immediately pay for them, but will pay for them, the gambler is now obligated to pay the casino for the value of the markers. That's when the debt arises. That is debt, and all debts are covered by the order."[313]

Finally, Judge Porteous's handling of these debts again explains why he did not disclose the Fidelity money market account. To make his November 9, 2001 payment of $4,400 to the Treasure Chest Casino, Judge Porteous withdrew $1,760 from his IRA, which he deposited into his Fidelity money market account, and he then wrote a check for $1,800, payable to the Treasure Chest Casino, drawn on his Fidelity account. (Judge Porteous repaid the remaining $2,600 on November 9, 2001 in cash.)[314]

Similarly, to make the August 11, 2002 payment of $1,300 to the Grand Casino Gulfport, Judge Porteous once again used his undisclosed Fidelity money market account. He wrote a

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313 Keir SITC at 1995:3-8. *See also id.* at 1194:17 – 1195:22; Keir Task Force at 79 ("The debt is incurred when the marker is taken. That is when the debt arises. You owe the money. And it is the incurrence of the debt that was prohibited by the order.").

314 *See* Horner SITC at 1011:11-23; HP Ex. 316 (Treasure Chest Casino Customer Transaction Inquiry); HP Ex. 530 (IRA and Fidelity records showing $1,760 withdrawal from IRA and $1,800 check written out of Fidelity to the Treasure Chest Casino); House Chart 19 ("Judge Porteous's Use of Undisclosed Fidelity Account in Bankruptcy to Pay Casino Debts") (referred to as "Chart 18" in the SITC transcript). In addition, Judge Porteous used the undisclosed Fidelity account to accumulate cash outside of his disclosed Bank One account. By May of 2002, Judge Porteous accumulated a balance of $8760.37 in the Fidelity account, while the balance in the Bank One account was $1120.91. In June of 2002, his Fidelity balance was in excess of $7,843.37, and his Bank One balance was $857. *See* Horner SITC 1016:1-14; House Chart 18 ("Judge Porteous's Use of Undisclosed Fidelity Account to Accumulate Cash Outside of Disclosed Bank One Checking Account").

check to the Grand Casino on July 26, 2002 for $1,300 drawn on the undisclosed Fidelity account, which cleared the casino on August 11, 2002.[315]

b. Judge Porteous's Application For, and Use of, a New Credit Card

On August 13, 2001 – less than two months after Judge Greendyke's Confirmation Order was entered – Judge Porteous applied for a new Capital One credit card, without seeking the approval of the bankruptcy trustee. The credit card carried a $200 credit line. Judge Porteous began using it immediately for dining out, clothing purchases, theater tickets, gasoline, and groceries, among other things. In May 2002, Judge Porteous's credit line was increased to $400, and in November 2002, it was increased again to $600. [316]

When Judge Porteous obtained and used this new Capital One credit card without permission from the Trustee, he violated Judge Greendyke's Confirmation Order.[317]

c. Taking Out an Additional Line of Credit

On July 4, 2002, Judge Porteous succeeded in increasing his credit limit at the Grand Casino Gulfport from $2,000 to $2,500. Immediately thereafter, Judge Porteous gambled at the casino and took out $2,500 in markers.[318]

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315 *See* Horner SITC at 1011:24 – 1012:5; HP Ex. 325 (Grand Casino Patron Transaction Report); HP Ex. 530 (Fidelity check written by Judge Porteous to the Grand Casino for $1,300); House Chart 19 ("Judge Porteous's use of Undisclosed Fidelity Account in Bankruptcy to Pay Casino Debts") (referred to as "Chart 18" in the SITC transcript).

316 *See* Horner SITC at 1008:23 – 1009:14; HP Ex. 341(a) (Capital One Credit Application); HP Ex. 341(b) (Capital One Statements).

317 *See* Keir SITC at 1196:16 – 1197:7; Hildebrand SITC at 1885:16-20.

318 *See* HP Ex. 324 (Grand Casino Gulfport Credit Line Change Request); HP Ex. 325 (Grand Casino Gulfport Patron Transaction Report); Horner Task Force at 18 (identifying the Grand Casino Credit Line Change Request and identifying Judge Porteous's signature on the document; testifying that a casino will not increase a gambler's credit line without the gambler proactively requesting the credit line increase).

3. Lightfoot's Knowledge of Judge Porteous's Post Confirmation Order Conduct

Judge Porteous did not tell Lightfoot that he had taken out markers, applied for a new credit card, or sought credit line increases at casinos:

> Q. Did Judge Porteous ever tell you that he gambled on credit from casinos after the confirmation order?
>
> A. No.
>
> Q. Would it have been a surprise to you that he took 14 gambling trips and signed 42 markers during the year after his confirmation?
>
> A. I didn't know about it, so it's a surprise.[319]

J. Judge Porteous Should Be Convicted and Removed from Office for the Conduct Alleged in Article III

1. The Conduct Demonstrates Judge Porteous is Not Fit for Office

Judge Porteous's misconduct in connection with his Chapter 13 bankruptcy constitutes "high crimes" for which he should be convicted and removed from office. Judge Porteous's conduct demonstrates that he is not fit to hold office. He committed numerous acts of dishonesty: filing for bankruptcy under a false name; concealing his tax refund; paying off and concealing preferred creditors; and hiding accounts. The lies and false statements reflect a premeditated determination to continue gambling and to conceal gambling debts while in bankruptcy, which he did notwithstanding a court order forbidding him to do so. Moreover, his dishonest conduct consisted of more than filling out forms. Rather, he undertook a series of financial actions such as having his secretary make payments to creditors, or paying off a casino in cash the day prior to filing, that demonstrate his intent (and vigilance) to create and maintain a false picture of his financial activities before the bankruptcy court. He willfully and deliberately violated a judicial order, and the evidence demonstrated that he did so in a premeditated fashion

[319] Lightfoot SITC at 1099:17-25.

– by concealing an account (Fidelity) that he could use secretly to pay gambling debts at the time he filed for bankruptcy .

His conduct was "material" in many respects. First, the amounts at issue were significant. There would have been $300 more a month available to creditors if Judge Porteous had disclosed the tax refund, and an additional $175 a month if he had reported accurately his true income (putting aside the greater amounts he would have received once the social security withholding stopped – amounts of which Judge Porteous certainly was aware). Plus, there was another $4,588 that he opted to pay to certain undisclosed creditors that was, therefore, not available to his disclosed creditors. (The fact that these amounts were spread out among three creditors – Grand Casino Gulfport ($2000), Treasure Chest ($1500) and Fleet ($1088) so that it was not efficient for the trustee to seek to collect these amounts from these entities – does not diminish in the slightest the fraudulent nature of Judge Porteous's conduct.) [320] Moreover, his failure to disclose material facts fundamentally distorted the bankruptcy proceeding. Judge Porteous had reason to conclude that if he were honest, he would have invited further scrutiny into his financial affairs, resulting in curbs on his gambling activity.

A fundamental requirement for obtaining bankruptcy relief is that the debtor act in "good faith." Dishonesty in the filing of bankruptcy petitions is the antithesis of good faith. Bankruptcy Judge Greendyke has indicated that if he had known all the facts concerning Judge Porteous's conduct, he "would probably have sua sponte objected on the basis of lack of good faith."[321] Lightfoot testified that one of the reasons he instructed Judge Porteous pre-bankruptcy to stop taking on debt was because of this "good faith" requirement: "Well, by the time someone

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320 *See* Keir SITC at 1197:8-23. The "defense" of "no harm, no foul" is not available to one who violates a bankruptcy judge's court order.

321 Greendyke 5th Cir. at 385.

is in a financial distress sufficient to be consulting about a bankruptcy, it is not good faith for such a person to continue making debt. So I always admonish them not to do it anymore, not to make any more credit card charges, et cetera."[322]

Judge Porteous's actions in connection with his bankruptcy proceedings "cast a cloud on the integrity of the judiciary."[323] The bankruptcy system depends on the honesty and candor of the debtors in disclosing financial information.[324]

Judge Keir testified to the effect on the bankruptcy system as the result of Judge Porteous's actions:

> Because Judge Porteous served as a judge, he obviously must have known what the words "under penalty of perjury" mean. And by falsely putting down information or omitting information and admittedly falsely doing it in the petition, he obviously must have known he was committing a perjurious act. And that seems to be - to go certainly to intent.
>
> In addition, although not part of the bankruptcy code, it's my view that these actions cast a cloud, if you will, on the integrity of the judiciary, and that public officials, whether they're elected or appointed, have a duty to not have that kind of cloud cast on the integrity of the government.
>
> If the public has no confidence in its courts, there aren't enough police officers, there are not enough judges, there are not enough officials of any kind that are . . . going to keep the peace in the public and make this an orderly society. There has to be that level of confidence, and this kind of activity certainly would attack and weaken that.[325]

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322 Lightfoot Task Force at 43. *See also* Keir SITC at 1199:7-18 ("it's a requirement under Section 1325 of the Code that a plan be proposed in good faith"); Keir Task Force at 74.

323 Keir SITC at 1198:17-23.

324 *See* Keir SITC at 1185:11-25; Hildebrand SITC at 1878:1-9, 1878:16 – 1879:8; Ronald Barliant Senate Impeachment Trial Committee Hearing Testimony at 1921:16-19.

325 Keir SITC at 1198:9 – 1199:6. *See also* Keir Task Force at 72, 69-70 (explaining that "the whole system demands and depends upon the honesty of the honest but unfortunate person who seeks relief." Individuals simply can't just decide "that they can do whatever they want, ignoring laws, and so long as you can't measure the particular damage of the violation, there is no violation at all. That would be chaos.")

In short, as charged in Article III, "Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for and confidence in the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge." Federal judges oversee bankruptcy court appeals. How could any member of the public who might have a bankruptcy matter before Judge Porteous in the future have confidence in any decision he would render, knowing that the Judge himself condones filing under a false name under penalty of perjury? The simple answer is, they could not. Judge Porteous's conduct in his bankruptcy so undermines the public trust, he cannot be allowed to remain on the bench.

2. Judge Porteous's Conduct Constitutes a "High Crime" Warranting Conviction and Removal from Office

Judge Porteous has argued that Article III should be dismissed because it alleges private, minor, bankruptcy misconduct for which Judge Porteous was never prosecuted. Specifically, he claims that (1) his conduct was arguably "personal" and (2) the Department of Justice concluded that his conduct did not merit prosecution. However, neither argument is relevant to whether Judge Porteous's conduct constitutes a "high Crime" warranting conviction and removal from office.[326]

Article III clearly charges that, by his conduct in the bankruptcy proceedings, "Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for and confidence in the federal judiciary, and demonstrated that he is unfit for the office of federal judge."[327] Whether similar conduct by a private person would warrant a criminal prosecution is

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[326] This portion of the brief tracks in substantial respects Section III.B. of The House of Representatives' Consolidated Opposition to Judge G. Thomas Porteous, Jr.'s Five Motions to Dismiss the Articles of Impeachment at 47–52 (July 28, 2010).

[327] *See* H. Res. 1031, 111th Cong., 2d Sess., at 6 (2010).

a far different issue than whether that same conduct by a federal judge on matters that touch centrally upon his duties, would warrant his removal from office.[328]

Judge Porteous's argument, which rests on the "private" nature of the financial misconduct, is fundamentally indistinguishable from the argument that Judge Claiborne raised and that the Senate rejected in that Impeachment trial. In that case, Articles of Impeachment against Judge Claiborne charged him with filing false tax returns. In his motion to dismiss, Judge Claiborne argued in terms that track Judge Porteous's claims here, namely, that impeachment "was designed to reach those in high places guilty of official delinquencies or maladministration" and that the charges against him were "based on alleged private misconduct, as distinguished from official misconduct."[329] In its response, the House stressed that nothing in the text of the Constitution supported the private / public distinction and stated that if the Framers sought impeachment to be limited to "official" conduct, they certainly could have included such a limitation in the Constitution. Moreover, as the House explained in Claiborne, that narrow view of impeachable conduct was "offered and rejected by the Framers of the Constitution," and that the Framers "rejected, at two separate junctures, the concepts of

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328 Judge Porteous further complains that Article III fails to set forth all the elements of a criminal offense. As set forth above, the Articles of Impeachment do not purport to allege violations of specific criminal laws and need not do so to sustain a conviction by the Senate.

329 *See* [Judge Claiborne's] Motion to Dismiss the Articles of Impeachment on the Grounds They Do Not State Impeachable Offenses at 3, *reprinted in* Report of the Senate Impeachment Trial Committee, Hearings before the Senate Impeachment Trial Committee, United States Senate, ("Claiborne Impeachment Report") S. Hrg. 99-812, 99th Cong., 2d Sess., at 244, 246 (1986). As to whether "non-official" conduct could constitute a basis for impeachment, Judge Claiborne further went on to argue: "[o]ffenses not immediately connected with office, such as murder, burglary, and robbery, are left to the ordinary course of judicial proceedings, while impeachment was historically limited to misconduct in office." *Id.*

professional 'malpractice' or 'maladminstration' as the sole basis for the impeachment of federal officials."[330]

At the oral arguments, Judge Claiborne's counsel repeated the arguments he had made in his written motion, arguing, for example: "[O]ur position, of course, is that there is no allegation at this point in time that the behavior of Judge Claiborne in any way was related to misbehavior in his official function as a judge; it was private misbehavior. And we submit that, based on that private conduct, it is not an impeachable offense."[331] In response, House Manager Kastenmeier reiterated: "As has been pointed out, it would be absurd to conclude that a judge who had committed murder, mayhem, rape, or perhaps espionage in his private life, could not be removed from office by the U.S. Senate."

Chairman Mathias, on behalf of the Senate Impeachment Trial Committee, denied Judge Claiborne's motion to dismiss, ruling:

> There is neither historical nor logical reason to believe that the Framers of the Constitution sought to prohibit the House from impeaching and the Senate from convicting an officer of the United States who had committed treason or bribery or any other high crime or misdemeanor which is a serious offense against the government of the United States and which indicates that the official is unfit to exercise public responsibilities, but which is an offense which is technically unrelated to the officer's particular job responsibilities.[332]

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330 *See* [The House of Representatives'] Opposition to [Judge Claiborne's] Motion to Dismiss Articles of Impeachment for Failure to State Impeachable Offenses at 3–4, *reprinted in* Claiborne Impeachment Report, *supra* note 335, at 443–44.

331 *See* Proceedings of the Senate Impeachment Trial Committee [Judge Claiborne], Statement of Oscar Goodman, Esq. (counsel for Judge Claiborne) (Sept. 10, 1986), *reprinted in* Claiborne Impeachment Report, *supra* note 335, at 77.

332 *See* Proceedings of the Senate Impeachment Trial Committee [Judge Claiborne], Statement of Senator Mathias (Sept. 10, 1986), *reprinted in* Claiborne Impeachment Report, *supra* note 335, at 113–14.

The Senate ultimately convicted Claiborne on the tax evasion article, a verdict that resolved any question that "personal" misconduct may warrant a judge's conviction and removal.

The Judge Walter Nixon impeachment in 1989 further illustrates the inapplicability of the private conduct versus official conduct distinction and provides additional grounds to reject Judge Porteous's claims. In that case, Judge Nixon had attempted to persuade a local sheriff to go easy on the prosecution of one of Judge Nixon's business associates, an individual who had provided Judge Nixon with lucrative investment opportunities. Thereafter, when investigated for bribery for having taken things of value from the business associate, Judge Nixon lied to the FBI and the Grand Jury and denied he had spoken to the Sheriff. Ultimately, Judge Nixon was impeached for lying to the FBI and committing perjury before the grand jury.

The Judge Nixon case establishes the propriety of impeachment when it is shown that a federal judge made false statements under oath and took other acts of concealment to interfere with a federal judicial proceeding, even one which had no bearing on any case in his own courtroom. Judge Porteous's false statements and pattern of concealment in the bankruptcy case fall well within the Nixon precedent.

Similarly, the fact that Judge Porteous was never prosecuted for the bankruptcy conduct is likewise not relevant. As noted at the outset, the fundamental inquiry involves fitness for office. Whether an individual has been criminally prosecuted (let alone convicted) is wholly irrelevant to whether a given course of conduct warrants impeachment.

The essence of the argument advanced by Judge Porteous was addressed by the House in connection with the impeachment of Judge George English for a variety of acts for which he was not criminally prosecuted. The Report accompanying the Articles noted there may well be circumstances where:

> [a] civil officer may have behaved in public so as to bring disgrace upon himself and shame upon the country and . . . his name became a public stench and yet might not be subject to indictment under any law of the United States, but he certainly could be impeached. Otherwise the public would in this and kindred cases be beyond the protection intended by the Constitution.[333]

Under Judge Porteous's theory of constitutional interpretation, Congress can impeach only if the Department of Justice prosecutes. Aside from the fact that most of the impeachments in this country's history have not followed criminal prosecutions, there is no principled basis for Congress – either the House or Senate – to abdicate its constitutionally assigned roles associated with the exercise of the impeachment power, conflate the power to impeach with the power to prosecute, and cede that power to the Attorney General of the United States.

Indeed, the Senate has spoken clearly that the existence of a federal prosecution – even a federal criminal conviction – does not drive its consideration of whether the conduct alleged in the Articles of Impeachment warrants conviction and removal. Judge Claiborne was ultimately convicted and removed by the Senate for his conduct. The Senate acquitted on the Article which specifically charged the federal <u>conviction</u> as grounds for impeachment. Similarly, the Senate convicted and removed Judge Hastings, even after he was acquitted in his jury trial.

The Report accompanying the Articles of Impeachment of Judge Porteous addressed the relevance of the fact that the Department of Justice did not prosecute Judge Porteous:

> First, the nature of Congress's determination whether to impeach is fundamentally different from DOJ's decision whether to prosecute. Congress does not decide guilt or innocence with reference to a criminal statute. Rather, it is for Congress to make what is in essence a "fitness for office" determination. Congress alone has the power to remove an unfit Federal judge, and conduct that renders a judge unfit may not necessarily violate a criminal statute.
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> Second, Congress has an independent responsibility to review the evidence and cannot rely on DOJ's assessment of what the evidence reveals. Thus, just as the

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[333] Impeachment of Judge George W. English, *excerpts from* Cong. Rec. (House), Mar. 25, 1926 (6283-87), *reprinted in* IMPEACHMENT, SELECTED MATERIALS, HOUSE COMM. ON THE JUDICIARY, Comm. Print (1973) at 164.

> House heard the evidence involving Judge Samuel B. Kent, and before that of Judges Walter Nixon and Robert Collins, and did not rely solely on the fact that each of those judges had been criminally convicted, so it is proper for Congress to consider and review the evidence that relates to the conduct of Judge Porteous, even though some of that evidence (but not all) was considered by the Department of Justice.
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> * * *
>
> Fifth, the Impeachment Task Force has . . . uncovered new evidence that simply was not considered by the Department, . . . [specifically] the Task Force and the Committee had the benefit of the Fifth Circuit hearings which expanded on the evidence available to the DOJ.

The evidence is clear that that Judge Porteous's dishonest statements and acts in his bankruptcy proceedings demonstrate that he cannot be entrusted with upholding the integrity of federal judicial proceedings, notwithstanding the Department of Justice's failure to prosecute. The evidence is clear that Judge Porteous's continued presence on the federal bench brings the federal judiciary into disrepute. The evidence is clear that Judge Porteous has demonstrated, by his contempt for federal judicial process that he is not fit to be a federal judge.

VI. ARTICLE IV

A. Introduction

In the summer of 1994, on the eve of his nomination to become a United States District Judge, Judge Porteous was engaged in two corrupt schemes. One scheme involved Robert Creely and the law firm Amato & Creely (the "curatorship scheme"), whereby Judge Porteous would assign curatorships to Creely, and the law firm would kick back approximately half the fees in cash to the judge. The other scheme was a corrupt relationship with the Marcottes and their bail bonding business whereby Judge Porteous would set bail at amounts requested by the Marcottes (to maximize their profits), and set aside or expunge the convictions of his employees, in return for favors from the Marcottes such as meals, a trip to Las Vegas, and house and car repairs.

Article IV alleges that during his background check to be a federal judge, Judge Porteous made a series of materially false statements, as follows: (1) denying under oath on his Supplemental SF-86 that there was anything "in his personal life that could be used by someone to coerce or blackmail him, or if there was anything in his life that could cause an embarrassment to Judge Porteous or the President if publicly known;" (2) "falsely [telling] the Federal Bureau of Investigation on two separate occasions that he was not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on his character, reputation, judgment, or discretion," and (3) representing under oath on a Senate Judiciary Committee Questionnaire that, to the best of his knowledge, he did "not know of any unfavorable information that may affect [his] nomination."[334]

Article IV alleges that these statements were false because, in truth and in fact, as Judge Porteous well-knew, he had engaged in corrupt relationships with attorneys Creely and Amato, and with bail bondsman Louis Marcotte and that if the Senate became aware of this unfavorable information it would have destroyed any chance of confirmation.

B. Judge Porteous's False Statements to the FBI

In 1994, Judge Porteous, in connection with his nomination to be a Federal judge, was the subject of an FBI background check and was required to submit to interviews, and fill out various forms and questionnaires.[335]

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334 H. Res. 1031, Art. IV.

335 *See generally* HP Ex. 69(b) (FBI Background Check of Judge Porteous).

1. The Supplement to the SF-86

Judge Porteous filled out and signed a document entitled "Supplement to Standard Form 86 (SF-86)." (The "Standard Form 86" is entitled "Questionnaire for Sensitive Positions (For National Security)"). That form sets forth the following question and answer by Judge Porteous:

> 10S. [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 an embarrassment to you or to the President if publicly known? If so, please provide full details?
>
> [Answer] NO

Judge Porteous signed that document under the following statement:

> 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.[336]

As part of the background check, Judge Porteous was interviewed by the FBI on July 6 and 8, 1994 about the contents of this form.

That statement was false because, in fact, he had received illegal kickbacks form Creely (and the firm Amato and Creely) and had a corrupt relationship with the Marcottes which "could be used by someone to coerce or blackmail" Judge Porteous.

2. FBI Interviews – July 6-8, 1994 and August 18, 1994

Judge Porteous, when interviewed by the FBI on July 6 and 8, 1994, was asked a series of questions designed to elicit information which might bear upon his fitness to serve as a federal judge. The FBI Agents, in their write-up of the interview, recorded Judge Porteous as stating:

> PORTEOUS said he is not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgement, or discretion.[337]

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336 *Id.* at PORT 0298.

337 *See* HP Ex. 69(i) (Un-redacted copy of Judge Porteous FBI interview).

In or about late July 1994, the FBI in New Orleans sent the results of its initial background investigation to FBI Headquarters in Washington D.C. After review by FBI Headquarters, further investigation was requested. In particular, FBI Headquarters directed by way of a teletype dated August 12, 1994, directed the agents to ask specific questions of various persons related to certain allegations concerning Judge Porteous's conduct in setting bonds. The agents were directed to inquire of specific persons whether Judge Porteous had received monies from an attorney to reduce bond in the "Keith Kline" case, and whether he had improperly reduced a bond for money in another case handled by a bondsman named Adam Barnett. The agents were then directed to re-interview Judge Porteous to provide him with an opportunity to address the allegations.[338] The instructions from FBI Headquarters to the agents in New Orleans also specifically directed the agents to ask the "coercion/integrity" questions of the individuals who were to be interviewed or re-interviewed.[339]

Accordingly, Judge Porteous was interviewed a second time by the FBI on August 18, 1994, about concerns related to 1993 allegations that he had received monies from an attorney and a bail bondsman to reduce bond for Keith Kline. He was also questioned about his reduction of an unrelated bond where the bondsman was Adam Barnett.

In the August 18, 1994 interview, FBI Agent Bobby Hamil, as directed by FBI Headquarters, also asked Judge Porteous the "coercion/integrity" questions. In that interview, which Hamil memorialized in an FBI "302" on the same day, Judge Porteous stated "that he was unaware of anything in his background that might be the basis of attempted influence, pressure,

338 *See* HP Ex. 69(b) at PORT 0478-480 (FBI Background Check of Judge Porteous).

339 *Id.*

coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion."[340]

Thus, on two occasions in the summer of 1994, the FBI asked Judge Porteous the "coercion/integrity" questions described above. On both occasions, Judge Porteous denied being aware of anything in his background that might be the basis of "attempted influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion." On both occasions, those statements were false, because at that very time, Judge Porteous was engaging in the two separate corrupt relationships that have been described.

Further, at the August 18th interview, Judge Porteous was also asked about misconduct in setting bonds (particularly whether he took bribes to reduce bond in the "Keith Kline" case) as well as his relationship with bail bondsman Adam Barnett (which, as the evidence before the SITC revealed, included corrupt aspects).[341] Judge Porteous was thus put on specific notice in this second FBI interview that misconduct in connection with his bond-setting practices was material to the FBI (and the Executive Branch) in assessing his fitness to be nominated. Judge Porteous nonetheless falsely denied there was anything in his background that would "impact negatively on his character, reputation, judgement or discretion."

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340 *Id.* at PORT 0493-494.

341 Evidence was presented at the SITC Hearing that Judge Porteous had set bonds at Barnett's requests, and that Barnett had paid for Judge Porteous's car repairs. *See* Louis Marcotte SITC at 515:11-15. In addition, evidence was presented in the form of a newspaper article, *see* HP Ex. 119(z), that Barnett had used his personal residence, which had little equity, as part of the equity portion of various "split bonds" that he obtained from Judge Porteous. The article reported that Barnett used this same piece of property as security for several bonds, including two set by Judge Porteous. At his second background check interview with the FBI, Judge Porteous described Barnett as "a trusted bondsman who he had known a long time." *See* Ex. 69(b) at PORT 0493 (Porteous Background Check Documents).

Judge Porteous was nominated to be a federal judge on August 25, 1994.[342]

3. September 6, 1994 – Senate Committee on the Judiciary Questionnaire

On September 6, 1994, Judge Porteous, in his United States Senate Committee on the Judiciary "Questionnaire for Judicial Nominees," was asked the following question and gave the following answer:

> [Question] Please advise the Committee of any unfavorable information that may affect your nomination.
>
> [Answer] To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

The signature block in the form of an "Affidavit," reads as follows:

> 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.[343]

It was signed by Judge Porteous and by a notary. Again for the reasons described in connection with the Supplement to the SF-86 and the FBI interviews, Judge Porteous's answer, under oath, to the Senate, was knowingly false.

Thus, Judge Porteous's four written and oral statements were in each instance false, made with the intent to deceive, and made with intent of procuring the judicial office without disclosing material information which would have affected his obtaining the federal office.

At no time during these interviews or in filling out the questionnaires did Judge Porteous inform the FBI, the White House, or the Senate that, at the very time he was being considered for a federal judgeship, he was engaged in two on-going corrupt relationships, namely, the

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342 *See* Ex. HP 9(a) (President Clinton's Nomination of Judge Porteous).

343 *See* Ex. HP 9(f) (Senate Judiciary Committee Questionnaire (Question 11 and Signature Block) at 33-34).

"curatorship scheme" with Creely and the firm of Amato & Creely, and the corrupt relationship with the Marcottes and their bail bonding business.

The questions are sufficiently precise, and Judge Porteous was well aware of his conduct that should have been disclosed in response to these questions. He cannot plausibly contend that the fact that he was assigning curatorships to the Creely and receiving a portion of fees back from his firm would not subject him to pressure or impact negatively on his character. He cannot plausibly contend that the fact that he was receiving car repairs and other things of value from a bail bondsman for whom he was routinely setting bonds as requested or setting aside convictions of employees doing his errands would not subject him to pressure or impact negatively on his character.

Everyone knows what is actually at the core of the questions. They are really asking: Are you an honest person? Are you a person of integrity? Do you have the requisites to hold a position of honor, trust, and profit? Do you have judicial integrity? That is at the core of all these questions. That is not at the periphery. And what Judge Porteous lied about was his gross misconduct as a judge: taking money from parties, taking money in cash envelopes, not reporting any of this to anyone. [344]

In short, Judge Porteous would have understood the questions as seeking out information as to corrupt, illegal behavior or behavior which otherwise constituted an abuse of his judicial office. Furthermore, in the second of his two FBI interviews, Judge Porteous was put on explicit notice that his relationship with bondsmen was material to the consideration of his judicial appointment. Judge Porteous's knowledge that the details of his relationship with Marcotte were

[344] *See also* Professor Calvin Mackenzie Senate Impeachment Trial Committee Hearing Testimony at 2039:6 – 2040:4 (kickbacks to attorneys should have been disclosed in response to the catchall questions).

material, and his concern that they be concealed, is evidenced by Judge Porteous's efforts to learn exactly what Marcotte was asked and what he told the FBI. Finally, Judge Porteous's understanding of the materiality of that relationship, and his intent to conceal it, is further evidenced by his set-aside of the Wallace conviction, and by his timing of that set aside, discussed in Section E below.

C. The Louis Marcotte Interviews

Notably, both Louis Marcotte and Robert Creely – Judge Porteous's confederates in the two corrupt schemes – each made false statements to the FBI on Judge Porteous's behalf.

On August 1, 1994, Louis Marcotte was interviewed by the FBI. That interview is discussed in detail as part of the evidence associated with Article II.[345] In substance, Louis Marcotte – on behalf of Judge Porteous – lied to the FBI when interviewed on August 1, as to his knowledge of Judge Porteous's financial circumstances, his alcohol usage, and in response to the general "integrity" questions. Soon after that interview, Louis Marcotte informed Judge Porteous the substance of the interview and told that Judge Porteous that he (Marcotte) had given Judge Porteous a "clean bill of health."[346] Thus, at the time Judge Porteous was re-interviewed by the FBI on August 18, and at the time he signed his Senate Judiciary Committee Questionnaire on September 6, Judge Porteous could confidently conceal his corrupt relationship with Louis Marcotte from the FBI, because he knew that Louis Marcotte had also misled the FBI.[347]

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345 *See* Section IV.

346 *See* Louis Marcotte SITC at 583:21-24; Louis Marcotte Task Force at 64.

347 Judge Porteous, through counsel, has completely mischaracterized one aspect of the allegations set forth in Article IV. Included in that Article is the allegation: "As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench."

D. The Robert Creely Interview

On August 1, 1994, Robert Creely was interviewed by the FBI as part of Judge Porteous's background check. In that interview, Creely stated that he "knows of no financial

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Judge Porteous has characterized this factual allegation as follows: "[T]he House specifically impeached Judge Porteous on the failure to mention a brief conversation he had with Louis Marcotte. . . . Now, the House Managers have said that the judge should be impeached because he failed to mention this conversation when he filled out these forms, when he filled out the background form, for example. The only problem [is that] the conversation occurred after the forms were filled out. It was impossible for him to put into these documents a conversation that hadn't occurred yet." Turley SITC Opening Statement at 108:19 – 109:10.

This argument on behalf of Judge Porteous is fatally flawed because Judge Porteous's counsel has his facts wrong.

Even the most superficial reading of Article IV makes it clear that it does not allege that Judge Porteous "fail[ed] to mention a brief conversation he had with Louis Marcotte." Judge Porteous's counsel is simply mischaracterizing what Article IV alleges in order to make a false and misleading argument.

Second, Judge Porteous's counsel is incorrect about the sequence of events concerning Marcotte's interview with the FBI and when Judge Porteous signed the Senate Judiciary Committee Questionnaire. Marcotte was interviewed by the FBI on August 1, 1994 at which time he lied on behalf of Judge Porteous, giving him a "clean bill of health." Shortly thereafter Marcotte informed Judge Porteous that he lied to the FBI on Judge Porteous's behalf. Accordingly, by the time Judge Porteous was re-interviewed by the FBI on August 18, he was aware that Marcotte had lied to the FBI in an effort to help him. Moreover, Judge Porteous signed his Senate Judiciary Committee Questionnaire on September 6, 1994, long after he was aware Marcotte had lied on his behalf. Once again he let Marcotte's lies stand uncorrected in answering the Questionnaire under oath.

Ultimately, this entire argument on behalf of Porteous is a total red herring. Article IV sets out four instances when Judge Porteous lied in order to get his cherished "lifetime appointment." These lies encompass corrupt relationships with lawyers and bail bondsmen which should have been revealed in response to the questions posed. Judge Porteous repeatedly lied because he knew that the truth was the death knell for his ambitions. The only way he could obtain the position was to lie to the Senate. The mischaracterization of Article IV is a transparent effort to avoid the consequences of Judge Porteous's repeated lies about facts that would have ended his opportunity to get his "lifetime appointment."

problems on the part of the candidate, and the candidate appears to live within his economic means."[348]

Creely's statement that he "[knew] of no financial problems of Judge Porteous" was false, as Creely knew Judge Porteous had significant financial problems. As he testified before the SITC: "[N]o, he was not living within his means."[349]

On the same day of Creely's interview, Judge Porteous assigned a curatorship to Creely and continued to assign curatorships – perpetuating the corrupt scheme – through his confirmation and swearing in.[350]

E. The Aubrey Wallace Set Aside

1. The Facts

At around the time of Judge Porteous's nomination, Louis Marcotte made several requests of him to set aside Aubry Wallace's conviction.[351] Judge Porteous agreed to do it, but informed Marcotte that he would do so only after he was confirmed, because he did not want to jeopardize his "lifetime appointment." Marcotte testified:

> Q And do you recall Judge Porteous's response [to Marcotte's request to set aside Wallace's conviction]?
>
> A He kind of put me off and put me off. And he said look, Louis, I'm not going to let anything stand in the way of me being confirmed and my lifetime appointment, so after that's done I will do it.[352]

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348 *See* HP Ex. 69(b) at PORT 0476-477 (Porteous Background Documents).

349 *See* Creely SITC at 277:19 – 280:9

350 *See* HP Ex. 189(224) (curatorship assigned by Judge Porteous to Creely on August 1, 1994); HP Ex. 189(225) (August 9, 1994); HP Ex. 189(226) (August 18, 1994); HP Ex. 189(219) (August 29, 1994); HP Ex. 189(223) (Sep 13, 1994); HP Ex. 189(222) (Sep. 21, 1994).

351 Aspects of the Wallace set-aside are discussed in Section IV.

352 Louis Marcotte SITC at 536:9-12 (emphasis added).

Senator McCaskill specifically inquired as to whether the "lifetime appointment" phrase was Louis Marcotte's or Judge Porteous's:

> Q. [Sen. McCaskill] [W]as that particular phrase, "his lifetime appointment," was that the words of Judge Porteous or was that something you supplied in terms of the context?
>
> A. That was the words of Judge Porteous.
>
> Q. And did Judge Porteous use the word "lifetime appointment" whenever he referred to his appointment to the federal bench?
>
> A. Yes, he does.[353]

Louis Marcotte has consistently described the events surrounding the Wallace set aside – to the FBI in 2004, and later to the House and Senate – including Judge Porteous's statement that he would wait until after he was confirmed to set aside the conviction so that it would not jeopardize his "lifetime appointment."

For example, in his Task Force Testimony, Louis Marcotte described the conversations he had with Judge Porteous concerning Wallace's set aside as follows:

> Mr. SCHIFF. Can you tell us a little bit about the conversations you had with him where he indicated that he was concerned with confirmation if they found out about this or if the newspapers made it public?
>
> Mr. MARCOTTE. Yeah. He just didn't want to make himself- he was worried about the confirmation, but he was trying to-he didn't want anything to come up that would, you know, cause him a problem from being confirmed.
>
> Mr. SCHIFF. And can you tell us what his words were, as best you can recall, how he expressed to you his concern that things might become public?
>
> Mr. MARCOTTE. He said, "<u>Louis, I am not going to let Wallace get in the way of me of becoming a Federal judge and getting appointed for the rest of his life to set aside his conviction. Wait until it happens, and then I'll do it.</u>"[354]

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353 Louis Marcotte SITC at 607:16-23.

Further, in both his SITC testimony as well as in his House testimony, Louis Marcotte specifically mentioned that Judge Porteous stated he was concerned about the press finding out about the set-aside.[355]

Judge Porteous's actions corroborate Marcotte's recollection of the conversation, and reflect Judge Porteous carrying out his expressed intent to set aside the conviction only after his confirmation.

There was no reason for Judge Porteous to wait until after his confirmation to set aside the conviction. As a procedural matter, it was necessary for Judge Porteous first to amend the sentence prior to setting it aside. This step was put in motion when, on September 20, 1994,

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354 Louis Marcotte Task Force at 60 (emphasis added). *See also* Louis Marcotte Sen. Dep. at 143:23 – 145:12 (adopting 2004 statement to the FBI that Judge Porteous "was not going to risk a lifetime judicial appointment for Wallace").

355 In his SITC testimony, Marcotte mentioned that Judge Porteous had a concern that the set-aside "would come out in the newspaper." Louis Marcotte SITC at 536:22-23. Marcotte testified similarly, and provided further detail, in his House Task Force testimony:

> Mr. SCHIFF. You mentioned that, with respect to Mr. Wallace, that Judge Porteous expressed a reservation about setting aside the conviction until his confirmation took place. Can you tell us a little bit about that conversation? You said you had to press him. Did he tell you why he was concerned it would affect his confirmation?
>
> Mr. MARCOTTE. Because if anyone—if the newspaper grabbed hold of it, then he would be worried that it would interfere with him being—his confirmation.
>
> Mr. SCHIFF. So he was aware that this was something that——
>
> Mr. MARCOTTE. Probably wasn't kosher.
>
> Mr. SCHIFF. And, for that reason, the Senate might not confirm him if he knew that he was setting aside a conviction as a favor to you?
>
> Mr. MARCOTTE. Yes, sir.

Louis Marcotte Task Force at 59.

Robert Rees, on behalf of Wallace, filed a "Motion to Amend Sentence."[356] On September 21, 1994, Judge Porteous held a hearing and amended Wallace's sentence to permit the conviction be set aside.[357] Judge Porteous entered the order amending sentence orally at the hearing, and the following day entered a written order.[358] As of September 21, 1994, after having amended the sentence, there was nothing to prevent Judge Porteous from setting aside the conviction at that time. However, consistent with his previously expressed intent to hide his actions, Judge Porteous chose to wait, for he had not yet been confirmed.[359]

Judge Porteous was confirmed by the Senate on October 7, 1994.[360] Thereafter, on October 14, 1994, Judge Porteous held an unnoticed hearing at which he orally set aside Wallace's conviction. He entered a written order to the same effect on that day.[361]

Absolutely nothing in Wallace's case occurred between September 21, 1994 (when Judge Porteous amended the sentence) and October 14, 1994 (when he set it aside) that explains the

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356 *See* HP Ex. 82 (*Louisiana v. Aubrey N. Wallace*, No. 89-2360, Motion to Amend Sentence (24th Jud. Dist Ct., Jeff. Par., La. Sep. 20, 1994)).

357 As described in the discussion of the facts associated with Article II, the set aside had a variety of legal infirmities. The discussion in this Section addresses the significance of the set-aside as reflecting Judge Porteous's intent, and does not otherwise address its legal merits.

358 *See* HP Ex. 69(d) at PORT 0620-624 (*State of Louisiana v. Aubrey Wallace*, No. 89-2360, Transcript of Proceedings (24th Judicial Dist. Ct., Jeff. Par. Sept. 21, 1994)); HP Ex. 82 (*Louisiana v. Aubrey N. Wallace*, No. 89-2360, Order (amending sentence) (24th Jud. Dist Ct., Jeff. Par., La. Sep. 22, 1994)).

359 *See* Rees SITC at 1986:8 –1987-6.

360 *See* HP Ex. 9(c) (Congressional Record Reflecting Senate Confirmation of Judge Porteous).

361 *See* HP Ex. 69(d) at PORT 0625-629 (*State of Louisiana v. Aubrey N. Wallace*, No. 89-2360, Transcript of Proceedings (24th Jud Dist. Ct., Jeff. Par., La. Oct. 14, 1994); HP Ex. 82 (*State of Louisiana v. Aubrey N. Wallace*, No. 89-2360, Order (setting aside arrest and dismissing charges) (24th Jud. Dist Ct., Jeff. Par., La. Oct. 14, 1994)).

delay. The only event of significance that explains the timing is that Judge Porteous was confirmed in the interim. As Judge Porteous made clear to Marcotte, he was going to set aside the conviction only after his Senate confirmation so as not to jeopardize his confirmation to his "lifetime appointment," and that's exactly what he did.

2. The Significance of the Set-Aside

The facts associated with the set-aside provide powerful evidence of Judge Porteous's wrongful intent. He explicitly expressed to Marcotte his intent to conceal material facts from the Senate, and he took actions that effectuated his expressed intent. Judge Porteous's actions demonstrate that he knew that his relationship with Louis Marcotte was improper, material to the Senate and had to be concealed. There is no ambiguity as to Judge Porteous's concerns and the manner in which he acted to hide his corrupt relationship.

Judge Porteous's actions in connection with the set-aside also demonstrate that he well understood the questions he had been repeatedly asked during the background check, and the answers those questions were designed to elicit. Judge Porteous's decision to delay the Wallace set-aside reflects his knowledge that his relationship with Marcotte was a matter in his background that would reflect negatively on his integrity – that is, that relationship was a matter that should have been properly disclosed to the FBI in response to the integrity questions that the FBI posed to him. Similarly, Judge Porteous's willingness to set aside Wallace's conviction at Marcotte's request constitutes proof positive that Judge Porteous was in fact subject to coercion, leverage, and compromise. In fact, Judge Porteous felt compelled to act on Louis Marcotte's request – during the time when Louis Marcotte had leverage over him – by taking an unjustifiable judicial action arising out of their conspiratorial relationship.[362]

[362] When pressed, Louis Marcotte acknowledged he could have "destroy[ed]" Judge Porteous – though he would not have done so. Marcotte SITC at 603:8-17.

F. Judge Porteous Should Be Convicted and Removed from Office for the Conduct Alleged in Article IV

1. The Conduct Constitutes "High Crimes and Misdemeanors"

Judge Porteous's conduct in making false statements to the FBI and the Senate in order to procure his judicial appointment established that he engaged in "high Crimes and Misdemeanors" that render him unfit to hold the office of United States District Judge. The acts of repeated dishonesty – under oath and to law enforcement agencies – demonstrate he is not fit to be a judge.

The conduct at issue is particularly significant because, in effect, Judge Porteous obtained his judicial appointment by fraud. If impeachment, conviction and removal were not permitted, then an individual who attained his judicial position by fraud would, in essence, be immune from removal – no matter what he concealed during his background check. The implications from failing to remove a judge upon proof of his dishonesty prior to his confirmation on material matters that go to the heart of judicial integrity would be to reduce and demean the Senate confirmation process to a game of hide the ball – there is no need to disclose anything that the Senate would not learn on its own, and, once confirmed, a federal judgeship is a lifetime safe harbor. While that may be the system that Judge Porteous would have the Senate adopt, it is certainly not one contemplated by the Constitution or the Senate.

Lying to or defrauding the Senate in order to be approved as a federal judge is serious as a stand-alone matter in that it plainly erodes the essential, indispensable integrity without which a Federal judge is unable to do his job. For, by defrauding the Senate in his confirmation proceedings, Judge Porteous has engaged in misconduct that is egregious and has a more than obvious connection to his present position. The nexus is that Judge Porteous deprived the Senate of information that would undoubtedly have changed the outcome in his confirmation hearing.

His failure to disclose is nothing less than an attack on the integrity of the confirmation process and an affront to the constitutional responsibilities of the President and the Senate.

In light of the core dishonesty reflected in the conduct in Article IV – dishonesty in the confirmation process to cover up dishonesty in his capacity as a state judge – and in light of the fact that by such dishonesty Judge Porteous perpetrated a fraud on the Senate in obtaining his judgeship, Judge Porteous should now be convicted and removed from office.

2. Judge Porteous's Arguments Are Meritless

Judge Porteous mischaracterizes certain aspects of Article IV, and raises a series of complaints that are factually and legally meritless.

First, there is the suggestion that because this conduct occurred prior to Judge Porteous's taking the federal bench, it cannot constitute a basis for impeachment. This issue was fully addressed in the discussion of Article II. There is no basis for the Senate to decline to consider pre-federal bench conduct that meets the "high Crimes and Misdemeanors" standard for conviction and removal. The facts underlying Article IV illustrate precisely why pre-federal bench conduct must be considered. They demonstrate that Judge Porteous obtained his position on the federal bench by misconduct, fraud, and by concealing material facts. There is nothing in the Constitution that requires that the Senate overlook this conduct, or prevents the Senate from removing Judge Porteous from office to remedy the fraud he perpetrated to obtain nomination and confirmation. As Professor Gerhardt noted:

> Particularly in cases in which an elected or confirmed official has lied or committed a serious act of wrongdoing to get into their present position, the misconduct that was committed prior to entering office clearly bears on the integrity of the way in which the present officeholder entered office and that integrity of that official to remain in office.[363]

[363] *See* GERHARDT, *supra* note 7, at 108–09.

Professor Akhil Reed Amar made, in substance, the same argument in which he explained why pre-Federal office bribery, committed to obtain the Federal office – would be grounds for impeachment and removal:

> "Bribery" – secretly bending the laws to favor the rich and powerful – involved official corruption of a highly malignant sort, threatening the very soul of a democratic republic committed to equality under the law. In the case of a president who did not take bribes but gave them – paying men to vote for him – the bribery would undermine the very legitimacy of the election that brought him to office. [364]

For purposes of this discussion, it is not material that Professor Amar used the example of a president who bribed his way into office to support his conclusion that conduct that occurred prior to the individual's assuming his official position may justify that individual's impeachment and removal. The reasoning applies in equal force to that of a judge who lied (and knowingly permitted others to lie on his behalf) to obtain an official position. In either instance, the conduct at issue occurred prior to the individual taking his official position, undermined the legitimacy of that individual's appointment (or election), and justifies the official's impeachment and removal.

Second, Judge Porteous has suggested that the questions at issue seek solely for Judge Porteous to disclose "embarrassing information." Thus, Judge Porteous's attorney characterized the questions at issue in Article IV as akin to the following: "Did Judge Porteous failure [sic] to disclose information that he, Judge Porteous, thought would be embarrassing to President Clinton?"[365]

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364 *See* AMAR, AMERICA'S CONSTITUTION – A BIOGRAPHY, *supra* note 17, at 201. *See also* Amar, *A Symposium On The Impeachment Of William Jefferson Clinton: Reflections On The Process, The Results, And The Future: On Impeaching Presidents*, *supra* note 17, at 302.

365 Turley SITC Opening Statement at 107:25 – 108:3.

This characterization of Article IV is simply not accurate. Only one of the four questions specified in Article IV asked anything about "embarrassing" information. That question was on the Supplement to the SF-86, which asked the following: "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?" Judge Porteous's answer "NO" applied in equal terms to both the "coercion/blackmail" as well as the "embarrassment to the President" parts of that question. None of the other three questions specified in Article IV request that Judge Porteous disclose "embarrassing" information. In the FBI interviews, he was asked twice whether he was concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on his character, reputation, judgment, or discretion. Then he was asked by the Senate whether there was "any unfavorable information that may affect [his] nomination." Counsel's attempt to characterize all four of these questions as little more than vague attempts to elicit "embarrassing" information is disingenuous and contradicted by the plain reading of the questions.

Furthermore, the questions are not vague. Judge Porteous well understood those questions and understood precisely the information that they sought he disclose. This is evidenced by his deliberate efforts, in connection with the Wallace set-aside, to conceal such information. The defense's own experts agreed that a truthful answer to these questions requires, among other matters, the disclosure of a kickback scheme. Moreover, the defense expert's own treatise on the appointments process recommends these questions be asked of nominees in a model questionnaire.[366]

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[366] G. CALVIN MACKENZIE, INNOCENT UNTIL NOMINATED (Brookings Institution Press 2001).

Judge Porteous takes issue with the purpose and efficacy of the "catch-all questions," as a general proposition. However, there are sound reasons that those questions must be asked.[367] In any event, if Judge Porteous did not like the questions, all he has to do was say, "I do not wish to be considered for this position." However, he had no license to lie.

Thus, applying all the recognized and established grounds for conviction and removal – lack of integrity, bringing disrepute to the judiciary and undermining public confidence in it – Judge Porteous's conduct warrants conviction and removal based upon Article IV.

WHEREFORE, the House of Representatives requests that the Senate convict Judge G. Thomas Porteous, Jr. on each of the four Articles of Impeachment and remove him from the Office of United States District Judge for the Eastern District of Louisiana.

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[367] The "catch-all" questions serve several valid and necessary purposes: (1) They dissuade persons from seeking Office if they know that to obtain it, they will need to lie under oath to conceal material facts; (2) it is not feasible to design a questionnaire that lists every possible variety of disqualifying misconduct. *See* Mackenzie SITC at 2052:16 – 2054:23, 2077:24 – 2078:8, 2079:19-21 ("I'm not opposed to the catchall questions."); and (3) they prevent an unworthy candidate from moving through the confirmation process and thereafter defending his or her failure to disclose material derogatory information because no question required its disclosure. As Senator McCaskill observed:

> [I]s there any doubt in your mind that if someone skated through that process, didn't disclose information and there was no catchall question, don't you think their defense would be, "[W]ell, no one ever asked me something like that, no one ever asked me that specific question, no one – there was no specific question that addressed that?]"

See Mackenzie SITC at 2077:25 – 2078:6 (questioning by Senator McCaskill).

Respectfully submitted,

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