111TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
111–427

IMPEACHMENT OF G. THOMAS PORTEOUS, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MARCH 4, 2010.—Referred to the House Calendar and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. Res. 1031]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 1031) impeaching G. Thomas Porteous, Jr., judge of the United States District Court for the Eastern District of Louisiana, for high crimes and misdemeanors, having considered the same, reports favorably thereon without amendment and recommends that the resolution be agreed to.

I. THE RESOLUTION

H. RES. 1031

Impeaching G. Thomas Porteous, Jr., judge of the United States District Court for the Eastern District of Louisiana, for high crimes and misdemeanors.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2010

Mr. Conyers (for himself, Mr. Smith of Texas, Mr. Schiff, Mr. Goodlatte, Ms. Jackson Lee of Texas, Mr. Sensenbrenner, Mr. Delahunt, Mr. Daniel E. Lungren of California, Mr. Cohen, Mr. Forbes, Mr. Johnson of Georgia, Mr. Gohmert, Mr. Pierluisi, and Mr. Gonzalez) submitted the following resolution; which was referred to the Committee on the Judiciary

Resolved, That G. Thomas Porteous, Jr., a judge of the United States District Court for the Eastern District of Louisiana, is im-

peached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against G. Thomas Porteous, Jr., a judge in the United States District Court for the Eastern District of Louisiana, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

G. Thomas Porteous, Jr., while a Federal judge of the United States District Court for the Eastern District of Louisiana, engaged in a pattern of conduct that is incompatible with the trust and confidence placed in him as a Federal judge, as follows:

Judge Porteous, while presiding as a United States district judge in *Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises,* denied a motion to recuse himself from the case, despite the fact that he had a corrupt financial relationship with the law firm of Amato & Creely, P.C. which had entered the case to represent Liljeberg. In denying the motion to recuse, and in contravention of clear canons of judicial ethics, Judge Porteous failed to disclose that beginning in or about the late 1980's while he was a State court judge in the 24th Judicial District Court in the State of Louisiana, he engaged in a corrupt scheme with attorneys, Jacob Amato, Jr., and Robert Creely, whereby Judge Porteous appointed Amato's law partner as a 'curator' in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm. During the period of this scheme, the fees received by Amato & Creely amounted to approximately $40,000, and the amounts paid by Amato & Creely to Judge Porteous amounted to approximately $20,000.

Judge Porteous also made intentionally misleading statements at the recusal hearing intended to minimize the extent of his personal relationship with the two attorneys. In so doing, and in failing to disclose to Lifemark and its counsel the true circumstances of his relationship with the Amato & Creely law firm, Judge Porteous deprived the Fifth Circuit Court of Appeals of critical information for its review of a petition for a writ of mandamus, which sought to overrule Judge Porteous's denial of the recusal motion. His conduct deprived the parties and the public of the right to the honest services of his office.

Judge Porteous also engaged in corrupt conduct after the Lifemark v. Liljeberg bench trial, and while he had the case under advisement, in that he solicited and accepted things of value from both Amato and his law partner Creely, including a payment of thousands of dollars in cash. Thereafter, and without disclosing his corrupt relationship with the attorneys of Amato & Creely PLC or his receipt from them of cash and other things of value, Judge Porteous ruled in favor of their client, Liljeberg.

By virtue of this corrupt relationship and his conduct as a Federal judge, 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.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

ARTICLE II

G. Thomas Porteous, Jr., engaged in a longstanding pattern of corrupt conduct that demonstrates his unfitness to serve as a United States District Court Judge. That conduct included the following: Beginning in or about the late 1980's while he was a State court judge in the 24th Judicial District Court in the State of Louisiana, and continuing while he was a Federal judge in the United States District Court for the Eastern District of Louisiana, Judge Porteous engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, III, and his sister Lori Marcotte. As part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. These official actions by Judge Porteous included, while on the State bench, setting, reducing, and splitting bonds as requested by the Marcottes, and improperly setting aside or expunging felony convictions for two Marcotte employees (in one case after Judge Porteous had been confirmed by the Senate but before being sworn in as a Federal judge). In addition, both while on the State bench and on the Federal bench, Judge Porteous used the power and prestige of his office to assist the Marcottes in forming relationships with State judicial officers and individuals important to the Marcottes' business. 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.

Accordingly, Judge G. Thomas Porteous, Jr., has engaged in conduct so utterly lacking in honesty and integrity that he is guilty of high crimes and misdemeanors, is unfit to hold the office of Federal judge, and should be removed from office.

ARTICLE III

Beginning in or about March 2001 and continuing through about July 2004, while a Federal judge in the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., engaged in a pattern of conduct inconsistent with the trust and confidence placed in him as a Federal judge by knowingly and intentionally making material false statements and representations under penalty of perjury related to his personal bankruptcy filing and by repeatedly violating a court order in his bankruptcy case. Judge Porteous did so by——

(1) using a false name and a post office box address to conceal his identity as the debtor in the case;

(2) concealing assets;

(3) concealing preferential payments to certain creditors;

(4) concealing gambling losses and other gambling debts; and

(5) incurring new debts while the case was pending, in violation of the bankruptcy court's order.

In doing so, 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.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

ARTICLE IV

In 1994, in connection with his nomination to be a judge of the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation in order to obtain the office of United States District Court Judge. These false statements included the following:

(1) On his Supplemental SF-86, 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 in his life that could cause an embarrassment to Judge Porteous or the President if publicly known. Judge Porteous answered 'no' to this question and signed the form under the warning that a false statement was punishable by law.

(2) During his background check, Judge Porteous falsely told 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.

(3) On the Senate Judiciary Committee's 'Questionnaire for Judicial Nominees', Judge Porteous was asked whether any unfavorable information existed that could affect his nomination. Judge Porteous answered that, to the best of his knowledge, he did 'not know of any unfavorable information that may affect [his] nomination'. Judge Porteous signed that questionnaire by swearing that 'the information provided in this statement is, to the best of my knowledge, true and accurate'.

However, in truth and in fact, as Judge Porteous then well knew, each of these answers was materially false because Judge Porteous had engaged in a corrupt relationship with the law firm Amato & Creely, whereby Judge Porteous appointed Creely as a 'curator' in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm and also had engaged in a corrupt relationship with Louis and Lori Marcotte, whereby Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. 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. Judge Porteous's failure to disclose these corrupt relationships deprived the United States Senate and the public of information that would have had a material impact on his confirmation.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

II. INTRODUCTION

The House Committee on the Judiciary, in conjunction with its duly authorized "Task Force on Judicial Impeachment," has conducted an investigation into the conduct of United States District Court Judge Gabriel Thomas Porteous, Jr., ("Judge Porteous") and has determined, for the reasons set forth in this Report, that Judge Porteous's impeachment is warranted as a factual matter, fully supported by the Constitution, and is consistent with precedent.

III. JUDGE G. THOMAS PORTEOUS, JR.

Judge Porteous was born December 14, 1946. He grew up in the New Orleans area and attended Louisiana State University both as an undergraduate and for law school. He graduated from law school in 1971.

From 1971 to 1973, Judge Porteous was Special Counsel to the Office of the Louisiana Attorney General. He then served as an Assistant District Attorney from approximately 1973 through 1984. During that time period, Assistant District Attorneys could also hold outside employment. Thus, during some portion of this time, Judge Porteous was a law partner of Jacob Amato, Jr., at the law firm Edwards, Porteous & Amato. Attorney Robert Creely also worked at this firm.

Judge Porteous was elected judge of the 24th Judicial District Court in the State of Louisiana in 1984 and remained in that position until October 1994. In August 1994, Judge Porteous was nominated by President Clinton to be a United States District Court Judge for the Eastern District of Louisiana. His confirmation hearing was held on October 6, 1994. He was confirmed by the Senate on October 7, 1994, received his commission on October 11, 1994, and was sworn in on October 28, 1994.

Judge Porteous was married in 1969 to Carmella Porteous, who passed away on December 22, 2005.

IV. PROCEDURAL BACKGROUND

In or about late 1999, the Department of Justice (occasionally referenced as the "Department" or "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. [1]

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[1] Among the reasons the Department gave in declining prosecution were that some of the conduct at issue was barred by the statue of limitations, and that some of the demonstrably false statements may not have been "material" as a matter of law. 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., May 18, 2007 (hereinafter "DOJ Complaint Letter") at 1 (Ex. 4).

The evidentiary materials have been identified as HP [House Porteous] Exhibit numbers by the Task Force Staff, and the documents are cited as "(Ex. [#])." Certain publicly available documents, such as House and Committee Resolutions, or pleadings in connection with litigation, have also been marked as exhibits for ease of reference. The testimony cited in this Report consists of the following: 1) testimony of witnesses before the House Impeachment Task Force during one of four hearings (either on November 17-18, 2009 (Hearing I), December 8, 2009 (II), December 10, 2009 (III) or December 15, 2009 (IV)), cited as "[Witness] TF Hrg. [I, II, III or

Continued

In a letter dated May 18, 2007, the Department 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 potentially related to his fitness as a judge.[2] The alleged misconduct included soliciting and accepting things of value from litigants, attorneys, and other interested persons (such as the owners of a bail bonds company) with matters before him. The misconduct was alleged to have commenced while Judge Porteous was a State judge serving on the 24th Judicial District Court in Jefferson Parish, Louisiana (from 1984 to 1994), and to have continued while he was a Federal district judge. In addition, the Department also set forth information that Judge Porteous, while a Federal judge, made false statements and engaged in other dishonest conduct in connection with his personal bankruptcy.

Upon receipt of the DOJ Complaint Letter, the Fifth Circuit appointed a Special Investigatory Committee (the "Special Committee") to investigate the Department's allegations. A hearing was held before the Special Committee on October 29 and 30, 2007 (the "Fifth Circuit Hearing"), at which Judge Porteous, representing himself, testified,[3] cross-examined witnesses, and called witnesses on his own behalf.[4] Thereafter, the Special Committee issued a Report to the Judicial Council of the Fifth Circuit, dated November 20, 2007. That Report concluded that Judge Porteous committed misconduct which "might constitute one or more grounds for impeachment."[5]

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."[6] The Fifth Circuit Judicial Council thereafter certified these findings and the supporting records to the Judicial Conference of the United States.[7]

IV] at [page];" 2) testimony of witnesses before the Fifth Circuit Special Investigative Committee Hearing in October 1997, cited as "[Witness] 5th Cir. Hrg. at [page]," or otherwise referencing the speaker if the person quoted is not the sworn witness; 3) testimony of witnesses before the Federal grand jury, cited as "[Witness] GJ at [page];" and 4) deposition testimony taken by Task Force Staff, in the late summer and fall of 2009 and early 2010, cited as "[Witness] Dep. at [ ]." Facts that are undisputed—such as the date Judge Porteous was nominated or confirmed—are not always cited. Several witnesses were interviewed by Task Force Staff but were not deposed. Every effort has been made in this Report to rely on documentary materials or testimony under oath; however, on a few occasions, references are made to Task Force Staff interviews where a deposition was not conducted.

[2] DOJ Complaint Letter (Ex. 4).

[3] An order of immunity had been obtained and provided to Judge Porteous in connection with his testimony before the Fifth Circuit Special Committee.

[4] That hearing did not address Judge Porteous's improper relationships with bail bondsmen, nor did it examine his conduct during the confirmation process to become a Federal judge.

[5] Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, In the Matter of Judge G. Thomas Porteous, Jr. United States District Judge, Eastern District of Louisiana, Dkt. No. 07-05-351-0085 (Nov. 20, 2007) (Ex. 5).

[6] Memorandum Order and Certification, In re: Complaint of Judicial Misconduct Against United States District Judge G. Thomas Porteous, Jr. Under the Judicial Conduct and Disability Act of 1980, Judicial Council of the Fifth Circuit, Dkt. No. 07-05-351-0085 (Dec. 20, 2007) at 4 (Ex. 6(a)). A dissenting opinion authored by Circuit Judge James L. Dennis examined each of Judge Porteous's acts individually and concluded that, under that analysis, the evidence did not demonstrate a possible ground for impeachment and removal. Id. (J. Dennis dissenting) (Ex. 6(b)). Judge Dennis would have recommended suspending and reprimanding Judge Porteous.

[7] Memorandum Order and Certification, In re: Complaint of Judicial Misconduct Against United States District Judge G. Thomas Porteous, Jr. Under the Judicial Conduct and Disability

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." [8]

On September 10, 2008, the Judicial Council of the Fifth Circuit issued an "Order and Public Reprimand" taking the maximum disciplinary action allowed by law against Judge Porteous, including ordering that no new cases be assigned to him and suspending his authority to employ staff for 2 years or "until Congress takes final action on the impeachment proceedings, whichever occurs earlier." [9]

On September 17, 2008, the House of Representatives of the 110th Congress passed H. Res. 1448, which provided, in pertinent part: "Resolved, That the Committee on the Judiciary shall inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana." [10] On January 6, 2009, Chairman John Conyers, Jr. of the Committee on the Judiciary introduced H. Res. 15, which continued the authority of H. Res. 1448 of the 110th Congress for the 111th Congress. [11] On January 13, 2009, H. Res. 15 passed the full House by voice vote.

V. COMMITTEE AND TASK FORCE ACTIONS

On January 22, 2009, the impeachment inquiry was referred by the Committee on the Judiciary to a Task Force on Judicial Impeachment (the "Task Force"), comprised of 12 Committee Members, to conduct the investigation. [12] On July 29, 2009, the Committee on the Judiciary voted to permit the House General Counsel to seek immunity orders to compel the testimony of 8 witnesses.

A. In General

Task Force Staff reviewed materials provided from the Fifth Circuit (which included DOJ materials that had been provided to the attorneys handling the Special Investigatory inquiry). Task Force Staff also obtained additional documents from DOJ and from other entities, and interviewed over 70 individuals and took over 25 depositions. The evidentiary materials that are pertinent to this Report were made part of the record at the Task Force meeting of January 21, 2010.

Act of 1980, Judicial Council of the Fifth Circuit, Dkt. No. 07-05-351-0085 (Dec. 20, 2007) at 5 (Ex. 6(a)).

[8] Certificate of the Judicial Conference of the United States, to the Speaker, United States House of Representatives [Re: Determination that Consideration of Impeachment of Judge G. Thomas Porteous may be Warranted], June 17, 2008 (Ex. 7). The Certificate was thereafter hand delivered to the Honorable Nancy Pelosi, Speaker of the House, on June 18, 2008.

[9] Order and Public Reprimand, In re: Complaint of Judicial Misconduct Against United States District Judge G. Thomas Porteous, Jr. Under the Judicial Conduct and Disability Act of 1980, Judicial Council of the Fifth Circuit, Dkt. No. 07-05-351-0085 (Sept. 10, 2008) at 4 (Ex. 8).

[10] H. Res. 1448 (2008).

[11] H. Res. 15 (2009).

[12] See Reestablishment of the Task Force on Judicial Impeachment: Before the H. Comm. on the Judiciary, 111th Con. (2009) (statement of John Conyers, Jr., Chairman, Committee on the Judiciary), http://judiciary.house.gov/hearings/transcripts/transcript090122.pdf at 30-34. The Task Force consisted of Chairman Adam B. Schiff (CA), Ranking Member Bob Goodlatte (VA), Sheila Jackson Lee (TX), Steve Cohen (TN), Henry C. "Hank" Johnson (GA), Pedro Pierluisi (PR), Charles A. Gonzalez (TX), F. James Sensenbrenner (WI), Daniel E. Lungren (CA), J. Randy Forbes (VA), and Louis Gohmert (TX).

B. LITIGATION BY JUDGE PORTEOUS IN RESPONSE TO THE TASK FORCE INQUIRY

Judge Porteous has litigated in three different courts in an attempt to preclude, or delay, the Committee from obtaining critically-needed information in this impeachment inquiry.

After review of the DOJ Complaint Letter, and the referral from the U.S. Judicial Conference, the Committee moved to obtain a court order authorizing DOJ to disclose grand jury materials. The Committee originally moved on July 8, 2009 for an order authorizing the disclosure of grand jury materials related to the DOJ investigations of Judge Porteous, Rowan Company, and Diamond Offshore, and a Department of Interior employee, Donald C. Howard. [13]

On July 28, 2009, Judge Porteous filed an opposition to the Committee's Motion. [14] While never challenging the fact that the information sought was relevant and necessary for the impeachment inquiry, the Judge's opposition was based solely on a concern for secrecy of grand jury matters. The court dismissed this objection and issued an order dated August 5, 2009, granting the Committee's Motion. [15] Thereafter, Judge Porteous moved to stay the Order pending his appeal to the U.S. Court of Appeals for the Fifth Circuit; [16] the Committee opposed Judge Porteous's stay motion [17] and the District Court denied the stay as without merit. [18] Judge Porteous took an appeal of the August 5 grand jury disclosure order [19] and also moved in the U.S. Court of Appeals for the Fifth Circuit to stay disclosure pending the duration of the entire ap-

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[13] Memorandum in Support of the U.S. House of Representatives Committee on the Judiciary for an Order Directing the Department of Justice to Disclose Certain Grand Jury Materials, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. July 8, 2009) (Ex. 401). Howard had been prosecuted for not disclosing that he accepted hunting trips from Rowan Companies on his financial disclosure reports, and, in fact, had been on some of the same Rowan hunting trips as Judge Porteous.

After the Committee filed its Motion, Judge Porteous's counsel wrote to the judge assigned to the case and asserted that it would not be proper for any judge currently sitting in the judicial districts comprising the Fifth Circuit to hear and decide the Committee's motion. Letter from Richard W. Westling, Counsel to Judge Porteous, to the Honorable Neal B. Biggers, Jr., Senior United States District Judge (July 13, 2009) (Ex. 400). As a result, the Fifth Circuit designated the Honorable Callie V. S. Granade, the Chief Judge of the Southern District of Alabama, to hear and decide the Committee's motion.

[14] Judge G. Thomas Porteous, Jr.'s Memorandum in Opposition to the Motion of the U.S. House of Representatives, Committee on the Judiciary's Motion for an Order Directing the Department of Justice to Disclose Certain Grand Jury Materials, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. July 28, 2009) (Ex. 402).

[15] Order, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Aug. 5, 2009) (granting motion to disclose grand jury materials) (Ex. 403).

[16] Judge Porteous's Motion for a Stay of the Court's August 5, 2009 Grand Jury Disclosure Order Pending Appeal of the Order to the United States Court of Appeals for the Fifth Circuit, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Aug. 10, 2009) (Ex. 404).

[17] U.S. House Committee on the Judiciary's Opposition to Motion for Stay of the Court's Grand Jury Disclosure Order Pending Appeal, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Aug. 13, 2009) (Ex. 406).

[18] Order, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Aug. 18, 2009) (denying motion to stay disclosure pending appeal) (Ex. 407).

[19] Notice of Appeal of the Court's August 5, 2009 Grand Jury Disclosure Order, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Aug. 10, 2009) (Ex. 405).

peal.[20] The Committee opposed this motion,[21] and the Court of Appeals denied the stay.[22] Throughout these pleadings, Judge Porteous never argued that the grand jury materials sought were not relevant to the Committee's impeachment inquiry.

On September 23, 2009, the Committee moved for summary affirmance of the district court's August 5, 2009 grand jury disclosure order.[23] Judge Porteous opposed this motion[24] and the Committee replied.[25] Judge Porteous moved to disqualify the panel of Fifth Circuit judges that ruled on the motion for a stay pending appeal, to vacate the panel's order denying the stay, and to designate a panel of judges from another Circuit to hear all further proceedings in the appeal.[26] The Committee opposed this motion.[27] On October 26, 2009, Judge Porteous filed the merits brief in his appeal.[28]

On November 12, 2009, the U.S. Court of Appeals for the Fifth Circuit issued an order which granted the Committee's motion for summary affirmance, and denied all of Judge Porteous's motions.[29] The Task Force finally obtained access to the grand jury materials in mid-November 2009.

The Judge's legal maneuverings had delayed access by the staff to important and relevant information for approximately 5 months.

By way of a motion filed October 8, 2009, the Committee sought a second Order authorizing disclosure of grand jury and Title III wiretap materials that related to Judge Porteous. These materials were obtained during the Department's "Wrinkled Robe" investigation into corruption in connection with the relationship of certain bail bondsmen to State judges of the 24th Judicial District Court of Louisiana, where Judge Porteous had presided prior to becoming a Federal judge.[30] Again, Judge Porteous filed an opposition to this

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[20] Appellant's Motion for a Stay of the District Court's Grand Jury Disclosure Order Pending Appeal, In Re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., No. 09-30737 (5th Cir. Aug. 20, 2009) (Ex. 408).

[21] Opposition to Appellant's Motion for Stay, In Re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., No. 09-30737 (5th Cir. Aug. 26, 2009) (Ex. 409).

[22] Order, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Sept. 14, 2009) (denying appellant's motion for a stay pending appeal) (Ex. 410).

[23] Appellee's Motion for Summary Affirmance, In Re: Grand Jury [Proceedings], No. 09-30737 (5th Cir. Sept. 23, 2009) (Ex. 411).

[24] Appellant's Memorandum in Opposition to Appellee's Motion for Summary Affirmance, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Oct. 5, 2009) (Ex. 412).

[25] Reply of U.S. House Judiciary Committee to Appellant's Memorandum in Opposition to Appellee's Motion for Summary Affirmance, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Oct. 9, 2009) (Ex. 413).

[26] Appellant's Motion to Disqualify the Panel of Judges that Ruled on the Motion for a Stay Pending Appeal, to Vacate the Panel's Order Denying a Stay, and to Designate a Panel of Judges From Another Circuit to Hear all Further Proceedings in this Appeal, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Sept. 29, 2009) (Ex. 414).

[27] Opposition of the U.S. House Judiciary Committee to Appellant's Motion to Disqualify the Panel . . . To Vacate the Panel's Order . . . and to Designate a Panel of Judges From Another Circuit to Hear . . . This Appeal, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Oct. 6, 2009) (Ex. 415).

[28] Original Brief on Behalf of Appellant G. Thomas Porteous, Jr., United States District Judge, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Oct. 26, 2009) (Ex. 416).

[29] Order, In Re: Grand Jury Proceedings, No. 09-30737 (5th Cir. Nov. 12, 2009) (granting appellee's motion for summary affirmance and denying appellant's motions to disqualify all Fifth Circuit Court of Appeals Judges from the case, vacate the order denying the motion for staying pending appeal, to designate a panel from another Circuit, and stay pending appeal) (Ex. 417).

[30] U.S. House Judiciary Committee's Motion to Obtain Grand Jury Materials and Specified Court-Ordered Wiretaps, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Oct. 8, 2009) (Ex. 418).

motion,[31] and the Committee replied.[32] The Department of Justice filed a memorandum in support of the Committee.[33] On October 23, 2009, the court granted the Committee's motion and authorized disclosure of the grand jury and Title III materials.[34]

Once again, Judge Porteous moved in the district court to stay disclosure.[35] The Committee opposed his stay motion.[36] The district court denied the stay motion as without merit.[37] Judge Porteous did not move to stay disclosure in the Court of Appeals, but he did file and pursue an appeal of the disclosure order. The Committee obtained access to the Wrinkled Robe grand jury and Title III materials in mid-November 2009 pursuant to the district court's disclosure order.

On December 30, 2009, the Committee moved for summary affirmance of Judge Porteous's appeal from the Wrinkled Robe disclosure order.[38] On January 29, 2010, the Fifth Circuit granted the Committee's motion and affirmed the district court's disclosure order.[39]

The district court and the Fifth Circuit granted the Committee's unopposed motions to unseal the litigation[40] so that all of the pleadings would be available to the public.

In addition to the grand jury litigation, on November 12, 2009, a few days prior to the first evidentiary hearing of the Task Force, Judge Porteous filed a lawsuit in the United States District Court for the District of Columbia seeking a permanent injunction preventing the Committee from using or reading his sworn immunized testimony that had been provided to the Committee by the Judicial Conference. On an emergency basis, Judge Porteous sought a temporary restraining order to enjoin three aides to the Impeachment Task Force from using testimony he had provided under a grant of immunity to the Fifth Circuit Special Committee more than 2 years

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[31] Judge G. Thomas Porteous, Jr.'s Memorandum in Opposition to the Motion of the U.S. House of Representatives, Committee on the Judiciary's Motion to Obtain Grand Jury Materials and Specified Court-Ordered Wiretaps, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Oct. 16, 2009) (Ex. 419).

[32] Reply of U.S. House Judiciary Committee to Judge G. Thomas Porteous's Opposition to the Motion to Obtain Grand Jury Materials and Specified Court-Ordered Wiretaps, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Oct. 23, 2009) (Ex. 420).

[33] Memorandum in Response to U.S. House Judiciary Committee's Motion to Obtain Grand Jury Materials and Specified Court-Ordered Wiretaps, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Oct. 16, 2009) (Ex. 421).

[34] Order, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Oct. 23, 2009) (granting Committee's motion for order authorizing disclosure of grand jury and Title III materials) (Ex. 422).

[35] Judge Porteous's Motion for a Stay of the Court's October 23, 2009 Grand Jury and Specified Wiretaps Disclosure Order Pending Appeal of the Order to the United States Court of Appeals for the Fifth Circuit, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Nov. 4, 2009) (Ex. 423).

[36] Opposition of the Committee on the Judiciary of the U.S. House of Representatives to Judge Porteous's Motion for Stay of the Court's October 23, 2009 Order Pending Appeal, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Nov. 10, 2009) (Ex. 424).

[37] Order, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Nov. 12, 2009) (denying motion for stay pending appeal) (Ex. 425).

[38] Appellee's Motion for Summary Affirmance, In Re: Grand Jury Proceedings, No. 09-31062 (5th Cir. Dec. 30, 2009) (Ex. 426).

[39] Order, In Re: Grand Jury Proceedings, No. 09-31062 (5th Cir. Jan. 29, 2010) (Ex. 436).

[40] Order, In re: Grand Jury Investigation of United States District Judge G. Thomas Porteous, Jr., Misc. No. 09-4346 (E.D. La. Dec. 14, 2009) (granting unopposed motion to unseal) (Ex. 427); Order, In Re: Grand Jury Proceeding, No. 09-30737 (5th Cir. Dec. 30, 2009) (same); Order, In Re: Grand Jury Proceedings, No. 09-31062 (5th Cir. Dec. 30, 2009) (same).

earlier.[41] On an expedited schedule, the Committee moved to dismiss this motion,[42] and Judge Porteous replied.[43] United States District Judge Richard J. Leon of the United States District Court for the District of Columbia denied Judge Porteous's motion for a temporary restraining order after oral argument on November 16, 2009.[44] Per the Court's request, the Committee filed a supplemental memorandum in support of its motion to dismiss.[45] Judge Porteous opposed this motion[46] and the Committee replied.[47]

C. Task Force Hearings

The Task Force held four hearings regarding the conduct of Judge Porteous. On November 17 and 18, 2009, Attorneys Robert Creely, Jacob Amato, and Joseph Mole testified.[48]

On December 8, 2009, Federal Bureau of Investigation Special Agent DeWayne Horner, Attorney Claude Lightfoot, and Chief United States Bankruptcy Judge for the District of Maryland Duncan Keir testified.[49]

On December 10, 2009, Bail Bondsman Louis M. Marcotte, III, and his sister Lori Marcotte testified.[50]

At each of the above hearings, Special Impeachment Counsel Alan I. Baron presented an overview of the evidence that related to the topics of the hearings.

On December 15, 2009, Professors Akhil Reed Amar (Yale Law School), Charles Geyh (Indiana University Maurer School of Law), and Michael Gerhardt (University of North Carolina School of Law) testified.[51]

Judge Porteous's attorney, Richard Westling, Esq., was permitted to give an opening statement at the initial hearing and was offered

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[41] Complaint for Declaratory Judgment and Injunctive Relief, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Nov. 13, 2009) (Ex. 428); Plaintiff G. Thomas Porteous, Jr.'s Motion for a Temporary Restraining Order and Preliminary Injunction, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Nov. 13, 2009) (Ex. 429).

[42] Defendants' Motion to Dismiss, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Nov. 13, 2009) (Ex. 430).

[43] Judge G. Thomas Porteous, Jr.'s Reply Memorandum to Defendants' Opposition to his Motion for a Temporary Restraining Order and a Preliminary Injunction, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Nov. 14, 2009) (Ex. 431).

[44] Bench Order, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Nov. 16, 2009) (denying motion for a temporary restraining order) (PACER Docket Report) (Ex. 432). "PACER" is an acronym for "Public Access to Court Electronic Records." It is an electronic database that allows users to obtain case and docket information from the Federal courts. A document referred to in this Report as a "PACER Docket Report" is a standard computerized printout that sets forth the various events that occur in the course of a given case. In this case, the PACER Docket Report reflects the denial of the Motion for the Temporary Restraining Order on November 16, 2009.

[45] Defendants' Supplemental Memorandum in Support of Motion to Dismiss, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Dec. 18, 2009) (Ex. 433).

[46] Judge G. Thomas Porteous, Jr.'s Memorandum in Opposition to Defendants' Motion to Dismiss, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Jan. 8, 2010) (Ex. 434).

[47] Defendants' Reply Brief in Support of Their Motion to Dismiss, Porteous v. Baron, et al, Case No. 1:09-cv-2131 (D.D.C. Jan. 15, 2010) (Ex. 434). As of the date of the preparation of this Report, the motion to dismiss is under advisement.

[48] See To Consider Possible Impeachment of United States District Judge G. Thomas Porteous, Jr. (Part I), Hearing Before the Task Force on Judicial Impeachment of the Committee on the Judiciary, House of Representatives, 111th Cong. (Nov. 17-18, 2009).

[49] See To Consider Possible Impeachment of United States District Judge G. Thomas Porteous, Jr. (Part II), Hearing Before the Task Force on Judicial Impeachment of the Committee on the Judiciary, House of Representatives, 111th Cong. (Dec. 8, 2009).

[50] See To Consider Possible Impeachment of United States District Judge G. Thomas Porteous, Jr. (Part III), Hearing Before the Task Force on Judicial Impeachment of the Committee on the Judiciary, House of Representatives, 111th Cong. (Dec.10, 2009).

[51] See To Consider Possible Impeachment of United States District Judge G. Thomas Porteous, Jr. (Part IV), Hearing Before the Task Force on Judicial Impeachment of the Committee on the Judiciary, House of Representatives, 111th Cong. (Dec. 15, 2009).

the opportunity to examine the witnesses at each of the four hearings. He did in fact examine witnesses at all the hearings except the December 10, 2009 hearing, where, despite having been offered the opportunity to participate, neither Mr. Westling nor any other attorney representing Judge Porteous was present. Mr. Westling was given the opportunity to identify witnesses whose testimony he sought for the Committee to hear. Mr. Westling did not identify any such individuals. Judge Porteous was also provided the opportunity to testify. He declined to do so.

On January 21, 2010, the Task Force held a meeting to consider proposed articles of impeachment. In connection with that meeting, Task Force exhibits cited in this Report were made part of the record. At that meeting, Task Force Members agreed by an 8-0 vote to recommend four specified Articles of Impeachment to the Full Committee.

On that same day, Chairman Conyers introduced H. Res. 1031, setting forth the four recommended Articles of Impeachment against Judge Porteous.

On January 27, 2010, the Committee on the Judiciary met and unanimously approved by record votes each of the four articles, and, upon doing so, voted unanimously to report H. Res 1031 to the full House.

VI. A BRIEF DISCUSSION OF IMPEACHMENT

A. Pertinent Constitutional Provisions

The following are the pertinent provisions in the United States Constitution that relate to impeachment:

> Article I, Section 2, Clause 5:
>
> The House of Representatives . . . shall have the sole Power of Impeachment.
>
> Article I, Section 3, Clauses 6 and 7:
>
> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the Concurrence of two-thirds of the Members present.
>
> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.
>
> Article II, Section 2, Clause 1:
>
> The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.
>
> Article II, Section 4:
>
> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

In this regard, it has long been recognized that Federal judges are "civil Officers" within the meaning of Article II, Section 4.[52] Finally, as to the life tenure of Federal judges, the Constitution provides:

> Article III, Section 1:
> The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour. . . .

B. THE MEANING OF "HIGH CRIMES AND MISDEMEANORS"

The committee report accompanying 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.[53]

In applying these concepts to the conduct of a judge, the Walter 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

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[52] A commentator wrote in 1825:

> All executive and judicial officers, from the president downwards, from the judges of the supreme court to those of the most inferior tribunals, are included in this description.

W. Rawle, A View of the Constitution of the United States of America, Philip H. Nicklin ed. (1829), 213 (The Law Exchange reprint (2003)). Another prominent commentator, Joseph Story, wrote:

> All officers of the United States . . . who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or in the lowest departments of the government, with the exception of officers in the army and navy, are properly civil officers within the meaning of the constitution, and liable to impeachment.

2 Joseph Story, Commentaries on the Constitution of the United States § 790 at 258 (1833) (citing Rawle) (quoted in To Consider Possible Impeachment of United States District Judge Samuel B. Kent of the Southern District of Texas: Hearing Before the Task Force on Judicial Impeachment of the H. Comm. on the Judiciary, 111th Cong. Serial No. 111-11 (June 3, 2009) (statement of Prof. Arthur Hellman)).

[53] H.R. Rep. No. 101-36, Impeachment of Walter L. Nixon, Jr., Report of the Committee on the Judiciary to Accompany H. Res. 87, 101st Cong., 1st Sess. (1989) [hereinafter "Walter Nixon Impeachment Report"] at 5 (1989).

> 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." [54]

The Walter Nixon Impeachment 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 questions 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. [55]

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." [56] That Report stressed that impeachment is "non-criminal," designed not to impose criminal penalties, but instead simply to remove the offender from office, [57] 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." [58] 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 further clear that impeachment is a remedial provision, not a punitive one. [59]

VII. ARTICLE BY ARTICLE ANALYSIS

A. In General

In connection with the impeachment of Federal Judge George W. English in 1926, the House Committee on the Judiciary noted: "Each case of impeachment must necessarily stand upon its own facts. It can not, therefore, become a precedent or be on all fours with every other case." [60] That observation is particularly true in regard to the case of Judge Porteous, who has committed misconduct in several spheres of activity over many years. As one scholar noted in his testimony before the Task Force, any lack of

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[54] Walter Nixon Impeachment Report at 5 (footnote omitted).

[55] Id. at 12.

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

[57] Hastings Impeachment Report at 7.

[58] Id. at 7. The last four judicial impeachments—those of Judge Samuel B. Kent (2009), Judge Walter L. Nixon (1989), Judge Alcee Hastings (1988), and Judge Harry Claiborne (1986)—occurred subsequent to Federal criminal proceedings, and the impeachment articles were to a great extent patterned after the Federal criminal charges. However, the principles that underlie the propriety of impeachment do not require that the conduct at issue be criminal in nature, or that there have been a criminal prosecution.

[59] U.S. Const., art. I, § 3, cl. 7.

[60] "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 163 (hereinafter "English Impeachment Report").

factual precedents directly on point "has to do with more the nature of Judge Porteous's misconduct than with anything else. The fact is that we are discovering or finding in this case a pattern of misbehavior that extends over such a long period of time that is virtually unique in the annals of impeachment."[61] Nonetheless, a review of prior judicial impeachments reveals that the four Articles against Judge Porteous are consistent with the Constitution and impeachment precedent.

B. Discussion of the Articles

1. Article I

Article I sets forth Judge Porteous's conduct in the course of presiding over the case Lifemark Hospitals of La., Inc. ["Lifemark"] v. Liljeberg Enterprises, Inc. ["Liljeberg" or "the Liljebergs"],[62] including his failure to recuse himself despite his close personal and financial relationships with attorneys for the Liljebergs (including, in particular, his prior financial relationship with Amato and Amato's partner Creely, while Judge Porteous was a State judge); making false and deceptive statements at the recusal hearing to conceal his relationship and otherwise failing to disclose his prior financial relationship; and continuing to solicit and accept things of value from the attorneys in that case, including cash, while he had the case under advisement.

The conduct alleged in Article I—financial entanglements with persons having business before the court—is well recognized as constituting the "gravest sort" of judicial misconduct.[63] The Committee notes that the conduct involving the solicitation and receipt of things of value violates Federal law as well as several of the Canons of Judicial Ethics that are designed to ensure that parties receive a fair trial by an impartial judge—a judge that is neither soliciting nor accepting things of value from attorneys who are appearing in front of him.[64]

Further, Article I against Judge Porteous alleges misconduct similar to that alleged in articles of impeachment against other judges. For example, in 1912, the House voted articles of impeach-

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[61] Prof. Gerhardt TF Hrg. IV at 25.

[62] Civ. Action No. 93-1794 (E.D. La.). See PACER Docket Report (Ex. 50).

[63] Prof. Geyh TF Hrg. IV at 12 (written statement at 6).

[64] As Professor Geyh testified:

> [J]udge Porteous's misconduct here was of the gravest sort. The current Code of Conduct for United States judges provides that "A judge should comply with the restrictions on acceptance of gifts set forth in the Judicial Conference Gift Regulations. [citation omitted]" The judge who solicits or receives money from a lawyer who has an important case pending before the court, creates the taint of corruption that the Judicial Conference's gift regulations are designed to prevent; it is thus unsurprising that ethics rules universally condemn the practice.

Prof. Geyh TF Hrg. IV at 12 (written statement at 6). The principles of impeachment do not require that the conduct at issue constitute a specific crime or violation of a civil or regulatory rule of law. Nonetheless, the fact that the conduct alleged to warrant impeachment violates widely accepted ethical standards or particular civil or criminal laws is a relevant consideration that informs, and in this case supports, the decision that impeachment and removal is appropriate. In connection with the impeachment of Judge Harry Claiborne, the accompanying Report referenced the Code of Judicial Conduct for United States Judges as "[o]ne guide to what is considered 'good behavior' befitting a member of the judiciary." The Report noted that Canon 1 (providing that judges should "uphold the integrity" of the judiciary) and Canon 2 (providing that judges should "avoid impropriety and the appearance of impropriety") "reinforce the Committee's determination that Judge Claiborne has brought disrepute upon the profession and severely undermined public confidence in the institution." H.R. Rep. No. 99-688, "Impeachment of Judge Harry E. Claiborne, Report of the Committee on the Judiciary to Accompany H. Res. 461," 99th Cong., 2d Sess. 23 (1986) [hereinafter "Claiborne Impeachment Report"].

ment against Circuit Judge Robert W. Archbald alleging numerous incidents of improper financial involvement with attorneys and parties. Articles 1 though 6 against Judge Archbald described complicated financial schemes whereby, while he was a judge of the Commerce Court, Judge Archbald enriched himself through financial dealings with companies and attorneys with cases before the Court. Articles 7 through 9 described complicated relationships through which Judge Archbald obtained money from counsels for parties with cases in front of him when he was a district court judge. Article10 charged that as a district court judge, Judge Archbald received money from an individual who was an officer and director of major railroad corporations "which in the due course of business was liable to be interested in litigation pending in the said court over which [Archbald] presided as a judge." That Article further charged that Judge Archbald's acceptance of the money was thus "improper and had a tendency to and did bring his said office of district judge into disrepute." Article 11 charged that Judge Archbald did "wrongfully accept and receive" money that was "contributed to [him] by various attorneys who were practitioners in the said court presided over by [Judge Archbald]."[65]

Similarly, in 1936, the House voted articles of impeachment against Judge Halsted L. Ritter.[66] In particular, Article I of the Ritter Articles described financial dealings between Judge Ritter and his former law partner, in which Judge Ritter appointed the former law partner as a receiver in a civil case. Thereafter, Judge Ritter approved the payment of a $75,000 receiver fee to the former partner (increasing the amount from $15,000 that had been set by another judge), and then received $4,500 back from the former partner.[67]

Article I against Judge Porteous, in alleging misconduct arising from his undisclosed financial relationships with attorneys with a case in front of him, is consistent with the sorts of charges that have supported Articles of Impeachment against Judges Archbald and Ritter.

Article I also charges that by his conduct, Judge Porteous has harmed the judicial system by bringing it into disrepute. This harm constitutes a discrete injury that justifies impeachment and removal, and numerous of the prior judicial impeachments, including those of Judges Claiborne, Nixon, Ritter, and Archbald, have included Articles that, after reciting the essential facts, have alleged that by virtue of that conduct the judge has brought such disrepute

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[65] H. Res. 622, 62d Cong., 2d Sess (1912) (Articles of Impeachment against Judge Robert W. Archbald), 48 Cong Rec. (House) July 8, 1912 (8705-08), reprinted in Impeachment, Selected Materials, House Comm. on the Judiciary, Comm. Print (1973) at 176, 181-82 (Articles 10 and 11) (hereinafter "Archbald Articles"). The Committee Print also contains excerpts from the accompanying Report, Robert W. Archbald, Judge of the United States Commerce Court, H. Rept. No. 946, 62d Cong., 2d sess. (1912), 48 Cong Rec. (House) July 8, 1912 (8697) (hereinafter "Archbald Impeachment Report").

[66] Impeachment of Judge Halsted L. Ritter, H. Res. 422, 74th Cong., 2d Sess. (March 2, 1936) and Amendments to Articles of Impeachment Against Halsted L. Ritter, H. Res. 471, 74th Cong., 2d Sess. (March 30, 1936), reprinted in Impeachment, Selected Materials, House Comm. on the Judiciary, Comm. Print (1973) at 188-197 (H. Res 422), 198-202 (H. Res. 471) (hereinafter "Ritter Articles").

[67] Ritter Articles at 188-189. Judge Ritter was acquitted of that Article in the Senate; however, it is not possible to determine the basis for the verdict—whether it was for failure of proof or because of some other reason. In any event, Judge Ritter was convicted of a different Article—Article 7—which re-alleged the $4,500 cash payment from his former partner.

to the Federal courts, and so undermined public confidence in the courts, that the judge should be impeached.[68]

Thus, when Judge Porteous denied a recusal motion and it was later revealed that he had financial entanglements with certain of the attorneys, not only did he harm the party seeking a fair and impartial judge (Lifemark), but he harmed the judicial system as a whole by inviting cynicism as to its fairness and by suggesting to the public at large that, for a litigant to prevail at trial, it may be necessary to pay for meals or trips or to provide other things of value to the presiding judge.[69]

2. Article II

a. Overview

Article II describes Judge Porteous's corrupt relationship with bail bondsman Louis Marcotte and his sister Lori Marcotte, spanning from the late 1980's/ early 1990's through Judge Porteous's tenure as a Federal judge and into approximately 2004. This article alleges what is in substance a bribery scheme, whereby Judge Porteous solicited and accepted things of value from the Marcottes and, in return Judge Porteous took numerous actions to assist the Marcottes, both as a State judge (in setting bonds and taking other judicial acts) and as a Federal judge. This type of conduct is specifically set forth in Article II, Section 4 of the Constitution as a grounds for impeachment—that is "Treason, Bribery, or other high Crimes and Misdemeanors."

b. Pre-Federal Bench Conduct—The Judge Archbald Precedent

Some of the conduct alleged to constitute a basis for impeachment in Article II occurred prior to Judge Porteous taking the Federal bench.[70] Including such conduct as a basis for impeachment is consistent with the impeachment of Judge Archbald and with a common-sense interpretation of the Constitution and Congress's impeachment power.

Judge Archbald was a District Court Judge in the Middle District of Pennsylvania from March 29, 1901 through January 31, 1911, when he was then appointed to the Circuit Court for the Third Circuit. While on the Circuit Court, he also sat on the United States Commerce Court.[71] In 1912—while Judge Archbald was a circuit court judge—the House voted articles of impeachment against him, alleging improper conduct both as a circuit judge sit-

[68] See, e.g., Archbald Article 10 (charging that Judge Archbald's acceptance of money from an officer of a railroad company was "improper and had a tendency to and did bring his said office of district judge into disrepute").

[69] One of the Articles against Judge Harold Louderback accused him of partiality so as "to excite fear and distrust and to inspire a widespread belief in and beyond said northern district of California that causes were not decided in said court according to their merits, but were decided with partiality and prejudice and favoritism to certain individuals . . . all of which is prejudicial to the dignity of the judiciary." H. Res. 403 (1933), Articles of Impeachment Against Harold Louderback, reprinted in Impeachment, Selected Materials, House Comm. on the Judiciary, Comm. Print (1973) at 185. This same language was used in the articles of impeachment against Judge George W. English, which accused him of conduct so as to "excite fear and distrust and to inspire a widespread belief . . . that causes were not decided in said court according to their merits but were decided with partiality and with prejudice and favoritism to certain individuals. . . ." English Impeachment Report at 163.

[70] Article IV is based exclusively on pre-Federal bench conduct. However, since that issue is arguably implicated in Article II as well, the legal discussion is set forth here.

[71] The United States Commerce Court was in existence from 1910 to 1913. It heard appeals from orders of the Interstate Commerce Commission.

ting on the Commerce Court (Articles 1 through 6) and in his prior position as a district judge (Articles 7 through 12). Article 13 set forth a "catch-all" article encompassing both district court and Circuit Court/Commerce Court conduct. That Article alleged that Archbald "as such United States district judge and judge of the United States Commerce Court," sought loans from persons who had an interest in the matters "pending in the court over which he presided as judge of the district court, and in suits pending in the United States Commerce Court, of which the said Robert W. Archbald is a Member." [72]

The Archbald Impeachment Report specifically addressed the fact that Articles 7 through 12 were based on judicial conduct that occurred prior to Judge Archbald being appointed to the Circuit Court (from which removal was sought). In the section of the Report entitled "Impeachment for Offenses Committed in Another Judicial Office," the Report stated:

> 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. [73]

In reaching this conclusion, the Archbald Impeachment Report focused on the similarity of the prior office in which Archbald committed impeachable conduct (district court judge) to the office from which Archbald was holding at the time of his impeachment (circuit court judge). The report further noted that precedents from State courts supported impeachment of a public official for misconduct that occurred in a prior term of office, especially if "the prescribed functions of such offices were of the same general nature and susceptible to the same malversations and abuse." [74]

In that the "prescribed functions" of Judge Porteous's prior office as State court judge were "of the same general nature" as the office of district court judge that he presently occupies, and were thus "susceptible to the same malversations and abuse," the reasoning in Archbald fully supports considering Judge Porteous's State judge conduct as a basis for impeachment. It would simply be "anomalous" if Congress were "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"—in this case, a State judgeship that

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[72] Archbald Impeachment Report at 182. Archbald was ultimately convicted in the Senate of 5 of the 13 articles—Articles 1, 3, 4, and 5 involving Commerce Court conduct, and Article 13, a "catch-all" article involving both district court and Commerce Court conduct. VI Cannon's Precedents of the House of Representatives, § 512, p. 707.

[73] Archbald Impeachment Report at 175.

[74] Archbald Impeachment Report at 175.

he occupied immediately prior to the Federal judgeship from which impeachment is now sought. [75]

c. Pre-Federal Bench Conduct—Views of Constitutional Scholars

There is broad support among scholars that certain pre-Federal bench conduct—especially of the sort that was committed while Judge Porteous was a State judge—may properly constitute a basis for impeachment. At the Task Force Hearing of December 15, 2009, Professor Michael Gerhardt testified that though Article II of 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," [76] and certainly does not require that such conduct occur during the tenure of the Federal office from which impeachment is sought. As Professor Gerhardt noted, "[t]he critical questions are whether Judge Porteous committed such misconduct and whether such misconduct demonstrates the lack of integrity and judgment that are required in order for him to continue to function" as a Federal judge. [77]

The reason for considering pre-Federal bench conduct in appropriate circumstances is evident from very basic examples. Take the situation where the individual committed a truly heinous crime prior to becoming a Federal judge:

> Say, for instance, that the offence was murder—it is as serious a crime as any we have, 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 that 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. [78]

However, the crime or misconduct need not be comparable to homicide to justify impeachment. As another professor testified:

> Let's take bribery. Imagine now a person who bribes his very way into office. By definition, the bribery here occurs prior to the commencement of office holding. But surely that fact can't immunize the briber from impeachment and removal. Had the bribery not occurred, the person never would have been an officer in the first place. [79]

Or, as the third expert testified: "[A] quid pro quo arrangement with bail bondsmen . . . is the kind of corruption that fairly may

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[75] Id.

[76] Prof. Gerhardt TF Hrg. IV at 30 (written statement of Prof. Michael J. Gerhardt, University of North Carolina at 4) (emphasis in original).

[77] Id.

[78] Id. This particular example is used to illustrate the principle that pre-Federal bench conduct may justify impeachment; it is not intended to suggest that such conduct must be comparable to homicide. Rather, "[f]rom there you simply have to ask yourself whether the conduct as a State judge is sufficiently egregious to rise to an impeachable standard." Prof. Geyh TF Hrg. IV at 36.

[79] Prof. Amar TF Hrg. IV at 17.

be characterized as a violation of the public trust. Who cares if it occurred before [Judge Porteous took the Federal bench]?" [80]

Thus, consistent with reasons set forth in the Archbald Impeachment Report and those provided by three legal scholars at the Task Force Hearing, there is simply no basis in the Constitution, nor is there a basis in policy, for the House or Senate to adopt a narrow or technical reading of the Constitution so as to divest themselves of the power to consider pre-Federal bench conduct as a grounds for impeachment.

d. Federal Bench Conduct

Even though Judge Porteous's conduct while a Federal judge did not involve taking judicial actions to benefit the Marcottes, the Federal bench conduct constituted a continuation of the same unlawful relationship that was in place when Judge Porteous was a State judge, and consisted of Judge Porteous's efforts to help the Marcottes form relationships with no fewer than four State judicial officers as well as other business executives. By these acts, Judge Porteous assisted the Marcottes—whom he knew to be corrupt—to expand their reach in the 24th Judicial District Court (24th JDC). By attending meals with the Marcottes and other judicial officers, Judge Porteous not only received the benefit of those free meals, but provided the opportunity for the Marcottes to show off their relationship with him and to put their generosity on display by paying for him and the others who were in attendance. Though there is no evidence that Judge Porteous specifically communicated to these judges that he sought or intended for the Marcottes to form corrupt relationships with them, from his personal experience Judge Porteous knew that the Marcottes gave him and others things of value to induce favored treatment and thus had every reason to know that the Marcottes would seek to establish the same relationship with new judges. Thus, Judge Porteous was instrumental in helping the Marcottes form a bond with one State judge, Ronald Bodenheimer, with whom the Marcottes formed a corrupt relationship that continued for several years until he was arrested and convicted. [81] Judge Porteous's vouching for the Marcottes was a critical causal factor in the perpetuation of the corruption in the setting of bail bonds in the 24th JDC even when Judge Porteous was no longer on the State bench. [82]

3. Article III

Article III alleges that Judge Porteous committed numerous acts of misconduct in the course of his personal bankruptcy, including making false material statements under oath and otherwise violating court orders. This Article is analogous to the tax evasion, perjury, and obstruction of justice bases of impeachment set forth in the impeachments of Judge Harry E. Claiborne, Judge Walter Nixon and Judge Samuel B. Kent—each of which involved dishonesty under oath in arguably personal and/or financial matters.

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[80] Prof. Geyh TF Hrg. IV at 36.

[81] Lori Marcotte Dep. at 47 (Ex. 76).

[82] Canon 2B of the Code of Conduct for United States Judges (1999) provides: "A judge should not lend the prestige of the judicial office to advance the private interests of others[.]" Again, it is noteworthy that the sort of conduct that is described in Article II, which the Committee has concluded warrants Judge Porteous's impeachment, also runs afoul of standards of conduct promulgated by the Judicial Conference.

In the case of Judge Harry E. Claiborne, a United States District Judge for the District of Nevada, the House voted four Articles of Impeachment. Articles I and II alleged that Judge Claiborne had filed false income tax returns for calendars years 1979 and 1980 under penalties of perjury. The returns were false because they reported total income in the amount of $80,227.04 and $54,251.00 respectively, when "as he then and there well knew and believed, he received and failed to report substantial income [from legal fees] in addition to that stated on the return." Each Article further alleged that because of such conduct, Judge Claiborne "was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor and, by such conduct, warrants impeachment and trial and removal from office." [83]

In the impeachment of District Court Judge Walter Nixon, the first two Articles each alleged, in substance, discrete incidents of perjury before the grand jury, namely, that "[i]n the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make material false or misleading statements to the grand jury." Each Article summarized the substance of the alleged perjurious statement. Article I, for example, alleged that "[t]he false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon." Each Article concluded: "Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office." [84]

Finally, the House voted four Articles of Impeachment against Judge Samuel B. Kent. Articles III and IV alleged, in substance, that Judge Kent obstructed justice by making false statements to the Fifth Circuit Special Investigatory Committee (Article III) and to the FBI when it investigated his conduct (Article IV). [85]

Judge Porteous's conduct in his personal bankruptcy invites disrepute upon the judiciary. The need for honesty by the debtor in bankruptcy proceedings is obvious, and dishonesty by a Federal judge as a debtor in bankruptcy has particular ramifications. As Chief Judge Duncan Keir of the United States Bankruptcy Court for the District of Maryland testified:

> [Because the conduct at issue] occurs by a Federal judge, I think it has a potential effect of denigrating, if you will, the integrity of the court. What happens if 6 months later somebody has been found by a bankruptcy court to have violated these oaths and denied a discharge, and they appeal it, and the appeal goes in front of Judge Porteous? What is that argument going to be? You did it? I did it? It is untenable. [86]

Article III against Judge Porteous is consistent with these Articles against Judges Claiborne, Nixon and Kent. As with the Judge

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[83] Claiborne Impeachment Report at 1-2.
[84] Walter Nixon Impeachment Report at 1-3.
[85] H. Res. 430, 111th Cong. (2009) (Articles of Impeachment Against Judge Samuel B. Kent).
[86] Keir TF Hrg. II at 81. Thus, though Judge Porteous's bankrutpcy conduct may have been "personal" in some respects, its consequences directly impact his ability to carry out his judicial responsibilities. Further, Judge Porteous's failure acts in the nature of filing false financial disclosure forms that concealed his liabilities for years, though not charged as part of Article III, constitute part of the evidence that implicates Judge Porteous's fitness to hold judicial office.

Claiborne impeachment, Article III against Judge Porteous charges that he filled out forms related to his own personal financial situation under penalty of perjury, on which he concealed material facts. And, as with the perjury and acts of obstruction alleged in the impeachment Articles against Judge Nixon and Judge Kent, Judge Porteous's dishonest statements on court forms and his violation of a court order occurred in the context of a Federal judicial proceeding and demonstrated a disregard of, and contempt for, the authority of the supervising Federal court. [87]

4. Article IV

Article IV alleges that Judge Porteous committed a fraud on the judicial confirmation process by making material false statements to the FBI and on his Senate Judiciary Committee Questionnaire in response to questions as to whether there was anything in his past that could be used to blackmail or coerce him. Judge Porteous answered "no" to such inquiries, notwithstanding his unlawful financial relationships with certain attorneys (Creely and Amato) and with the Marcottes.

For reasons set forth in the discussion of Article II, it is appropriate to consider pre-Federal bench conduct as a basis to impeach. Even though Judge Porteous did not make the statements in a judicial capacity, and even though this conduct did not carry over into his tenure as a Federal judge, the false statements corrupted the judicial appointment and rendered it illegitimate from its inception. As Professor Amar testified before the Task Force, after stating why pre-Federal bench "bribery" would constitute impeachable conduct:

> Now what is true of bribery is equally true of fraud. A person who procures a judgeship by lying to the President and lying to the Senate has wrongly obtained his office by fraud and is surely removable via impeachment for that fraud. [88]

Professor Gerhardt agreed that "lying to or defrauding the Senate in order to be approved as a Federal judge" is likely to justify impeachment. First of all, that conduct 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." [89] Professor Gerhardt noted, however, that in the case of Judge Porteous, it is not necessary to determine whether the false statements themselves demonstrated his unfitness.

> 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

[87] Professor Gerhardt noted that the violation of the bankruptcy laws "reflects a level of disdain for the law that I think is just simply incompatible with being a Federal judge." Prof. Gerhardt TF Hrg. IV at 36.
[88] Prof. Amar TF Hrg. IV at 18.
[89] Prof. Gerhardt TF Hrg. IV at 24.

> constitutional responsibilities of the President and the Senate.[90]

The questions are sufficiently precise for purposes of concluding that the false answers were knowing and intentional, and warrant impeachment. As Professor Amar testified:

> [E]veryone knows what is actually at the core of the question[s]. 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 he 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. . . .
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> * * *
>
> [W]e know what those questions at their core [were] about, and he lied at the core. There is vagueness at the periphery, but this was really central.[91]

VIII. THE FACTS UNDERLYING ARTICLE I—JUDGE PORTEOUS'S RELATIONSHIPS WITH ATTORNEYS ROBERT CREELY, JACOB AMATO, JR., DON GARDNER AND LEONARD LEVENSON, AND HIS HANDLING OF THE *LILJEBERG* CASE

A. INTRODUCTION

Judge Porteous, while a State court judge, was particularly close to four attorneys: Jacob Amato, Jr., with whom Judge Porteuos had practiced law; Robert Creely, Amato's partner who also practiced with Judge Porteous; and local attorneys Leonard Levenson and Donald Gardner. These individuals regularly paid for expensive lunches for Judge Porteous, accompanied him on travel, including travel to gambling establishments, hosted him on hunting trips, and otherwise subsidized his lifestyle. Creely and Amato, in particular, provided Judge Porteous substantial cash from "curatorships" assigned to Creely by Judge Porteous.

Judge Porteous's personal and financial relationships with these attorneys, as well as his financial dependence upon them, became particularly significant in connection with his handling of a civil case, *Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc.,*[92] when he was a Federal judge. A few weeks prior to the scheduled November 1996 non-jury trial before Judge Porteous, the defendants (the Liljebergs) brought in Amato and Levenson as trial counsel. In response, the plaintiffs (Lifemark) filed a motion to recuse Judge Porteous, arguing that Amato's and Levenson's late entry in the case and their known close relationships with Judge Porteous supported the conclusion that Amato and Levenson were hired precisely because of those relationships. Counsel for

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[90] Prof. Gerhardt TF Hrg. IV at 31.

[91] Prof. Amar TF Hrg. IV at 34-35. Professor Amar further noted that these questions did not constitute some sort of "trap" for the unwary: "All he has to do is say, ['I do not wish to be considered for this position.']" Id. at 42.

[92] Civ. Action No. 93-1794 (E.D. La.). See PACER Docket Report (Ex. 50).

Lifemark, however, was unaware of any prior financial relationship between Judge Porteous and Amato, and unaware that Amato and his partner Creely had provided Judge Porteous thousands of dollars in cash while Judge Porteous was a State judge.

Judge Porteous denied Lifemark's recusal motion in a fashion that concealed his respective relationships with Amato and Levenson. Lifemark then added Gardner to their trial team. Trial was ultimately held in June and July 1997. Subsequent to trial, while the case was pending his decision, and while his financial circumstances were significantly deteriorating, Judge Porteous continued to seek money and accept other things of value from these four attorneys.

Finally, in April 2000, as his financial situation became increasingly dire (and just weeks prior to his consulting with a bankruptcy attorney), Judge Porteous ruled for the Liljebergs. This verdict, if it had stood, would have been worth hundreds of thousands of dollars in legal fees to Amato (and his partner Creely) and Levenson—men who had supported Judge Porteous's life-style for years. Judge Porteous's decision was reversed by the Fifth Circuit Court of Appeals, in a scathing opinion that castigated Judge Porteous's legal reasoning.

B. Relationships with the Attorneys Pre-*Liljeberg*—Meals, Trips, Hunting and Entertainment [93]

Meals and Related Entertainment. Beginning with Judge Porteous's years on the State court bench and continuing through his tenure on the Federal bench, the four attorneys—Creely, Amato, Levenson and Gardner—routinely provided Judge Porteous with meals, trips, and entertainment, as well as covered other expenses.

Amato and Creely took Judge Porteous to lunch frequently. When asked how frequently Judge Porteous paid, Amato testified "[n]ot very often." [94] As Amato noted: "He [Porteous] probably paid for one or two of them." [95] As to the frequency of the lunches: "It would depend upon what his schedule was and my schedule. I would say we probably met two to three times a month over a, you know, a period of time. And depending—you know, some months it might have been more. Some months less. It just depended." [96] Amato identified the restaurants he took Judge Porteous to as including: Red Maple, Beef Connection, Ruth's Chris Steak House, Fitzgerald's, and Smith & Wollensky's. [97] Amato also recalled paying for Porteous's swearing in party as a Federal judge at the "Jefferson Orleans," [98] at which about 100 to 200 people attended. [99] This would have been in late 1994. This party would have cost several thousand dollars. [100]

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[93] There is no attempt here to break out the meals, entertainment, and trips that occurred prior to and subsequent to Judge Porteous's appointment as a Federal judge.
[94] Amato 5th Cir. Hrg. at 254 (Ex. 20).
[95] Amato 5th Cir. Hrg. at 255 (Ex. 20). See also Amato TF Hrg. I at 104 (Judge Porteous paid for lunch for Amato "at least on one occasion").
[96] Amato GJ at 15 (Ex. 18).
[97] Amato 5th Cir. Hrg. at 255 (Ex. 20).
[98] Amato GJ at 38 (Ex. 18).
[99] Amato GJ at 66 (Ex. 18).
[100] Amato GJ at 39 (Ex. 18).

Gardner described purchasing Judge Porteous numerous meals over time—"50, 60 lunches a year when he was a [New Orleans] district court judge."[101] In response to questioning at the Task Force deposition, Gardner agreed that he had paid for "countless, countless, countless more meals" than Judge Porteous had paid for Gardner.[102]

Levenson also testified to treating Judge Porteous to lunches over the years. Levenson testified that, starting while Judge Porteous was a State court judge, these lunches "would average . . . maybe over the course of a year three or four times a month, or more. Some months would be or some weeks would be more. Some would be less."[103] Levenson paid "[m]ost of the time;"[104] Judge Porteous paid "[v]ery rarely."[105] "To say that I could specifically remember him picking up another lunch bill, no. Did he do it? I'm sure he did. Was it rare? Yes."[106] Levenson listed the restaurants they went to as Mandina's, Ruth's Chris Steak House, Smith & Wollensky's, Bon Ton, Red Maple, and the Beef Connection.[107] Judge Porteous at the Fifth Circuit Hearing testified that Levenson took him out to places such as Ruth's Chris Steak House and Smith & Wollensky's.[108]

Former State Judge Ronald Bodenheimer testified that when he was first elected, Judge Porteous gave him pointers on being a judge. Judge Porteous told Bodenheimer that he would "never have to buy lunch again. . . . There will always be somebody to take you to lunch."[109]

These attorneys continued taking Judge Porteous out for lunches after he became a Federal judge, including during the period when they had the *Liljeberg* case pending before him.

Creely took Judge Porteous on several hunting and fishing trips while Judge Porteous was on the State bench. For example, Creely identified a dove hunt in Mexico in September 1990, where he paid for Judge Porteous. Creely also took Judge Porteous on another dove hunting trip to Mexico—probably in September 1993.[110] The

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[101] Gardner GJ at 69 (Ex. 33). See also, Gardner Dep. at 8 (lunch "once a week" when Judge Porteous was a State judge) (Ex. 36).

[102] Gardner Dep. at 37 (Ex. 36).

[103] Levenson GJ at 10 (Ex. 25).

[104] Levenson GJ at 10 (Ex. 25).

[105] Levenson GJ at 11 (Ex. 25).

[106] Levenson GJ at 12 (Ex. 25).

[107] Levenson GJ at 15 (Ex. 25); Levenson Dep. at 28 (Ex. 30). Judge Porteous stipulated to Levenson's and Forstall's grand jury testimony at the Fifth Circuit Hearing. 5th Cir. Hrg. at 341.

[108] Porteous 5th Cir. Hrg. at 128 (Ex. 10). Another attorney, Warren A. Forstall, stated he would take Judge Porteous to lunch at Ruth's Chris Steak House and Smith & Wollensky's, and that he [Forstall] always paid the bill. Forstall GJ at 30 (Ex. 38). The Ruth's Chris Steak House bills, on average, were $100. Id. at 31.

[109] Bodenheimer testified that Judge Porteous told him:

> Congratulations kid, you know. Now, let me tell you, give you some pointers about being a judge. Number one, you'll never be known as Ronnie again. You'll be judge for the rest of your life. Number two, you'll never have to buy lunch again OK. There will always be somebody to take you to lunch. And number three, always wash your rear end so the attorneys have a clean place to kiss.

Bodenheimer GJ at 10 (Ex. 87). See also Bodenheimer Dep. at 12 (Ex. 86).

[110] Creely GJ at 19-20 (Ex. 11). Creely also testified there may have been another trip to Mexico in 1995 (when Judge Porteous was a Federal judge). He said he knows he took Judge Porteous twice, and maybe a third time. Id at. 20-21. Creely also traveled to Las Vegas with Judge Porteous a few times when Judge Porteous was a State judge. Creely recalled going to Las Vegas with Judge Porteous as part of a fund-raiser to retire campaign debt of a local candidate in September 1990 , Creely GJ at 29-31 (Ex. 11) and in January 1991 on a Jefferson

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cost of these trips paid for by Creely would have been approximately $1,500 per person plus air fare.[111] Creely also took Judge Porteous fishing on a houseboat Creely leased at Delacroix Island on more than 20 occasions—each time hosting Judge Porteous.[112]

Levenson went on trips to Las Vegas with Judge Porteous, as part of a group, on more than one occasion when Judge Porteous was a State judge. Levenson also recalled going on "one . . . maybe two" trips to Las Vegas. One of the trips was to the Riviera Hotel where Levenson shared a room with Judge Porteous. Attorney Warren Forstall also went on that trip and roomed with State Judge George Giacobbe. Although Levenson did not have a specific recollection of what he may have paid for Judge Porteous, he answered affirmatively that he "could state with confidence . . . that [he] paid for some aspects of drinks or meals or other entertainment . . . for which Judge Porteous would have been a beneficiary."[113]

Gardner also recalled going to Las Vegas with Judge Porteous on several Jefferson Bar Association "Continuing Legal Education" trips, which he thought occurred in the 1970's.[114]

C. CASH FROM CREELY AND AMATO (PRE-*LILJEBERG*)

Amato and Creely formed a law partnership in about 1975 that lasted until 2005. It was a true partnership—all the income and expenses were shared, they held joint accounts, they held themselves out as partners, and took equal draws.[115]

While he was on the State bench, Judge Porteous requested cash from Creely on several occasions. Creely provided cash to Judge Porteous in response to those requests. As Creely testified:

> Q. [C]an you just describe a typical instance that would characterize how this request would be made and the sorts of dollar amounts which were encompassed by these requests?
>
> A. In reference to the dollar amounts, it would be hard for me to say. He would ask me for money when we were together socially or fishing or one of those things. He would ask for money.
>
> Q. Did he give you reasons?
>
> A. Yes. He would have—it would be a number of reasons, just a number of reasons, like needing to pay tuition, needing to meet his obligations, financial obligations.[116]

Bar "Continuing Legal Education" trip. Creely GJ at 32 (Ex. 11). Caesars Palace records reflect that Creely gambled at that casino in January 1991.

[111] Creely GJ at 19-20. Creely also testified there may have been another trip to Mexico in 1995 when Judge Porteous was a Federal judge. He testified he knows he took Judge Porteous twice, and maybe a third time. Id. at 20-21.

[112] Creely GJ at 24-25 (Ex. 11).

[113] Levenson Dep. at 18-19 (Ex. 30).

[114] Gardner GJ at 23 (Ex. 33).

[115] Creely Dep. at 3 (Ex. 16).

[116] Creely Dep. at 6 (Ex. 16). Before the Grand jury, Creely testified: "Every time he came to us it was a car note he couldn't pay. His house was being foreclosed upon. He couldn't pay his kids' tuition." Creely GJ at 61 (Ex. 11). At the Fifth Circuit hearing, Creely stated that Judge Porteous requested the money "for various personal issues." . . . "[I]t would be things like tuition, different things that he needed in his—in his personal life." Creely 5th Cir. Hrg. at 199 (Ex. 12).

The amounts were as much as $500 to $1,000 and Creely never perceived these payments to be loans.[117] Creely explained that he and his partner, Amato, would take draws from the firm account in the form of checks payable to the two men, would cash the checks, and would give Judge Porteous the cash. When asked to describe the mechanics of how he would get the money to give to Judge Porteous, Creely testified:

> [I] think sometimes I had to go cash a check, take a draw, yes. Yes, sir. I did not always have money to hand him. I would have to get—I'd have to say, you know—"You know, his tuition's due. He can't pay his tuition, Jake [Amato]." And he'd say, "all right," you know. "How much money does he need?" And I would say five hundred or a thousand dollars, whatever. I'm just—and I wanna try to be fair to him, OK, to whatever number. And then we'd go get a check cashed and give him the money.[118]

Even though the requests were made to Creely, and the actual provision of money to Judge Porteous came from Creely, the payments to Judge Porteous were split 50-50 between Creely and Amato.[119]

Amato testified consistently as to Judge Porteous's reasons for needing money (as reported to Amato by Creely), the frequency of the requests, the procedures for getting the money to Judge Porteous, and the fact that the payments were split between Amato and Creely. Amato testified that "Bob [Creely] would come in and say, you know, 'Porteous is looking for money.'" After the request was made: "We both took draws to do it. We would split it. . . ." Amato characterized the reasons Judge Porteous gave as follows: "[H]e couldn't pay the tuition for his children. He was gonna lose his house. They were gonna take his car. His daughter was a maid in the Washington Ball and he needed money. Those are the kind of stories that I would get through Bob Creely that Porteous needed money. . . . [H]e [Judge Porteous] was always poor mouthing, you know, he was always busted. He always—you know, it was always a catastrophe. It was always something that, you know—that, you know, hard to ask a—it's hard to turn down a friend, you know."[120]

D. The Curatorship Kickback Scheme with Creely and Amato

1. Creely's and Amato's Testimony

Creely ultimately balked at providing monies to Judge Porteous. Creely testified: "I told him, quite frankly, I thought it was an imposition on our friendship for him to continue to ask me for money."[121] As Creely stated in his Task Force deposition: "I got

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[117] Creely Dep. at 7 (Ex. 16).

[118] Creely GJ at 50 (Ex. 11). See also Creely TF Hrg. I at 20 (Judge Porteous would ask for money for "tuition" and "living expenses").

[119] Creely Dep. at 8 (Ex. 16).

[120] Amato GJ at 25-28 (Ex. 18). See also Amato GJ at 61 (Ex. 18) (to obtain money Amato and Creely would each take a draw).

[121] Creely TF Hrg. I at 21.

tired of the requests for every request he made. I was tired of it." [122]

As a result of Creely's discontent, and in order to generate cash that Creely and Amato could then use to provide Judge Porteous money as he requested, Judge Porteous began increasingly to assign Creely "curatorships." [123] Judge Porteous took this initiative at a time when Creely was resisting giving him more money. Creely described how this scheme began as follows:

> [T]his borrowing turned into this, as you said, burden, and that's a good word 'cause I, you know, can use many words for it. But he—there was a time I said, you know, "I just can't keep doing this man, I can't keep supporting your family." . . .
>
> And so I told him I had to stop. I gotta stop doing this. All right . . . But he started sending curatorships over to my office. . . . And he would send like two or three at a time. . . .
>
> And he then started calling and saying, "Look. I've been sending you curators, you know. Can you give me the money for the curators?" I said, "Man." So I talked to my law partner. I said, "Jake, you know, man what do we do?" He says, "Well, just go ahead and give it to him." We decided to give him the money. We would deduct the expenses. We would pay income taxes on it. . . .
>
> But the practice became that he—and it got to the point that he would call my secretary and say, "Dianne, how may curators do I have over there?" And then she'd come in and it was like a—it was a bad deal. I mean, it's a bad feeling. OK. And she would say, she'd say, "Hey, you got four or five curators" and say, "He's calling wanting the money on [sic]." And I said, "Well, just go get two draws, one for Jake, one for me" and then I would give him the money. Either me or Jake would give him the money. [124]

Creely would receive a fee of approximately $200 for a curatorship, which went into the law firm accounts. Creely did not want these curatorships, [125] even though they involved minimal work. [126] Rather, Creely viewed these curatorships as "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." [127]

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[122] Creely Dep. at 7 (Ex. 16). Creely testified consistently before the Fifth Circuit: "[I] told him that I—we could not continue giving him money, I couldn't continue giving him money." Creely 5th Cir. Hrg. at 204 (Ex. 12).

[123] Creely described the duties of a curator as follows: "[W]hat you do is, you represent an absentee that they can't find. So when somebody would get their house foreclosed on and they would leave and they couldn't find them to serve them with the foreclosure proceedings the court would appoint a lawyer. And I would be the curator in the Porteous instances, in which case then I would have to—the bank would give me the last known address—write a letter, registered letter. Then I'd have to run an ad in the newspaper. And then I'd have to get a certified copy. . . . But a curator is to represent a person that they can't find." Creely GJ at 101-02 (Ex. 11).

[124] Creely GJ at 51-54 (Ex. 11).

[125] At the Task Force Hearing, when asked if he wanted Judge Porteous to assign him curatorships, Creely answered, "No, I did not," and testified they were not important to his business. Creely TF Hrg. I at 21-22.

[126] All the work, consisting primarily of placing notices in the newspapers and preparing routine notices to be filed with the court, was done by Creely's secretary.

[127] Creely 5th Cir. Hrg. at 209-10 (Ex.12).

This was not a dollar-for-dollar arrangement. At the Fifth Circuit Hearing, Creely testified that Judge Porteous received more than 50% of the curatorship fees. Creely also confirmed that the payments of the curatorship fees to Judge Porteous were at Judge Porteous's request.[128] Notwithstanding the mechanics of the scheme, Creely resisted characterizing it as a "kickback" scheme because Creely did not believe he was getting anything out of the arrangement:

> It had nothing to do with, "Look, why don't you give me these and I'll give you that back," or "Do something for me and—you know, and I'll give you this back." It was just—it just occurred that he—you know, he got the curator money.[129]

In the Task Force Hearing, Creely similarly resisted the use of the term "kickback" to describe the relationship, describing the fact that he had received the curatorships from Judge Porteous as a "justification to help him out so that I didn't have to go and spend my own money on him."[130] Nonetheless, Creely understood that Judge Porteous linked his assignment of curatorships to Creely's giving cash back to Judge Porteous.[131]

> Q. [Mr. Johnson] The curatorship process, you say that you would not—there was no agreement before this scheme started, but didn't it become apparent to you during the course of the curatorship scheme that this was a way of you being able to pay Judge Porteous?
>
> A. It evolved into that, yes. He began to rely upon the curators, began to call for them, and we rationalized he is asking for money, giving him the money. And it wasn't all of the money, but, yes, it—that is what it sounds like.[132]

Creely's partner, Amato, confirmed the essentials of this arrangement. Amato testified that "Mr. Creely came to me 1 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."[133] In response to questioning by Task Force Chairman Schiff, Amato testified:

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[128] Creely 5th Cir. Hrg. at 208-09 (Ex. 12).

[129] Creely 5th Cir. Hrg. at 209-10 (Ex.12). The term "kickback" is occasionally used in this Report notwithstanding Creely's resistence to it, and notwithstanding the evidence that suggests that he and Amato were not thrilled about this financial relationship, about engaging in these acts to give Judge Porteous money at Judge Porteous's instigation.

[130] Creely TF Hrg. I at 23.

[131] From Creely TF Hrg. I at 23:

> Q. [S]o he was taking official acts [assigning curatorships] to enrich himself, correct?
>
> A. [Creely] I can't speak for him, but that was my understanding.

[132] Creely TF Hrg. I at 38.

[133] Amato TF Hrg. I at 100. He also testified before the Task Force: "[J]udge Porteous sent curator cases to Bob Creely and at some point asked that he be—receive some of that money." Id. Amato has been consistent throughout his various appearances. Before the grand jury, Amato testified that Judge Porteous "would send curatorships to Bob Creely and then he would ask Bob to, you know, 'I need some money for one of these catastrophes. And, you know, I've sent you 10 or 15 or 20' or however many 'curatorships so, you know, send me a check or' not 'Send me a check.' But you know, 'I need some money.'" Amato GJ at 61 (Ex. 18). At the Fifth Circuit Hearing, he testified: "At some point in time when Judge Porteous was on the State

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Q. [Mr. Schiff] [W]as there ever any doubt in your mind that what he [Judge Porteous] was asking for during the period he was sending you curatorships was part of the money he was sending you for the curatorships?

A. No, no doubt. [134]

Amato knew that giving money to Judge Porteous was wrong. [135] When asked whether he felt he had a choice as to giving Judge Porteous money, he replied: "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." [136]

2. Judge Porteous's Statements About His Financial Relationship with Amato and Creely at the Fifth Circuit Hearing

In his testimony at the Fifth Circuit Hearing, Judge Porteous confirmed the essential aspects of his receiving cash from Amato and Creely at the Fifth Circuit Hearing. He admitted that: 1) he received cash from Creely and Amato; 2) at some time, Creely expressed his displeasure with giving him cash; and 3) thereafter his receipts of cash were linked to his assigning Creely curatorships. At that Hearing, he testified:

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. [137]

Judge Porteous also admitted that these transactions "occasionally" followed his assignment of curatorships to Creely, though he claimed he did not know if the amounts paid back to him "matched each time" the curatorship fees. [138]

Furthermore, Judge Porteous confirmed that he started assigning Creely the curatorships after Creely expressed resistance to giving Judge Porteous money:

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. [139]

Judge Porteous implied in his cross-examination of Creely and Amato at the Fifth Circuit Hearing that he gave Creely and Amato the curatorships so they would have funds to pay an individual

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bench, Bob Creely started getting a number of curator cases. And after a period of time that that went on, Bob came to me and said that, 'The judge is—Judge Porteous wants some of the curator fees. What should we do?' . . . Well, I told him I didn't like the idea but I guess it's something we had to do." Amato 5th Cir. Hrg. at 238 (Ex. 20).

[134] Amato TF Hrg. I at 107.

[135] Amato TF Hrg. I at 111.

[136] Amato TF Hrg. I at 101.

[137] Porteous 5th Cir. Hrg. at 119 (Ex. 10).

[138] Porteous 5th Cir. Hrg. at 130-33 (Ex. 10).

[139] Porteous 5th Cir. Hrg. at 134 (Ex. 10).

they had hired at Judge Porteous's request. Amato denied this to be the case and Creely did not recall it.[140]

3. Judge Porteous's Knowledge of Amato's Financial Participation

Even though Judge Porteous's requests for and receipts of cash went through Creely, the evidence establishes that Judge Porteous knew that the monies coming back to him were from Amato as well. Judge Porteous was close to Amato, had practiced with him, and the Amato-Creely partnership was well-known. When asked at the Task Force Hearing if Judge Porteous would have known the money was coming from Amato as well as Creely, Amato responded: "Of course. We owned our own office building. We had checks. We had business cards. We filed pleadings and, you know, Amato and Creely, a professional law corporation."[141]

Further, Judge Porteous, in questioning Amato at the Fifth Circuit Hearing, evidenced his understanding that the money provided to Judge Porteous came from Amato in addition to Creely:

> Q. [J]ust so I'm clear, this money that was given to me, was it done because I'm a judge, to influence me, or just because we're friends?
>
> A. Tom, it's because we were friends and we've been friends for 35 years. And it breaks my heart to be here.[142]

4. Frequency and Amounts of Cash from Amato and Creely

Throughout the various proceedings—the DOJ investigation, the Fifth Circuit Hearing, and the Task Force Inquiry—efforts have been made to quantify the amounts of cash given to Judge Porteous by Creely and Amato. Creely's and Amato's estimates have varied.

a. Grand Jury Testimony

In his March 2006 questioning before the grand jury, Creely estimated that the total amount given to Porteous could have been more or less than $10,000.

> Q. And how much cash we're talking about?
>
> A. [I] don't know how much it is. I mean, it could be $10,000. It could be less than that.[143]

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[140] Creely 5th Cir. Hrg. at 232-33 (Ex. 12); Amato 5th Cir. Hrg. at 260-62 (Ex. 20). In any event, this would not provide any legitimate basis for curatorship fees to have been given back to Judge Porteous.

[141] Amato TF Hrg. I at 100. Amato elaborated in his deposition: "[W]e had a professional law corporation, Amato and Creely, PLC. We filed tax returns. We had office signs. We had cards, checks. We owned the office building together. . . ." "[W]e had a pension profit sharing plan. . . ." He went on to testify:

> Q. Now, in the course of those encounters from your vantage point, would Judge Porteous have known that you and Bob were true, full-blown partners?
>
> A. I don't, I don't know anything else we could have done to indicate otherwise.
>
> * * *
>
> Q. And following up, therefore, on the previous set of questions, is there any question in your mind that Judge Porteous would have known that the money that was coming back from Mr. Creely for those curatorships was an equal part money coming from you?
>
> A. I would, I would think so. I mean, I, I don't know what was in his mind, but I would think he would imagine that, you know.

Amato Dep. at 5-7 (Ex. 24).

[142] Amato 5th Cir. Hrg. at 258-59 (Ex. 20).

[143] Creely GJ at 44 (Ex. 11).

In his May 2006 questioning before the grand jury, Amato testified that the amount was greater than $10,000 and less than $50,000, agreeing that it was "probably" over $10,000, but "I don't think it ever approached anywhere near [$50,000].[144]

b. Fifth Circuit Hearing

In October 2007, before the Fifth Circuit, Creely was asked how much he and Amato gave to Judge Porteous. He responded: "I would say approximately $10,000 thereabout. Maybe more than that but at least 10,000."[145]

In response to questioning by Judge Benavides, Amato testified consistently with his grand jury testimony as to the frequency and total amount of the cash requests—this time agreeing that it could be from $10,000 to $20,000:

> A. It has just—it's been so long ago and so much water under the bridge since then, I can't tell you specifically how many draws we took, how much money we gave, and when did we give it to him.
>
> Q. All we need is an amount.
>
> A. It was never an amount that was astonishing. It was always a couple thousand dollars.
>
> Q. A couple thousand dollars sometimes every 6 months and sometimes every three or 4 weeks?
>
> A. Yeah, but, I mean, it wasn't a constant thing. It wasn't, you know, "Look, I expect a check every Thursday" or Friday for 2 weeks or anything like that, no.
>
> * * *
>
> Q. All right. But there's no doubt that there had been, you say, not more than $50,000; but would be fair to say ten to twenty thousand dollars in cash?
>
> A. I would say, yes, close to that.[146]

In his testimony before the Fifth Circuit, Judge Porteous admitted receiving cash from Amato and Creely, but would not be pinned down on an amount. He did not deny that the total amount could have been in excess of $10,000. He 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.
>
> * * *
>
> 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.

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[144] Amato GJ at 36-37 (Ex. 18). Amato testified that he thought all the funds given to Judge Porteous came from the "curatorship" scheme. Amato 5th Cir. Hrg. at 242 (Ex. 20).
[145] Creely 5th Cir. Hrg. at 201 (Ex. 12).
[146] Amato 5th Cir. Hrg. at 242, 247 (Ex. 20).

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. [147]

c. Task Force Inquiry—Creely and Amato Depositions

In Creely's Task Force Deposition, he stated that the amount paid to Judge Porteous by Amato and himself was close to $20,000 (including approximately $2,500 paid in 1999, discussed below). He testified:

Q. What is your best feel for how much that [what you and Amato gave Judge Porteous] would have amounted to?

A. During the twenty year period of time he was on the bench, it would be about $10,000 a piece.

Q. So that would be about $20,000; is that right?

A. Yes.

Q. And this was all cash, correct?

A. Yes. [148]

At his deposition, Amato acknowledged that the amount could have even been greater than $20,000:

Q. Now, referring again to these monies from the curatorships, at some point in prior testimony the amount of $10,000 was used to describe in some sense the amount of monies which had come from you and Creely to Judge Porteous when he was a State judge. If upon the analysis of the curatorship records the amount proves to be greater by some substantial amount, is that a fact that you would take dispute with?

A. No. I don't—I have no idea how much the curators amounted to.

Q. Okay. So if it was over 20,000 or over 30,000 or whatever the dollar amount is, that is not an amount that you would disagree with?

A. Right. [149]

d. Task Force Hearing Testimony

At the Task Force Hearing, Creely, consistent with his deposition testimony, estimated the amount that he and Amato paid to Judge Porteous was approximately $20,000. [150]

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[147] Porteous 5th Cir. Hrg. at 118-19 (Ex. 10).
[148] Creely Dep. at 8-9 (Ex. 16).
[149] Amato Dep. at 7-8 (Ex. 24).
[150] Creely TF Hrg. I at 24.

Amato, like Creely, estimated at the Task Force Hearing that the amount was "over $10,000, but how much over, I don't know." [151] He did not disagree with Creely's estimate that the amount could have been as much as $20,000. [152]

e. Analysis of the Curatorship Records from the 24th Judicial District Court

Subsequent to Creely's deposition but before Amato was deposed, the Task Force obtained from Amato a computer printout of records that were retained in his office's computer system that listed the curatorships assigned to Creely. [153] The printout revealed that Creely had over 350 curatorships assigned to him (from all judges—not just Judge Porteous) in the late 1980's (when the firm's financial records were first computerized) and early 1990's. Of the cases listed in that printout, the Clerk's Office of the 24th Judicial District Court ("24th JDC") located and made certified copies of the curatorship cases that, based on case assignment information, appeared to be the ones that were most likely to have been handled by Judge Porteous. Those records have been provided to the Task Force. The analysis of those records reflects the following:

Total number of curatorships assigned to Creely: 350

Total number of these cases located by the 24th JDC Clerk's Office: 209

Total number of theses cases assigned to Creely by Judge Porteous: 192

The reimbursement amount to Creely would have started at $150 in 1988, increased to $200 sometime in 1988, and stayed at $200 until 1994. The payment to Creely for the 192 curatorships that have been identified is approximately as shown in the following chart: [154]

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[151] Amato TF Hrg. I at 101. See also Amato TF Hrg. I at 108 (agreeing that the total amount was "in the neighborhood of 10 [thousand] to 20 thousand [dollars]").

[152] Amato TF Hrg. I at 101.

[153] Ex. 193. These were identified by Amato's long-time accountant Jody Rotolo. See also Rotolo Dep. (Ex. 191). Mr. Amato provided the records to the Task Force without a subpoena.

[154] This chart has been marked as Ex. 190. A similar chart, used at the November 17, 2009 Task Force Hearing, listed 191 curatorship cases. Further review has identified an additional curatorship assigned by Judge Porteous to Creely, and has revealed a few changes in the amounts in some of the years. The curatorships are listed on the Exhibit List as Exhibits 189(1) through 189(227), and includes a few curatorships that were assigned to Creely by other judges.

Table 1. Fees Received by Creely from Curatorships Assigned by Judge Porteous

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	$6,000
1994	20 x $200	$4,000
TOTAL	192	$37,500 - $38,400

Thus, the best evidence to date is that a minimum, Judge Porteous assigned curatorships to Creely resulting in Creely receiving fees amounting to over $37,500 from 1988 through 1994.

E. Cash and Things of Value from Gardner

Donald Gardner was another attorney from whom Judge Porteous asked for money and other things of value, and who also ended up as an attorney in the *Liljeberg* case discussed below. His testimony, including his description of Judge Porteous's behavior, is consistent with (and thus serves to corroborate) the testimony of Creely and Amato.

As to requests for cash, Gardner testified he gave Judge Porteous money on more than one occasion, at least sometimes in connection with Judge Porteous's gambling. Gardner's grand jury testimony does not pin him down on the frequency of these events or the dates they occurred:

> I wouldn't say often, but when I was with Tom [Porteous], he'd come up to me . . . Donnie, you got $200? Can I borrow $200 from you? I'm a little short. I'd give him the $200. Can I borrow $100 from you? You know. And I'd give it to him. [155]

Similarly:

> I think he [Porteous] was always short. I think that's why, you know, he would ask me from time to time for money for stuff, you know, to buy gifts, to do this or whatever.
>
> At the gambling casinos at the CLE [Continuing Legal Education trips], you know, I remember. . . . I gave him a couple hundred dollars. He, you know, Donnie, I'm bust-

[155] Gardner GJ at 31 (Ex. 33).

> ed. You got a couple hundred dollars on you? Like I said, I didn't gamble. I always had money if you don't gamble. [156]

At the Fifth Circuit Hearing, Gardner estimated the amount he gave Judge Porteous to be "[p]robably less than [$]3,000." [157] Gardner agreed with the questioner that his payments to Judge Porteous were "in small amounts, like $300 or a hundred dollars, when he [Judge Porteous] would ask." [158] Gardner specifically recalled an instance when he gave Judge Porteous $200 so that Judge Porteous could buy a Christmas present (drinking glasses) for his wife. [159] In the grand jury, Gardner testified that the total amount was more like $2,000:

> Q. How many times did he ask you for cash in the amount of—in the range of a hundred dollars or in the range of between fifty and a hundred dollars?
>
> * * *
>
> I'm asking in total.
>
> A. In total from the time I've known Tom to present, most of it was before he was a Federal judge. But I would imagine that the total would be close—and I keep going through adding it up in my mind—$2,000, give or take. [160]

Gardner also recalled paying for some home improvements (hanging fans, paying a sheet rock installer), paying to have Judge Porteous's car towed when it broke down, as well as buying Judge Porteous an expensive fountain pen. [161]

As he did with Creely, Judge Porteous assigned Gardner curatorships. Gardner denied that Judge Porteous asked for cash back from these appointments. [162]

Judge Porteous called Gardner as a witness on his behalf at the Fifth Circuit Hearing. In response to questioning from Judge Porteous at that Hearing, Gardner testified as follows:

> When we were practicing lawyers, we were Christmas shopping for the wives; and I believe that you had bought a gift and you were short. And you asked me if I had some money on me. You wanted to buy some glasses—glasses, and I think I gave you some money then.

---

[156] Gardner GJ at 62-63 (Ex. 33). Gardner provided more detail in his deposition testimony, testifying: "[On occasions] when we were at CLE [Continuing Legal Education], he would come up and say, 'Don, you got a hundred dollars?' And sometimes I'd give him a couple 20's. I'd give him—I'd count out five 20's or a hundred dollars. But I have to tell you, there was never any occasions where Tom Porteous ever asked me for any large sums of money or did I give him that. It would just be, 'Hey, I'm short. You've got a few dollars?'" Gardner Dep. at 32 (Ex. 36).

[157] Gardner 5th Cir. Hrg. at 461 (Ex. 32).

[158] Gardner 5th Cir. Hrg. at 467 (Ex. 32).

[159] Gardner GJ at 31-32 (Ex. 33).

[160] Gardner Dep. at 32-33 (Ex. 36).

[161] Gardner GJ at 32-34 (Ex. 33); Gardner 5th Cir. Hrg. at 468 (Ex. 32).

[162] Gardner 5th Cir. Hrg. at 464 (Ex. 32). There might have been as many as one per month on the average. Gardner Dep. at 24-25 (Ex. 36). Gardner testified he received 50 curatorships from Judge Porteous, if not more. This would have meant approximately $10,000 in fees. (The curatorship reimbursement rates at the applicable time period were $150 and $200.) Even if Judge Porteous did not have the same understanding with Gardner as he did with Creely regarding the curatorships, it is significant that Judge Porteous assigned the curatorships to an individual who in turn was spending money on him on a regular basis. It is reasonable to conclude that Judge Porteous knew and intended that by assigning Gardner curatorships, he was generating cash for Gardner that Gardner could, in turn, use for Judge Porteous's benefit.

> At various times, you'd asked me for this or that when we were out either eating or drinking and I'd advance it to you or give it to you. I did so as a friend. [163]

At the Fifth Circuit Hearing, Judge Porteous admitted receiving cash from Gardner prior to his becoming a Federal judge.

> Q. Now, other than Messrs. Amato and Creely, who else had—what other lawyers—lawyer friends of yours have given you money over the years?
>
> A. Given me money?
>
> Q. Money, cash.
>
> A. Gardner may have. Probably did.
>
> * * *
>
> Q. And when is the last time Mr. Gardner gave you money?
>
> A. Before I took the Federal bench, I'm sure.
>
> Q. Okay. And do you recall how much?
>
> A. Absolutely not. [164]

F. CREELY'S STATEMENTS AS PART OF JUDGE PORTEOUS'S BACKGROUND CHECK

In August 1994, Creely was interviewed by the FBI as part of Judge Porteous's background check. The FBI write-up of the interview reports:

> CREELY has never known the candidate to use illegal drugs or to abuse alcohol or prescription drugs. . . . CREELY advised that he knows of no financial problems on the part of the candidate and the candidate appears to live within his economic means. [165]

In his August 28, 2009 Task Force deposition, Creely was questioned about his statements concerning Judge Porteous's drinking habits and financial circumstances. Although Creely stated that Judge Porteous "drank excessively," and that "he did, in my opinion, drink a lot," he also stated that Judge Porteous "was a very intelligent man" and that "[h]is drinking in no way impaired his ability as a judge." [166] In his Task Force Hearing testimony, Creely

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[163] Gardner 5th Cir. Hrg. at 461 (Ex. 32). Judge Porteous asked for and accepted money from Gardner to buy a Christmas present for his wife:

> We [Judge Porteous and Gardner] were shopping one Christmas and he wanted to buy Mel [Judge Porteous's wife Carmella]—we would go out for Christmas and try to find a gift for our wives, and he wanted toasting glasses. He was short and he asked me, he says, "Don, can I borrow $200 for toasting glasses?"
>
> They were in the 160, 180 range. And I had it on me because I had Christmas money and loaned it to him.

Notwithstanding Gardner's use of the word "loan," Judge Porteous never repaid him. Gardner Dep. at 34-35 (Ex. 36).

[164] Porteous 5th Cir. Hrg. at 129 (Ex. 10).

[165] Creely FBI Interview, Aug. 1, 1994, PORT 0477-78 (Ex. 69(b)) (also marked as Creely Dep Ex. 50 (Ex. 250)).

[166] Creely Dep. at 11, 13, 14 (Ex. 16).

acknowledged having seen Judge Porteous in circumstances in which Judge Porteous had obviously abused alcohol.[167]

As to Judge Porteous's financial circumstances, Creely testified both at the Task Force Hearing and during his deposition that his statements to the FBI were not truthful. In his deposition, Creely testified:

> Q. [I]f the FBI's write-up of its interview with you indicated that you, and I'm quoting, "advised that [you] knew of no financial problems on the part of the candidate and the candidate appears to live within his economic means," do you have any reason to doubt that you said that?
>
> A. No sir.
>
> Q. And that wouldn't have been true, would it? That would not have been true, because, in fact, you did know that he had financial problems, correct?
>
> A. Yes.[168]

Creely stated he made those statements because he held Judge Porteous in "very high esteem," had a lot of affection for him, and would not have wanted to do anything to harm his candidacy for the Federal judgeship."[169] Before the Task Force, Creely testified: "I didn't want to do anything to impede his [Judge Porteous's] advancement. He was a friend. He was a very manipulative friend. And I didn't want to—I didn't want to hurt the guy.[170]

G. THE *LILJEBERG* PROCEEDINGS

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"].*[171] This case involved a dispute between a hospital and a pharmacy, and implicated 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 Porteous in January 1996. The matter was particularly contentious, with millions of dollars at stake.

1. September-October 1996—Amato and Levenson Are Hired by the Liljebergs; Lifemark files a Motion to Recuse Judge Porteous

The *Liljeberg* case was set for a non-jury trial before Judge Porteous beginning on November 4, 1996. On September 19, 1996, approximately 6 weeks prior to the scheduled trial date, the Liljebergs filed a motion to enter the appearances of Amato and Levenson as their attorneys.[172] As Amato described it: "I was approached by a lawyer by the name of Ken Fonte who represented the Liljebergs and asked if I would be interested in the case. And I told him 'I'm always interested in litigation and I would take a

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[167] Creely TF Hrg. I at 25.
[168] Creely Dep. at 13 (Ex. 16).
[169] Creely Dep. at 12 (Ex. 16).
[170] Creely TF Hrg. I at 25.
[171] Civ. Action No. 93-1794 (E.D. La.). See PACER Docket Report (Ex. 50).
[172] The Motion by the Liljebergs to enter the appearance of attorneys Amato and Levenson was dated September 16, 1996 (Ex. 51(a)). Judge Porteous granted the motion on September 26, 1996 (Ex. 51(b)).

look at the case.'"[173] According to Amato, the Liljebergs "were looking for people [attorneys] who were, you know, not only competent, but had some rapport with the court."[174] Amato and Levenson were hired on a contingent fee basis, that is, they would not receive anything unless the Liljebergs prevailed.[175] Amato estimated that if the Liljebergs prevailed at trial, his fee would have been between $500,000 and $1,000,000.[176] The motion to enter Amato's appearance clearly identified him with the firm "Amato and Creely."[177] Amato described the case as "exceptionally important" to him.[178]

The decision of the Liljebergs to add Amato and Levenson so close to the trial date aroused the concerns of Lifemark's lawyer, Joseph Mole, who spoke to other attorneys who knew Judge Porteous, Amato and Levenson:

> I learned that—from people who would talk to me . . . —that Mr. Levenson and Mr. Amato were very close to Judge Porteous, that Mr. Amato had been his law partner, as had Mr. Creely—Amato and Creely was the firm—and Mr. Levenson was very close to Judge Porteous and had—I think had been to a fifth circuit conference or two as Judge Porteous's guest, that they frequently socialized in—in the way of lunches, hunting trips, and things like that, and that they—I also knew—well, I formed the opinion that there was—there was a high likelihood that the case—it was a bench trial. There was no jury. So it would be entirely a decision by the judge in a case that had been valued as high as $200 million for my client that the case would be handled in the way by the judge that would be favorable to his friends, and that was of deep concern.[179]

On October 1, 1996, Mole, on behalf of his client Lifemark, filed a motion to recuse Judge Porteous. The motion focused on the appearance of impropriety suggested by the fact that just weeks prior to trial, the Liljebergs retained two lawyers who were close friends with Judge Porteous, neither having particular expertise in complicated business litigation.[180]

Lifemark's recusal motion did not allege an actual conflict of interest or that Amato (or his partner Creely) had given money to Judge Porteous because Lifemark's counsel (Mole) had no idea what, if anything, Amato (or Creely) had ever given to Judge Porteous.[181] If he had known of prior cash dealings between Judge Porteous and Amato, he would have used that fact in his mo-

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[173] Amato GJ at 41 (Ex. 18).
[174] Amato GJ at 42 (Ex. 18).
[175] Amato GJ at 44 (Ex. 18). See also, Motion to Recuse, Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La.) (Oct. 1, 1996) at 3 (stating that Levenson and Amato were to receive a contingent fee) (Ex. 52).
[176] Amato GJ at 50 (Ex. 18). Amato stated he believed that the Liljebergs had a good case. Amato GJ at 54 (Ex. 18).
[177] Ex Parte Motion of Liljeberg Enterprises Inc. To Substitute Counsel, Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La.) (Sept. 16, 1996) (Ex. 51(a)).
[178] Amato TF Hrg. I at 102.
[179] Mole TF Hrg. I at 141. See also Mole 5th Cir. Hrg. at 168 (Ex. 65); Mole GJ at 9-10 (Ex. 64).
[180] Motion to Recuse, Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La.) (Oct. 1, 1996) (Ex. 52).
[181] Mole 5th Cir. Hrg. at 169-70 (Ex. 65).

tion,[182] and he believed that if a prior financial relationship existed recusal would have been mandatory.[183] Further, Mole believed recusal would have been required even if the relationship were between Judge Porteous and Creely, and not Judge Porteous and Amato, because Creely and Amato were partners and it was the firm Amato & Creely that had entered its appearance for Lifemark—not just Amato.[184]

Because he was unaware of a prior financial relationship, as Mole himself described: "[I] danced around that issue [of a financial relationship] pretty carefully because I didn't want to accuse the judge that was going to try my case of doing something of which I had no evidence."[185] Thus, Mole argued "that the judge shouldn't be handling a case where two of his closest friends, if not his very closest friends, had just signed up 6 weeks before trial, whose facts had been in litigation since 1987 in one court or another, and that I didn't believe they had anything to add, other than their relationship with the judge, and that if the result came out in a certain way, it would create an appearance that things had not been right."[186]

As to the appearance of impropriety, the recusal motion stated:

> Your Honor's relationship with Messrs. Amato and Levenson is well known to the legal community. It needs no elaboration in this memorandum. This would be of no concern were it not for the timing of their addition, and the fact that the [Liljebergs] clearly believe that influence with governmental bodies, including judges, can be bought.
>
> * * *
>
> Under the circumstances, it is respectfully submitted that Your Honor is duty bound to remove any appearance of impropriety. In spite of Your Honor's attempts to be fair, the obviousness of the Liljebergs' intentions, coupled with the timing of the hiring of these lawyers, will always leave questions in the eyes of any objective observer, the "man in the street," who is aware of the Court's relationship with Messrs. Amato and Levenson and the Liljebergs' attitudes toward the political and judicial systems. [citation omitted.] Under such circumstances, Lifemark suggests that Your Honor, the Federal courts, and the litigants in this case (including the Liljebergs) are all best served by Your Honor's recusal.[187]

The Motion went on to argue that the applicable standard for review of Judge Porteous's role was "how things appear to the well informed, thoughtful and objective observer, rather than the hypersensitive, cynical and suspicious person."[188]

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[182] Mole GJ at 14 (Ex. 64). The various investigations have not disclosed that Levenson gave Judge Porteous cash at any time.
[183] Mole TF Hrg. I at 142.
[184] Mole TF Hrg. I at 142.
[185] Mole 5th Cir. Hrg. at 171 (Ex. 65).
[186] Mole TF Hrg. I at 141-42.
[187] [Lifemark's] Motion to Recuse, Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La., Oct. 1, 1996) [hereinafter "Motion to Recuse"] at 3, 5-6 (Ex. 52).
[188] Motion to Recuse at 7 (citing United States v. Jordan, 49 F.3d 156, 156 (5th Cir., 1995)) (Ex. 52).

The Liljebergs filed their Opposition dated October 9, 1996, signed by Levenson;[189] Lifemark filed its Reply to the Opposition, dated October 11, 1996;[190] and the Liljebergs filed a Memorandum in Opposition to Lifemark's Reply, dated October 15, 1996, again signed by Levenson.[191] 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:"

> In its original supporting memorandum, Lifemark uses terms such as "close," "extremely close" and "closest" to characterize the relationship between the Court and Messrs. Amato and Levenson. . . . However, such vague superlatives provide absolutely no information upon which an objective, thoughtful and well-informed person could reasonably rely in determining whether grounds exist to question the Court's impartiality.
>
> * * *
>
> Lifemark presents no evidence that a reasonable person would attribute to the mere existence of a friendly relationship a significant likelihood that a judge would violate Federal law and subordinate his oath of office just to help a lawyer earn a fee.[192]

Judge Porteous, of course, knew that his respective relationships with Amato and Creely went well beyond the "mere existence of a friendly relationship."

2. Judge Porteous's Statements at the Recusal Hearing

On October 16, 1996, Judge Porteous held a hearing on the recusal motion. Both Levenson and Amato were present. In that hearing, the following colloquy occurred:

> 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.[193]
>
> * * *
>
> Mr. Mole:

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[189] [The Liljebergs'] Memorandum in Opposition to Lifemark's Motion to Recuse Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La., Oct. 9, 1996) [hereinafter "Memorandum in Opposition"] (Ex. 53).

[190] Lifemark's Reply Memorandum to Liljeberg Enterprises, Inc.'s Opposition to Motion to Recuse, Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La., Oct. 11, 1996) [hereinafter "Lifemark's Reply to the Liljeberg's Opposition"] (Ex. 54).

[191] Memorandum of Liljeberg Enterprises, Inc. and St. Judge Hospital of Kenner La., Inc., in Opposition to Reply Memorandum of Lifemark on Motion to Recuse, Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La., Oct. 15, 1996) (hereinafter "Liljeberg's Opposition to Lifemark's Reply") (Ex. 55).

[192] Liljeberg's Opposition to Lifemark's Reply at 2 (Ex. 55).

[193] Transcript of Proceedings, Plaintiff's Motion to Recuse, Lifemark Hospitals, Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-179-4-T (E.D. La., Oct. 16, 1996) (hereinafter "Recusal Hearing Transcript") at 4 (Ex. 56).

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

* * *

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. [194]

* * *

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: The first time I ran, 1984, I think is the only time when they gave me money. [195]

* * *

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. [196]

* * *

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

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[194] Recusal Hearing Transcript at 6-7 (Ex. 56).

[195] Recusal Hearing Transcript at 8 (Ex. 56). Judge Porteous spent several transcript pages on the issue of whether the attorneys had given him campaign contributions and challenged Mole on that issue:

> [D]on't misstate, don't come up with a document that clearly shows well in excess of $6700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for All Program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers.

Recusal Hearing Transcript at 10 (Ex. 56).

[196] Recusal Hearing Transcript at 10-11 (Ex. 56).

> 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." [197]

Judge Porteous denied the recusal motion after the argument in open court on October 16, 1996. The complete written opinion signed the following day states:

> 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. [198]

Lifemark sought a writ of mandamus from the Fifth Circuit. That petition was also denied. [199]

3. Discussion of the Recusal Hearing

The attorneys—Levenson and Amato—made no factual disclosures. Amato, who was present in the courtroom during the recusal hearing, viewed the issue of disclosure and recusal to be Judge Porteous's issue—not Amato's. He thus took his lead as to disclosure from Judge Porteous, and was not going to embarrass the judge by stating that in the past he and his partner had given Judge Porteous tens of thousands of dollars funded by curatorships assigned by Judge Porteous. As Amato testified at his Task Force deposition:

> Q. Okay. Now, in connection with that motion to recuse Judge Porteous, would it be fair to say that you considered it really Judge Porteous'[s] decision as to whether or not he should be recused?

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[197] Recusal Hearing Transcript at 17-19 (Ex. 56).

[198] Judgment [Denying Motion to Recuse], Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La., Oct. 17, 1996) (Ex. 57).

[199] Petition for Writ of Mandamus, Brief of Petitioner [Lifemark], In re: Lifemark Hospitals of Louisiana, Inc., No. 96-31098 (5th Cir., Oct. 24, 1996) (Ex. 58); Order [Denying Petition for Writ of Mandamus], In re: Lifemark Hospitals of Louisiana, Inc., No. 96-31098 (5th Cir., Oct. 28, 1996) (Ex. 59).

A. Oh, absolutely.

Q. And would it be fair to say that you followed his lead in terms of disclosures which could be made or should be made relative to your relationship with Judge Porteous?

A. Yes. That Porteous—that was Porteous'[s] obligation.

* * *

Q. . . . Was the fact that you all had given back to Judge Porteous money from the curators disclosed in the course of the Liljeberg litigation?

A. No, it was not disclosed.

Q. And if that, if that was a fact that could have or should have been disclosed, that was really in your mind something that Judge Porteous would have to do?

A. Yes. [200]

Amato, in the Task Force Hearing, before the Fifth Circuit, and in the grand jury, has acknowledged the materiality of this prior relationship to Judge Porteous's handling of the recusal motion. [201]

With Amato and Levenson remaining silent in the courtroom, the only factual disclosures about the relationships were made by Judge Porteous, and these were limited to the facts 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 was "the only time when they gave me money."

Judge Porteous did not mention that Amato, through his firm Amato & Creely, had given him thousands of dollars in cash, including monies funded through the assignment of curatorships to Creely. And, as discussed, Judge Porteous would have known, and in fact subsequently acknowledged, that the funds paid by Creely under that arrangement came from Amato as well. Judge Porteous did not address Mole's specific statement that he [Mole] had heard Judge Porteous had traveled with the attorneys, and thus, did not disclose, for example, that he had gone to Las Vegas with Levenson (and shared a room with him) and had gone hunting and fishing with Amato and Creely on several occasions. Judge Porteous also failed to disclose that Amato and Creely paid for his party to celebrate his appointment to the Federal bench. [202]

Judge Porteous's statement denying that he had ever been to either one of their houses suggests a relationship that is totally at odds with the truth of their respective associations. He 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. . . ." And, by suggesting merely that he had "dinner with" or "gone along to lunch with" the

[200] Amato Dep. at 8-10 (Ex. 24).

[201] See also Amato TF Hrg. I at 103; Amato 5th Cir. Hrg. at 248 (Ex. 20); Amato GJ at 57 (Ex. 18).

[202] There is also some evidence that Judge Porteous's secretary, Rhonda Danos, had solicited Amato, Creely and Levenson to help pay for his son's expenses when Judge Porteous was a State judge.

two men, with no elaboration, he affirmatively concealed what was really the truth: that Amato and Levenson had paid for hundreds of his lunches and dinners at expensive restaurants for a decade or longer. Judge Porteous affirmatively attempted to divert the hearing from the true issues raised in the recusal motion by spending considerable attention on the issue of whether the attorneys had given him campaign contributions—denying that fact—and criticizing Lifemark's attorney for raising the issue.[203]

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 with the issue having been raised. The most significant instance of this conduct 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.[204]

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.

4. March 1997—Lifemark Hires Gardner

Lifemark, having lost the recusal motion, felt that it was necessary to "level the playing field," and thus hired Don Gardner to be part of its trial team.[205] Lifemark's pleading to the court entering the appearance of Gardner was date-stamped March 11, 1997.[206] As Mole described:

> Q. Why was Gardner then brought in by Lifemark?
>
> A. After we lost the motion to recuse, my client and I discussed that—and my client insisted that we try to find a lawyer who, like Mr. Amato and Mr. Levenson, was a friend with the judge and knew him very well. They were concerned that they would do everything they can to achieve a level playing field. I resisted doing that. I am not happy with the fact that we did it. But my client insisted, and so we did it.[207]

Even Gardner recognized: "[T]hey [Lifemark] wanted to have a friendly face."[208] Lifemark's contract with Gardner provided that Gardner would be paid based on the results of the case, that he would be guaranteed $100,000 simply for entering his appearance, and that he would receive another $100,000 if Judge Porteous withdrew or if the case settled.[209] As Mole bluntly testified at the Fifth Circuit Hearing:

> Q. So is it fair to say this term [the $100,000 guaranteed payment] also shows that the purpose that Don Gard-

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[203] Recusal Hearing Transcript at 8-10 (Ex. 56).
[204] Recusal Hearing Transcript at 18 (Ex. 56).
[205] Mole 5th Cir. Hrg. at 174 (Ex. 65); Mole GJ at 18 (Ex. 64).
[206] Ex Parte Motion of Lifemark to Enroll Additional Counsel of Record (Don Gardner), Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. Action No. 93-1794 (E.D. La., Mar. 11, 1997) (Ex. 60(a)).
[207] Mole TF Hrg. I at 143; Mole 5th Cir. Hrg. at 174-75 (Ex. 65).
[208] Gardner 5th Cir. Hrg. at 462 (Ex. 32).
[209] Mole 5th Cir. Hrg. at 177-80 (Ex. 65); Mole GJ at 21-22 (Ex. 64).

ner came in the litigation was because of his relationship with Judge Porteous?

A. Yeah. Embarrassing but true. [210]

5. June and July 1997—Trial

Judge Porteous conducted a bench trial in the *Liljeberg* case in June and July 1997. [211] Amato handled a substantial portion of the trial for the Liljebergs. [212]

One incident during the trial is noteworthy. Judge Porteous played an active role in examining some of Lifemark's witnesses, and at one point in the proceedings near the end of the day, Lifemark's attorney, Mole, sought permission to ask additional questions of the witness after Judge Porteous's examination. Judge Porteous lost his temper at Mole, and though the descriptions of the event vary, Judge Porteous ended up knocking or throwing some of the evidence binders that were in front of him in the direction of Mole. When the parties returned to court the following trial day, which was after an intervening weekend, Judge Porteous stated for the record his position, and then permitted Mole to ask additional questions. [213]

At the conclusion of the trial in July 1997, Judge Porteous took the case under advisement. He did not issue his opinion until April 26, 2000, nearly 3 years after trial.

H. Judge Porteous's Declining Financial Circumstances—1996 Through 2000

Judge Porteous's financial circumstances in the years preceding his filing for bankruptcy in 2001 are discussed in the next section. However, in order to understand Judge Porteous's behavior in accepting and soliciting things of value from attorneys during the pendency of the *Liljeberg* case (and to appreciate his dependency on attorneys and others to support his lifestyle), it is useful to note the decline of Judge Porteous's financial situation during the period 1996-2000.

At the end of 1996, a few months after the October 1996 recusal hearing, Judge Porteous had credit card debt of approximately $45,000, and a balance in his individual retirement account (IRA) of $59,000. Over the next 4 years, he gradually drew down his IRA account, frequently to pay off his credit cards. By April 2000, he had credit card debt of $153,000, and an IRA balance of $12,000.

By the time he rendered his decision in the *Liljeberg* case in April 2000, Judge Porteous was just weeks away from consulting with a bankruptcy attorney. [214]

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[210] Mole GJ at 28 (Ex. 64).

[211] The Court's "PACER" Docket Report reveals that the trial took place from June 16, 1997 through June 27, 1997, then started again on July 14, 1997 and concluded July 23, 1997. (Ex. 50).

[212] Amato GJ at 48 (Ex.18).

[213] Mole TF Hrg. I at 144; Levenson Dep. at 41-42 (Ex. 30); Transcript(s) of Proceedings (Excerpts), Lifemark Hospitals of La., Inc., v. Liljeberg Enterprises, Inc., Civ. No. 93-CIV-1794 (E.D. La.) (Excerpts of Non-Jury Trial, July 17, 1997 and July 21, 1997) (Ex. 61).

[214] As described in the Bankruptcy Section of this Report, Judge Porteous's debts were largely a result of gambling.

I. JUDGE PORTEOUS'S RELATIONSHIPS WITH AMATO, LEVENSON, AND GARDNER WHILE HE HAD THE *LILJEBERG* CASE UNDER ADVISEMENT (JULY 1997-APRIL 2000)

During the period from July 1997 through the issuance of his verdict for the Liljebergs in April 2000, with millions of dollars for the parties and substantial fees for the attorneys at stake, Judge Porteous continued to seek and accept things of value from Amato, Creely, Levenson and, to a lesser extent, Gardner.

1. Meals

Amato continued to take Judge Porteous to lunches after the *Liljeberg* trial and prior to Porteous's ruling in that case. As Amato testified in his Task Force appearance:

> Q. After the trial, did you continue to take Judge Porteous to lunch on a regular basis?
>
> A. Judge Porteous and I have been eating lunch together for—since we have known each other, yes.
>
> Q. Okay. And some of them . . . involved you eating well at Ruth's Chris Steak House, the Beef Connection, Andrea's, Emeril's, and so forth, correct?
>
> A. Yes, we had a nice—we had a good time.
>
> * * *
>
> Q. So I am talking about roughly summer of 1997 to April 2000, and that is the period that you have just testified that, as part of your whole life, you took him to restaurants that we have just mentioned, correct?
>
> A. Right.[215]

The Department subpoenaed Amato's calendar and corresponding credit card records reflecting meals he bought for Judge Porteous starting in 1999. From 1999 to April 2000 (during which the *Liljeberg* case was pending), the following chart reflects some of the meals attended by Judge Porteous and paid for by Amato.[216]

[215] Amato TF Hrg. I at 103-04. See also Amato Dep. at 17-18 (Ex. 24) (paying for Judge Porteous's meals at restaurants such as Beef Connection, Ruth's Chris Steak House, and Dickie Brennan's while Liljeberg case was pending).

[216] Exs. 21(b)-(c). By virtue of the limited records, the chart does not include all instances where there is a calendar entry mentioning Judge Porteous but no corresponding credit card charge, and also does not include meals for which there is no entry on Amato's calendar.

Table 2. Selected Meals Provided by Amato to Judge Porteous (1999-2000)

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]
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]

Gardner also testified that he took Judge Porteous to meals while the *Liljeberg* case was pending. Specifically, Gardner testified he took Judge Porteous to the following restaurants when Judge Porteous was a Federal judge: Ruth's Chris Steak House ("more than six [times]."[217]); Mr. B's ("four or five times a year"[218]); Emeril's ("on occasions"[219]); Brennan's/Dickie Brennan's ("I've been to Dickie Brennan's I guess with Tom Porteous three or four times during that period of time"[220]); NOLA's ("[t]hree or four times"[221]),

[217] Gardner Dep. at 16 (Ex. 36).
[218] Gardner Dep. at 15-16 (Ex. 36).
[219] Gardner Dep. at 16 (Ex. 36).
[220] Gardner Dep. at 16-17 (Ex. 36).
[221] Gardner Dep. at 17 (Ex. 36).

and Metro Bistro ("a little more frequent [than NOLA's]"[222]). For each of these restaurants, there are charges on Gardner's American Express account from approximately 1994 through 2000, including charges during the roughly 3 year period spanning Gardner's appearance as an attorney in the *Liljeberg* case (early 1997) to the issuance of Judge Porteous's decision (April 2000).

Though Gardner could not identify specific meals during this time frame as being ones where he paid for Judge Porteous, the charges on Gardner's American Express card identify the likely meals, and provide a sense of what the meals would have cost. For example, Gardner testified he took Judge Porteous to NOLA's, Dickie Brennan's or Brennan's "three or four times." Charges on Gardner's credit card between 1997 and 1999 (when *Liljeberg* was pending and when Gardner represented Lifemark) at those restaurants were as shown in the following chart:

Table 3. Selected Meals Provided by Gardner to Judge Porteous (1997-1999)

Date	Restaurant	Amount
April 12, 1997	NOLA's	$ 203.01
June 28, 1997	NOLA's	$ 231.10
June 29, 1997	Brennan's	$ 205.20
September 8, 1997	NOLA's	$ 86.27
January 30, 1998	NOLA's	$ 142.10
December 22, 1998	NOLA's	$ 385.76
January 25, 1999	Dickie Brennan's Steakhouse	$ 95.02
February 23, 1999	Dickie Brennan's Steakhouse	$ 143.38
July 1, 1999	Dickie Brennan's Steakhouse	$ 82.60
August 9, 1999	NOLA's	$ 110.53
December 28, 1999	NOLA's	$ 308.42

From August 1994 through February 2000, Gardner had over 30 charges at Ruth's Chris Steak House, 16 charges at Emeril's, over 30 charges at Mr. B's, and 23 at the Metro Bistro—consistent with his testimony as to other places he frequently took Judge Porteous.

2. May 1999—Creely Helps Pay for Bachelor Party Trip to Las Vegas

In connection with his son Timothy's bachelor party, Judge Porteous went on a trip from May 20-23, 1999 (while Liljeberg was pending) with several of his friends, including Creely and Gardner, to Las Vegas, Nevada. Creely paid for Judge Porteous's room and

[222] Gardner Dep. at 17 (Ex. 36).

for a portion of Timothy's bachelor party dinner during that trip.[223]

As to Judge Porteous's room, Caesars Palace records reflect that Judge Porteous's room was charged to Creely's credit card number.[224] Judge Porteous also seemed to recall that Creely paid for his room.[225]

As to the bachelor party meal at a steakhouse, Creely testified:

> [A]nd in these charges [on my credit card], all right, is a meal for the bachelor party meal, OK, that we went out on, and the way all that—$560.48. And the way I recall what happened, there's no way that all these people could eat for $500 at a steak house, drinking and eating. The way I recall, is that there were a number of people that, after the meal and the bill came out, that put up the credit card to pay for the meal. . . . There were a number of credit cards put up to have the tip and the bill divided among everybody.[226]

Creely recalled that Judge Porteous did not share the cost of this meal.[227] Creely's American Express records also revealed a charge of $560.48 at the steakhouse.[228]

Gardner also went to Las Vegas on the bachelor party trip.[229] Gardner denied paying anything for Judge Porteous on that trip.[230]

3. June 1999—Judge Porteous Solicits and Accepts Money from Amato

On June 28, 1999—after his son's wedding and prior to issuing his decision in *Liljeberg*—Judge Porteous solicited money from Amato. This request was made while the two men were on a fishing trip. Amato identified the date of the fishing trip—June 28, 1999—by reference to an entry on his calendar.[231] At the Task Force Hearing, Amato recalled the amount requested by Judge Porteous as being $2,500.[232] Amato described the incident as follows:

> It was a weekday, and a friend of mine has a fairly large boat, and we were going to Caminada Pass, which is the pass at Grand Isle, and at certain times of the year, the fish run between the Gulf of Mexico and the marsh. And the fish just at night, they bubble up. They come to the surface, and it is a free-for-all. So we went fishing that night. Judge Porteous was drinking. We were standing on the front of the boat, the two of us, and he was—I don't know how to put it. He was really upset. He was—had a few drinks. He said, "My son's wedding was more than I anticipated. The girl's family can't afford it. I invited too many guests." Would I lend him, give him, provide him,

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[223] Creely GJ at 39-40 (Ex. 11).
[224] Caesars Palace Record (Ex. 377); Creely American Express Record for May 1999 (Ex. 378).
[225] Porteous 5th Cir. Hrg. at 140 (Ex. 10).
[226] Creely GJ at 40 (Ex. 11).
[227] Creely GJ at 41 (Ex. 11).
[228] Creely American Express Record for May 1999 (Ex. 378).
[229] Porteous 5th Cir. Hrg. at 194 (Ex. 10); Gardner 5th Cir. Hrg. at 465 (Ex. 33).
[230] Gardner 5th Cir. Hrg. at 465-66 (Ex. 32).
[231] Amato Dep. at 11-13 (Ex. 24); Amato Dep. Ex. 83 (Ex. 283).
[232] Amato Dep. at 13 (Ex. 24).

> however you want to call it, something, like $2,500, to pay for part of the wedding or the after-rehearsal party or something? [233]

Notwithstanding Amato's use of the term "lend" in describing Judge Porteous's request of him, Amato was clear: "I didn't believe I was gonna be paid back." [234] Amato testified he gave Judge Porteous cash. [235] Amato described this incident consistently at the Fifth Circuit Hearing, [236] and further testified that he recalled providing the cash to Judge Porteous in a bank envelope. [237]

Creely recalled and corroborated critical aspects of that incident as well. Specifically, Creely was asked whether Judge Porteous requested money when he was a Federal judge:

> [I] know one occasion that I remember. And it was an occasion and it was May 1999. I have it written on my calendar. And it has at the bottom of the page "Fishing Mitch Martin." And Mitch Martin is a friend of ours that had a boat. . . . I didn't go on this trip.
>
> [B]ut after this trip that—this one trip—I do recall my law partner [Amato] went fishing with him—I didn't go on this fishing trip—he [Amato] came back and said, "The judge was crying about not being able to pay for a wedding of some sort for his daughter. I don't know what it was. But I think it had something to do with a wedding or something. And he said, ["]He's crying." And he said, "What do I do[?"] I said, "I don't know what to tell you to do. It ain't even me." And I believe he gave him the money and I gave my law partner back half of the money or—I don't know how that happened. But I do know he asked for that money and it was given to him. [238]

Creely recalled "that I gave my law partner a thousand dollars, which means he gave him [Judge Porteous] $2,000," [239] and that Judge Porteous's secretary, Rhonda Danos, picked up an envelope with the cash. [240] Creely also testified he told Judge Porteous it was not appropriate for him to be sending his secretary to pick up the money. [241]

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[233] Amato TF Hrg. I at 104-05. See also Amato GJ at 19-20 (Ex. 18) ("The only time Judge Porteous ever asked me for money was when his first son got married. I went fishing, an overnight fishing trip, and him and I were standing on the bow of the boat and he told me that his son's wedding cost more than the bride's family anticipated because he invited too many guests and could I lend him some money.").

[234] Amato GJ at 21 (Ex. 18).

[235] Amato GJ at 20-24 (Ex. 18).

[236] Amato 5th Cir. Hrg. at 240 (Ex. 20).

[237] Amato GJ at 64 (Ex. 18).

[238] Creely GJ at 59-60 (Ex. 11). Notwithstanding minor discrepancies (the fishing trip was June 1999, not May; the wedding was for Judge Porteous's son, not daughter), Creely's testimony was consistent with Amato's.

[239] Creely GJ at 61 (Ex. 11). At the Fifth Circuit Hearing, Creely testified that he recalled the request being a tuition expense, but confirmed that he recalled the amount as $2,000. Creely 5th Cir. Hrg. at 212-14 (Ex. 12).

[240] Creely 5th Cir. Hrg. at 214 (Ex. 12).

[241] Creely 5th Cir. Hrg. at 215 (Ex. 12). Amato was asked whether he recalled an incident where Judge Porteous's secretary picked up the money. He replied "I don't recall that, but I don't say that it didn't happen. You know, it well may have happened." Amato 5th Cir. Hrg. at 241 (Ex. 20).

Danos recalled picking up envelopes of money or having envelopes delivered from Creely and Amato. In response to questions from the attorneys, she identified that as having occurred in the May-June 1999 time frame. Danos 5th Cir. Hrg. at 421-22 (Ex. 43).

Judge Porteous, testifying in the Fifth Circuit hearing, denied recollection of the specific circumstances in which he made a request to Amato, but did not deny that the conversation occurred. He admitted that he actually received money from Amato for the purposes Amato described, and that the money 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 Mr. 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. [242]

* * *

Q. [W]hether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2,000 shortly thereafter?

A. Yeah. Something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope, or anything about it.

* * *

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. [243]

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[242] Porteous 5th Cir. Hrg. at 121 (Ex. 10).
[243] Porteous 5th Cir. Hrg. at 136-37 (Ex. 10).

4. Payments for "Externship" for Judge Porteous's Son

At some point in time—and the best evidence suggests that it occurred during the pendency of the *Liljeberg* case—Judge Porteous and his secretary, Rhonda Danos, solicited the four attorneys to contribute to an "externship" for Judge Porteous's son. As Danos testified: "I pretty much knew who to call," identifying Levenson, Creely, and Amato among others.[244] She testified that all the attorneys contributed, and indicated that as a general matter they gave $500.[245]

Amato recalled that "I just remember that some sort of way that . . . Timmy or Tommy needed money to go to Washington, and they were passing the hat."[246] He testified he contributed a few hundred dollars.[247]

Levenson testified that Danos solicited him for funds for Judge Porteous's son: "[I] recall Rhonda [Danos] saying that they were trying to have some friends help him with—I don't know if it was travel expenses or living expenses of something so that he could go to Washington" and that Levenson gave Rhonda "a couple hundred dollars."[248]

Gardner recalled being asked by Judge Porteous himself. He testified: "[T]o the best of my recollection . . . he [Judge Porteous] says that Tommy or one of his sons, and I think it's Tommy, had the opportunity to extern and whatever. It was a golden opportunity, but that there were some expenses resulting as a result of it. And I think at that point in time I may have volunteered to give him $200 to do that. . . . I don't know if I gave it to Tommy or gave it to his secretary or whatever."[249] Gardner placed the externship as occurring sometime in 1998, 1999 or 2000, that is, while the *Liljeberg* case was pending.[250]

5. Five Year Anniversary Party—Fall 1999

Amato and Creely also 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 former clerks and other attorneys were invited.[251] This would have been in late 1999, during the pendency of the *Liljeberg* case.[252] Danos and Judge Porteous's courtroom deputy clerk, Ricky Windhorst, recalled this party as

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[244] Danos Dep. I at 21-22 (Ex. 46). Rhonda Danos was deposed twice, first on Aug. 25, 2009, referenced as "Danos Dep. I (Ex. 46)," and on December 3, 2009, referenced as "Danos Dep. II (Ex. 47)."

[245] Danos Dep. I at 22 (Ex. 46).

[246] Amato Dep at 21-22 (Ex. 24).

[247] Amato TF Hrg. I at 104 ("I recall that . . . one of his children were coming to Washington to extern, I think, for Senator Breaux, and they were looking for contributions to defray the cost.").

[248] Levenson GJ at 64-65, 66 (Ex. 25).

[249] Gardner GJ at 74 (Ex. 33); Gardner 5th Cir. Hrg. at 468 (Ex. 32); Gardner Dep. at 26-27 (Ex. 36).

[250] Gardner 5th Cir. Hrg. at 471 (Ex. 32); Gardner Dep. at 26 (Ex. 33). The dates of the payments, and the son (or sons) for whom the payments were made, is not entirely clear from the record, though Amato, Gardner and Danos all recall these requests being made.

Danos generally recalled there were two externships. She was "pretty sure one of them was when [Judge Porteous] was, was [a] State [judge]. The other may have been when we were in Federal court." Danos Dep. I at 21 (Ex. 46). However, whether these requests and payments were made prior to the Liljeberg proceeding or while the decision was pending (or, as appears likely, whether there were two externships, one in each time-frame), it was never disclosed to Lifemark that Judge Porteous (through Danos) had ever requested, and that Amato and Levenson had paid, monies to help support Judge Porteous's son or sons.

[251] Amato TF Hrg. I at 105.

[252] The date is not noted on Amato's calendar.

well.[253] Amato estimated the amount of the party as approximately $1,500.[254]

6. Continued Association and Travel with Levenson while Liljeberg was Pending

During the 1996-2000 time frame, Judge Porteous maintained a close relationship with Levenson, characterized by the two men traveling together on several occasions. On some of those occasions, Levenson purchased meals and drinks for Judge Porteous.

Meals and Drinks at the Jefferson Bar Association Events in Biloxi, Mississippi. Levenson has stated he paid for meals and drinks for Judge Porteous and others at the annual Jefferson Bar Association events held in April of the various years, though he does not recall specific meals. His credit card records reflect a charge of $197.24 for food at the "Isle of Capri" restaurant in Biloxi on April 15, 1999, and a charge for $405.38 at that same restaurant on April 14, 2000. It is likely he paid for Judge Porteous at one or both of these meals.[255]

Hunting Trips at Attorney Allen Usry's Mississippi Property 1996-1998. From 1996 through 1998, there were one or two hunting trips that included Levenson, Judge Porteous, and other associates of Judge Porteous (including a neighbor and a now-deceased bankruptcy judge). Allen Usry, an attorney who on occasion worked with Levenson, recalled that Levenson and Judge Porteous came to his property to hunt on two occasions during the period after fall of 1996 (that is, after Levenson entered his appearance in the Liljeberg case) through 1998. Usry recalled that "probably both [hunting trips] . . . [b]ut at least one for sure" occurred in this period.[256] Levenson recalled one such trip.[257]

Trip to Washington D.C. for Mardi Gras—February 1999. In 1999, Judge Porteous's daughter was made a "Princess" in connection with an event generally referred to as Mardi Gras in Washington D.C. This event consisted of meals, drinking, and other entertainment. Levenson traveled to Washington D.C. with Judge Porteous for this event. It appears that Judge Porteous paid his own airfare and hotel charges. Levenson stated he would not have paid for meals, because the meals were provided at that event, "[b]ut I'm sure we probably had a round of drinks, several of us at the bar, that I would have paid for."[258]

Trip to Houston for the Fifth Circuit Judicial Conference—April 1999. In April 1999, Levenson went to Houston as Judge Porteous's invitee for the Fifth Circuit Judicial Conference.[259] Levenson paid for meals and drinks for Judge Porteous, including a meal at a res-

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[253] Danos Dep. I at 35-37 (Ex. 46).

[254] Amato Dep. at 14-15 (Ex. 24). In his deposition he estimated $1,500. At the Task Force Hearing Amato estimated $1,700. TF Hrg. I at 119.

[255] Levenson Expense Records (Ex. 26). The "Isle of Capri" was the hotel where the restaurant was located. Levenson has stated that if Judge Porteous was present, it is likely that he (Levenson) would have taken Judge Porteous (among others) to that restaurant, and though he did not have a specific memory of each dinner, he had taken Judge Porteous to dinner at the Isle of Capri restaurant on at least one occasion. Levenson Dep. II at 9 (Ex. 31). Judge Porteous's credit card records reflect that he was in fact in Biloxi, Mississippi, at these Bar events in both 1999 and 2000. Though Judge Porteous's attendance at the 2000 dinner is not certain, that dinner would have been just a few weeks prior to Judge Porteous issuing his opinion in the Liljeberg case.

[256] Usry Dep. at 20 (Ex. 163).

[257] Levenson Dep. at 8-10 (Ex. 30).

[258] Levenson Dep. at 23 (Ex. 30).

[259] Levenson Expense Records (Ex. 26).

taurant called "Americas" (for which there is a charge of $574.71 on his credit card) and other food or drinks at "Delmonico's" restaurant (for which there are charges amounting to over $200 on Levenson's credit card).[260]

Las Vegas—October 1999. In October 1999, Levenson was in Las Vegas at the same time as Judge Porteous. "I don't recall traveling with him. I do remember going to a national bull riding championship with him out there."[261] Levenson recalled paying for a dinner with Judge Porteous, and confirmed that the "Aqua" restaurant charge of $256 reflected in his hotel records corresponds to that meal.[262]

Hunting trip at the Blackhawk Hunting Facility—December 1999. Usry was offended by the behavior of Judge Porteous and his friends during prior hunting trips at his property—stemming from their drinking—and falsely told Judge Porteous he had sold his Mississippi property so he would not have to invite Judge Porteous back. In December 1999, Levenson and Usry planned to go with Judge Porteous and another friend of Usry's to the "Blackhawk" hunting facility in Louisiana. Usry recalled that he was going to pay for his friend and that Levenson would pay for Judge Porteous. Usry's calendar reflected that this trip was planned for December 7-10, 1999.[263]

A few days prior to the trip, Usry's friend had a health emergency that made it impossible for him to go on the trip, so Usry cancelled as well, leaving Levenson and Judge Porteous to go alone.[264] Levenson testified that either he, Usry, or some combination of the two of them ended up paying for Judge Porteous.

> Q. What do you recall about the payment for yourself and Judge Porteous at this lodge?
>
> A. I know I was supposed to make a payment. I don't recall whether or not I made any payment, and I was unable to find any records where I had made any payments, but I was certainly supposed to pay for myself and a portion of some of the other [persons] which would have included Judge Porteous.[265]

Trip to Houston for the Fifth Circuit Judicial Conference—May 2000. In May 2000, less than 2 weeks after the *Liljeberg* case was decided, Levenson went to San Antonio, Texas, to accompany Judge Porteous to the annual Fifth Circuit Judicial Conference.[266] Levenson confirmed he paid for two dinners for Judge Porteous,

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[260] Levenson Dep. II at 11-12 (Ex. 31). Levenson's Hotel Bill reflecting charges at "Delmonico's," and his credit card statement reflecting a dinner at "Americas" are marked as part of Levenson Dep. II Ex. 91 (Ex. 291) (LEV 048, 043).

[261] Levenson Dep. at 19 (Ex. 30). Caesar's Palace records reveal that Judge Porteous was there from October 27-29, 1999. (Ex. 299).

[262] Levenson Dep. II at 11-12 (Ex. 31). Levenson's Hotel Bill reflecting charges totaling more than $300 at "Aqua" is marked as part of Levenson Dep. II Ex. 91 (Ex. 291) (LEV 034).

[263] Usry Dep at 14 (Ex. 163); Usry Dep. Ex. 86 (Ex. 286).

[264] Levenson Dep. at 10-13 (Ex. 30). Levenson confirmed that he went on this trip with Judge Porteous. Efforts have been made to establish whether Levenson paid for Judge Porteous and, if so, what amount. Judge Porteous's records do not reflect that he paid for the Blackhawk trip; but he had only a few months before asked Amato for money, and the evidence demonstrated that he hardly ever paid for his own hunting. The Levenson financial records that were obtained during the Department's investigation do not include his 1999 American Express records. Blackhawk no longer possessed the pertinent 1999 records.

[265] Levenson Dep. II at 5 (Ex. 31).

[266] Levenson Expense Records (Ex. 26). The records were obtained subsequent to Levenson's deposition, and he was not questioned about these charges.

and his credit card reflects charges of $322.16 at the "Little Rhein Steakhouse" (on May 7, 2000), and $201.33 at "L'Etoile" for food (on May 9, 2000).[267]

7. Conversations with Amato while the Liljeberg Case was Pending

Amato testified that Porteous made occasional comments to him acknowledging that he [Judge Porteous] knew that Amato was waiting for the opinion to be issued. Amato interpreted Judge Porteous's comments as being favorable, and testified that he believed that Judge Porteous was going to rule for him.[268]

8. These Items of Value were not Disclosed to Lifemark

Notwithstanding Judge Porteous's statement at the 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, Creely, or Levenson in order to give Mole the opportunity to move to recuse.

Mole testified he was unaware that Judge Porteous requested money from Amato, and that Amato gave him money:

> Q. Were you aware of any cash changing hands in '99 during the pendency of this suit?
>
> A. No. I 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.[269]

Mole similarly denied knowing or being informed "that Mr. Amato and Mr. Levenson took Judge Porteous out to lunch on a number of occasions;" that "Mr. Amato and Mr. Levenson contributed money to Judge Porteous to help pay for some type of intern or externship for one of Judge Porteous's sons;" "that Amato had paid about $1,500 for a party to celebrate Judge Porteous's fifth year on the bench;" and that "with regard to Mr. Levenson, . . . that he had, in fact, traveled to Washington with Judge Porteous at the end of January 1999, that he traveled to Houston with Judge Porteous in April 1999, that he was in Las Vegas with Judge Porteous in October 1999, and that Levenson and Judge Porteous went on hunting trips together, including a hunting trip to a hunting lodge in December 1999." As Mole testified: "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."[270]

At the Fifth Circuit Hearing, Judge Porteous cross-examined Mole to elicit the fact that Gardner went on the Las Vegas bachelor party trip as well.

> Q. Are you aware that, again, while this case was under advisement, that your counsel Mr. Gardner accom-

[267] Levenson Dep. II at 16-17 (Ex. 31). Levenson's credit card statement reflecting these payments are marked as part of Levenson Dep. II Ex. 91, at 16-17 (Ex. 291).
[268] Amato Dep. at 18-20 (Ex. 24).
[269] Mole 5th Cir. Hrg. at 193 (Ex. 65).
[270] Mole TF Hrg. I at 159.

panied me and my family to Las Vegas for a bachelor party?

A. No, I did not know that.

Q. So, he went—if I represent to you that he went, do you find anything wrong with that?

A. You know, I find something wrong with the whole system that allows that to happen, Judge Porteous. So, yeah, I do.

Q. Okay. But if he—should I have recused because I went with Gardner?

A. Well, I'm not the judge here but——

Q. I'll withdraw that question.

A. Yeah, you should. I think you should. [271]

J. APRIL 2000—JUDGE PORTEOUS RULES FOR THE LILJEBERGS; AUGUST 2002—CASE REVERSED BY THE FIFTH CIRCUIT COURT OF APPEALS

On April 26, 2000, Judge Porteous issued a written opinion ruling for Amato's and Levenson's clients, the Liljebergs.

In ruling for the Liljebergs, Judge Porteous concluded that Lifemark—a lender to the Liljebergs—had breached certain duties it purportedly owed to the Liljebergs in connection with a $44 million loan to construct a hospital. Lifemark's loan to the Liljebergs was secured by hospital property owned by the Liljebergs. In 1993, Lifemark had failed to take certain steps to secure its debt—it was required to "reinscribe" its lien in the appropriate land and title records for the lien to remain in effect and had failed to do so. As a result, another entity—Travelers—which had obtained an unrelated $7.8 million judgment against the Liljebergs, was able to file a lien on the property and place itself in the prime position ahead of Lifemark, which had by its inaction lost its security interest. Travelers, now in the prime position, executed its $7.8 million judgment on the property, forcing its sale in 1994. The property was sold for $26 million—approximately $7.8 million of which went to Travelers, and $18 million to Lifemark (now sitting in the second position).

The Liljebergs alleged (and Judge Porteous found) that Lifemark's failure to "reinscribe" its lien breached a duty Lifemark purportedly owed to the Liljebergs, and that because of that breach, Travelers was able to move to the front of the line (ahead of Lifemark) and foreclose on the Liljebergs' property, in this way damaging the Liljebergs. Judge Porteous made this finding despite the fact that Travelers could have executed on the property even in second position behind Lifemark, and even though the Liljebergs could have "reinscribed" the Lifemark lien themselves. In his April 2000 opinion, Judge Porteous ordered that the 1994 judicial sale be

[271] Porteous 5th Cir. Hrg. at 194 (Ex. 10).

"undone."[272] This was extraordinary relief that the Liljebergs had not even requested.[273]

Lifemark appealed Judge Porteous's decision to the Fifth Circuit. In August 2002, the Fifth Circuit Court of Appeals, in striking language, rejected Judge Porteous's conclusions that Lifemark's failure to preserve its own security interests gave the Liljebergs grounds for complaint. The Fifth Circuit characterized various aspects of Judge Porteous's ruling as "inexplicable," "a chimera," "constructed entirely out of whole cloth," "nonsensical," and "absurd":

> The extraordinary duty the district court imposed upon Lifemark, who loaned the money to build the hospital and held the mortgage on it to secure its payment, is inexplicable. Whatever duty Lifemark may have owed as the pledgee of the collateral mortgage note, they do not include a requirement that Lifemark reinscribe the mortgage executed in Lifemark's favor to secure a debt owed by [the Liljebergs][274] to Lifemark, in order that the mortgage may retain priority for Lifemark's benefit as pledgee and mortgagee. As Lifemark aptly points out, ordinarily a debtor such as [the Liljebergs] is happy to have its creditor fail to record its lien. We reject the assertion that Lifemark as the mortgagee here owed a duty to its mortgagor to reinscribe the mortgage, as illustrated in part, indeed, by the very difficulty of describing exactly how not protecting a mortgage[e]'s first position, in and of itself, could possibly harm the mortgagor.
>
> * * *
>
> Nor can this theory explain how it can lie beside the undisputed right of Lifemark Hospitals, Inc. to, "at any time, without notice to anyone, release any part of the Property from the effect of the Mortgage." . . . The grant of a security interest to secure [the Liljebergs'] debt was to protect the lender, Lifemark Hospitals, Inc., not the borrower.
>
> Nor did Lifemark as mortgagee have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did. . . . This is a mere chimera, existing no-

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[272] On this point, Gardner testified he and Judge Porteous had the following off the record conversation:

> At the end of that day's testimony when that was resolved, Mr. Levenson and myself went back to talk about the next day, and Judge Porteous commented about the thing. He says, "I'm really having some problems with Lifemark not reinscribing their mortgage and allowing another creditor to jump ahead of that." Because they allowed the foreclosure in effect by not reinscribing their mortgage.
>
> And I said to him, I said, "Judge"—I may have said "big boy" because I was friendly with him, but we were not in court. And I said, "I don't care who you are. No Federal judge"—because I'm very familiar with State law in foreclosures. I did a lot of them at [a prior law firm]. "You cannot overturn a State court foreclosure absent fraud." And those people [the Liljebergs] put no evidence whatsoever on about any fraud, because they [Lifemark] had a right not to reinscribe their mortgage. They were perfectly in their legal rights the way they went about it.

Gardner Dep. at 53-54 (Ex. 36).

[273] Mole TF Hrg. I at 160.

[274] The Liljebergs owned and operated an entity called "St. Jude." Throughout this discussion, for simplicity's sake, "St. Jude" will be replaced by "[the Liljebergs]."

> where in Louisiana law. It was apparently constructed out of whole cloth. [275]

Judge Porteous offered a second ground for undoing the judicial sale, namely, that there was a conspiracy by Lifemark to wrest control of the hospital from the Liljebergs. Evidence of the conspiracy included the fact that Lifemark failed to reinscribe its lien and thus permitted Travelers to initiate foreclosure proceedings. This was also rejected by the Fifth Circuit as "border[ing] on the absurd" and "close to being nonsensical":

> [T]he district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from [the Liljebergs] and Liljeberg Enterprises border on the absurd. . . .
>
> The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or [the Liljebergs'] losses were caused by Lifemark. Specifically, not reinscribing the collateral mortgage and not buying out the Travelers lien and adding the Travelers debt to the debt owed by [the Liljebergs] to Lifemark. . . . The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law. [footnote omitted]
>
> The theory that Lifemark proximately caused any loss to Liljeberg Enterprises or [the Liljebergs] from the Travelers foreclosure on its judicial mortgage cannot accommodate the undisputed fact that, under Louisiana law, [the Liljebergs] could have reinscribed the collateral mortgage itself. [footnote omitted] . . . That it could have and did not do so is telling. It rends a large hole in the conspiracy claim and leaves [the Liljebergs'] inaction unexplained. . . .
>
> * * *
>
> [T]he idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment, to wit, approximately $7.8 million, to Travelers at any judicial sale, comes close to being nonsensical. [276]

After the case was reversed by the Fifth Circuit, the parties settled. [277]

IX. THE FACTS UNDERLYING ARTICLE II—JUDGE PORTEOUS'S CORRUPT RELATIONSHIPS WITH BAIL BONDSMAN LOUIS M. MARCOTTE, III, AND LORI MARCOTTE

A. INTRODUCTION

In the early 1990's, while a State judge in the 24th Judicial District Court (the "24th JDC") located in Gretna, Louisiana, Judge Porteous formed a relationship with local bail bondsman Louis M.

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[275] In the Matter of: Liljeberg Enterprises, Inc., 304 F.3d 410, 428-29 (5th Cir. 2002) (Ex. 63).
[276] Id. at 431-32 (footnote omitted) (Ex. 63).
[277] Mole GJ at 41-42 (Ex. 64).

Marcotte, III, and his sister, Lori Marcotte, who operated a bail bonds company called Bail Bonds Unlimited (BBU). That relationship was characterized by a course of conduct whereby the Marcottes provided numerous things of value to (then) State judge Porteous, and Judge Porteous in turn took numerous steps in his official capacity to assist the Marcottes in their bail bonds business. Judge Porteous was instrumental to the Marcottes in their ability to expand their business in the 24th JDC.

Ultimately, the Marcottes' conduct and their relationship with State judges and other State law enforcement officials came under investigation. In the late 1990's, after Judge Porteous had become a Federal judge, the FBI, working with the United States Attorney's Office for the Eastern District of Louisiana, conducted the "Wrinkled Robe" investigation, targeting public corruption in the setting of bonds in the 24th JDC. This investigation included wiretaps and other covert methods, and resulted in convictions of Louis Marcotte, Lori Marcotte, another BBU employee (Norman Bowley), two State judges (Ronald Bodenheimer and Alan Green) and several other State law enforcement officials.

The role Judge Porteous played in the inception of the corrupt scheme is discussed generally in the FBI's August 2001 affidavit in support of its request to obtain wiretaps. That affidavit described how the Marcottes had provided Judge Porteous (referred to as "JUDGE #2" in the Affidavit) with meals and a trip to Las Vegas and that Judge Porteous had expunged a conviction of a Marcotte employee. The Affidavit cited specific instances where Judge Porteous set bonds at the Marcottes' request in order to benefit the Marcottes financially. The affidavit concluded that the "pattern of illegal activity has been occurring for at least the last 8 years [*i.e.,* from 1993 to 2001] beginning with [Judge Porteous]."[278] However, as DOJ noted in its 2007 Complaint Letter to the Fifth Circuit, the corrupt relationship between Judge Porteous and the Marcottes that occurred while Judge Porteous was a State judge, even if it were clearly of a criminal nature, could not have been the subject of a criminal prosecution as part of Wrinkled Robe, because it was barred by the applicable statute of limitations.[279]

The FBI's perception of Judge Porteous's central role in the corruption in the 24th JDC has been confirmed by the Marcottes in their Task Force Hearing testimony and in their respective depositions. Not only did Judge Porteous set bonds at the Marcottes' request, but because Judge Porteous was an influential judge on the 24th JDC, the Marcottes were able to trade and build on their close relationship with him to form corrupt relationships with other judges. Significantly, though the Marcottes would give things of value to other judges and law enforcement officials who helped them throughout the 1990's and into the 2000's, several of whom were subsequently convicted of Federal corruption offenses, they each perceived Judge Porteous to be the single most significant judge in assisting them in their business.

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[278] Affidavit in Support of Application, In the Matter of the Application of the United States of America for an Order Authorizing the Interception of Wire Communications, Misc. No. 01-2607 (E.D. La., Aug. 27, 2001) (redacted) at 136 (Ex. 69(f)).

[279] The DOJ Complaint Letter stated: "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." DOJ Complaint Letter at 1 (Ex. 4).

Louis Marcotte testified:

Q. Now, of all the judges who have helped you, where would you rank Judge Porteous?

A. Number one.

Q. Okay. You didn't even hesitate in that response, did you?

A. No.

Q. And you're certain of that; is that right?

A. Yes. [280]

Lori Marcotte, Louis's sister, who ran the company with Louis, testified similarly:

Q. Who was the single most important judge [to] the success of your company, in the 24th Judicial District Court?

A. Tom Porteous.

Q. Is there any question in your mind about that?

A. No. [281]

Even as a Federal judge, Judge Porteous took steps to help the Marcottes maintain and expand their business. He lent his status as Federal judge and reputation on their behalf, notwithstanding his knowledge of their corrupt acts. In particular, Judge Porteous vouched for the Marcottes with newly elected State judges and other judicial officers, and helped the Marcottes secure and cement relationships—including a corrupt relationship with one judge in particular, former State Judge Ronald Bodenheimer. Judge Porteous undertook these efforts while accepting numerous expensive meals from the Marcottes.

Two other incidents that reflect actions taken by Louis Marcotte for the benefit of Judge Porteous are noteworthy. First, in 1994, Louis Marcotte was interviewed by the FBI as part of its background check of Judge Porteous in connection with his nomination to be a Federal judge. Louis Marcotte was not candid with the FBI as to his knowledge of Judge Porteous's activities. Second, in 2003, when he was under criminal investigation, Louis Marcotte prepared an affidavit that generally attempted to exculpate Judge Porteous. As discussed below, that affidavit was misleading, if not false.

B. Overview—the Impact of Louisiana State Judges on the Bail Bonds Businesses

In the 24th JDC where Judge Porteous presided as a State judge until October 1994, the practices of the State judges in setting bonds had enormous financial impact on those in the bail bonds business. If the bonds were set too high, persons who were arrested would not be able to afford to pay the premium (typically 10% of

[280] Louis Marcotte Dep. at 24-25 (Ex. 68).
[281] Lori Marcotte Dep. at 66-67 (Ex. 76).

the bond)[282] to the bondsman to have the bond posted. If the bond was set too low—say, personal recognizance—the bondsman would not make any money in the form of premiums. As a general matter, a bondsman wanted bonds to be set at profit-maximizing levels—that is, the highest amount for which the individual who was arrested could afford to pay the premium, but no higher than the person could pay. As Lori Marcotte testified:

> Q. [E]xplain what the consequences are if bond was set too low or if the bond was too high.
>
> A. It depends on how much money the person had to bail out. If they had little money, then having a low bond set would be advantageous to us. If they had plenty money, then a higher bond would be set.
>
> Q. [W]hy isn't it in your best interest for the judge to set a $100,000 bond or $1 million bond? Does that mean you get $100,000 premium?
>
> A. Not if the people don't have the money. No, it doesn't maximize profit to write a bond and not collect all the money.[283]

In the 24th JDC, the practice was that the Marcottes (or their employees or agents) would interview a prisoner upon arrest, find out identifying information, the nature of the crime, and the prisoner's record, locate relatives or persons capable of posting bail, and ultimately determine how much the prisoner could afford to pay in the form of a premium: "We would screen the family or the defendant to find out how much money they had. At some point, we would run credit reports to see if they had available credit on their credit cards."[284] The Marcottes would use that information in making a recommendation to one of the judges in the courthouse as to the amount of bond that the judge should set.

The procedures in the courthouse during the relevant time period called for bond to be set by a sitting magistrate assigned to that duty. However, any judge in the courthouse could set bond, so if the bondsman thought that the magistrate who would hear the case would set the bond too high or too low, the bondsman would seek out a favored judge to set the bond at the bondsman's recommended, profit-maximizing level. As Louis Marcotte explained: "[I]f the 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."[285]

It is against this background and set of financial incentives that Louis Marcotte and Lori Marcotte formed a relationship with Judge Porteous.[286]

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[282] The actual amount was 12.5%. Of that amount, 10% went to the bondsman, and 2.5% went to the court. The 10% amount will be used for this discussion.

[283] Lori Marcotte Dep. at 8 (Ex. 76).

[284] Louis Marcotte TF Hrg. III at 42.

[285] Louis Marcotte TF Hrg. III at 43.

[286] Though financial records of Judge Porteous in the 1990-1994 time-period have not been obtained, the testimony of those who knew him—including Creely, for example—make it clear that Judge Porteous had financial difficulties meeting family obligations.

C. The Relationship Between the Marcottes and Judge Porteous Through the Summer of 1994

The relationship between Judge Porteous and the Marcottes involved a course of conduct, consisting of Judge Porteous soliciting and accepting a steady stream of things of value from the Marcottes, while, at the same time, Judge Porteous took a series of official actions for their financial benefit. These actions on both sides grew more extensive, and more intertwined, from the inception of their relationship in or about 1990 and 1991 to the time that Judge Porteous took the Federal bench in late October 1994.

1. Judge Porteous's Solicitation and Acceptance of Things of Value from the Marcottes

Meals. The Marcottes frequently took Judge Porteous to lunch, along with his secretary Ms. Danos, as well as other courthouse personnel or staff. The meals were expensive and involved significant consumption of alcohol. Louis Marcotte estimated they occurred "around once a week and sometimes twice a week" and identified the restaurants as "the Beef Connection, Ruth's Chris [Steak House], a place named Romairs, you know, restaurants near the courthouse."[287] Lori Marcotte similarly described the frequency of the lunches as "[a] few times a month. Sometimes once or twice a week and then sometimes once a month. So overall, I don't know, twice a month in the whole history, but sometimes more."[288] On occasion the lunches would go on for hours, to the point that Lori Marcotte left her credit card number with the restaurant—essentially providing Judge Porteous and others access to an open bar and unlimited food.

Several witnesses corroborated the Marcottes. When asked which restaurants the Marcottes took her and Judge Porteous to, Danos responded: "Red Maple, Beef Connection, Emeril's. I'm sure there's others. . . ."[289] Attorney Bruce Netterville was friends with Louis Marcotte,[290] and was also an occasional guest of the Marcottes when they were taking Judge Porteous to lunch. Netterville identified "Ruth's Chris Steakhouse on Broad Street and the Red Maple which is on Lafayette and, I think 10th, but Lafayette Street in Gretna" as among the restaurants they went to, but had no doubt there were others as well.[291] Bodenheimer (who would subsequently be elected judge) testified that when he was a prosecutor: "I was assigned to [Judge Porteous's] court. And when we broke for lunch, he would—Louis and his, one or sometimes both of his sisters, would be there to take him [Judge Porteous] to lunch."[292]

Sometimes Louis would call Judge Porteous, sometimes Judge Porteous would call Louis: "It started out with me calling him for lunch. And then, as we got closer and developed a relationship, he

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[287] Louis Marcotte TF Hrg. III at 44. The various restaurants were described as "pretty close to the same cost" as Ruth's Chris Steak House. Id.
[288] Lori Marcotte Dep. at 18 (Ex. 76).
[289] Danos Dep. I at 25-26 (Ex. 46).
[290] Louis Marcotte was best man at Netterville's 1994 wedding.
[291] Netterville Dep. at 8 (Ex. 92(a)).
[292] Bodenheimer Dep. at 8 (Ex. 86).

would call and then I would call."[293] According to Louis, Judge Porteous never paid for a meal.[294]

Corporate credit card records of Louis Marcotte and Lori Marcotte were obtained going back as far as January 1994, as well as Lori Marcotte's personal credit card going back to March 1993. These records are consistent with the recollections of the Marcottes and other witnesses concerning lunches at the Beef Connection, Red Maple, Emerils, and Romairs, and reveal charges at those restaurants on the days shown in the following chart:[295]

Table 4. Selected Meals Provided by the Marcottes to Judge Porteous (1994)

Date	Credit Card	Restaurant	Amount
1/10/94	Lori Amex (C)	Romair's	$ 77.14
1/21/94	Lori Amex (C)	Beef Connection	$ 256.56
2/28/94	Lori Amex (P)	Emeril's	$ 91.31
3/25/94	Lori Amex (C)	Beef Connection	$ 181.06
4/15/94	Lori Amex (P)	Beef Connection	$ 213.89
4/28/94	Lori Amex (C)	Beef Connection	$ 200.00
5/27/94	Lori Amex (P)	Emeril's	$ 69.33
7/xx/94	Lori Amex (C)	Red Maple	$ 51.98
7/xx/94	Lori Amex (C)	Red Maple	$ 96.64
7/27/94	Lori Amex (P)	Mike's on the Avenue	$ 121.37
8/xx/94	Louis Amex	Red Maple	$ 87.11
8/xx/94	Louis Amex	Red Maple	$ 107.90
8/xx/94	Lori Amex (C)	Red Maple	$ 100.05
8/24/94	Lori Amex (P)	Romair's	$ 74.95
9/29/94	Louis Amex	Beef Connection	$ 139.46
9/xx/94	Lori Amex (C)	Red Maple	$ 77.63
9/12/94	Lori Amex (C)	Beef Connection	$ 113.25
10/8/94	Lori Amex (P)	Romair's	$ 105.96
10/xx/94	Lori Amex (C)	Red Maple	$ 190.42
10/xx/94	Lori Amex (C)	Red Maple	$ 72.75
10/28/94	Lori Amex (P)	Mike's on the Avenue	$ 122.65

Bodenheimer testified that Louis's and Lori's other sister, Lisa Marcotte, was occasionally in attendance at these lunches, and there are charges on Lisa Marcotte's American Express account for

[293] Louis Marcotte TF Hrg. III at 44.

[294] From Louis Marcotte TF Hrg. III at 45:

> Q. [L]et's just say [you took him to lunch] three times a month for 3 years, so 100 lunches. Of the 100 lunches that you went to with Judge Porteous at the restaurants and at the rates that you described, how many of those did Judge Porteous pay for?
>
> A. He didn't pay for any.

[295] Designations in Table 4 reflect that Lori Marcotte used both a personal (P) and corporate (C) American Express account. Records for the Red Maple charges do not indicate the date of the month on which the charges were incurred.

meals at the Red Maple and Beef Connection, consistent with the amounts set forth above, in this same time period. Lori Marcotte and Lisa Marcotte confirmed that on occasion Lisa was in attendance at lunches with Judge Porteous and paid for the meals.

Automobile repairs and maintenance—early 1990's. The Marcottes, through their employees Jeffery Duhon and Aubrey Wallace, began to take care of Judge Porteous's various automobiles (including those of his family).[296] This service included picking up Judge Porteous's car to have it washed, detailed, and filled up with gas, as well as more significant repairs. As Louis Marcotte described: "[F]irst, I started washing it. And then, you know, after I would wash it, I would add a little gas to it. And then it escalated from there, you know. Then the mechanical work started, the tires, the radios in the cars, and then his son's cars, and transmissions and stuff like that."[297] Danos recalled an incident where she went to pick up Judge Porteous's car from the repair shop, and the proprietor told her that the Marcottes were paying for the repairs.[298]

Duhon testified that he "took care of three of [Judge Porteous's] cars. I had his, his son's, and his wife['s]." As to what he meant by "took care of them," Duhon explained: "Anything. Mostly keeping them maintained, maintenance up on them, transmission, brakes, tune-ups, air condition[ing], anything that was wrong with his automobiles, his three automobiles." Duhon specifically recalled: "I had a transmission rebuilt in a Cougar, brake job. I used to tune them up, get them tuned up a lot."[299]

Aubrey Wallace, another Marcotte employee, similarly testified that "I was assigned on some occasions, several occasions to do detail of the car, just basic maintenance. If it needed some maintenance work, I would bring it to the proper place that it needed to go." By "detailing" Wallace meant: "Generally, just cleaning the car inside and out, gassing it up. If there were any additional work that I needed to do, it would be specified to me what I needed to do."[300]

As with the meals, sometimes Louis offered and sometimes Judge Porteous solicited car service. As Louis described: "Well, sometimes we would be at lunch and he would say, 'Well, you know, my car is not running well,' and I would say, 'Okay, Judge, I will take care of that.' And there was also requests from him, you know, asking me to do it. So it worked both ways."[301]

Trip to Las Vegas with Judge Giacobbe and Attorney Bruce Netterville. In or about 1992, the Marcottes invited Judge Porteous

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[296] Louis Marcotte TF Hrg. III at 45-46.

[297] Louis Marcotte TF Hrg. III at 45. See also, Louis Marcotte FBI Interview, 4/29/04, at 3-4 (Ex. 72(d)). In his FBI interviews, Louis specifically recalled Judge Porteous requesting that Marcotte replace four tires on the car, and in a follow-up phone call to the FBI, Louis Marcotte reported that a car stereo for Judge Porteous's car was purchased at "Delta Electronics" and that tires were purchased at "Uniroyal." The tire business's name had changed and was called "Premier Tire" at the time of the interview. Louis Marcotte FBI Interview, Apr. 22, 2004, at 1 (Ex. 72(b)); Louis Marcotte FBI Interview, Apr. 26, 2004 (Ex. 72(c)).

[298] Danos testified she knew that the Marcottes paid for the repairs "Because I, I remember Gus [the mechanic] saying it was taken care of or whoever was working there at the time." Danos Dep. I at 55-56 (Ex. 46).

[299] Duhon Dep. at 10, 12 (Ex. 78).

[300] Wallace Dep. at 6-7 (Ex. 83).

[301] Louis Marcotte TF Hrg. III at 46.

and Danos,[302] among others (including attorneys who helped the Marcottes in their business), on a trip to Las Vegas with them. Judge Porteous did not attend this trip, though Danos did. The trip included attending a "Siegfried and Roy" show, as well as a flight over the Grand Canyon. One of the dinner bills paid for by Lori Marcotte was particularly expensive—"the largest bill we had ever paid for dinner."[303] Photographs have been obtained of guests sitting around the table, and of Lori Marcotte holding the bill.[304]

Thereafter, from approximately 1992 through 1994, the Marcottes paid for at least one, and maybe two, trips for Judge Porteous to Las Vegas.

One of the Las Vegas trips included another State judge—Judge George Giacobbe—as well as Netterville, one of the criminal attorneys with whom the Marcottes had dealings in a professional capacity. That trip to Las Vegas is confirmed by Netterville and Lori Marcotte and was also mentioned in the Wiretap Affidavit.[305] Louis Marcotte testified he wanted attorneys to be on the trip with him and Judge Porteous because "it just doesn't look good with a bail bondsman hanging out with judges. So what I did is I brought some attorneys in to make it look good."[306]

Both Louis Marcotte and Lori Marcotte claimed they split the costs of the trip with the attorneys and did so by paying cash to Judge Porteous's secretary Danos. Louis Marcotte testified:

> Q. Okay. Now, do you recall how Judge Porteous'[s] travel was arranged for and/or paid for?
>
> A. Yes. My sister brought cash money to Rhonda, and Rhonda had wrote the check to pay everything, and we reimbursed her. And we got money from the lawyers for half of it.
>
> Q. And how is it that you happen to remember that?
>
> A. Because that's just one thing that you'd remember.
>
> Q. Okay. And was there, was there conscious thought about paying Rhonda so the money wouldn't come—look like it's coming right from you to Judge Porteous?
>
> A. Right.[307]

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[302] The Marcottes had similar incentives to pay for Danos as they did for Judge Porteous—she was a gatekeeper to Judge Porteous and would help the Marcottes have access to him, and dealt with the jail on bond matters on behalf of Judge Porteous. See e.g., Danos Dep. I at 6 (Ex. 46). In fact, one measure of the importance of Judge Porteous to the Marcottes is the fact that they gave things to his secretary as well to ensure access to him.

[303] Lori Marcotte Dep. at 29-30 (Ex. 76);

[304] Lori Marcotte Dep. Ex. 2 (Ex. 202); Lori Marcotte Dep. Ex. 6 (Ex. 206).

[305] Affidavit in Support of Application, In the Matter of the Application of the United States of America for an Order Authorizing the Interception of Wire Communications, Misc. No. 01-2607 (E.D. La., Aug. 27, 2001) (redacted) at 47 (PORT 793)) (Ex. 69(f)). Judge Porteous also admitted going on this trip in a November 1994 interview with the New Orleans Metropolitan Crime Commission—a respected private citizens watchdog agency—though he denied that the Marcottes paid for him. Interview of United States District Court Judge G. Thomas Porteous by Anthony Radosti and Rafael C. Goyaneche, III, Metropolitan Crime Commission, Nov. 9, 1994 (part of Ex. 85).

[306] Louis Marcotte TF Hrg. III at 46.

[307] Louis Marcotte Dep. at 14-15 (Ex. 68). As written up by the FBI, Louis Marcotte stated in an April 2004 interview:

> On this [Las Vegas] trip the lawyers and LOUIS split the cost of Judge PORTEOUS' expenses and gave the money to DANOS to put it through her checkbook in order to hide the payments. DANOS then wrote a check to pay for the expenses so there was no direct link between LOUIS, JUDGE PORTEOUS and [others].

Lori Marcotte likewise recalled "standing in [Danos's] office, with another attorney, handing her the money."[308] According to Lori Marcotte, this trip to Las Vegas, paid for by the Marcottes, was initiated at Judge Porteous's request.[309]

Attorney Netterville testified that he did not recall how much he actually paid for the trip but acknowledged that if he had been asked to pay for more than his individual personal share (i.e., if he had been asked to chip in for the judges) he would have done so. Netterville testified:

> Q. But you don't doubt that if Louis said your share of this trip is "X" dollars that that's something you would have paid?
>
> A. Yes, I would have.[310]

Possible second trip to Las Vegas. Louis Marcotte and Lori Marcotte both testified they believed there was a second trip where they took Judge Porteous to Las Vegas, a fact that appears supported by Danos as well. Louis recalled a second trip because he "remember[ed] we were standing by a slot machine, and his wife was asking him for some change to put—some dollars to put back in, coins, you know, to put back into the slot machine."[311]

Lori Marcotte also testified there may have been a second trip to Las Vegas paid for by the Marcottes, possibly in connection with Judge Porteous speaking at a Professional Bail Agents of the United States (PBUS) Convention.[312]

Danos did not recall Judge Porteous taking the previously described trip with Judge Giacobbe and the attorneys (a trip that she did not attend).[313] However, she, like Lori Marcotte, recalled what appeared to be a different Marcotte-Judge Porteous trip to Las Vegas in connection with one of the PBUS conventions that Danos herself attended:

> Q. [D]id the Marcottes ever take Judge Porteous to Las Vegas, either with you on any trip that you were in attendance on or on a trip that you know they took him on even if you were not in attendance on?
>
> A. One Las Vegas trip.
>
> Q. Okay. And what do you recall about that trip?
>
> A. Not very much. It was their convention. And I think they would have liked for him to have spoken, but they already had speakers lined up.
>
> Q. Okay. And you were in attendance on that trip?

Louis Marcotte FBI Interview, 4/30/04 at 5 (Ex. 72(a)). See also, Louis Marcotte FBI Interview, Apr. 22, 2004 at 3 (Ex. 72(b)). Lori Marcotte told the FBI that Louis paid for Judge Porteous's airfare, hotel, food and expenses at a club. Lori Marcotte FBI Interview, Mar. 30, 2004 at 2 (Ex. 74(b)).

[308] Lori Marcotte TF Hrg. III at 56.

[309] "LORI remembered DANOS called LOUIS [Marcotte] and told LOUIS that PORTEOUS was ready to go to Las Vegas." Lori Marcotte FBI Interview, Apr. 21, 2004 at 1 (Ex. 74(d)) See also Lori Marcotte FBI Interview, Apr. 2, 2004 at 6 (Ex. 74(c)).

[310] Netterville Dep. at 11-12 (Ex. 92(a)).

[311] Louis Marcotte TF Hrg. III at 47.

[312] Lori Marcotte FBI Interview, Mar. 30, 2004 at 2 (Ex. 74(b)); Lori Marcotte FBI Interview, Apr. 2, 2004 at 8 (mentioning possible trip associated with a bail bonds convention) (Ex. 74(c)).

[313] Danos Dep. I at 15 (Ex. 46).

A. Yes, sir.[314]

* * *

Q. The trip which there was a bail bond convention going on, and I think it's your testimony that to the best of your recollection this was still when he was a State judge, I take it, is it your testimony that that was a trip that was paid for by the Marcottes?

A. I think it was.[315]

Consistent with both Louis's and Lori's testimony, Danos did recall that on one occasion the Marcottes reimbursed her for Judge Porteous's trip to Las Vegas. Danos did not dispute that it was Lori who paid her in cash.[316]

Fence repairs. In or about 1994—while Judge Porteous was still a State judge—Marcotte's employees Duhon and Wallace rebuilt a fence at Judge Porteous's house. They were there more than 1 day and also performed other repairs at the house. They both recalled picking up lumber at Home Depot and described the incident in consistent terms.[317] Louis Marcotte described the incident as follows: "[W]e were at lunch and he mentioned, 'Well, look, my fence blew over in the storm.' And I said, 'Well, you know, I got two guys that will take care of it for you. No problem.'"[318] Lori Marcotte confirmed they paid for a fence for Judge Porteous.[319]

Favors for Judge Porteous's Son. The Marcottes permitted one of Judge Porteous's sons to use one of their parking spaces near the courthouse for his courier business. They also hired his son on occasion.

2. Judge Porteous's Actions on Behalf of the Marcottes

Setting Bonds. When Louis Marcotte first entered the bail bonds business as the owner of Bail Bonds Unlimited (BBU), he did not have connections with judges or other law enforcement personnel in the 24th JDC where he did the bulk of his work. Louis and Lori came to know Judge Porteous through another bondsman—Adam Barnett (who in turn knew Judge Porteous from other connections in the courthouse).[320] On occasion, when Louis Marcotte needed a "difficult" bond to be set, Barnett would go to Judge Porteous to have him set the bond. Barnett was not an employee of Marcotte's, but Louis Marcotte would provide Barnett some portion of the premium that was paid by the individual for whom bond was posted.

Louis Marcotte gradually excluded Barnett as the middleman and he and Lori began to deal with Judge Porteous directly. As Louis and Lori began to do things for Judge Porteous—described

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[314] Danos Dep. I at 15 (Ex. 46). See also Danos Dep. II at 11 (recalling being on a Marcotte trip to Las Vegas with Judge Porteous) (Ex. 47).

[315] Danos Dep. I at 17 (Ex. 46).

[316] Danos Dep. II at 12 (Ex. 47). See also Danos Dep. I at 18 ("One trip I do recall putting the judge's fare on my card. But I, don't recall if it was Lori or Louis that reimbursed me.") (Ex. 46).

[317] See Duhon Dep. at 13-14 (Ex. 78); Wallace Dep. at 10-11 (Ex. 83). The fence repairs occurred either prior to Wallace's February 1991 incarceration or subsequent to his August 1993 release.

[318] Louis Marcotte TF Hrg. III at 46. See also, Louis Marcotte FBI Interview, Apr. 29, 2004, at 7-8 (Ex. 72(d)).

[319] Lori Marcotte FBI Interview, Mar. 30, 2004, at 2 (Ex. 74(b)).

[320] At some point in 1993, Judge Porteous officiated at Adam Barnett's wedding, which was also attended by Lori Marcotte.

in the previous section—Judge Porteous became the "go-to" judge for the Marcottes. Over the time period roughly between 1990 through 1994, as the Marcottes increasingly gave Judge Porteous things of value, they would increasingly go to Judge Porteous to have him set bonds at amounts they requested, and would seek other favors from him. It started "just a little bit" but, as Lori Marcotte described: "[I]n the end it was a lot. It was an everyday, everyday thing in the courthouse. We'd go to the courthouse to see him in his office, call him on his cell phone, call him at home, contact him through his secretary. If he wasn't in the office, she would find him for us, get, get him off the bench. When we needed him to set a bond, he was available for us to set a bond, or split a bond too." [321] As to the frequency of their contacts: "A few times a week. And sometimes when we would go to see him, we'd have more than one bond, sometimes ten at a time. We would make a stack of worksheets and bring bonds. So it's not so much how, how many times in a week. It's when we did go, we always had more than one." [322]

Louis Marcotte described the reasons he gave Judge Porteous things of value as follows:

> Q. The real question, Mr. Marcotte, is, why did you do all of these things for Judge Porteous? What value were you getting by virtue of the fact that you were providing him this stream of value?
>
> A. I wanted service, I wanted access, and I wanted to make money. [323]

The Marcottes' access to Judge Porteous is corroborated by numerous witnesses who saw the Marcottes around his courtroom or in his chambers. [324] For example, Marcotte employee Duhon testified that Louis Marcotte would go to Judge Porteous more than to any other judge in the courthouse to get bonds set. He further described Louis's access to Judge Porteous as follows:

> Q. [W]ould you describe what it would be like to have Judge Porteous go in and set bond at the request of Louis?
>
> A. Yes. He'd get to his chambers at 9:00 in the morning, and they might have 10 or 12 lawyers waiting there. Me and Louis would just walk right by both of them, all of them and walk into his office and have a seat carrying sheets of paper which is like bond form we bring to them, and he let them see them. [325]

Splitting bonds. One way in particular that Judge Porteous helped the Marcottes was through a practice referred to as "splitting" a bond. If a bond for a serious crime would otherwise naturally be set at an amount that would be too high for an accused to pay the required premium, a judge could "split" the bond into

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[321] Lori Marcotte Dep. at 13-14 (Ex. 76).
[322] Lori Marcotte Dep. at 14 (Ex. 76).
[323] Louis Marcotte TF Hrg. III at 47.
[324] Other witnesses describe the Marcottes' frequent access to Judge Porteous. These witnesses include Lori Marcotte, Danos, Netterville (a criminal defense attorney who associated with the Marcottes), Aubrey Wallace (Marcotte employee), and Bodenheimer (a prosecutor at the time, and eventually a State judge).
[325] Duhon Dep. at 7-9 (Ex. 78).

two pieces—one portion was a standard commercial bond, the other was a property bond or other personal promise not backed up by a bondsman. As an example, a $100,000 bond could be "split" into a regular $50,000 commercial bond and a $50,000 component that was secured by property or by the promise of a third party (the accused's mother, for example) to pay $50,000 if the accused did not appear as required.[326] By splitting the bond, the accused needed only to come up with the premium for the $50,000 piece, that is, $5,000. A judge's action in splitting a high bond would mean that the Marcottes would receive some premium rather than no premium.

A "split bond" had political value for the elected State judges who "liked setting high bonds, because if it came out in the newspaper that, you know, something happened and the guy [who was let out on a split bond] did something wrong, then it would look like he got out on a high bond."[327] A judge who "split" a bond could claim that he did not actually reduce the bond (even though in substance this was the effect). Certain individuals in the law enforcement community opposed this practice, and there were some judges who would not "split" bonds.[328]

Judge Porteous became associated with this practice of "splitting bonds" and bragged about having invented it (even though it may have been done by other judges in the past). Former State Judge Bodenheimer testified it was his understanding that Judge Porteous "was the one who somehow came up with this idea of doing these bond splittings" and that Louis Marcotte "told me that Porteous was, was the one who came up with the idea about splitting bonds in the first place."[329] Lori Marcotte stated that "because Judge Porteous was respected in the courthouse by other judges, his peers, the District Attorney's office, Judge Porteous—by Judge Porteous splitting and setting bonds for us was making it like the norm, creating the practice of splitting bonds. He actually originated this practice of splitting bonds."[330]

Setting aside convictions. Judge Porteous took other significant official actions as favors to the Marcottes. In 1993 at Louis Marcotte's request, he set aside the burglary conviction of Jeffery Duhon. Duhon was not only an employee of the Marcottes but was

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[326] Louis Marcotte noted that, frequently, the bail component that was not backed by a surety bond may have had no real value. Louis Marcotte TF Hrg. III at 48 ("[M]ost of the time the personal surety wasn't worth anything, and the only portion of the bond that was worth something was the commercial part of the bond that was executed by the bail agent and backed by the insurance company.").

[327] Louis Marcotte TF Hrg. III at 47.

[328] See Lori Marcotte Dep. at 15 (Ex. 76). As described by the FBI in its wiretap affidavit:

[I]t is common practice for bondsmen to attempt to get a bond reduced in order to make a bond more affordable; however, there is a built-in reluctance to grant such requests, especially in cases where serious crimes are involved. This reluctance is based primarily on the fact that a Judge, who depends on the public vote to keep his/her job, fears potential serious criticism from the public in general and from the media in particular if a defendant commits another serious crime while out on bond. Splits are a much more attractive means of making bonds "affordable" because a Judge can always argue he/she did not "reduce a bond."

Affidavit in Support of Application at 20-21, In the Matter of the Application of the United States of America for an Order Authorizing the Interception of Wire Communications, Misc. No. 01-2607 (E.D. La., Aug. 27, 2001) (redacted) at 20-21 (Ex. 69(f)).

[329] Bodenheimer Dep. at 6-7 (Ex. 86).

[330] Lori Marcotte Dep. at 17 (Ex. 76). The act of setting a bond is entrusted to a Judge's discretion, so it cannot be argued that the actions of Judge Porteous in splitting or reducing in bond in any particular cases was "right" or "wrong," or that splitting bonds in general was either appropriate or inappropriate across the board.

also married to Lisa Marcotte (Louis's other sister).[331] Louis Marcotte testified he "approached Porteous to see if he would expunge Jeff Duhon's record" and that Judge Porteous did so.[332] Judge Porteous's action in setting aside Duhon's conviction was particularly unusual 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."[333] Louis Marcotte elaborated that in his experience, it was unusual for a judge in one division to expunge a conviction in a criminal case assigned to a judge in a different division.[334]

Additionally, as discussed below, on the eve of his ascension to the Federal bench in October 1994, Judge Porteous set aside the conviction of Aubrey Wallace, another Marcotte employee.

Helping the Marcottes with Judge Alan Green and other Judges. As noted, Judge Porteous was a former prosecutor, had a good relationship with the District Attorney, and was perceived by many in the courthouse to be influential on the bench.[335] By forming a public relationship with Judge Porteous, the Marcottes gained credibility with other State judges on the 24th JDC. Thus, the Marcottes sought to have other State judges included in their lunches with Judge Porteous. Louis Marcotte told the FBI he "wanted to target judges who were not doing bonds and asked RHONDA DANOS [Judge Porteous's secretary] to invite them to lunch with Judge PORTEOUS."[336] An FBI write-up of another Louis Marcotte interview recounts: "MARCOTTE frequently called on PORTEOUS to help bring in other judges MARCOTTE could use to split bonds, reduce bonds and give MARCOTTE good service."[337]

As one example, Judge Porteous helped connect the Marcottes with Judge Alan Green (who was ultimately convicted of a corruption offense arising from his relationship with the Marcottes). Lori Marcotte described this in her Task Force Hearing testimony as follows:

> 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

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[331] In 2003, after Louis Marcotte was publicly identified as the subject of a criminal investigation, Judge Porteous's expungement of Duhon's record was reported in the local newspapers:

> Duhon said it was Porteous who gave him his break in 1992, when the judge expunged his felony record as a favor to Marcotte, allowing him to apply for a bail bonds license. Duhon had been arrested for burglary when he was 17, a charge for which he served 93 days in jail for probation violation, he said.

M. Carr and M. Torres, "Judges Were Given Gifts; Marcotte's Ex-workers Tell of Shrimp, Fence," New Orleans Times-Picayune, Feb. 8, 2003 (part of the Metropolitan Crime Commission Documents, at MCC 0199-200 (Ex. 85), and separately marked as Ex. 119(e)).

[332] Marcotte Dep. at 6-8 (Ex. 68). Exhibit 77(a) is the Motion for Expungement. That Motion is undated, however, it was assigned to "Division B"—Judge E.V. Richards—of the 24th Judicial District Court. Judge Richards set a hearing on that Motion for July 15, 1993. It is not known if that hearing took place. Ex. 77(b) is the Judgment of Expungement dated July 29, 1993, signed by Judge Porteous.

[333] Louis Marcotte TF Hrg. III at 48.

[334] Marcotte Dep. at 6-8 (Ex. 68).

[335] Bodenheimer testified: "Out of all the judges there—Porteous came from the District Attorney's Office—and he was probably the most influential judge with the District Attorney's office, in my opinion.' Bodenheimer Dep. at 5 (Ex. 86). Netterville similarly testified that Judge Porteous was perceived to be an influential Judge on the 24th JDC. Netterville Dep. at 9 (Ex. 92).

[336] Louis Marcotte FBI Interview, May 17, 2004 at 2 (Ex. 72(e)).

[337] Louis Marcotte FBI Interview, Apr. 22, 2004 at 3 (Ex. 72(b)).

> 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. [338]

This practice of having Judge Porteous vouch for the Marcottes with the State judges in the 24th JDC continued after Judge Porteous became a Federal judge.

Helping in civil "non-compete" litigation. The Marcottes also requested that Judge Porteous help lobby other judges on their behalf in connection with "non-compete" litigation initiated by the Marcottes against a former employee. As written up by the FBI, Lori Marcotte described the request for assistance in a BBU civil case against a former employee, Bobby Gene Hollingsworth, as follows:

> BBU [Bail Bonds Unlimited] sued BOBBY HOLLINGSWORTH over a non-compete clause in his contract. LOUIS MARCOTTE went to JUDGE PORTEOUS and wanted JUDGE PORTEOUS to call JUDGE CLARENCE McMANNUS and tell him how to rule. JUDGE PORTEOUS said he would contact JUDGE McMANNUS and called him while LOUIS MARCOTTE was in JUDGE PORTEOUS' chambers. McMANNUS ruled in favor of BBU. [339]

The official court case jacket is consistent with this recollection, and reveals that the Marcottes (Bail Bonds Unlimited) filed the case against Hollingsworth in August 1994, shortly prior to Judge Porteous taking the Federal bench. The Marcottes initially obtained a Temporary Restraining Order restraining Hollingsworth from competing against them, then obtained a permanent injunction which was to be in effect until September 1995. [340]

C. The July-August 1994 Background Check of Judge Porteous

The bulk of the background investigation of Judge Porteous in connection with his nomination to the Federal bench occurred in July and early August 1994. On August 1, 1994, Louis Marcotte was interviewed as part of that standard background check. It is not known how the FBI got Louis Marcotte's name as a person to interview; however, Marcotte testified that Judge Porteous told him "that the FBI is going to be coming to interview you." [341] Louis Marcotte told the FBI as follows:

> MARCOTTE said the candidate [Porteous] is of good character and has a good reputation in general. He said the candidate is well-respected and associates with attorneys who are upstanding individuals. He does not know the

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[338] Lori Marcotte TF Hrg. III at 57. See also Lori Marcotte FBI Interview, Apr. 2, 2004 at 1 (Ex. 74(c)) ("After Green won the election, Lori and Louis discussed initiating a relationship with Green via Judge Porteous. Porteous got Green to come to lunch with Porteous and the Marcottes which was set up by Danos [Porteous's secretary]. They had lunch at Romer's (ph) [should be 'Romair's']."). Danos also identified Judge Green as one of the judges who accompanied them with Judge Porteous on lunches when he was a State judge. Danos Dep. I at 27 (Ex. 46).

[339] Lori Marcotte FBI Interview, Nov. 5, 2004 at 2 (Ex. 74(e)).

[340] Bail Bonds Unlimited v. Bobby Gene Hollingsworth, No. 467-905, Div. E (J. McManus) (24th Jud. Dist. Ct., Jeff. Par., La.) (Ex. 91(b)).

[341] Louis Marcotte TF Hrg. III at 51.

> candidate to associate with anyone of questionable character. [342]

As to Judge Porteous's drinking and financial situation, the write-up 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. [343]

Louis Marcotte acknowledged that these statements about Judge Porteous's financial situation and drinking habits were false. As to Judge Porteous's financial condition, Marcotte has since testified that he knew at the time that Judge Porteous was "struggling": "[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." [344] He further described Judge Porteous's cars as being in "deplorable condition." [345]

As to Judge Porteous's drinking, Louis Marcotte bluntly described his statement to the FBI that Judge Porteous would have a "beer or two" at lunch in the following terms: "That's a false statement." [346] Marcotte testified that he was familiar with Judge Porteous's drinking, and "knew that he [Judge Porteous] was an alcoholic. He drank a lot. . . . He would drink four or five glasses of Absolut for lunch." [347]

Finally, the FBI interview quoted Louis Marcotte as stating that he "was not aware of anything in the candidate's background that might be the basis of attempted influence, pressure, coercion or compromise or would impact negatively on the candidate's [Judge Porteous's] character, reputation, judgement or discretion." Louis Marcotte acknowledged that he "was lying again," 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. [348]

After the initial portion of the background check had been completed, FBI Headquarters directed that further investigation be conducted as a result of some derogatory information that was uncovered (including allegations as to Judge Porteous's drinking and that he was living above his means). [349]

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[342] Porteous Background Check Documents, at PORT 503-04 (Ex. 69(b)).
[343] Porteous Background Check Documents, at PORT 503-04 (Ex. 69(b)).
[344] Louis Marcotte TF Hrg. III at 49.
[345] Louis Marcotte TF Hrg. III at 49 ("I knew he was struggling, because his cars were in deplorable condition.").
[346] Louis Marcotte Dep. at 12 (Ex. 68).
[347] Louis Marcotte Dep. at 11 (Ex. 68). In his Task Force Hearing testimony, Louis Marcotte repeated his testimony that Judge Porteous would have numerous vodka drinks at lunch and that he deliberately misled the FBI about his knowledge of Judge Porteous's drinking. Louis Marcotte TF Hrg. III at 49. Thus, Louis Marcotte, like Robert Creely, was not candid with the FBI as to both Judge Porteous's financial circumstances and as to his drinking.
[348] Louis Marcotte TF Hrg. III at 50.
[349] Porteous Background Check Document, at PORT 462-63 (Ex. 69(c)).

On August 17, 1994, Louis Marcotte was briefly reinterviewed,[350] and the background investigation was completed a few days later.[351]

At the Task Force Hearing, Marcotte testified that after the FBI interview (it was not clear which one), he met with Judge Porteous and "told him [Judge Porteous] everything that they asked about"[352] and that he had given Judge Porteous "a clean bill of health."[353]

On August 25, 1994, Judge Porteous was nominated by President Clinton to be a United States District Court Judge for the Eastern District of Louisiana.

D. JUDGE PORTEOUS'S ACTIONS TO BENEFIT THE MARCOTTES DURING HIS FINAL MONTHS ON THE STATE BENCH

1. September-October 1994 Set-Aside of Wallace's Felony Conviction

After he was nominated, and around the time of his Senate confirmation process, Judge Porteous was pressed by Louis Marcotte to set aside the felony burglary conviction of his employee Aubrey Wallace.[354] As described by Louis Marcotte:

> Q. [W]hat was Judge Porteous's response when you made that request of him?
>
> A. He waffled a little bit because he wasn't confirmed at the time, but he told me—I saw him a few times, I pushed him and said, you know, "Judge, you know, I really need to get this done." He said, "After my confirmation, I will do it."
>
> Q. And, in fact, did he do it?
>
> A. Yes, he did.
>
> Q. And, in your mind, do you have an opinion as to why Judge Porteous set aside Wallace's conviction?
>
> A. Because all of the stuff that I have done for him in the past.
>
> 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.[355]

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[350] Louis Marcotte FBI Interview, Aug. 17, 1994, at PORT 513-14 (Ex. 69(b)). The FBI was primarily concerned with certain bonds that Judge Porteous had set at the request of an attorney at a time prior to Marcotte having formed a relationship with Judge Porteous.

[351] Note to DOJ re: Judge Porteous, Aug. 19, 1994, at PORT 530 (Ex. 69(b)).

[352] Louis Marcotte TF Hrg. III at 51.

[353] Louis Marcotte TF Hrg. III at 64.

[354] Wallace had been arrested on burglary charges on May 8, 1989; he pleaded guilty to the felony charge of simple burglary on June 26, 1990 and was sentenced the same day to a suspended sentence of 3 years incarceration and placed on probation for 2 years. State v. Wallace, No. 89-2360 (24th Jud. Dist. Ct., Jeff. Par., La.) (court case file) (Ex. 82). At the time of his May 1989 burglary arrest, Wallace was under indictment for felony drug charges (PCP and cocaine) for an offense alleged to have occurred on December 15, 1988.

While he was on probation for the burglary conviction, Wallace pleaded guilty on February 26, 1991, to the felony drug charges of possession of over 28 grams of cocaine and possession of PCP and was sentenced to 5 years incarceration.

[355] Louis Marcotte TF Hrg. III at 51. Louis Marcotte's Task Force Hearing testimony tracked his statement to the FBI in 2004 in which he stated that Judge Porteous wanted to wait until after his Senate confirmation to set aside Wallace's conviction:

> PORTEOUS waited until the last days of his term as a 24th Judicial District Court Judge to expunge AUBREY WALLACE'S criminal record. PORTEOUS did not want the fact that he expunged WALLACE'S record to be exposed in the media or discovered in

Setting aside Wallace's burglary conviction required Judge Porteous to take two steps: first, the sentence for Wallace's burglary conviction—a sentence which Wallace had completed—had to be amended from one which, as a matter of law, was not eligible to be set aside, to one that could be set aside; second, the sentence, having been so amended, would then need to be set aside.

On September 20, 1994, Robert Rees, an attorney who did occasional criminal work and thus had interactions with the Marcottes, filed a motion on behalf of Wallace to set aside Wallace's conviction. This was a bare-bones motion, reciting only that Wallace had been sentenced in 1990 and now "desires to amend his sentence to give him benefit under Article 893."[356]

On September 21, 1994, Judge Porteous held a hearing in which he took the first step in the set aside process, by amending Wallace's sentence to make it eligible to be set aside. At that hearing, Netterville (an attorney who did business with the Marcottes and who had traveled to Las Vegas with Judge Porteous and Louis Marcotte in or about 1992 or 1993) stood in for Rees. Netterville did not recall this hearing or how he came to stand in for Rees, and he did not consider Wallace a client. His appearance was limited to his saying "Thank you, Judge" and "Thank you." The entire hearing was less than one transcript page, the critical portion consisting of Judge Porteous's conclusion: "Accordingly, the sentence will be amended to include removal of the unsatisfactory removal of probation and the entering of the plea under Code of Criminal Procedure 893. All right. I've signed the order."[357]

On Thursday, September 22, 1994, Judge Porteous signed the written order that was proposed as part of the underlying September 20, 1994 Motion. The Order amended the sentence so that it would represent that the defendant pleaded guilty under a provision of State law (Article 893) which permitted the conviction to be set aside.[358]

Judge Porteous's Senate confirmation hearing occurred 2 weeks later, on Thursday, October 6, 1994. He was confirmed by the Sen-

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his background investigation for his Federal judicial appointment. PORTEOUS told MARCOTTE that he (PORTEOUS) would act on WALLACE'S expungement after he was appointed to the Federal judicial bench. PORTEOUS told MARCOTTE he was not going to risk a lifetime judicial appointment for WALLACE.

Louis Marcotte FBI Interview, Oct. 15, 2004 at 1 (Ex. 72(g)). Lori Marcotte specifically recalled that "we went to Judge Porteous to ask him if he would expunge Aubrey Wallace's criminal record. My brother and myself, we went to Judge Porteous'[s] office." Lori Marcotte Dep. at 25-26 (Ex. 76).

[356] Motion to Amend Sentence, State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.), Sept. 20, 1994, (part of Ex. 82). Wallace's first name is spelled "Aubry" in the court records from this case. The correct spelling of his first name is in fact "Aubrey." Accordingly, throughout this Report, his first name will be spelled "Aubrey" regardless of how it may have been spelled in court records.

[357] Transcript of Proceedings, State of Louisiana v. Aubrey Wallace, No. 89-2360 (24th Judicial Dist. Ct., Jeff. Par.), Sept. 21, 1994, at PORT 0620-24 (part of Ex. 69(d)). Probation was initially deemed to have been unsatisfactorily completed because Wallace was incarcerated while on probation.

[358] The Order stated in full:

ORDER

Considering the foregoing, IT IS ORDERED that the sentence on Aubrey WALLACE is hereby amended to include the following wording, "the defendant plead under Article 893."

GRETNA, LOUISIANA this 22 day of September, 1994.

G. Thomas Porteous /s/
JUDGE

Order (amending sentence), Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.), Sep. 22, 1994 (part of Ex. 82).

ate on Friday, October 7, 1994, and received his commission the following Tuesday, October 11, 1994.

On Friday, October 14, 1994, 1 week after being confirmed but prior to being sworn in as a Federal judge (which occurred on October 28, 1994), Judge Porteous held another hearing on the Wallace matter to finish the process, this time with Rees appearing for Wallace. Again, the transcript of the entire hearing takes up but one transcript page, starting as follows:

> Mr. Reese: You Honor, Robert Reese on behalf of——
>
> Judge Porteous: I'm going to grant that. I've already amended the sentence to provide for a 893.
>
> * * *
>
> Under 893 the dismissal will be entered. [359]

Judge Porteous also signed a written order that date to the same effect, thus setting aside Marcotte employee Wallace's 1990 burglary conviction. [360]

November 1994—Judge Porteous's Interview by the Metropolitan Crime Commission. Shortly after setting aside Wallace's conviction, an allegation was made to the New Orleans Metropolitan Crime Commission (MCC)—a citizen's watchdog group—concerning the lawfulness of Judge Porteous's actions in setting aside Wallace's conviction. Judge Porteous was interviewed by MCC representatives on November 8, 1994, 11 days after he became a Federal judge.

In that interview, Judge Porteous denied having "frequent" lunches with the Marcottes, denied that the Marcottes paid his way to Las Vegas, and denied that he amended Wallace's sentence out of friendship or at the request of Louis Marcotte. That interview was written up as follows:

> Upon arrival we advised Judge Porteous that the purpose of our meeting was to question him regarding his amendment of the Aubrey N. Wallace sentence. . . . In particular we advised Judge Porteous that we wanted to ask him about his relationship with Louis Marcotte. . . . The Judge stated "lets not sugar coat anything, in other words you guys think I'm dirty." We replied that we had some questions about his handling of the Aubrey Wallace case and welcomed an explanation of his reasoning in this matter. . . .

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[359] Transcript of Proceedings, State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist. Ct., Jeff. Par., La.), Oct. 14, 1994, at PORT 000625-29 (Ex. 69(d)). The attorney's name was Robert Rees (without the "e"). It is reported in the documents as Robert "Reese," and that spelling is used in the quoted materials. The prosecutor in the courtroom for the two hearings, Assistant District Attorney Michael Reynolds, stated in a Task Force Staff interview on January 5, 2010, that the set-aside didn't "smell right" to him at the time, that it was wrong as a matter of discretion and perhaps illegal, but that because of Judge Porteous's close relationship with the then-District Attorney, there was nothing he could do.

On October 19, 1994, Judge Porteous signed again the same order he had previously signed on September 22, 1994 (the order amending the sentence to permit it to be set aside). It is not known why he signed this second identical order. It was actually signed after Judge Porteous had set aside the conviction.

[360] Order (setting aside arrest and dismissing charges), State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.), Oct. 14, 1994 (part of Ex. 82).

> 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 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.
>
> The Judge stated he felt he had done nothing criminal, but stated that the Assistant District Attorney had the authority to appeal his ruling it was improper. The Judge ended the meeting by telling us to "do what you think you have to do." . . .[361]

These events 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.[362]

The Lawfulness of the Set-Aside. The action of Judge Porteous setting aside Wallace's burglary conviction was not appealed by the State and thus not subject to review as to its lawfulness. Nonetheless, the observations of a practicing attorney in this field are noteworthy. Netterville, the attorney who stood in to represent Wallace at the initial set-aside hearing, has handled hundreds of set-aside motions in his career and understands the law and practice involved in the process. Notwithstanding that Netterville actually appeared for Wallace in open court in seeking the set-aside, he testified in a Task Force deposition that he would not have accepted that case from a paying client and viewed the set-aside as legally improper:

> Q. If a client, if a person came to you and said I want to hire you to have my conviction set aside and . . . I wasn't sentenced under Article 893 [which permits set asides] and my probation was unsatisfactorily terminated, what would you tell them?
>
> A. I'd say you can't hire me because it can't be done.

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[361] Interview of United States District Court Judge G. Thomas Porteous by Anthony Radosti and Rafael C. Goyaneche, III, Metropolitan Crime Commission, Nov. 9, 1994 (part of Ex. 85).

[362] J. Darby, Amending Sentence Questioned, Federal Judge Defends Actions, New Orleans Times-Picayune, B-1, Mar. 19,1995 (Ex. 119(a)).

Q. So that's more—I mean, isn't that more than just being irregular to highly irregular.

A. No, it's highly irregular. You can't, you can't do it. If the district attorney had objected and taken a writ, he would have won in my opinion. [363]

Whether or not the set-aside was unlawful, the facts at a minimum demonstrate that on the eve of his taking the Federal bench, Judge Porteous took the "highly irregular" official act of setting aside the felony conviction of one of Marcotte's employees, at the personal request of Marcotte and as a favor to him. The fact that Judge Porteous timed this judicial act to occur after his confirmation is strong evidence that he knew of its impropriety and that he knew that it evidenced his improper relationship with the Marcottes. It is not possible to challenge the "merits" of a decision to set aside a conviction (any more than it is possible to challenge the exercise of discretion in setting a bond), for such an act inherently embodies the judgment of a judge as to whether an individual merits this significant benefit. However, in this instance, the following factors are noteworthy:

- Wallace had two felony convictions in a short period of time (stemming from the 1989 drug charge and the 1990 burglary charge, which occurred while on release from the drug charge). Wallace had been released from prison for about a year on the drug charge, and was still on parole for that offense at the time Judge Porteous set aside Wallace's burglary conviction.
- It is consistent with Judge Porteous's other conduct as a judge that benefitted Louis Marcotte. Indeed, Judge Porteous had previously set aside the conviction for Marcotte's brother-in-law (Duhon).
- There was no compelling justification for Judge Porteous to set aside the conviction in the last days of his tenure on the State bench. The motions and orders were bare-bones, handled by persons close to Louis Marcotte and Judge Porteous. There were no facts adduced at the hearings or in the pleadings in support of the motion, such as a contention of extraordinary rehabilitation.
- Judge Porteous knew that Wallace, like Duhon, had worked on his cars and his house.
- Moreover, even if both the legality and the merits could be argued, at the time he set aside the conviction, Judge Porteous was indebted to Marcotte, who had assisted him by lying on his behalf in the confirmation process. So long as Judge Porteous was a State judge—and particularly when Judge Porteous was seeking to become a Federal judge—Louis Marcotte had leverage over Judge Porteous by virtue of Marcotte's knowledge of their corrupt relationship.

[363] Netterville Dep. at 18-19 (Ex. 92(a)).

2. Judge Porteous's Bond-Setting in His Final Days on the State Bench

Louis Marcotte also recalled that when Judge Porteous was about to leave the State bench, Marcotte used him to "open the floodgates" in terms of setting bonds: "I figured he was on his way out and let's open the floodgates and let me try to make as much money as I can before he left."[364] In response to questioning from Mr. Schiff at the Task Force hearing, Louis Marcotte explained: "Now, prior to that [the last days on the bench], you know, there was a ton of bail applications as well, but my words were 'Well, let's wear him [Judge Porteous] out.'"[365] Marcotte's testimony has been corroborated by a series of bond forms that were obtained from the Sheriff's Office and the 24th JDC reflecting numerous bonds set by Judge Porteous, for prisoners for whom the Marcottes posted bonds, in the last days of his tenure on the State court bench. [366]

E. JUDGE PORTEOUS'S RELATIONSHIP WITH LOUIS MARCOTTE AND LORI MARCOTTE WHILE HE WAS A FEDERAL JUDGE

1. Overview

Judge Porteous and the Marcottes continued to maintain a relationship after he became a Federal judge. Even though Judge Porteous could no longer set bonds for them, the Marcottes continued to take Judge Porteous to expensive lunches, assisted in having him speak at Bail Bond conventions in Biloxi Mississippi (at the Beau Rivage Resort) and in New Orleans at the Royal Sonesta Hotel, and took his secretary Rhonda Danos to Las Vegas at least twice, to maintain access to Judge Porteous. Louis Marcotte explained that because Judge Porteous was a Federal judge, he "brought strength to the table" on any issues for which the Marcottes sought his assistance, particularly maintaining and forging new relationships with other State judicial officers and business executives.

In his Task Force Hearing testimony, Louis Marcotte was blunt about the prestige that Judge Porteous provided by being at the "table" with him:

> A. Because, number one, he was a Federal judge. Right there, that brings strength to the table whenever he sits down with me.
>
> * * *
>
> A. It would make people respect me because, you know, I am sitting with a Federal judge.

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[364] Louis Marcotte TF Hrg. III at 51. See also Louis Marcotte Dep. at 24 (Ex. 68). Louis Marcotte's Task Force Hearing testimony was consistent with what he told the FBI in 2004: "After PORTEOUS was appointed to the Federal bench, he expunged WALLACE'S record and did almost every bond MARCOTTE asked." Louis Marcotte FBI Interview, Oct. 15, 2004 at 1 (Ex. 72(g)). From Judge Porteous's perspective, at the time he set aside Wallace's conviction and signed the bonds on the "way out," he knew that Louis Marcotte had been interviewed twice by the FBI, and had the power to derail his nomination, and, further, that this was one of his last opportunities to set bonds for the Marcottes.

[365] Louis Marcotte TF Hrg. III at 58.

[366] See Exs. 350 (a)-350(zz). Louis Marcotte TF Hrg. III at 51.

* * *

Q. So it is good for you to be sitting with a Federal judge if you are meeting with somebody else, right?

A. Yes, sir.[367]

Judge Porteous, while a Federal judge, helped the Marcottes meet at least four judicial officers—newly elected Justices of the Peace Charles Kerner and Kevin Centanni, and newly elected State judges Ronald D. Bodenheimer and Joan Benge. In addition, Judge Porteous also went with the Marcottes to meals that were also attended by Norman Stotts, the executive for the insurance company that underwrote the Marcottes' bonds. In each instance, Louis Marcotte's explanation of how Judge Porteous "brought strength" and helped him with these individuals is corroborated by other witnesses and evidence.

2. Maintaining the Marcotte-Porteous Relationship

Both Louis Marcotte and Lori Marcotte testified that they continued to take Judge Porteous to lunches when he was a Federal judge—typically with others, and frequently with other State judges. Their testimony on this fact is corroborated by records that were obtained, including calendars of Bail Bonds Unlimited (BBU), noting some of the activities of Louis and Lori Marcotte in the 1999-2002 time frame; various credit card records of Louis Marcotte, Lori Marcotte, and other BBU employees; and several meal checks from the Beef Connection going back to August 1997. Thus, as reflected in the following table, several meals can be identified as including Judge Porteous while he was a Federal judge:[368]

[367] Louis Marcotte TF Hrg. III at 52. See also Louis Marcotte Dep. at 16 (Louis Marcotte maintained a relationship with Judge Porteous "[b]ecause whenever I brought Porteous to the table, I brought strength. . . . Because other judges respected him and they listened to him when he talked.") (Ex. 68).

[368] The exhibits supporting the first four dates in the table 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. The meal checks reflect the purchase of "Abs" or "Abso"—short for "Absolut"—Judge Porteous's drink of choice. The respective exhibits are Ex. 372(a) for August 6, 1997; Ex. 372(b) for August 25, 1997; Ex. 372(c) for November 19, 1997; and Ex. 372(d) for 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 Ex. 373(c) (February 1, 2000) and Ex. 373(d) (November 7, 2001).

In addition, there are other calendar entries mentioning potential lunch appointments with Judge Porteous on other dates for which no corresponding or corroborating credit card statements reflecting restaurant charges were located. Nonetheless, the very presence of Judge Porteous's name in the Marcotte calendars starting in 1999 reflects an ongoing relationship during the years while he was on the Federal bench.

Table 5. Selected Meals Provided by the Marcottes to Judge Porteous (1997-2001)

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

PBUS Convention at the Beau Rivage—July 1999. In July 1999, the PBUS held its annual convention at the Beau Rivage resort in Biloxi, Mississippi. The Marcottes paid for some of the events and entertainment at that convention. Judge Porteous's room was paid for by PBUS,[369] however Danos's room was paid for by the Marcottes. Photos taken at that convention show Judge Porteous in the company of Louis Marcotte and Marcotte employee Norman Bowley, among others, at the cocktail reception hosted by BBU.[370]

3. Judge Porteous's Assistance to the Marcottes

a. 1997—Helping with Newly Elected Justice of the Peace Charlie Kerner

Charlie Kerner was the Justice of the Peace in Lafitte, a city about 30 minutes outside of New Orleans. Both Louis Marcotte and Lori Marcotte testified that Judge Porteous helped them try to forge a relationship with Justice of the Peace Kerner. Louis Marcotte testified that they had Judge Porteous attend a lunch with Kerner: "We sat down at the Beef Connection. We ate with Kerner. And then we thought we had a good lunch, and, and Kerner had listened to Porteous. And then after we called Kerner, he kind of froze up on us."[371]

Kerner confirmed that on one occasion, when Judge Porteous was a Federal judge, he (Kerner) arranged to have lunch with Judge Porteous and Danos.[372] Kerner sought to have lunch with Judge Porteous to thank him for having sworn him in as Justice of the

[369] Judge Porteous's hotel room of $206.00 was paid by PBUS, and other food and entertainment for Judge Porteous was provided by PBUS and the Marcottes. Judge Porteous did not disclose this reimbursement in his Financial Disclosure Report for calendar year 1999. In contrast, Judge Porteous did disclose the following comparable events for which he was reimbursed: (1) "Jefferson 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)." Judge Porteous's receipt of hotel accommodations at a gambling location from the PBUS arose from his association with the Marcottes, and his failure to report the receipt of this reimbursement is consistent with an attempt to conceal that relationship.

[370] The photographs were identified by Lori Marcotte in her deposition. See Lori Marcotte Dep. Exs. 23 and 24 (Exs. 223 and 214).

[371] Louis Marcotte Dep. at 16-17 (Ex. 68).

[372] This discussion of events is set forth in Justice of the Peace Kerner's deposition.

Peace.[373] Kerner had "a lot of respect" for Judge Porteous and was "honored" that Judge Porteous had sworn him in.[374]

On the day of the lunch, Kerner received a call from Danos stating that Louis Marcotte, whom Kerner had never met, would be joining them and that the Marcottes would pay for lunch. At that lunch, in the presence of Judge Porteous and Danos, Marcotte spread law books and other materials over the lunch table and tried to explain to Kerner the authority that Kerner possessed to set bonds to help Marcotte. As Kerner described it:

> [H]e [Louis Marcotte] produced some law books to me and had a outline of what he felt as a magistrate and saying setting bonds or whatever would be in my jurisdiction to help him to lower the bonds, you know, so they can help people like that. That's the way he presented it to me.
>
> * * *
>
> Well, he wanted me to help him, help them, I guess, if someone say if the bond could be lowered in a margin that would be affordable to them. That's the way I took it.[375]

Kerner testified that when Louis was giving this presentation: "[I] felt a little uncomfortable. I'll say that. I felt a little uncomfortable."[376] The respect Kerner felt towards Judge Porteous and the honor he felt by Judge Porteous's presence affected Kerner's willingness to hear what the Marcottes had to say.[377] After that lunch, Kerner spoke to another Justice of the Peace who knew the Marcottes, and after that conversation he decided he wanted nothing to do with them.[378]

b. 1997—Helping with Newly Elected Justice of the Peace Kevin Centanni

Lori Marcotte, in her FBI interviews in 2004[379] and Task Force interviews, stated that Judge Porteous also arranged for them to meet newly elected Justice of the Peace Kevin Centanni. As with Justice of the Peace Kerner, the Marcottes' efforts to cultivate a relationship with Centanni were not successful.

Centanni, when interviewed by the FBI in 2004, recalled a meal at the Beef Connection with the Marcottes and other judges, at which he "believed" Judge Porteous was in attendance.[380] At that lunch, according to the FBI write-up, Louis Marcotte gave Centanni information on bond setting and bond splitting. "CENTANNI believed MARCOTTE was trying to educate CENTANNI to

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[373] The lunch would have been in 1997, Kerner having been elected in late 1996.
[374] Kerner Dep. at 6 (Ex. 79).
[375] Kerner Dep. at 9 (Ex. 79).
[376] Kerner Dep. at 12 (Ex. 79).
[377] Kerner Dep. at 13-14, 16-17 (Ex. 79).
[378] Kerner Dep. at 10-11 (Ex. 79). Lori Marcotte, in her Task Force testimony described this event in similar terms: "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." Lori Marcotte TF Hrg. III at 56-57.
[379] Lori Marcotte FBI Interview, April 21, 2004 at 5 (Ex. 74(d)). According to the FBI write-up, Lori Marcotte stated: "PORTEOUS talked to KEVIN CENTANNI, a Justice of the Peace in Jefferson Parish, about doing bonds. CENTANNI did a couple of bonds but stopped because he felt uncomfortable doing the bonds."
[380] Centanni FBI Interview, July 6, 2004 at 1 (Ex. 69(h)). When interviewed by Task Force staff on January 6, 2010, Justice of the Peace Centanni stated he did not recall whether Judge Porteous was present.

get CENTANNI to do bonds for MARCOTTE, however, CENTANNI rarely set bonds." [381]

c. 1999—Helping with Newly Elected State Judge Ronald Bodenheimer

In 1999, Judge Porteous took steps to assist the Marcottes in forming a relationship with newly elected State Judge Ronald Bodenheimer. Shortly after Bodenheimer was elected, Louis Marcotte asked Judge Porteous to help the Marcottes form a relationship with Bodenheimer. During his Task Force Hearing testimony, Louis Marcotte was asked to describe what he asked Judge Porteous to do with regard to Bodenheimer. Louis Marcotte described his request to Judge Porteous as follows:

> A. Judge, tell this guy [Bodenheimer] I am a good 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.
>
> Q. Do you know whether or not Judge Porteous spoke to Judge Bodenheimer?
>
> A. Yes, he did.
>
> Q. And after he spoke to Judge Bodenheimer, did your relationship with Judge Bodenheimer change as a result?
>
> A. Yes, it did. Bodenheimer became the Porteous of the 24th District Court. [382]

Bodenheimer confirmed Louis Marcotte's testimony. He testified in the grand jury: "I distanced myself from him [Marcotte]. Porteous knew it." [383] Bodenheimer recalled that Judge Porteous told him that he [Judge Porteous] "knew that I didn't really like Louis Marcotte and that group very much but they were really—they really weren't as bad as people thought they were, that he [Louis Marcotte] was a pretty good guy." [384]

Bodenheimer had appeared as a prosecutor in front of Judge Porteous in State court in the early 1990's and "looked up" to Judge Porteous. Thus, Judge Porteous's comments about the Marcottes were significant to Bodenheimer and affected his willingness to form a relationship with the Marcottes. As Bodenheimer explained:

> Q. So how did the fact that Judge Porteous—how did the fact that you looked up to Judge Porteous influence, in-

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[381] Centanni FBI Interview, July 6, 2004 at 2 (Ex. 69(h)).

[382] Louis Marcotte TF Hrg. at 53. Similarly, when asked what the Marcottes requested of Judge Porteous, Lori Marcotte responded: "The same thing that we—that Judge Porteous did with us with the other judges, to, to introduce us to him, to get close to him, to—he was familiar with bond splitting because he was a D.A., Judge Bodenheimer. But just to establish trust and to help us split bonds, to get us to help us split bonds." Lori Marcotte Dep. at 46 (Ex. 76). She testified that Bodenheimer "took Judge Porteous'[s] place." Id. at 47.

[383] Bodenheimer GJ at 11 (Ex. 89).

[384] Bodenheimer Dep. at 12 (Ex. 86). See also id. at 13 (Judge Porteous told Bodenheimer "regardless of what preconceived notions I might have about them, that [Louis Marcotte] really wasn't a bad guy, that he wouldn't steer me wrong, if he tells me something about a particular defendant and a bond, I can take it to the bank, he won't lie to me.").

fluence you in interpreting the comments that Judge Porteous made in your dealings with the Marcottes?

A. I had a lot of respect for Judge Porteous. I had a lot of respect for him as a person. I had a lot of respect for him and his rulings. I had been with him for a long time, and I knew he was very, very, just in my opinion, was very, very smart. And if he told me something, I wouldn't question it.

Q. So when he vouched for the Marcottes, that was very significant for you in your willingness to form a relationship with the Marcottes?

A. Yes.[385]

Over time, Bodenheimer would attend lunches with Louis Marcotte and Judge Porteous. Louis Marcotte would pay: "[I]t would be the better restaurants, maybe like the Beef Connection. . . . Of course, we did go to Emeril's one time. But mostly it would be something like the Beef Connection or a place called the Red Maple[.]"[386]

Bodenheimer, who ended up "[taking] Judge Porteous'[s] place," ultimately pleaded guilty to Federal corruption charges arising from his relationship with the Marcottes.[387]

d. March 2002—Helping with Newly Elected State Judge Joan Benge

In 2001, Joan Benge was elected to the State bench. Louis Marcotte sought to get to know her and wanted Judge Porteous to be at a March 2002 lunch at "Emeril's" that included himself, Judge Benge and others.[388] As Louis Marcotte testified:

A. Well, Benge was a new judge. And basically what we tried to do was rally a bunch of judges to have lunch with Porteous, and he could tell them how great the bail bond business is and how, how. . . .

* * *

Q. And did you want Judge Porteous to be there because——

A. Yes, I did. Because I wanted to show strength. He's a Federal judge, and when he—if he spoke, then they would listen.[389]

As described by Bodenheimer, Louis Marcotte arranged the lunch and told him that he wanted to have Judge Benge present because "he didn't really know her that well and he wanted to get to meet

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[385] Bodenheimer Dep. 13-15 (Ex. 86). He testified consistently in the Grand jury:

> I distanced myself from [Marcotte]. Porteous knew it. And he [Porteous] says, "I know you got this bad taste in your mouth for him. I know that you've heard these rumors about him and cocaine." He said, "Let me tell you. It's not true. He's a good guy. You can trust him. If you got problems with bonds go see him. He'll never steer you wrong. He'll never get you hurt."

Bodenheimer GJ at 11 (Ex. 89).

[386] Bodenheimer GJ at 20 (Ex. 89). See also Bodenehimer Dep. at 15-17 (Ex. 86).

[387] See, e.g., Superseding Bill of Information for . . . for Conspiracy to Commit Mail Fraud, United States v. Ronald. D. Bodenheimer, Crim. No. 02-291 (E.D. La.), Mar. 31, 2003, at 3 (Ex. 88(d)).

[388] Louis Marcotte TF Hrg. III at 53-54.

[389] Louis Marcotte Dep. at 18-19 (Ex. 68).

her." He also knew that Judge Benge, who had been a prosecutor in the 24th JDC, "respected him [Judge Porteous] as much as I did." [390] As it turned out, Judge Porteous arrived late for the meal, and only had drinks. [391] The Emeril's credit card receipt and meal check for $414 has been obtained. Louis Marcotte paid for this lunch with his American Express card. The FBI surveilled and videotaped this March 2002 lunch, at which Judge Porteous, Louis Marcotte, Bodenheimer and Judge Benge (as well as BBU staff and Judge Benge's secretary) were in attendance. [392]

e. Meals with Insurance Company Representative Norman Stotts

The Marcottes' bonds were underwritten by an insurance company called "Amwest." As Louis Marcotte described, the Marcottes were in essence insurance agents for Amwest and bail bonds were, in essence, insurance policies that would pay the court if a defendant did not show up as required. [393] Amwest would receive from the Marcottes a portion of the premiums. As the Marcottes were, in substance, selling Amwest insurance policies, Amwest had a vital interest in the Marcottes' profitability and business practices and could, for example, limit the dollar amount of bonds they could write.

On a regular basis, Amwest would send a high level company official, Norman Stotts, to meet with the Marcottes. Louis and Lori would take him out to lunch and include Judge Porteous. As Louis described: "It makes me look good with the insurance company. It gives me more writing authority to write big bonds, you know. It just showed strength in my organization by having a Federal judge sitting with me at the table." [394]

In his FBI interview, Stotts confirmed that he went to lunch with Judge Porteous on occasions when Judge Porteous was a Federal judge. [395] Danos also recalled attending a lunch with Stotts. [396]

F. The Wrinkled Robe Investigation and the Prosecution of Louis Marcotte, Lori Marcotte, and Louisiana State Judges

In 1999, the United States Attorney's Office for the Eastern District of Louisiana commenced a broad investigation of Louis Marcotte's corrupt relationship with Louisiana State judges and other State law enforcement officials. The FBI labeled this investigation "Wrinkled Robe." In August 2001, the FBI sought and obtained wiretaps, and in June 2002, the FBI executed a search warrant at the Marcottes' offices.

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[390] Bodenheimer Dep. at 20 (Ex. 86).

[391] Bodenheimer Dep. at 20 (Ex. 86).

[392] Louis Marcotte TF Hrg. III at 53-54. Photographs that span the period from 1993 to 2002 have been obtained that depict Judge Porteous with Wrinkled Robe convicted conspirators Louis Marcotte, Lori Marcotte, Norman Bowley, and Ron Bodenheimer.

[393] "A bail bondsman is no more than a State Farm agent. We are licensed through the Commission of Insurance. We carry a property and casualty license. And the insurance company supplies us with policies that we can post at the jail so we can get defendants out. It is not real money; it is just a policy. If the defendant doesn't show up in court, then the courts cash the policy." Louis Marcotte TF Hrg. III at 42.

[394] Marcotte Dep. at 15-20 (Ex. 68).

[395] Stotts FBI Interview, Dec. 18, 2002, at 22 (Ex. 69(g)). Stotts also confirmed having meals with the Marcottes that included Judge Porteous in an interview with Task Force Staff in late 2009.

[396] Danos Dep. II at 14 (Ex. 47).

The results of the investigation included the convictions of Louis Marcotte and Lori Marcotte for their actions in giving things of value to State judges and other State law enforcement officials (such as jail employees) who helped them in their bail bonds business. Two State judges (Bodenheimer and Green) and other State law enforcement officials were also convicted on Federal corruption charges arising from their relationships with the Marcottes. By any reasonable interpretation of the evidence, Judge Porteous's conduct was indistinguishable (if not more extensive) from the conduct of the other two State judges who were convicted.

1. Bodenheimer's Guilty Plea

Bodenheimer pleaded guilty in March 2003 to conspiracy to commit mail fraud on a "deprivation of honest services" theory. (This was prior to the Marcottes' guilty pleas.) Among the overt acts charged in the Information were that he:

> 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.[397]

The sorts of things Judge Bodenheimer received from the Marcottes were similar to those things that the Marcottes gave to Judge Porteous. Louis Marcotte, according to Bodenheimer, "worked on my house," "took us on fishing trips," and "took us to the Beau Rivage [casino] to a show."[398] 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

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[397] Superseding Bill of Information for . . . Conspiracy to Commit Mail Fraud, United States v. Ronald D. Bodenheimer, Crim. No. 02-219 (E.D. La.), Mar. 31, 2003, at 3 (Ex. 88(d)).

It is of no consequence that the judge—be it Bodenheimer or Judge Porteous—may have taken the same discretionary acts in setting, splitting, or reducing bonds or setting aside convictions even without accepting the financial inducements from the Marcottes to do so. A judge has significant discretion to exercise as he or she deems fit—just not in exchange for things of value. In this regard, the Committee notes by way of reference that the Federal courts have reached the same understanding in interpreting the bribery laws. Public officials accused of taking bribes have occasionally attempted to defend their conduct, or claim a lack of corrupt intent, on the grounds that they would have taken the same act or reached the same decision anyway, or that the official acts alleged to have been committed for things of value were affirmatively "good" for the community.

One Federal circuit court addressed and rejected these arguments as follows: "It is neither material nor a defense to bribery that 'had there been no bribe, the (public official) might, on the available data, lawfully and properly have made the very recommendation that (the briber) wanted him to make.'" United States v. Janotti, 673 F.2d 578, 601 (3d Cir. 1982) (citing United States v. Labovitz, 251 F.2d 393, 394 (3d Cir. 1958)). In Labovitz, the court explained: "It is a major concern of organized society that the community have the benefit of objective evaluation and unbiased judgment on the part of those who participate in the making of official decisions. Therefore, society deals sternly with bribery which would substitute the will of an interested person for the judgment of a public official as the controlling factor in official decision." United States v. Labovitz, 251 F.2d at 394.

The standard Federal criminal jury instruction on this topic tracks the above cases, and provides: "It is not a defense to the crime of bribery as charged in Count of the indictment that the [offer] [or] [promise] [demand] [or] [receipt] of anything of value was made [to] [by] the public official to influence an official act which is actually lawful, desirable, or even beneficial to the public." O'Malley, Grenig & Lee, 2 Fed. Jury Prac. & Instr. § 27:11 (6th ed.). See also United States v. Dorri, 15 F.3d 888, 890 (9th Cir. 1994) (same).

[398] Bodenheimer GJ at 25-27 (Ex. 89).

bail bonding company in exchange for things of value, including meals, trips to resorts, campaign contributions, home improvements, and other things of value."[399]

On April 28, 2004 , Bodenheimer was sentenced to 46 months incarceration on the corruption count, to run concurrently with other offenses to which he pleaded guilty.[400]

2. Louis Marcotte Affidavit

On April 17, 2003, 2 months after a New Orleans Times-Picayune article publicly linked Judge Porteous to accepting things of value from Louis Marcotte as a State judge,[401] and 1 month after Bodenheimer pleaded guilty, Louis Marcotte signed an affidavit designed to protect Judge Porteous.[402] 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.[403]

Louis Marcotte testified in his deposition that the statement was "not accurate."

> Q. Okay. And would you describe whether or not that statement is accurate or not?
>
> A. It's not accurate.
>
> * * *
>
> A. I gave him meals, trips, car repairs, radios.
>
> Q. And why did you do all that?
>
> A. I wanted him to help me with the bonds.[404]

In his deposition, Louis Marcotte testified he felt uncomfortable signing the affidavit, and "thought my lawyer was protecting Porteous and not me."[405] Nonetheless, just as he did in 1994 in connection with the FBI background check, Louis Marcotte made statements intended and designed to protect Judge Porteous and to insulate him from investigation, scrutiny and the disclosure of the relationship between the two men.[406]

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[399] Factual Basis [in Support of Guilty Plea], United States v. Ronald D. Bodenheimer, Crim. No. 02-219 (E.D. La.), Mar. 31, 2003, at 10 (Ex. 88(f)); Bodenheimer Dep. Ex. 45 (Ex. 245).

[400] Judgment and Probation/Commitment Order, United States v. Ronald D. Bodenheimer, Crim. No. 02-219 (E.D. La.), Apr. 28, 2004 (Ex. 88(h)).

[401] M. Carr and M. Torres, "Judges Were Given Gifts; Marcotte's Ex-workers Tell of Shrimp, Fence," New Orleans Times-Picayune, Feb. 8, 2003 (part of the Metropolitan Crime Commission Documents, MCC 0199-200 (Ex. 85), and separately marked as Ex. 119(e)). Judge Porteous is identified by name in that article which states:

> The former employees claim Marcotte paid for car repairs and built a fence for former 24th Judicial District Judge Thomas Porteous, who now sits on the Federal bench[.]

Id.

[402] Louis Marcotte Dep. Ex. 80 (Ex. 280).

[403] Marcotte Dep. Ex. 80 (Ex. 280).

[404] Louis Marcotte Dep. at 23-24 (Ex. 68).

[405] Louis Marcotte Dep. at 23 (Ex. 68).

[406] Though the statement may be parsed as "literally true" if read as a denial that Judge Porteous and Louis Marcotte had a specific conversation where Louis Marcotte agreed to give a specific thing of value to Judge Porteous in exchange for a specific official act, the sweeping nature of the denial is misleading, if not outright false, in that it conceals the numerous things of value that Louis Marcotte gave Judge Porteous and the numerous official acts of Judge Porteous that benefitted Louis Marcotte in return.

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

In March 2004, both Louis Marcotte and Lori Marcotte pleaded guilty to an Information charging Federal corruption offenses. Louis Marcotte pleaded guilty to Racketeering Conspiracy. That conspiracy was alleged to have commenced prior to 1991.[407] The temporal scope of the scheme is consistent with the allegations in the FBI wiretap affidavit that generally described the inception of the corrupt relationship between Marcotte and judges in the 24th JDC as beginning with their relationship with Judge Porteous. Similarly, the Information's elaboration of the acts of the judicial conspirators describes the actions of Judge Porteous.[408] 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.[409]

Bodenheimer, who had already pleaded guilty to having a corrupt relationship with the Marcottes, was specifically identified in the Louis Marcotte Information as one of the judges with whom Marcotte had a corrupt relationship. That relationship was described as follows:

> Beginning at a date unknown and continuing until in or about June 2002, LOUIS M. MARCOTTE, III provided Bodenheimer with gifts, meals, and other things of value. In return, Bodenheimer was available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.[410]

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[407] Bill of Information for Conspiracy to Operate an Enterprise through a Pattern of Racketeering Activity and Conspiracy to Commit Mail Fraud, United States v. Louis M. Marcotte, III, and Lori M. Marcotte, Crim. No. 04-061 (E.D. La.), Mar. 3, 2004, at 4 (Ex. 71(a)).

[408] DOJ policy generally prohibits publicly identifying uncharged conspirators unless they have otherwise been publicly identified. Thus, though Bodenheimer's name could be included in the Marcotte Information as a named conspirator because he had previously pleaded guilty to a corrupt relationship with the Marcottes, the prosecutors would not have identified Judge Porteous in the Marcotte Information as he had not been publicly accused.

[409] Bill of Information for Conspiracy to Operate an Enterprise through a Pattern of Racketeering Activity and Conspiracy to Commit Mail Fraud, United States v. Louis M. Marcotte, III, and Lori M. Marcotte, Crim. No. 04-061 (E.D. La.), Mar. 3, 2004, at 5 (Ex. 71(a)).

[410] Bill of Information for Conspiracy to Operate an Enterprise through a Pattern of Racketeering Activity and Conspiracy to Commit Mail Fraud, United States v. Louis M. Marcotte, III, and Lori M. Marcotte, Crim. No. 04-061 (E.D. La.), Mar. 3, 2004, at 6 (Ex. 71(a)).

The things of value included: Louis Marcotte's hiring Bodenheimer's daughter, paying for meals and paying for hotel rooms. The Louis Marcotte Information further specified that during the course of that corrupt relationship, Bodenheimer set and split hundreds of bonds.[411]

Lori Marcotte pleaded guilty at the same time as Louis Marcotte to conspiracy to commit mail fraud, that is, "to deprive the citizens of the State of Louisiana of the honest and faithful services, performed free from deceit, bias, self-dealing, and concealment, of certain Jefferson Parish Sheriff's Deputies in the performance of their official duties."[412]

Louis Marcotte was sentenced August 28, 2006 to 38 months incarceration, followed by 3 years supervised release.[413]

Lori Marcotte was sentenced August 28, 2006 to 3 years probation, including 6 months of home detention.[414]

4. Judge Alan Green's Conviction

Judge Alan Green was indicted September 29, 2004, along with Marcotte employee Norman Bowley, on several charges arising from Judge Green's corrupt relationship with the Marcottes.[415] The conspiracy to commit mail fraud (honest services fraud) count (Count Two) with which Green was charged described the scheme in terms that again track the Marcottes' relationship with Judge Porteous (as well as Judge Bodenheimer):

> 2. It was part of the scheme and artifice to defraud that the defendant, NORMAN BOWLEY, the defendant, ALAN GREEN, along with Louis Marcotte, Lori Marcotte, and others known and unknown to the Grand Jury, engaged in a scheme to maximize BBU's and the Marcottes' profits from writing bail bonds in Jefferson Parish and elsewhere through the corruption of the defendant, ALAN GREEN.
>
> * * *
>
> 4. It was a further part of the scheme and artifice to defraud that, in return for things of value, ALAN GREEN would make himself 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.
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> 5. It was a further part of the conspiracy that, to allow BBU to maximize its profits, the defendant, ALAN GREEN, would engage in the practice of "bond splitting." . . . At BBU's request, GREEN would set the

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[411] If "Porteous" were to be substituted for "Bodenheimer"—in the above paragraph, the charging language would aptly describe the nature of Louis Marcotte's relationship with Judge Porteous as established by the evidence.

[412] Bill of Information for Conspiracy to Operate an Enterprise through a Pattern of Racketeering Activity and Conspiracy to Commit Mail Fraud, United States v. Louis M. Marcotte, III, and Lori M. Marcotte, Crim. No. 04-061 (E.D. La.), Mar. 3, 2004, at 14-15 (Ex. 71(a)).

[413] Judgment in a Criminal Case, United States v. Louis M. Marcotte, III, Crim. No. 04-061 (E.D. La.), Aug. 28, 2006 (Ex. 71(e)).

[414] Judgment in a Criminal Case, United States v. Lori Marcotte, Crim. No. 04-061 (E.D. La.), Aug. 28, 2006 (Ex. 73(d)).

[415] Indictment, United States v. Alan Green and Norman Bowley, Crim. No. 04-295 (E.D. La.), Sept. 29, 2004 (Ex. 93(a)).

> 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 it profits and minimize its liability. [416]

On June 29, 2005, the jury found Green guilty of Count Three of the Indictment, charging him with a single substantive count of mail fraud. The jury did not reach a verdict on the conspiracy count. However, Count Three incorporated by reference the description of the scheme set forth above.

Judge Green was sentenced on February 9, 2006, to 51 months incarceration, to be followed by 3 years of supervised release. [417]

G. The Marcottes' Relationship with Danos

As alluded to at various points above, the Marcottes maintained a relationship with Judge Porteous's secretary, Rhonda Danos, over the same time period that they maintained a relationship with Judge Porteous. As Lori Marcotte testified:

> She [Danos] could call [Judge Porteous] if he wasn't in the office. She could get him off of the bench. . . . Also she could call the jail, call in the bonds for us and call to get information on the case itself. So when Judge Porteous was off the bench, he could split or set the bond fast. [418]

Thus, the Marcottes included her in the lunches with Judge Porteous, paid for numerous expensive entertainment events, and took her to Las Vegas four or five times, some of which took place after Judge Porteous became a Federal judge. [419] Danos has also testified that "[i]t may have been four [trips to Las Vegas]" [420] and that the Marcottes took her to two "Siegfried and Roy" shows on those trips. [421] Notably, Lori Marcotte testified she did not know Danos well prior to inviting her the first time, [422] and she explicitly

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[416] Id. at 18-19. The charging language in the Green case is similar in essential aspects to a description of the Marcottes' relationship with Judge Porteous.

[417] Judgment in a Criminal Case, United States v. Alan Green, Crim. No. 04-295 (E.D. La.), Feb. 9, 2006 (Ex. 93(b)).

[418] Lori Marcotte Dep. at 28 (Ex. 76).

[419] There is ample corroboration for these trips: (1) Lori Marcotte testified she took Danos to Las Vegas in 1992 and that on that trip they took an airplane trip over the Grand Canyon. Lori Marcotte identified a "certificate" that she was given by the tour company for that Grand Canyon trip dated February 1992. Danos also recalled that trip and the Grand Canyon flight. (2) Louis Marcotte's credit card records reflect that he purchased for Danos a February 1996 flight to Las Vegas, and Golden Nugget Casino hotel records reflect a room for Danos charged to the Marcottes' office address. Danos also recalled a trip paid by the Marcottes at which she stayed at the Golden Nugget. (3) Lori Marcotte's credit card records reflect her purchase for Danos of a February 1998 flight to Las Vegas. On that trip, the Marcottes stayed at the Luxor Hotel, and Danos shared a room with a Marcotte employee. See, e.g., Lori Marcotte Dep. at 28-29 (Ex. 76); Danos Dep. I at 13-14 (identifying various trips to Las Vegas); Lori Marcotte Dep. Ex. 1 (the Grand Canyon flight certificate) (Ex. 201); Ex. 371 (containing, among other records, Louis Marcotte's credit card statement containing charges for air travel purchased for Danos for a trip to Las Vegas in 1996 and the Golden Nugget Casino room statement for Danos for February 1996 (charged to the BBU address)).

[420] Danos Dep. I at 8 (Ex. 46).

[421] Danos Dep. I at 12 (Ex. 46).

[422] When asked how it came about that she took Danos to Las Vegas, Lori Marcotte testified: "Well, we would go to Judge Porteous's office to get bonds set or split, and I started speaking to her at the desk and asked her to come to Las Vegas. We were having a bail bond convention, and we asked her to come along." Lori Marcotte TF Hrg. III at 55-56.

linked providing these trips with the fact that Danos had been so good to them.[423]

To the extent that Judge Porteous would have understood that the Marcottes gave things of value to Danos because of official acts performed (or to be performed) by her, then his tolerance of those activities would have, in substance, been the condoning of a relationship based on the Marcottes' provision and Danos's acceptance of a stream of illegal gratuities.[424]

X. THE FACTS UNDERLYING ARTICLE III—JUDGE PORTEOUS'S FALSE STATEMENTS AND VIOLATION OF THE COURT ORDER IN CONNECTION WITH HIS PERSONAL BANKRUPTCY

A. OVERVIEW

Judge Porteous's conduct surrounding his bankruptcy case was characterized by numerous false statements and material omissions on the official forms that he signed under penalty of perjury that were filed with the court. He also violated a court order by incurring gambling debt and other indebtedness. These acts included filing for bankruptcy under a false name (and with a PO Box rather than his actual residence address) to conceal his identity, and failing to disclose an anticipated substantial tax refund. In addition, Judge Porteous made numerous other false or deceptive statements about his income, liabilities, and financial activities in order to conceal his prior and ongoing gambling activity. As a result, his unsecured creditors (predominantly credit card companies) received a fraction of what he owed them, while, at the same time, (1) every casino that had ever extended credit to Judge Porteous was paid in full, and (2) the casinos continued to extend to Judge Porteous lines of credit which he utilized even while in bankruptcy.

The evidence related to Judge Porteous's dealings with Creely, Amato, other attorneys, and the Marcottes demonstrates that Judge Porteous experienced financial difficulties throughout the 1990's. He solicited money from friends; accepted hundreds of meals and payments towards travel and entertainment with no pretense that he would reciprocate; drove vehicles in "deplorable" condition; and depended on others for home and car repairs. Judge Porteous even asked Gardner to give him money on one occasion so he could buy a Christmas present for his wife. Many of these requests and acceptances of meals and money occurred while on gambling trips at locations such as Las Vegas or casinos in Mississippi.

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[423] Lori Marcotte TF Hrg. III at 56.

[424] Although Danos testified she believed the things of value were solely because of a friendship, she would have known that Lori Marcotte brought jail personnel along on at least one Las Vegas trip that Danos attended. Notably, one of the jail employees, Edward Still, pleaded guilty to Conspiracy to Commit Mail Fraud. The Information charged that Still and others, including Louis Marcotte and Lori Marcotte, conspired to defraud the citizens of Louisiana of their right to the honest services of Still (and other Sheriff's Deputies who worked in the jail). See Bill of Information for Conspiracy to Commit Mail Fraud, United States v. Forges et al [including Edward Still], Crim. No. 04-217 (E.D. La., July 21, 2004) (Ex. 95(a)). Among the overt acts in that Information were: "In or about February 1993, Louis Marcotte and Lori Marcotte paid for the defendant, Edward Still, to take an expense-paid trip to Las Vegas, Nevada." Id. at 4. Still admitted this event in the "Factual Basis," filed in court, to support his guilty plea. See Factual Basis at 3, United States v. Still, Crim. No. 04-217 (E.D. La., Sept. 1, 2004) (Ex. 97(b)). Still pleaded guilty September 1, 2004, and received a sentence of probation. See Judgment in a Criminal Case, United States v. Still, Crim. No. 04-217 (E.D. La., Feb. 2, 2005) (Ex. 97(c)).

The extent of Judge Porteous's deteriorating financial condition in the late 1990's is reflected in his financial records. These reveal extensive gambling expenses and credit card debts that increased dramatically in the late 1990's and amounted to approximately $180,000 by the end of 2000.

For years, Judge Porteous concealed the extent of these liabilities. He annually filed false financial disclosure reports with the Judicial Conference that materially understated his credit card liabilities.

Ultimately, on March 28, 2001, Judge Porteous and his wife Carmella filed for relief under Chapter 13 of the Bankruptcy Code.

B. JUDGE PORTEOUS'S FINANCIAL AFFAIRS PRIOR TO FILING FOR BANKRUPTCY

1. Causes of His Debt

By the time Judge Porteous took the Federal bench in October 1994, he had a history of gambling and was an "established player" [425] at the Grand Casino Gulfport in Gulfport, Mississippi. As an established player, Judge Porteous held a $2,000 line of credit at the Grand Casino Gulfport, which allowed him to take out $2,000 worth of markers at the casino. [426] After becoming a Federal judge, and prior to filing for bankruptcy in March 2001, Judge Porteous became an established player and opened up lines of credit at seven more casinos. [427] His credit limits ranged from $2,000 to $5,000.

An analysis of Judge Porteous's credit card and bank account records, performed by the FBI, revealed that from 1995 through 2000—while he was a Federal judge—over $130,000 in gambling charges appeared on his credit card statements:

1995	$ 9,545.08
1996	$ 22,927.48
1997	$ 32,927.48
1998	$ 16,056.84
1999	$ 40,825.62
2000	$ 8,908.90
Total	$131,191.40 [428]

[425] 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. Established 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 and free meals and drinks. As FBI Special Agent Horner explained, there are two reasons why a gambler would want to be rated: "One for tax purposes, for wins and losses, because they have to report their winnings and losings. Number two, a gamer or gambler would want their gaming activity rated—they call it rated play—because the casino will then give the customer food and room specials. They will give them free shows if they play enough. They will even give them free transportation to the casino. There is a term of art that is used, RFB. It is called room, food, beverage. A gambler will try to attain RFB status at the casino where when he walks in—or he or she walks in, you know, everything is paid for, including your room. So that is the main benefit to a gambler." Horner TF Hrg. II at 23.

[426] A marker is a form of credit extended by a casino that enables the customer to borrow money from the casino. See also Horner TF Hrg. II at 13.

[427] Judge Porteous became an established player at the following casinos: (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. See Porteous Central Credit Inc. Gaming Report (Ex. 326).

[428] FBI Credit Card Chart (Ex. 348). At the Fifth Circuit Hearing, FBI Financial Analyst Gerald Fink testified that the gambling charges on Judge Porteous's credit cards were $66,051 in gaming charges. Fink 5th Cir. Hrg. at 345-48 (Ex. 332). These same dollar amounts were pre-

Additionally, between January 1997 and June 2000, Judge Porteous wrote checks or made cash withdrawals from his bank accounts at casinos totaling at least $27,739.[429] Thus, Judge Porteous had incurred at least $150,000 in gambling charges and related gaming withdrawals in the 5 years preceding his bankruptcy filing.

2. Judge Porteous's Financial Condition from 1996 to 2000

From 1996 to 2000, Judge Porteous's financial situation grew increasingly dire, as follows:

Year-end 1996—Credit card debt in excess of $44,826; IRA Balance of $59,000. In December 1996—a date as of which nearly all the known credit card records of Judge Porteous were obtained—Judge Porteous had about $45,000 in outstanding credit card debt and an IRA balance of about $59,000. (He had no stocks or bonds or other significant savings or assets other than modest equity in his house.)

June of 1997—Credit card debt of $69,000; IRA balance of $20,000. During the first 6 months of 1997, Judge Porteous's financial situation deteriorated significantly. During that period, he made three withdrawals from his IRA account amounting to $40,000, resulting in his IRA balance falling to approximately $20,000. His credit card debt increased to $69,000.

June of 1999—Credit card debt of $103,000; IRA balance of $9,500. Judge Porteous took additional withdrawals from his IRA in April 1998 and January 1999. By June 1999 (when Judge Porteous sought money from Amato on the boat),[430] Judge Porteous's credit card debt had increased to approximately $103,000, while his IRA balance had fallen to approximately $9,500.

April 2000—Credit card debt of $153,000; IRA balance of $12,000. In September 1999, Judge Porteous withdrew another $1,600 from his IRA (his balance was as low as $7,700 on September 30, 1999, but the value grew over the next several months as the value of his securities in that account increased), but his credit card debt had increased to more than $150,000.

3. Judge Porteous's False Statements Concealing Liabilities on Financial Disclosure Reports

On an annual basis, starting with calendar year 1994, Judge Porteous was required by law to file Financial Disclosure Reports with the Judicial Conference of the United States.

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"

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sented at the Task Force Hearing. A subsequent review has revealed that the chart of credit card gambling expenses used at the Fifth Circuit and the Task Force Hearing failed to include several of Judge Porteous's credit cards, and that the actual amount of credit card gambling charges is substantially greater. Agent Horner, at the Task Force Hearing, testified that the chart he identified, Exhibit 327, "doesn't include everything. There is probably some additional credit card charges that were not included in this time period, and there may be some additional withdrawals out of his bank account that were not included." Horner TF Hrg. II at 9. An updated chart, Exhibit 348, supplements the chart (Exhibit 327) that was used at the Task Force Hearing.

[429] The June 2000 date was chosen for the purposes of the Fifth Circuit Hearing because that was the first time Judge Porteous met with his bankruptcy attorney, Claude Lightfoot.

[430] See discussion in VIII(I)(3), supra.

for amounts between $15,001 and $50,000. The filer is required to list all liabilities to credit card companies where the balance exceeded $10,000 at the close of the calendar year for which the Report was filed.[431]

Table 6 sets forth the credit card liabilities that Judge Porteous actually disclosed as compared with the credit card debts he actually incurred and failed to disclose on his Financial Disclosure Reports for calendar years 1996 through 2000.[432]

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[431] Under the Ethics in Government Act of 1978, Federal judges are required by law to file annual public reports with the Judicial Conference 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 conflicts of interests from arising," 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." "By having access to financial disclosure statements, an interested citizen can evaluate the official's performance of his duties in light of the official's outside financial interests." See S. Rpt. 95-170, 95th Cong. 1st Sess. 21-22 (1977), Senate Committee on Governmental Affairs, Report to Accompany S. 555, "Public Officials Integrity Act of 1977." (This Act took the name "Ethics in Government Act" in its final form.)

These disclosure requirements were upheld by the United States Court of Appeals for the Fifth Circuit in Duplantier v. United States, 606 F.2d 654 (5th Cir. 1979). In that case, the Fifth Circuit explained:

> While nomination and confirmation procedures no doubt weed out certain persons who should not serve as Federal judges, they do nothing to scrutinize the behavior of judges once confirmed. Congress could legitimately conclude that the statutory controls mandated by the Act would further the interest of judicial integrity.
>
> By alerting litigants and the public of a judge's financial interest, the financial disclosure provisions of the Act can serve as a check on potential judicial abuse.

Id. at 701. Individuals who have made false statements on Financial Disclosure Reports have been subject to prosecution under the Federal criminal laws as a violation of title 18, United States Code, Section 1001 (False and Fraudulent Statements).

[432] Danos testified that Judge Porteous prepared the forms, including specifying the codes to be used, and she simply typed the forms for him using the information he provided. Danos Dep. II at 4-5 (Ex. 47).

> Judge Porteous's Financial Disclosure Reports are marked as exhibits as follows: Ex. 102(a) (Financial Disclosure Report for 1996); Ex. 103(a) (Report for 1997); Ex. 104(a) (Report for 1998); Ex. 105(a) (Report for 1999), and Ex. 106(a) (Report for 2000). The various credit card statements for December of the respective calendar years containing balances that should have been reported are marked as follows: Ex. 167 (statement for Citibank account 0426 (December 12, 1996)); Ex. 168 (statements for MBNA accounts 0877 (December 19, 1997) and 1290 (December 4, 1997), and Travelers account 0642 (December 30, 1997)); Ex. 169 (statements for MBNA accounts 0877 (December 19, 1998) and 1290 (December 4, 1998)); Ex. 170 (statements for Citibank accounts 0426 (December 10, 1999) and 9138 ((December 21, 1999), MBNA accounts 0877 (December 18, 1999) and 1290 (December 4, 1999)); Ex. 171 (statements for MBNA accounts 0877 (December 20, 2000) and 1290 (December 5, 2000), Citibank accounts 0426 (December 12, 2000) and 9138 (December 21, 2000), Travelers Bank account 0642 (December 29, 2000), and Discover account 9489 in the name of Carmella G. Porteous (December 25, 2000)).

Table 6. Judge Porteous's Non-Disclosure of Liabilities on his Financial Disclosure Reports – 1996 through 2000

Year	Disclosed	Not Disclosed (December Balance)
1996	Box Checked: "None (No reportable liabilities)"	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
2000	1) MBNA - J 2) Citibank - J	1) MBNA Mastercard 0877 ($28,347.44) – K 2) MBNA Mastercard 1290 ($29,258.68) – K 3) Citibank 0426 ($24,565.76) – K 4) Citibank 9138 ($21,227.06) – K 5) Travelers 0642 ($17,682.35) – K 6) Discover 9489 ($21,518.14) – K

The 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 WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS [433]

Thus, for several years prior to filing for bankruptcy, Judge Porteous concealed his financial circumstances on documents where he was legally required to disclose them.

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[433] Judge Porteous's Financial Disclosure Report (for calendar year 1998), filed May 13, 1999 (Ex. 105(a)). That warning cites 5 U.S.C. App. 4, § 104 which provides, in part, that the Attorney General may bring civil penalty enforcement actions (seeking damages not to exceed $10,000), against persons who knowingly and willfully falsify a financial disclosure report. Even though the report does not cite to the criminal laws, Judge Porteous would have known that a false statement would also violate Title 18, United States Code, Section 1001 (False Statements) which makes it a crime for an individual "in any matter within the jurisdiction of the . . . judicial branch" to make a "materially false, fictitious, or fraudulent statement or representation," or make or use "any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry."

C. THE PRE-BANKRUPTCY WORKOUT PERIOD— JULY 2000 THROUGH FEBRUARY 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.[434]

Lightfoot spent "considerable time" with Judge Porteous and his wife in July and August 2000,[435] working to compile documentation on their assets and debts and to develop a workout proposal for the creditors in an effort to avoid a bankruptcy filing.[436] Lightfoot also told Judge Porteous not to incur any new debts and provided Judge Porteous general information describing Chapter 13 bankruptcies.[437]

During the early months of his engagement with Judge Porteous, Lightfoot gave Judge Porteous worksheets to fill out.[438] Lightfoot specifically explained to Judge Porteous that he needed to disclose all of his assets and all of his debts.[439] Lightfoot believed that the worksheets may have been filled out before he met with Judge Porteous on July 20, 2000, and that Judge Porteous personally filled out the worksheets because, for example, only Judge Porteous's Social Security number was initially filled in on the worksheets, and not Mrs. Porteous's.[440]

Judge Porteous also provided Lightfoot with a "big pile of invoices," bills, and credit card statements.[441] Included among these documents was Judge Porteous's pay stub from the period ending May 31, 2000, which showed Judge Porteous's net monthly income to be $7,531.52.[442]

Lightfoot spent considerable time preparing an analysis of Judge Porteous's debts and collecting all relevant documents that creditors would need to review when considering whether the workout proposal was a fair settlement.[443] Finally, on December 21, 2000, Lightfoot sent Judge Porteous a copy of the workout letters that had been sent to all of Judge Porteous's unsecured creditors, "with the exception of [a $5,000 loan from] Regions Bank which we want-

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[434] Lightfoot GJ I at 22 (Ex. 120). Lightfoot testified three times before the grand jury: August 19, 2004 (Lightfoot GJ I), September 9, 2004 (Lightfoot GJ II), and November 4, 2004 (Lightfoot GJ III).

[435] In August 2000, even as Judge Porteous was consulting with Lightfoot for the purpose of attempting a workout of his debts, he requested a credit limit increase at the Treasure Chest Casino from $2,500 to $3,000. See Porteous Central Credit Inc. Gaming Report (Ex. 326). Judge Porteous did not disclose this fact to Lightfoot.

[436] Lightfoot Affidavit in Support of Attorney's Fees at 1, Docket No. 18, In the Matter of Porteous, Case No. 01-12363, (Bankr. E.D. La.) (hereinafter "Lightfoot Affidavit and Invoice") (Ex. 342). During the workout process, Lightfoot analyzed Judge Porteous's assets and debts and came up with a plan to offer at least a partial payment to Judge Porteous's creditors for all of Judge Porteous's credit card debt of which Lightfoot was aware. Lightfoot TF Hrg. II at 87.

[437] Lightfoot Dep. at 14-15 (Ex. 123); Lightfoot TF Hrg. II at 42.

[438] Lightfoot Dep. at 3 (Ex. 123). Lightfoot's worksheets contained "every single question that appears in the petition, the schedules and the statements and the Chapter 13 plan. . . . [I]t contains everything that would ultimately be contained in a bankruptcy filing." Lightfoot TF Hrg. II at 42.

[439] Lightfoot TF Hrg. II at 42.

[440] Lightfoot GJ III at 36-37 (Ex. 122).

[441] Lightfoot GJ I at 39 (Ex. 120).

[442] Judge Porteous never provided Lightfoot with an updated pay stub closer to the date of the bankruptcy filing in March 2001, nor did he provide any other information indicating that his salary increased in 2001. Lightfoot Dep. at 4 (Ex. 123).

[443] Lightfoot GJ I at 54 (Ex. 120).

ed to exclude.[444]" The workout letters listed thirteen debts owed to ten different creditors, totaling $182,330.23.[445]

During the entire period that Lightfoot represented Judge Porteous in connection with his bankruptcy, Judge Porteous never told Lightfoot that he had any gambling debt. Lightfoot has been consistent in his testimony at every forum—the grand jury, the Fifth Circuit, the Task Force Deposition, and the Task Force Hearing—that at all times he was unaware of Judge Porteous's gambling.[446] At the Task Force Hearing, in response to questioning by Mr. Goodlatte, Lightfoot testified: "I didn't know [Judge Porteous] gambled . . . whatsoever."[447] At the Fifth Circuit Hearing, Chief Judge Jones pressed Lightfoot on this point:

> Q. 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?
>
> A. I didn't. I never knew him before, and I—I really didn't know that gambling was an issue with the judge.[448]

D. Judge Porteous's Conduct Between the End of the Workout (February 2001) and Filing for Bankruptcy (March 28, 2001)

In about February 2001, Lightfoot concluded that the proposed workout would not succeed, and he turned his attention toward preparing a bankruptcy filing for Judge Porteous. From February 2001 to the filing of the initial bankruptcy petition on March 28, 2001, Judge Porteous committed a series of acts that have particular significance in connection with the bankruptcy forms he subsequently signed under oath. These acts reflect his intent to conceal certain of his debts, particularly his gambling debts, in violation of applicable bankruptcy law requiring the disclosure of such liabilities.

1. Treasure Chest Markers

On March 2, 2001, Judge Porteous's credit limit at the Treasure Chest Casino ("Treasure Chest") was increased from $3,000 to $4,000.[449] Also on that day Judge Porteous gambled at Treasure Chest and took out seven $500 markers. He repaid four markers in chips that same day but left the casino owing $1,500.[450]

On March 27, 2001, the day prior to filing for bankruptcy, Judge Porteous made a cash payment of $1,500 to Treasure Chest, repaying the three markers that had been outstanding since March 2,

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[444] December 21, 2000 Letter from Lightfoot to the Porteouses (Ex. 146).

[445] December 21, 2000 Letter from Lightfoot to the Porteouses (Ex. 146). Five days after Lightfoot sent Judge Porteous the workout letters, Judge Porteous traveled to Caesars Lake Tahoe and took out a $3,000 marker. (Ex. 380). Judge Porteous did not disclose to Lightfoot this gambling trip or the $3,000 extension of credit.

[446] Lightfoot Dep. at 9 (Ex. 123); Lightfoot 5th Cir. Hrg. at 446 (Ex. 124); Lightfoot TF Hrg. II at 43.

[447] Lightfoot TF Hrg. II at 65.

[448] Lightfoot 5th Cir. Hrg. at 453 (Ex. 124).

[449] Treasure Chest Records (Ex. 331).

[450] Treasure Chest Customer Transaction Inquiry (Ex. 302).

2001.[451] Judge Porteous thus made certain that he had no unsecured debts to Treasure Chest as of the date he filed for bankruptcy.

2. The Fleet Credit Card

Carmella Porteous had a Fleet credit card issued in her name. In the few months prior to March 2001, partial payments had been made to keep that account current and in good standing. Thus, the balance on the account's January 17, 2001 closing date was $1,144, on which $315 was paid in February. The February closing balance was over $1,250, on which a $370 payment was made on March 5, 2001.

On March 19, 2001, a Fleet statement was issued showing a new balance of $1,088.41. Payment on the account was due April 15, 2001. Nonetheless, just a few days after the closing date, Judge Porteous directed his secretary Rhonda Danos to pay off this credit card in full. On March 23, 2001, Danos wrote a check drawn on her personal account in the amount of $1,088.41 to Fleet, indicating in the memo line that the payment was for the Carmella Porteous account.[452] The Fleet card was not used to make any charges from March 5, 2001 (three weeks prior to filing for bankruptcy), to April 7, 2001 (about 10 days after the bankruptcy petition was filed).[453]

3. Grand Casino Gulfport Markers

On February 27, 2001, Judge Porteous gambled at the Grand Casino Gulfport ("Gulfport") and took out two $1,000 markers. Had they been outstanding on the date Judge Porteous filed for bankruptcy, the debt to the casino would have had to be disclosed on the schedule of unsecured creditors that would be filed as part of the bankruptcy process. (And, as will be discussed, if Judge Porteous paid the debt within 90 days of filing for bankruptcy, that payment would be required to be disclosed on his Statement of Financial Affairs, one of the official forms that must be filed in a bankruptcy case.)

Gulfport records reflect that the casino attempted to deposit and collect on these markers starting March 16, 2001—which would have been prior to the bankruptcy filing—but the markers were returned as "uncollected."[454] FBI Agent Horner determined that

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[451] Treasure Chest Customer Transaction Inquiry (Ex. 302). Judge Porteous's payment of these markers on March 27, 2001 in order that they would not be included on the bankruptcy schedules also reflect his understanding that markers were a form of unsecured debt.

[452] Fleet statement and Danos check number 1660 in the amount of $1,088.41 (Ex. 329).

[453] Judge Porteous's handling of this payment to Fleet demonstrates his knowledge of the bankruptcy process and his determination that Fleet not be included as an unsecured creditor. First, it was not Judge Porteous's practice to pay off credit cards early and in full. Second, though he did not have funds in his accounts to make the Fleet payment (he had only $559.07 in his main checking account on the date Danos wrote the $1,088.41 check to Fleet), he could have easily waited until April 1, 2001, when he would receive his monthly salary check in excess of $7,500. Instead, he had Danos pay it a few days prior to his filing for bankruptcy. (Also, by having Danos pay the Fleet card, if creditors were subsequently to insist on examining Judge Porteous's accounts in the month prior to bankruptcy, the check to Fleet would not be signed by Judge Porteous, and Judge Porteous's personal involvement in hiding this card from the creditors would not be apparent.) Third, the 5-week gap in any charges on the card was inconsistent with the card's prior usage pattern, but can be explained by Judge Porteous's desire to be certain there was no debt outstanding on the date of the filing for bankruptcy. Finally, the concealed payment on the concealed account occurred 3 days after Judge Porteous obtained a P.O. Box to hide his actual residential address at a time when he was structuring (and concealing) his activities with his bankruptcy filing in mind.

[454] Grand Casino Gulfport Patron Transaction Report (Ex. 301(a)).

there was a problem with Judge Porteous's bank routing number on the markers.

On March 27, 2001—the day prior to filing his initial bankruptcy petition, and the same day he paid off his Treasure Chest markers—Judge Porteous deposited exactly $2,000 into his Bank One account.[455] This amount consisted of $1,960 cash and a check he drew on his Fidelity money market account of $40—thus ensuring that there be a $2,000 in that account.[456] Without this deposit, there would not have been $2,000 to pay the markers. This $2,000 deposit into an account from which Judge Porteous knew a $2,000 debt was to be collected demonstrates Judge Porteous's awareness that the Gulfport markers were outstanding as of March 27.[457]

Gulfport records reflect that the casino ultimately redeposited the markers for collection on March 24, 2001 (a fact, which if known to Judge Porteous, would explain his $2,000 deposit), and the markers cleared Judge Porteous's bank account on April 5 and 6, 2001, a week after he filed for bankruptcy.[458]

Despite Judge Porteous's efforts to have these markers paid off pre-bankruptcy, the markers were in fact pending on March 28, 2001 when he filed.

4. Obtaining a Post Office Box

On March 20, 2001, Judge Porteous opened a Post Office Box for the explicit purpose of using that address, along with a false name in his bankruptcy filing, instead of using his home address.[459]

5. Filing a Tax Return for Calendar Year 2000

On March 23, 2001 (the same date Danos wrote the check to Fleet), the Porteouses signed their income tax return for 2000 and claimed a tax refund in the amount of $4,143.72.[460]

Judge Porteous did not disclose to Lightfoot his activities associated with the Gulfport and Treasure Chest markers, the Fleet payment, or his filing for a tax refund. As described in (E) below, Judge Porteous further failed to disclose these activities when he signed forms and schedules under oath in connection with his bankruptcy.

E. March 28, 2001—Judge Porteous's Initial Bankruptcy Petition Filed under a False Name

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.[461] While the

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[455] Porteous Bank One Records (Ex. 144).

[456] Porteous Fidelity Money Market Statement (Ex. 143).

[457] No other debt has been uncovered which would require that there be at least $2,000 in Judge Porteous's bank account for the 3 days prior to his anticipated receipt of his salary deposit.

[458] See Porteous Bankruptcy Schedules (Ex. 127); Grand Casino Gulfport Patron Transaction Report (Ex. 301(a)); Bank One Account Summary (Ex. 301(b)).

[459] Porteous PO Box Application (Ex. 145).

[460] 2000 Porteous Tax Return (Ex. 141).

[461] Porteous Initial Chapter 13 Bankruptcy Petition, Docket No. 1, In the Matter of Porteous, Case No. 01-12363 (Bankr. E.D. La. Mar. 28, 2001) (hereinafter "Initial Petition") (Ex. 125). During his testimony before the Impeachment Task Force, the Honorable Duncan Keir, Chief Judge of the United States Bankruptcy Court for the District of Maryland, described Chapter 13 bankruptcies as wage earners' 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

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Initial Petition contained a list of creditors, it did not contain financial schedules or other detailed financial information. Those documents were subsequently filed on April 9, 2001.

This Initial Petition was filed with the false names "G.T. Ortous" and "C.A. Ortous" as debtors and also listed a newly obtained P.O. Box address instead of Judge Porteous's actual residential address. Judge Porteous personally reviewed the Initial Petition before it was filed,[462] and both he and his wife signed the Initial Petition "under penalty of perjury that the information provided in this petition is true and correct."[463]

Judge Porteous admitted at the Fifth Circuit Hearing that the names used the Initial Petition were false.

> Q. Your name is not Ortous, is it?
>
> A. No, sir.
>
> Q. Your wife's name is not Ortous?
>
> A. No, sir.
>
> Q. So, those statements that were signed—so, this petition that was signed under penalty of perjury had false information, correct?
>
> A. Yes, sir, it appears to.[464]

While Judge Porteous admitted that he filed his initial bankruptcy petition with a false name, Lightfoot has taken responsibility for coming up with that idea.[465] Lightfoot has since characterized the use of false names as a "stupid idea,"[466] and he explained in his Task Force testimony that his goal in filing the Initial Petition with the false names was to avoid embarrassment to Judge Porteous:

> I had hoped that I could avoid him the embarrassment—or have him avoid the embarrassment of a big story in the newspaper. At that time, these filings were listed in the newspaper once a week. And I knew that it would be corrected very quickly before any notice would go out to creditors. And that was a mistake, and it was my suggestion, and I am sorry that I made that suggestion.[467]

Lightfoot acknowledged that Judge Porteous may have said something about not wanting his bankruptcy to be in the paper.[468] While it was Lightfoot's idea to use a false name, Judge Porteous

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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." Keir TF Hrg. II at 68.

[462] Lightfoot TF Hrg. II at 44.

[463] Initial Petition (Ex. 125). Lightfoot had no doubt that the Porteouses understood that they were signing a document containing false information when they signed the Initial Petition. Lightfoot GJ III at 31 (Ex. 122).

[464] Porteous 5th Cir. Hrg. at 55 (Ex. 10). 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 6 years before filing the petition." Fed. R. Br. P. 1005 (2001). Accuracy in the caption of the petition is not merely a matter of form. "It is of substantive importance since it informs the creditor of exactly who the debtor is in order that the creditor may have an opportunity to determine whether it has a claim against the estate." In re Anderson, 159 B.R. 830, 838-39 (Bankr. N.D. Ill. 1993); accord In re Adair, 212 B.R. 171 (Bankr. N.D. Ga. 1997).

[465] Lightfoot 5th Cir. Hrg. at 435 (Ex. 124).

[466] Lightfoot 5th Cir. Hrg. at 435 (Ex. 124).

[467] Lightfoot TF Hrg. II at 44.

[468] Lightfoot GJ III at 23-24, 26 (Ex. 122).

never objected and never refused to file a document under oath representing he was "G.T. Ortous."[469]

F. April 9, 2001—Judge Porteous's Amended Petition, Accompanying Schedules, and Statement of Financial Affairs

1. The Amended Petition

Judge Porteous amended his Initial Petition on April 9, 2001, 2 weeks after it was filed, correcting the false names and listing his actual residential address in Metairie, Louisiana.[470] The Amended Petition did not list Judge Porteous's newly acquired PO Box under either the "street address" field or the "mailing address" field.[471]

2. The Bankruptcy Schedules and Statement of Financial Affairs

Along with the Amended Petition, Judge Porteous filed two other documents. The first consisted of schedules setting forth such items as assets (for example, real and personal property, and property claimed as exempt), debts (secured and unsecured creditors), income, and other miscellaneous financial matters. The second, entitled "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.[472] Though they were filed April 9, 2001, these forms should have described Judge Porteous's financial affairs as they existed on the date of the Initial Petition—the date which determines the bankruptcy "estate."

Prior to filing these documents, Lightfoot provided Judge Porteous with draft copies and specifically reviewed them with Judge Porteous at least twice.[473] The final review took place within 1 week of the Initial Petition's filing.[474] Judge Porteous then signed both his Bankruptcy Schedules and his Statement of Financial Affairs under penalty of perjury, declaring that the documents were true and correct.[475]

3. False Representations in the Bankruptcy Schedules

a. The Tax Refund

Category 17 on Schedule B ("Personal Property") of the Bankruptcy Schedules required Judge Porteous to disclose "other liq-

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[469] Lightfoot testified:

> Q. After you made the suggestion to Judge Porteous that he file under a false name in the original petition, did he object to your suggestion?
>
> A. No.
>
> Q. Did he ever say to you, no, I refuse to file a document with a false name?A.No.

Lightfoot TF Hrg. II at 44.

[470] Porteous Amended Chapter 13 Bankruptcy Petition, Docket No. 2, In the Matter of Porteous, Case No. 01-12363 (Bankr. E.D. La. Apr. 9, 2001) (hereinafter "Amended Petition") (Ex. 126).

[471] Judge Porteous identified his Amended Petition during his testimony before the Fifth Circuit Special Committee. Porteous 5th Cir. Hrg. at 56-57 (Ex. 10).

[472] Porteous Chapter 13 Schedules ["Bankruptcy Schedules"] and Statement of Financial Affairs, Docket No. 3, In the Matter of Porteous, Case No. 01-12363 (Bankr. E.D. La. Apr. 9, 2001) (Ex. 127).

[473] Lightfoot TF Hrg. II at 46. As Lightfoot explained in his Task Force testimony: "[I] would sit down, and I believe with his wife at one time as well, and we went through them to see that everything was accurate and there were no changes, just going page by page, pointing out what was there." Id.

[474] Lightfoot Dep. at 5-6 (Ex. 123).

[475] Bankruptcy Schedules at SC00111, SC00116 (Ex. 127).

uidated debts owing debtor including tax refunds."[476] In response to Category 17, the box "none" is checked.[477]

However, on March 23, 2001—5 days before he filed his Initial Petition and seventeen days before he filed his Bankruptcy Schedules—Judge Porteous filed his calendar year 2000 Federal income tax return and requested a $4,143.72 tax refund.[478] And on April 13, 2001—just 4 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.[479]

At the Fifth Circuit Hearing, Judge Porteous was shown the return and identified it as having been filed on March 23, 2001. When confronted with the fact that the Schedule did not disclose the pending refund, Judge Porteous responded: "When that was listed, you're right."[480]

At one point 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:

> Q. What did Mr. Lightfoot tell you?
>
> A. Said, "If the trustee didn't put a lien on it, put it in your account; but they may—they may ask for it back."
>
> Q. But, Judge Porteous, that schedule was signed under penalty of perjury.
>
> A. It was omitted. I don't know how it got omitted. There was no intentional act to try and defraud somebody. It just got omitted. I don't know why.[481]

Lightfoot, however, testified before the Task Force that Judge Porteous never told him about the year 2000 tax refund.[482] In response to Judge Porteous's statement that he talked about the refund with Lightfoot after he received it, Lightfoot testified that he had a conversation with Judge Porteous in relation to Judge Porteous's receipt of a different tax refund in a subsequent year. Lightfoot testified he specifically recalled the issue in that conversation being whether the "special confirmation order we received from the Houston [bankruptcy judge]" required that the refund be disclosed or turned over, and that to answer Judge Porteous's question, it would be necessary to "look at [the] confirmation order" since it was not a typical order issued in New Orleans.[483] The confirmation order in Judge Porteous's case was issued June 28, 2001. As of the date Judge Porteous received the

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[476] The instructions for completing Category 17 on Schedule B state that "Item 17 request [sic] the debtor to list all monies owed to the debtor . . . and specifically, any expected tax refunds." Instructions for Completing Official Form 6, Schedules at 62 (Ex. 345).

[477] Bankruptcy Schedules at SC00096 (Ex. 127). During his Fifth Circuit testimony, Judge Porteous acknowledged that he checked "none" in response to this question. Porteous 5th Cir. Hrg. at 80 (Ex. 10). The decision to check "none" was Judge Porteous's decision—not Lightfoot's. Lightfoot 5th Cir. Hrg. at 451 (Ex. 124).

[478] 2000 Porteous Federal Tax Return (Ex. 141).

[479] Porteous Bank One records (Ex. 144). Bankruptcy Trustee S.J. Beaulieu told the FBI during an interview in 2004 that the Porteouses should have disclosed any tax refund to Beaulieu, and Beaulieu would have then required the Porteouses to turn over the refund so that it could be distributed to the unsecured creditors. Beaulieu FBI Interview, Jan. 22, 2004, at SC00410 (Ex. 334). 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. Porteous 5th Cir. Hrg. at 82-83 (Ex. 10).

[480] Porteous 5th Cir. Hrg. at 81-82 (Ex. 10).

[481] Porteous 5th Cir. Hrg. at 83-84 (Ex. 10).

[482] Lightfoot TF Hrg. II at 46.

[483] Lightfoot Dep. at 19 (Ex. 123).

refund (April 13, 2001) the order had not yet been issued. Therefore, the conversation that Lightfoot had with Judge Porteous about whether the order required disclosure of the refund could not have taken place in reference to the 2000 tax refund.

Further, Lightfoot testified he viewed the existence of the refund as significant and he stated that if he had known about it, he would have disclosed it to the bankruptcy trustee:

> 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. [484]

According to Lightfoot, a tax refund is an asset and "[i]f you have a liquidated refund owing to you at the time you file, it should be listed." [485]

b. Omitted and Undervalued Financial Accounts

The Bankruptcy Schedules were also inaccurate as to two of Judge Porteous's accounts.

Question 2 on Schedule B ("Personal Property") requires the debtor to list, among other things, "checking, savings or other financial accounts." In response, the current market value of Judge Porteous's Bank One Checking Account—into which his monthly salary was deposited—was listed as $100. [486] However, the opening balance in Judge Porteous's Bank One account for the time period of March 23, 2001 to April 23, 2001 was $559.07, and the closing balance for the same time period was $5,493.91. Indeed, the day prior to filing his Initial Petition, Judge Porteous had deposited $2,000 into the account—the amount he owed on the Gulfport markers—so he knew that the account held at least that amount. At no time during that month did Judge Porteous's balance drop to as low as $100. [487]

Judge Porteous also omitted a Fidelity money market account entirely from Category 2 on Schedule B. This account was held in both his and his wife's names, and was an active account of Judge Porteous. Judge Porteous never told Lightfoot about this account, and did not include it on the worksheets that he filled out for Lightfoot in the summer of 2000. [488] As Lightfoot testified: "I asked

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[484] Lightfoot TF Hrg. II at 47. See also Lightfoot Dep. at 18 ("I would have felt the requirement, the obligation on my part to amend the schedules, to list an expected tax refund as the questions read, and I would have informed the trustee at the upcoming meeting of creditors.") (Ex. 123).

[485] Lightfoot 5th Cir. Hrg. at 447 (Ex. 124); see also Lightfoot TF Hrg. II at 46. Chief Judge Keir also explained that "liquidated" in this context means the tax refund is an amount certain—it does not mean that the amount has already been collected. According to Judge Keir, "[a] tax refund that has been determined or at least initially determined by the tax return is a liquidated amount." Keir TF Hrg. II at 70. Judge Keir 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 TF Hrg. at 77.

[486] Bankruptcy Schedules at SC00095 (Ex. 127). During his Fifth Circuit testimony, Judge Porteous acknowledged that he listed his Bank One checking account under Schedule B as having a balance of $100. Porteous 5th Cir. Hrg. at 79-80 (Ex. 10).

[487] Porteous Bank One Records (Ex. 144). Lightfoot testified that he asked Judge Porteous on April 9, 2001 how much money Judge Porteous had in his Bank One account, and Judge Porteous told Lightfoot that he had "about $100." Lightfoot GJ III at 43. (Ex. 122).

[488] Lightfoot 5th Cir. Hrg. at 436, 448 (Ex. 124).

for all bank accounts, and this [the disclosed accounts] is what I got. I was never told there were others."[489] Judge Porteous acknowledged the existence of his Fidelity money market account, and acknowledged that it was omitted from his Schedule B, during his Fifth Circuit testimony.[490]

The Fidelity money market account was an active account used by Judge Porteous for transactions outside his personal checking account. He would deposit into the account withdrawals from his IRA account, travel reimbursements, insurance checks, cash, and other miscellaneous items. He used the funds for a variety of purposes, including the payment of gambling debts. For example, on November 27, 2000, Judge Porteous deposited $2,400 that he withdrew from his IRA into that account, and on November 30, 2000, he wrote a check on that account for $1,600 to the Treasure Chest Casino.[491] On occasion, he would move money from his main checking account (the Bank One account, into which his salary checks were deposited) to the Fidelity money market account and then write checks from the latter account. The checks drawn on this account also included checks to Danos that appeared to constitute Judge Porteous's repayment to her for payments she made on his behalf.

Moreover, Judge Porteous had used the Fidelity money market account in the time frame immediately surrounding his filing for bankruptcy.[492] By omitting the Fidelity money market account, Judge Porteous kept a bank account available for his own use while in bankruptcy that was outside the knowledge of, and thus the potential scrutiny of, creditors.

c. Understated Income

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)." On that schedule, Judge Porteous's monthly gross income was listed as $7,531.52, the amount that was reflected on the pay stub Judge Porteous gave Lightfoot when he first retained him in the summer of 2000.[493] That amount listed was in fact Judge Porteous's net salary for that month (not gross as called for by the Schedule), and the pay stub was attached to the Schedule. In 2001, Judge Porteous's net judicial salary had increased to $7,705.51 per

[489] Lightfoot GJ III at 45 (Ex. 122).

[490] Porteous 5th Cir. Hrg. at 85-87 (Ex. 10).

[491] Judge Porteous deposited each of the following withdrawals from his IRA into his Fidelity money market account: January 22, 1997 ($12,000); April 30, 1997 ($12,000); April 6, 1998 ($7,200); January 19, 1999 ($2,000); September 27, 1999 ($1,600); May 12, 2000 ($2,400); and November 21, 2000 ($2,400) (Ex. 383).

[492] Porteous Fidelity Statement (Ex. 143). The Fidelity statement that was issued to Judge Porteous immediately prior to his filing the original bankruptcy petition was dated March 20, 2001, and showed a balance of over $600. There was some activity on the account, dropping the balance down to $283.42 on March 28, 2001. On April 4, Judge Porteous deposited another $200 into the account. Judge Porteous knew about this money market account, having written five checks on this account between March 22, 2001 and April 12, 2001, including a check in the amount of $40 which he deposited into his Bank One account on March 27, 2001—the day prior to filing for bankruptcy. Moreover, the account was similarly active and used for the same purposes in the summer of 2000, at the time when Judge Porteous should have disclosed it to Lightfoot. Judge Porteous deposited $2,400 into that account on May 12, 2000, leaving and ending balance that month of $2,456.33, and, after some transactions the next month, a balance on June 20, 2000 of $2,055.43.

[493] Bankruptcy Schedules at SC00108-09 (Ex. 127).

month.[494] Judge Porteous's net income, therefore, was understated by $173.99 a month, or $2,087.88 annually, or over $6,000 for the 3 year life of the proposed Plan.[495]

d. Schedule of Unsecured Creditors

Notwithstanding Judge Porteous's pre-bankruptcy efforts to ensure there would be no outstanding casino markers on the date of filing his Initial Petition, Judge Porteous in fact owed $2,000 in outstanding markers to the Grand Casino Gulfport on March 28, 2001. Though he listed numerous creditors on Schedule F, "Creditors Holding Unsecured Nonpriority Claims," this casino debt was not included. Once again, this was a gambling-related matter as to which Lightfoot was unaware. As Lightfoot testified:

> Q. Did Judge Porteous tell you more specifically that on February 27th of 2001 he gambled at the Grand Casino Gulfport, he took out $2,000 in markers and that he left the casino that day still owing $2,000?
>
> A. No. I never knew that he gambled at all or had any gambling debts.
>
> Q. Did he ever tell you that he owed $2,000 to the Grand Casino Gulfport on March 28th, which was the day that he filed the bankruptcy petition?
>
> A. No.
>
> Q. Should Judge Porteous have told you about those sorts of gambling debts?
>
> A. Yes, so I could list them.[496]

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[494] Porteous Bank One Records (Ex. 144). Judge Porteous never disclosed to his bankruptcy attorney that his judicial salary had increased in 2001. Lightfoot TF Hrg. II at 47. Schedule I was improperly filled out because Judge Porteous's gross income, even according to his attached May 31, 2000 pay stub, was $11,775, and his net (not gross) income was $7,531.52. Nonetheless, the form was prepared by Lightfoot and the pay stub was attached.

[495] Moreover, even as a "net" amount, the $7,531 was misleading. Judge Porteous had Social Security taxes withheld from his salary until he reached a statutorily defined annual gross salary—referred to as the Social Security "wage base"—a level he typically reached in July of a calendar year. At that point, he was no longer subject to Social Security tax withholding, and his net monthly salary would increase several hundred dollars. Judge Porteous had experienced this pattern for years. In 1999, when the Social Security wage base was $72,600, Judge Porteous's net monthly salary increased from approximately $7,350 on June 1 to $8,052 by August, where it stayed for the rest of the year. In 2000, when the Social Security wage base was $76,200, Judge Porteous's salary increased from $7,531 on June 1 to $8,253 on August 1, where it likewise remained for the rest of the year.

The same pattern would hold for 2001. As noted, Judge Porteous received $7,705 per month through June 1, 2001 (though he reported only $7,531 to the bankruptcy court). His monthly net salary increased to $7,875 on July 2, 2001, and thereafter increased to a range between $8,555 through $8,592 for the rest of the year—roughly $1,000 per month more than he reported on his Schedule I, or over $5,000 more for that year. See also Horner TF Hrg. II at 26 (testifying that from "August through December [2001], the pay that is deposited in his account every month is about $8,500").

Schedule I specifically contemplated the possibility that a wage-earner in bankruptcy may anticipate a salary increase, and, to ensure that all disposable income is actually paid to creditors, specifically inquires at the bottom of Schedule I: "Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document." In the response for Judge Porteous, the word "NONE" is typed. Judge Porteous's net monthly salary did in fact go up more than 10%. Thus, Judge Porteous in fact enjoyed thousands of dollars a year in undisclosed disposable income that would otherwise have been available to pay his creditors—income that was significantly in excess of the $7,531.52 that was disclosed on Schedule I as his monthly income.

[496] Lightfoot TF Hrg. II at 43. It was clear to Lightfoot that a marker was a form of debt that had to be reported. He explained, "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.

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Gulfport collected on these markers on or about April 5-6, 2001.[497]

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.[498]

4. Statement of Financial Affairs

Judge Porteous's April 9, 2001 Statement of Financial Affairs likewise contained false information by failing to report the Fleet payment and the payment of certain gambling debts within 90 days of his filing the Initial Petition.

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

Question 3 on the Statement of Financial Affairs 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." The question thereafter provided fields for the debtor to list the name and address of any creditor, the dates of payments, the amount paid, and the amount still owing.[499]

Relying on the information that Judge Porteous had provided, Lightfoot entered the answer: "normal installments."[500] When questioned about what he meant by "normal installments" during his Task Force Hearing testimony, Lightfoot explained: "'[N]ormal installments' was intended to cover the normal installments on his two leased cars and his two home mortgages."[501]

That answer—"normal installments"—was false, in light of Judge Porteous's actions in the weeks immediately preceding filing for bankruptcy.

First, it failed to disclose Judge Porteous's payment to Treasure Chest. 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

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So it has to be listed. I would have listed and do list anybody who has a casino-type debt." Lightfoot TF Hrg. II at 53.

[497] Ex. 144.

[498] Bankruptcy Schedules at SC00111 (Ex. 127).

[499] Statement of Financial Affairs at SC00112 (Ex. 127). 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. As a Federal judge, Judge Porteous would have well understood this purpose. Lightfoot explained:

> But what I'm looking for was there anything unusual, any unusual payments to anybody, anything outside a normal monthly installment, like a normal house note, a normal car payment, a normal payment to the credit card company. In other words, anybody gets paid off, I want to know that. Some relative gets paid back, I want to know that.

Lightfoot GJ III at 70-71 (Ex. 122).

[500] Statement of Financial Affairs at SC00112 (Ex. 127). During his Fifth Circuit testimony, Judge Porteous acknowledged that his response to Question 3 was "normal installments." Porteous 5th Cir. Hrg. at 89 (Ex. 10).

[501] Lightfoot TF Hrg. at 48. See also Lightfoot GJ III at 70-72 (Ex. 122).

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." [502] Lightfoot testified that the repayment of the markers to Treasure Chest should have been reported on the Statement of Financial Affairs, but that, as with all of Judge Porteous's gambling activities, Lightfoot did not include this payment because he did not know about it. [503]

Second, Judge Porteous also failed to disclose that on March 23, 2001, he had his secretary, Danos, pay off his wife's Fleet credit card balance of $1,088.41. [504] Judge Porteous claimed, in his Fifth Circuit testimony, that he had no recollection of asking Danos to pay off his wife's Fleet bill. However, he also testified that Danos had "paid some bills" for him in the past. [505] Danos testified before the Fifth Circuit that she "assume[d]" Judge Porteous asked her to write the check to Fleet and that she didn't talk with Carmella about paying her bills. [506]

As to both these items—the Treasure Chest payment and the Fleet credit card payment—Lightfoot did not include them in response to Question 3 on the Statement of Financial Affairs because Judge Porteous did not disclose them to him. [507]

Finally, on February 26, 2001, Judge Porteous took out $2,000 in markers at the Grand Casino Gulfport. As noted, these 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, that payment should have been disclosed. Again, Lightfoot was unaware of the Gulfport markers. [508]

b. Gambling Losses

Question 8 on the Statement of Financial Affairs required Judge Porteous to "[l]ist all losses from . . . gambling within 1 year immediately preceding the commencement of this case or since the commencement of this case." In response, the box for "none" is checked. [509] However, an analysis of Judge Porteous's gambling ac-

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[502] Treasure Chest Customer Transaction Inquiry (HP Ex. 302). Judge Porteous was able to take out so many markers on March 2, 2001 because his credit limit at Treasure Chest had been increased during the previous summer. See Central Credit, Inc. Gaming Report for Judge Porteous (HP Ex. 326).

[503] Lightfoot TF Hrg. II at 48.

[504] Fleet Statement and Danos Check (Ex. 329); Fleet Statements at SC00590 (Ex. 140). This payment 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 argue that the payment to Fleet was not in fact made within the 90 days preceding his bankruptcy filing (even though it had been mailed within that time), 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 made sure that Fleet was listed on Judge Porteous's Schedule F as an unsecured creditor. In either event, Fleet should have appeared somewhere in Judge Porteous's bankruptcy filing. In fact the transaction does not appear anywhere.

[505] Porteous 5th Cir. Hrg. at 97-98 (Ex. 10).

[506] Danos 5th Cir. Hrg. at 402-03 (Ex. 43).

[507] "In other words, I, I—my questioning revealed that the only payments that they [the Porteouses] said they made were just normal installments on the debts that I knew of." Lightfoot GJ III at 72 (Ex. 122).

[508] In short, Judge Porteous would have known either that the debt was actually pending (in which case it should have been listed on Schedule F as a debt owed to an unsecured creditor) or that it had been paid (in which case it should have been listed on the Statement of Financial Affairs as a payment made in the 90 days preceding the bankruptcy filing). This indebtedness was not listed in either place, because Judge Porteous did not tell Lightfoot about it.

[509] Statement of Financial Affairs at SC00113 (Ex. 127).

tivities in the year preceding his bankruptcy filing revealed that Judge Porteous had accrued $6,233.20 in net gambling losses during that year.[510]

During his Fifth Circuit testimony, Judge Porteous admitted that his response of "none" to that question 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.[511]

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.[512]

E. Judge Porteous's Post-filing Activities and the Bankruptcy Creditors Meeting

1. Post-Filing Activities

Despite the fact that he had filed for bankruptcy protection and claimed to have over $190,000 in credit card debts,[513] Judge Porteous continued to gamble and to incur thousands of dollars in additional debt immediately following his bankruptcy filing.[514] Judge Porteous's activities between March 28, 2001, when he filed his Initial Petition, and the Creditors Meeting on May 9, 2001 included the following:[515]

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[510] FBI Gaming Losses Chart (Ex. 337). FBI Agent Horner explained this chart both to the Impeachment Task Force and to the Fifth Circuit Special Committee, and he testified that Judge Porteous's losses totaled $12,895.35, but Judge Porteous also had winnings of $5,312.15. Horner TF Hrg. II at 16; Horner 5th Cir. Hrg. at 317-18 (Ex. 338). The analysis of Judge Porteous's gambling activities (including losses) in the year preceding his bankruptcy was based on a review of each casino's records. Casinos keep these records because "first of all, they have to determine wins and losses for tax purposes for these people; and then, second of all, they're basing their comps on these numbers. So . . . they want the numbers to be as accurate as possible." Horner 5th Cir. Hrg. at 322 (Ex. 338).

[511] Porteous 5th Cir. Hrg. at 99 (Ex. 10).

[512] Statement of Financial Affairs at SC00116 (Ex. 127).

[513] Bankruptcy Schedules at SC00092 (Ex. 127).

[514] Judge Porteous never advised Lightfoot that, after filing the amended petition on April 9, 2001, he incurred thousands of dollars in gambling debt at casinos. Lightfoot 5th Cir. Hrg. at 449 (Ex. 124).

[515] While there was no official court order during this time period prohibiting Judge Porteous from incurring new debt, nor had the bankruptcy trustee yet instructed Judge Porteous that he may not incur new debt, Lightfoot had already made it clear to Judge Porteous that he

- April 6, 2001—Judge Porteous requested a one-time credit increase at the Beau Rivage Casino from $2,500 to $4,000.[516]
- *April 7-8, 2001*—Judge Porteous took out $2,000 in markers at the Beau Rivage Casino. He left the casino owing $1,000, which was not paid back until May 4, 2001.[517]
- *April 10, 2001*—Judge Porteous took out $2,000 in markers at Treasure Chest. He paid them all back the same day in chips.[518]
- *April 30, 2001*—Judge Porteous submitted a casino credit application to Harrah's Casino and requested a $4,000 credit limit.[519]
- *April 30, 2001*—Judge Porteous took out $1,000 in markers at Harrah's Casino. These markers were not paid back until May 30, 2001.[520]
- *Approximately April 30-May 1, 2001*—Judge Porteous repaid the Beau Rivage by withdrawing $1,000 from his IRA, which was paid to him in the form of a check dated April 24, 2001. He endorsed the check directly to Danos, and she deposited it into her personal account on May 1, 2001. On April 30, 2001, Danos wrote a check payable to the Beau Rivage in the amount of $1,000, the memo line referencing Judge Porteous. As noted, that payment was credited against Judge Porteous's Beau Rivage account on May 4, 2001.[521]
- *May 7, 2001*—Judge Porteous took out $4,000 in markers at Treasure Chest. He left the casino owing this amount and repaid all $4,000 2 days later in cash.[522]

2. Bankruptcy Creditors Meeting

On May 9, 2001, the Section 341 Creditors Meeting was held in Judge Porteous's bankruptcy case.[523] Bankruptcy trustee S.J.

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should not be incurring any new debt. Lightfoot Dep. at 13-14 (Ex. 123). Moreover, Judge Porteous's return to the same conduct that had caused him to go into bankruptcy in the first place necessarily placed his creditors at risk. Gambling, and seeking credit to do so, in the very days after filing false documents in bankruptcy (that concealed his gambling) bear on the question of his "good faith" in seeking bankruptcy. See testimony of Judge Greendyke, in X(F)(1) and (2), infra. Finally, Judge Porteous's repayment of the Beau Rivage debt by endorsing a check to Danos and having her write a check to the casino, thus bypassing Judge Porteous's account altogether, is evidence of his consciousness of the wrongfulness of taking out and repaying debts to casinos between the time of filing for bankruptcy and the Creditors Meeting.

[516] Beau Rivage Credit History (Ex. 303).

[517] Beau Rivage Balance Activity (Ex. 304). Judge Porteous was able to leave the casino while still owing money because he had an established credit line. FBI Agent Horner testified before the Fifth Circuit Special Committee and explained that a player has "to establish some kind of credit line with the casino before they would let you [leave while still owing money]." Horner 5th Cir. Hrg. at 309-10 (Ex. 338).

[518] Treasure Chest Customer Transaction Inquiry (Ex. 305).

[519] Harrah's Casino Credit Application (Ex. 149). This application lists "$0" for indebtedness, though it is not clear who may have written that figure on the form. See also Central Credit, Inc. Gaming Report for Judge Porteous (Ex. 326).

[520] Harrah's Patron Credit Activity (Ex. 306). Judge Porteous wrote a check to repay these markers on April 30, 2001, but Harrah's held the check for 30 days before depositing it.

[521] Thus, rather than depositing the money into his own account and writing a check on that account, Judge Porteous conducted this transaction in a way that bypassed his accounts altogether and consistent with an intent to conceal his gambling. (Ex. 382).

[522] Treasure Chest Customer Transaction Inquiry (Ex. 307).

[523] Trustee's Memo to Record, Docket No. 7, In the Matter of Porteous, Case No. 01-12363 (Bankr. E.D. La. May 9, 2001) (Ex. 129). A section 341 creditors meeting is a statutorily mandated meeting of creditors and equity security holders that is held by the bankruptcy trustee.

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Beaulieu, Jr. presided over the hearing, which was attended by Judge Porteous and his attorney Lightfoot. At the beginning of the hearing, Judge Porteous was provided with a copy of a pamphlet entitled "Your Rights and Responsibilities in Chapter 13."[524] 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.[525]

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."[526]

The bankruptcy trustee 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."[527] 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 by taking out markers at casinos—one of which he paid back by way of a transaction that bypassed his personal accounts altogether. Nor did he disclose that he had increased a credit line, that he had concealed a credit card in his bankruptcy filing, or that he had outstanding markers at Harrah's Casino on the date of the meeting.

Despite this admonition by the bankruptcy trustee, and despite the clear language in the "Rights and Responsibilities" pamphlet stating that he was not allowed to borrow money, Judge Porteous continued to gamble, to take out casino markers, and to incur new debt after the Creditors Meeting on May 9, 2001. Judge Porteous's activities between May 9, 2001 and June 28, 2001 included the following:

- *May 16, 2001*—Judge Porteous took out a $500 marker at Treasure Chest. He repaid the marker the same day in chips.[528]
- *May 26-27, 2001*—Judge Porteous took out $1,000 in markers at the Grand Casino Gulfport. He paid back $900 on May

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See 11 U.S.C. § 341 (2003). Lightfoot explained during his Task Force testimony that the purpose of a section 341 creditors meeting is to examine the debtor under oath regarding his petition and bankruptcy schedules. Lightfoot TF Hrg. II at 49.

[524] See Creditors Meeting Hearing Transcript (indicating that Judge Porteous was given a copy of the pamphlet) (Ex. 130); see also Chapter 13 Pamphlet (Ex. 148). During his testimony before the Fifth Circuit Special Committee, Judge Porteous acknowledged receiving the pamphlet from the bankruptcy trustee. See Porteous 5th Cir. Hrg. at 60 (Ex. 10).

[525] Chapter 13 Pamphlet at SC00402 (Ex. 148).

[526] Creditors Meeting Hearing Transcript at SC00595-96 (Ex. 130).

[527] Creditors Meeting Hearing Transcript at SC00598 (Ex. 130). During his Fifth Circuit testimony, Lightfoot confirmed that both he and the bankruptcy trustee advised Judge Porteous about not incurring new debt without permission. Lightfoot 5th Cir. Hrg. at 454 (Ex. 124); Lightfoot Dep. at 13-14 (Ex. 123).

[528] Treasure Chest Customer Transaction Inquiry (Ex. 308).

27, 2001 and paid back the remaining $100 on June 5, 2001.[529]

- *June 20, 2001*—Judge Porteous took out a $500 marker at Treasure Chest. He repaid the marker the same day in chips.[530]

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

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

On June 28, 2001, U.S. Bankruptcy Judge William Greendyke[531] signed an Order Confirming the Debtor's Plan and Related Orders (the "June 28 Order"). Among its terms, the June 28 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.[532]

Judge Porteous testified he understood the June 28 Order at the time the order was entered.[533] 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.[534]

2. Judge Greendyke's Decision to Sign the Confirmation Order

Judge Greendyke was asked about his decision to sign the June 28 Order, confirming Judge Porteous's Chapter 13 plan, during his Fifth Circuit testimony:

> Q. Given the sum of these events—the false filing of the name on the initial petition, the omission of the tax refund on the schedules where it should be noted, the preferred payment to certain creditors. . . .
>
> * * *

Given the sum of those events, had you known that, what would have been your course of action while you were the judge super-

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[529] Grand Casino Patron Transaction Request (Ex. 309).

[530] Treasure Chest Customer Transaction Inquiry (Ex. 310).

[531] Judge Greendyke is now in private practice with the law firm of Fulbright & Jaworski LLP. Prior to entering private practice in 2004, Judge Greendyke was the Chief Judge of the United States Bankruptcy Court for the Southern District of Texas. He was specially assigned Judge Porteous's bankruptcy case to avoid having the case heard by a bankruptcy judge from the Eastern District of Louisiana. Judge Greendyke was interviewed by Impeachment Task Force staff on January 7, 2009.

[532] Order Confirming the Debtor's Plan and Related Orders, Docket No. 22, In the Matter of Porteous, Case No. 01-12363 (Bankr. E.D. La. June 28, 2001) (hereinafter "June 28 Order") (Ex. 133).

[533] Porteous 5th Cir. Hrg. at 62 (Ex. 10). Lightfoot also testified before the Impeachment Task Force that Judge Porteous was aware the June 28 Order had been entered and that Judge Porteous had received a copy of the Order.

[534] Lightfoot TF Hrg. II at 50. First, on December 20, 2002, the bankruptcy trustee granted Judge Porteous's request to refinance his home. (See Ex. 339.) And second, on January 2, 2003, the bankruptcy trustee granted Judge Porteous's request to obtain two new car leases. (See Ex. 340).

vising that bankruptcy? Had you known all those events, what action would you have taken?

A. If I had been aware of those items prior to the signing of the confirmation order, I would not have signed the confirmation order. I would probably have sua sponte objected on the basis of lack of good faith. I anticipate if my Houston trustee had been aware of that he would have filed a similar objection. And we would have had a hearing to try and iron things out.

Q. And in bankruptcy filings, is good faith on behalf of the debtor one of the key elements that the judge and the trustee rely on?

A. It's a confirmation requirement.[535]

In response to questioning by Chief Judge Jones, Judge Greendyke further testified that he did not scrutinize Judge Porteous's bankruptcy as closely as he normally would have because Judge Porteous was a Federal judge:

Q. I assume you attributed a higher—a certain level of integrity to this filing because the subject in quest was a Federal judge?

A. I did not scrutinize it——

Q. Right.

A. —particularly because I thought it was a judge and I——

Q. Because you thought a judge would turn square corners?

A. Yes, Judge. That's why I was surprised when I found out the things I found out.[536]

3. Violations of the June 28 Order

Judge Porteous was subject to the terms of his Chapter 13 repayment plan for 3 years.[537] Notwithstanding Judge Greendyke's Order that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee," Judge Porteous: (1) took out 42 markers over the course of 14 different gambling trips at 4 different casinos, (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 low-limit credit card. He did not have the permission of the trustee or the bankruptcy court to engage in these activities.

a. Casino Markers

After the June 28 Order was issued, Judge Porteous continued to gamble and to take out markers, i.e., incur debt, at casinos on a regular basis. He obtained these markers on his existing lines of

[535] Greendyke 5th Cir. Hrg. at 384-85 (Ex. 335).
[536] Greendyke 5th Cir. Hrg. at 392 (Ex. 335).
[537] See Discharge of Debtor After Completion of Chapter 13 Plan, Docket No. 49, In the Matter of Porteous, Case No. 01-12363 (Bankr. E.D. La. July 22, 2004) (Ex. 137).

credit at the casinos, and on occasion sought an increase on a line of credit.[538]

Judge Porteous took out at least 42 markers between July 19, 2001 and July 5, 2002. The following table summarizes Judge Porteous's gambling activity during the first year following the June 28 Order:[539]

Table 7. Judge Porteous's Gambling Markers – July 2001 through July 2002

Date	Casino	Number of Markers	Total Dollar Amount	Repayment
7/19/01	Treasure Chest	1	$500	7/19/2001 (same day)
7/23/01	Treasure Chest	1	$1,000	7/23/2001 (same day)
8/20-21/01	Treasure Chest	8	$8,000	8/20-21/2001 ($5,000) (same day) 9/9/2001 ($2,000) 9/15/2001 ($1,000)
9/28/01	Harrah's	2	$2,000	10/28/2001 (check dated 9/28/01, cashed by Harrah's 10/28/01)
10/13/01	Treasure Chest	2	$1,000	10/13/2001 (same day)
10/17-18/01	Treasure Chest	9	$5,900	10/17/2001 ($1,500) (same day) 11/9/2001 ($4,400)
10/31/01-11/1/01	Beau Rivage	6	$3,000	11/01/2001 (same day)
11/27/01	Treasure Chest	2	$2,000	11/27/2001 (same day)
12/11/01	Treasure Chest	2	$2,000	12/11/2001 (same day)
12/20/01	Harrah's	1	$1,000	11/9/2002 (check dated 12/20/01, cashed by Harrah's 11/9/02)
2/12/02	Grand Casino Gulfport	1	$1,000	2/12/2002 (same day)
4/1/02	Treasure Chest	3	$2,500	4/01/2002 (same day)
5/26/02	Grand Casino Gulfport	1	$1,000	5/26/2002 (same day)
7/4-5/02	Grand Casino Gulfport	3	$2,500	7/05/2002 ($1,200) (same day) 8/11/2002 ($1,300) (check dated 8/2/02, cleared casino 8/11/02)
TOTAL		42	$33,400	

Judge Porteous repaid his October 17-18, 2001 debt to Treasure Chest using his undisclosed Fidelity money market account. As Table 7 shows, Judge Porteous left Treasure Chest on October 18,

[538] See Central Credit, Inc. Gaming Report for Judge Porteous (Ex. 326). Agent Horner explained during his Task Force testimony that gamblers are required to fill out credit applications before they can take out markers at casinos, and these applications are very similar to credit card applications. Horner TF Hrg. II at 13.

[539] The documents related to the Treasure Chest transactions are marked as follows: Ex. 311 (July 19, 2001 markers); Ex. 312 (July 23, 2001 markers); Ex. 313(a)-(b) (August 20-21, 2001 markers); Ex. 315 (October 13, 2001 markers); Ex. 316 (October 17-18, 2001 markers); Ex. 318 (November 27, 2001 markers); Ex. 319 (December 11, 2001 markers); Ex. 322 (April 1, 2002 markers). The documents related to the Harrah's transactions are marked as follows: Ex. 314 (September 28, 2001 markers); Ex. 320 (December 20, 2001 markers). The documents related to the Beau Rivage transaction are marked as Ex. 317 (October 31-November 1, 2001 markers). The documents related to the Grand Casino Gulfport transactions are marked as Ex. 321 (February 12, 2002 markers), Ex. 323 (May 26, 2002 markers), and Ex. 325 (July 4-5, 2002 markers). At the Task Force Hearing, the total dollar amounts of the markers were erroneously added up to be in excess of $149,000.

2001, owing $4,400. The following week, on October 25, 2001, Judge Porteous withdrew $1,760 from his IRA. He received those funds by check and, on October 30, 2001, he deposited the check into his Fidelity money market account. On November 9, 2001, he repaid Treasure Chest with $2,600 cash and a $1,800 personal check from the Fidelity money market account into which he had deposited the IRA proceeds.[540]

During his Task Force Deposition, Lightfoot explained that a marker is a form of indebtedness owed to a creditor, that it was clearly prohibited by the June 28 Order, that at no time did Judge Porteous inform him that he [Judge Porteous] had taken markers, and that if the Judge had so informed him, it would have been significant.

> Q. Is there any question in your mind that a marker is a form of indebtedness owed to a creditor?
>
> A. None whatsoever.
>
> * * *
>
> Q. And if he had ever asked you, by the way, is a marker a form of indebtedness which has to be disclosed, what would you have said?
>
> A. I'd say—I would have told him that it's a civil liability that has to be disclosed because it's a debt, but that there are other issues about if you can't pay it, it may be the subject of some sort of criminal bad check prosecution that you need to look into.
>
> Q. Okay. But there's no question it's a form of debt, correct?
>
> A. At a minimum it's that, and at a maximum it could be worse.[541]

Judge Porteous was questioned about his understanding of a marker before the Fifth Circuit Special Committee, and he accepted as accurate the following definition:

> 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.[542]

Judge Porteous's knowledge that a marker constituted an unsecured debt is further evidenced by his pre-bankruptcy efforts to ensure that there were no markers outstanding when he filed for bankruptcy.

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[540] Judge Porteous's financial records related to his use of his Fidelity money market account to repay Treasure Chest are marked as Ex. 381.

[541] Lightfoot Dep. at 9-10 (Ex. 123). See also Lightfoot TF Hrg. II at 64 ("No doubt at all" that a marker is a form of indebtedness.)

[542] Porteous 5th Cir. Hrg. at 6465 (Ex. 10).

While Judge Porteous repaid some of these markers on the same day they were taken out, those markers were no less an extension of credit than the markers that were not repaid until some time later. As Chief Judge Keir explained during his Task Force testimony:

> [T]he debt is incurred when the marker is taken. That is when the debt arises. You owe the money. And it is the incurrence of debt that was prohibited by the order. It was not qualified by saying "unless you pay it off within the same day," or any other words, such as if you pay it off in the same session or something. It is the incurrence of debt. And, of course, when the marker was taken out, there is no way that Judge Porteous knew he was going to be able to or not going to be able to pay it from a particular source or at a particular time. It was gambling. There is a chance. So the only real event in terms of his disobedience of the order was the obtaining of the marker.[543]

b. Judge Porteous's Application for a New Credit Card

On August 13, 2001—less than 2 months after Judge Greendyke's June 28 Order was entered—Judge Porteous applied for a new Capital One credit card. 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.[544] In May 2002, Judge Porteous's credit line was increased to $400, and in November 2002, it was increased again to $600.[545]

Judge Porteous never sought permission from the bankruptcy trustee to apply for this credit card. When asked about a debtor's request to obtain a new credit card, bankruptcy trustee S.J. Beaulieu told the FBI that he objects to all new credit applications by debtors and sends the application to the bankruptcy judge.[546]

c. Judge Porteous's Application for a Casino Credit Increase

On July 4, 2002, Judge Porteous succeeded in increasing his credit limit at the Grand Casino Gulfport from $2,000 to $2,500.[547] Immediately thereafter, Judge Porteous gambled at the casino and took out the full $2,500 in markers.

4. Lightfoot's Knowledge of Judge Porteous's Post-June 28 Conduct

Judge Porteous did not tell Lightfoot that he had taken out markers, applied for a credit card, or sought credit line increases at casinos. When asked at the Task Force Hearing whether he would have considered these acts violations of Judge Greendyke's Confirmation Order, Lightfoot responded: "They clearly would have been."[548]

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[543] Keir TF Hrg. II at 78.

[544] Capital One Credit Application and Statements (Ex. 341(a)-(b)). FBI Agent Horner identified Judge Porteous's Capital One Credit Application during his Task Force hearing testimony. Horner TF Hrg. II at 18.

[545] Capital One Credit Application and Statements (Ex. 341(a)-(b)).

[546] Beaulieu FBI Interview, Jan. 22, 2004 at SC00410 (Ex. 334).

[547] Grand Casino Gulfport Credit Line Change Request (Ex. 324); see also Horner TF Hrg. II at 18.

[548] Lightfoot TF Hrg. II at 51.

G. INTENT AND MATERIALITY

1. Intent

There are numerous reasons to conclude that the instances of falsity on the Bankruptcy Schedules and Statement of Financial Affairs, and the acts in violation of the June 28 Order, were committed by Judge Porteous knowingly and with intent to deceive and defraud.

First, prior to bankruptcy, Judge Porteous had on numerous other instances signed forms and documents with false information in an effort to conceal material facts. For example, he signed false documents in connection with his background check to become a Federal judge (and made other false statements to the FBI). On an annual basis, he also signed false Financial Disclosure Reports that, among other things, concealed his debts. [549]

Second, the fact that Judge Porteous was dishonest and acted with the intent to conceal and deceive in connection with filing his Initial Petition under a false name and misleading address supports the conclusion that the other false statements at issue were made with a similar intent.

Third, throughout the workout process and up to the time of filing for bankruptcy in March 2001, Judge Porteous updated Lightfoot as to the full extent of his credit card debts (with the exception of the Fleet card, which Judge Porteous concealed entirely), and he did so as late as March 2001 so as to include the most current March credit card balances as of the date of filing. As Lightfoot explained:

> [H]e had a practice of providing me with updated credit card statements. Every so often I would get another collection and I would adjust the balances, because the accrual of interest was making them get larger. [550]

Though Judge Porteous updated Lightfoot on his credit card debts, he did not update Lightfoot on income and assets (including the tax refund), and did not provide information that would disclose his gambling activities. Thus, the evidence demonstrates that Judge Porteous was careful in picking and choosing the information he would tell his attorney—informing Lightfoot only what he wanted him to know and, more to the point, concealing what he did not want to reveal.

Fourth, Judge Porteous is a Federal judge who has presided over bankruptcy matters. Whether some of the acts under scrutiny can be explained as a good faith mistake if committed by someone of lesser sophistication, Judge Porteous was well aware of the signifi-

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[549] As Mr. Schiff noted at the markup:

> Our investigation also uncovered that Judge Porteous falsely reported the full extent of his liabilities in his required financial disclosure reports. These debts, which arose from Judge Porteous'[s] gambling problem, provided further evidence of his willful efforts to conceal his financial situation and the extent of his gambling over the years.
>
> Taken together, it is clear that his false statements in the bankruptcy proceedings were not the result of an oversight or mistake, but reflected instead intentional and willful conduct to conceal his financial affairs and his gambling.

Markup of H. Res. 1031 [and other bills], House Committee on the Judiciary (Hearing Transcript, Jan. 27, 2010) at 33, available at http://judiciary.house.gov/hearings/transcripts/transcript100127.pdf.

[550] See also Lightfoot TF Hrg. II at 43.

cance of the documents he was signing and he well understood that he was signing them under penalty of perjury.

Fifth, the omissions and false statements concerning gambling activities are consistent with, and are explained by, Judge Porteous's powerful motives to keep those activities secret from his attorney, from his creditors, and from the bankruptcy trustee and judge. Judge Porteous may not have known precisely what would happen if his attorney and creditors learned of his gambling, but there is little question that he would have anticipated that the result would have been further scrutiny into his finances and potentially court ordered restrictions on his gambling.

Indeed, Lightfoot testified that it would have been very important to him to learn of Judge Porteous's gambling, and that such information not only would have triggered numerous other questions, but would have resulted in his admonishing Judge Porteous that he could no longer gamble and take on debt to do so. When asked by Mr. Goodlatte what he would have done had he learned that Judge Porteous gambled, Lightfoot testified:

> A. I would want to know where are the gambling debts. They must be listed. You can't gamble anymore. You can't incur debt to gamble. Those admonitions. Have we listed all of the debts or do you have—And then I would get into the area of the markers. Because the markers, although they are a civil liability to pay, as you were explaining, they also could—if the marker is put through as a check and it bounces and then you have a bad check, which is a more serious problem.
>
> Q. Tell me what sorts of questions you would have asked him and what advice you would have given him if he told you he was a frequent gambler?
>
> A. Well, I would have told him exactly what—do you have any gambling debts that you haven't told me about? If so, I need the name, address, account number, balance due. Are you doing it now? Because your budget will not work if you gamble. You have no authority to make any debts to gamble.[551]

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.[552] The casinos would thus be treated the same as other unsecured creditors, and would have received less than full payment on the markers.[553] Further, a default to one casino would jeopardize Judge Porteous's credit at all casinos. As Agent Horner testified, the various casinos participate in a centralized credit sys-

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[551] Lightfoot TF Hrg. II at 64. See also Lightfoot TF Hrg. II at 48-49.

[552] Keir TF Hrg. II at 71.

[553] Keir TF Hrg. II at 72. ("[Trustees] can and on fairly rare occasion do actually launch these adversary proceedings to recover back from the preferred creditor all of the money, and then the creditor has to wait and get their aliquot share from distributions under the plan."). Lightfoot TF Hrg. II at 54.

tem, and "if a gambler gets a negative history on his central credit report, what happens is the other casinos generally cut him off." [554]

Thus, the conduct discussed in this Section is not simply a variety of isolated and unrelated insignificant omissions that can be characterized as mere mistakes. Rather, the omissions and false statements form a sophisticated and coherent pattern of deception that demonstrates a determined effort by Judge Porteous to pick and choose those aspects of the Federal bankruptcy laws with which he would honestly comply and those which he would disregard.

Judge Porteous's conduct consisted of calculated acts at every juncture associated with his bankruptcy. These include:

- His failure to be truthful to his attorney at the very outset as to his gambling debts and as to the Fidelity money market account;
- His conduct in the days immediately preceding his filing the Initial Petition (having Danos pay off the Fleet Card, obtain the P.O. Box, and paying off Treasure Chest markers);
- His causing false statements and omissions to be made on the Initial Petition, the Bankruptcy Schedules, and the Statement of Financial Affairs, and swearing to those documents under penalty of perjury;
- His secretly incurring gambling debt after filing for bankruptcy but prior to the Creditors Meeting, and paying off some of this debt by directing that a check constituting a withdrawal from his IRA be endorsed to Danos, and having her write the check paying the casino;
- His false swearing to the accuracy of the documents he had previously signed, and acknowledging his understanding of the requirement that he was on a "cash basis now" at the Creditors Meeting;
- His applying for and taking out debt at casinos, applying for and using a personal credit card in violation of the June 28 Confirmation Plan Order, and his using his concealed Fidelity money market account to pay some of those debts.

Notwithstanding his knowledge that Chapter 13 bankruptcies are to be characterized by providing to the creditors all disposable income, Judge Porteous knowingly enjoyed substantial disposable income, while creditors were left receiving only a portion of what he owed them, and less than what they would have received had he been honest and acted in good faith.

2. Materiality

Notwithstanding the willfulness of Judge Porteous's conduct, a question at the Task Force Hearing was raised as to the "materiality" of the false statements and omissions. For example, Judge Porteous's attorney sought to make the point in his examination of the witnesses that even though Judge Porteous filed under a false name, the casinos would have ultimately learned of the bankruptcy

[554] Horner TF Hrg. II at 19.

if they had run a credit check that included Judge Porteous's Social Security number.[555]

The false statements were material for numerous reasons. First and foremost, one 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 was asked about his decision to sign the June 28 Order during his Fifth Circuit testimony, and indicated that if he knew all the facts concerning Judge Porteous's conduct, he "would probably have sua sponte objected on the basis of lack of good faith."[556] 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 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.[557]

Second, if Judge Porteous had disclosed accurate information, the proceedings could have taken an entirely different course. For example, the trustee could have ordered that the undisclosed tax refund be distributed to the creditors, or could have determined that the payment plan should be increased to account for that additional amount in Judge Porteous's possession, or that Judge Porteous was over-withholding and thus had more disposable income. "But, by hiding [the refund], he both falsified the amount that the plan was going to have to pay and took away from the trustee the opportunity to obtain the funds to make sure creditors got those funds."[558] Or, as Judge Keir explained, by filing under a false name and by using a P.O. Box, Judge Porteous had "falsified the official record of the United States court." Accordingly, between the time Judge Porteous filed his Initial Petition and his Amended Petition, a lender's credit inquiry would likely have failed to reveal that Judge Porteous had in fact filed for bankruptcy.[559] By failing to disclose the Fleet card, he deprived Fleet of the accurate information whereby it could decide whether it would wish to cancel Judge Porteous's account.[560] Alternatively, if Judge Porteous had disclosed payments to casinos within the 90 days of filing, the trustee may have decided to sue to recover those payments so that those casinos would not end up getting "a greater re-

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[555] Horner TF Hrg. II at 29-30.

[556] Greendyke 5th Cir. at 384-86 (Ex. 335). Judge Keir would have done the same: "It is a requirement under section 1325 that the plan be proposed in good faith. The plan, based upon falsehoods like this, is not proposed in good faith and the confirmation would have been denied right at that point." Keir TF Hrg. II at 74.

[557] Lightfoot Hrg. II at 43.

[558] Keir TF Hrg. II at 70-71. As Judge Keir explained:

> So if you hide $4,100 of your assets, you're reducing the amount that the trustee is going to calculate in making a recommendation to the court as to how high the plan payment has to be. The second thing is, of course, a tax refund is effectively cash to put into your account. You can spend it. If you spend it and then your case for some reason was converted to Chapter 7, it is not going to be available to creditors. It is gone. So, often, at least in my district, the trustee will take the position and if not agreed will file a motion asking for a court order that the refund be paid into the trustee upon receipt and, as in effect, part of the payment required into the plan.

Id. at 70.

[559] Keir TF Hrg. II at 69.

[560] Keir TF Hrg. II at 71.

turn dollar for dollar than unsecured creditors generally in the case." [561]

Third, if Judge Porteous had been truthful as to his gambling activities, he may have invited further and more pointed scrutiny of all his financial affairs, bringing to light his actual income and tax refund—the sort of scrutiny that was not conducted in part because he was so careful and thorough in removing evidence of his gambling from his bankruptcy filings, and because it was assumed that as a Federal judge, he would turn square corners. Judge Keir explained that the bankruptcy system depends on the honesty of the debtors in disclosing financial information. Judge Keir testified:

> All of this information is sworn to under penalty of perjury. So they [the debtors] are taking a court oath as to all of this, and this provides the essential information that both the creditors and the trustee can then use to decide whether further investigation by way of the examination or take action [by] filing [a] particular action before the bankruptcy court. They investigate the liabilities by asking questions of other witnesses or seeking bank records, for example. All of this activity would follow on based upon what the debtor has revealed. It has to be complete or there is no trail for the creditors and the trustee to follow. [562]

Thus, "the whole system demands and depends upon the honesty of the honest but unfortunate person who seeks relief." [563] Individuals can't just simply 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." [564]

XI. THE FACTS UNDERLYING ARTICLE IV—JUDGE PORTEOUS'S FALSE STATEMENTS IN CONNECTION WITH HIS CONFIRMATION

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.

First, Judge Porteous filled out and signed a document entitled "Supplement to Standard Form 86 (SF-86)." That form, at question 10's, sets forth the following question and answer by Judge Porteous:

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[561] Keir TF Hrg. II at 71.

[562] Keir TF Hrg. II at 68.

[563] Keir TF Hrg. II at 72. Keir explained by analogy: "[If] one goes 110 miles an hour the wrong way down a one-way street but by good fortune doesn't hit anybody, they are not exonerated from their intentional misconduct for certain." Keir TF Hrg. II at 69.

[564] Keir TF Hrg. II at 69-70. As one appellate court has noted: "Materiality does not require a showing that creditors are harmed by the false statements. . . . Matters are material if pertinent to the extent and nature of bankrupt's assets, including the history of a bankrupt's financial transactions. . . . Materiality is also established when it is shown that the inquiry bears a relationship to the bankrupt's business transactions or his estate . . . or concerns the 'discovery of assets, including the history of a bankrupt's financial transactions.'" United States v. O'Donnell, 539 F.2d 1233, 1237 (9th Cir. 1976). See also United States v. Gellene, 182 F.3d 578, 587 (7th Cir. 1998) ("Materiality . . . does not require harm to or adverse reliance by a creditor, nor does it require a realization of a gain by the defendant. Rather it requires that the false oath or account relate to some significant aspect of the bankruptcy case or proceeding in which it was given, or that it pertain to the discovery of assets or to the debtor's financial transactions.")

> [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 [565]

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. [566]

Second, Judge Porteous, when interviewed by the FBI in July 1994, was asked a series of standard questions designed to elicit derogatory information. The FBI Agent, in her 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. [567]

Third, 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. Again, in the FBI Agent's write-up of that interview, Judge Porteous is recorded as stating "that he was unaware 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." [568]

Fourth, on his United States Senate Committee on the Judiciary "Questionnaire for Judicial Nominees," Judge Porteous 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. [569]

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.

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[565] Porteous Background Check Documents, at PORT 00298 (part of Ex. 69(b)).
[566] Porteous Background Check Documents, at PORT 00298 (part of Ex. 69(b)). The form is undated. The date "April 27, 1994" was written by hand. The Standard Form 86 is entitled "Questionnaire for Sensitive Positions (For National Security)."
[567] Porteous Background Check Documents, at PORT 00294 (part of Ex. 69(b)).
[568] Porteous Background Check Documents, at PORT 00493-94 (part of Ex. 69(b)).
[569] Porteous Background Check Documents, at PORT 00049 (part of Ex. 69(a)).

It is signed by Judge Porteous and by a notary.[570]

These four statements each concealed that Judge Porteous had engaged in serious and potentially criminal misconduct on the bench on numerous occasions over several years. These acts involved his assigning curatorships to Creely as part of a kickback scheme. It also involved his setting bonds and setting aside convictions for the Marcottes as part of a course of conduct, quid pro quo relationship with them.

XII. OTHER THINGS OF VALUE RECEIVED BY JUDGE PORTEOUS AS A STATE COURT JUDGE

Judge Porteous's acceptance of other things of value from attorneys and parties, both as a State court judge and as a Federal judge, is relevant to his intent and to address a contention that the conduct discussed in Articles I and II constitute nothing more than a misinterpretation of Judge Porteous's friendship and his motives in relation to a few attorneys and the Marcottes.

Attorney Leonard Cline was a plaintiff's attorney who, in the late 1980's, had at least three cases in front of Judge Porteous for which Judge Porteous awarded his clients large verdicts. In the mid-1990's, an attorney sued Cline, alleging, in substance, that Cline owed him a portion of the fees from one of the cases. In connection with that suit, Cline's secretary, Sharon Konnerup, gave a sworn statement in which she testified that Cline and Judge Porteous were friends, that Cline had given Judge Porteous a unique firearm which she had actually seen, and that Cline also paid for a cruise for Judge Porteous. Her testimony as to the firearm was as follows:

Q. Does Mr. Cline or did Mr. Cline, at the time you were working with him, have any kind of a relationship with Judge Porteous?

A. They were very good friends. Judge Porteous would stop by the office every now and then.

Q. Did they go to lunch together?

A. Yes, they did.

Q. Did Mr. Cline ever give any gifts to Judge Porteous?

A. He gave him a very, very, very unique shotgun that had silver inscriptions on it, all silver scroll, decorative.

Q. Was that during your tenure with Mr. Cline?

A. Yes, it was.

Q. Did you ever see the shotgun?

A. Yes, I did.

Q. Did Mr. Cline tell you he had purchased it for Judge Porteous?

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[570] Thus, both Louis Marcotte and Robert Creely have admitted making false statements when they were interviewed by the FBI in connection with Judge Porteous's background check. Each individual admitted not being candid as to their knowledge of Judge Porteous's drinking habits and his financial circumstances.

A. Yes, he did.[571]

Konnerup also testified that, based on discussions that she overheard, she believed that Cline had paid for a cruise for Judge Porteous.[572]

Konnerup was deposed by Task Force Staff about this incident. At her deposition, Konnerup testified that she worked for Cline roughly between 1988 to 1990. She indicated her current recollection of events was not as clear as it was at the time of the 1995 sworn statement, but she did adopt her 1995 prior statement, stating that she took the oath to tell the truth seriously, and she was confident she told the truth as she knew it at that time.[573]

Attorney Cline, who was deposed by Task Force Staff, acknowledged having three cases in front of Judge Porteous. In the first, Judge Porteous awarded a verdict after a non-jury trial of "[s]omething like a million dollars . . . or $800,000" in May 1987 in a case where Cline's client suffered injuries after tripping over a manhole cover.[574] In the second case, in May 1989, Judge Porteous awarded a default judgement of $1,461,105.18 to Cline's client. The case thereafter settled for about $450,000.[575] In the third case, in June 1989, Judge Porteous awarded a verdict of $1.5 million to Cline's client in an automobile accident case, also after a non-jury trial. The award was reduced on appeal to about $1 million.[576]

Cline was asked at the Task Force deposition whether he ever gave Judge Porteous a firearm or a cruise. He claimed to have no recollection of doing so:

> Q. Now in or about the 1988 to 1990 time frame do you recall giving Judge Porteous any sort of hunting weapon, be it a shotgun, a rifle, or any other hunting weapon?
>
> A. I have no recollection of that one way or another.
>
> Q. And in or about the same time frame, do you recall paying for a cruise for Judge Porteous?
>
> A. I have no recollection of paying for a cruise one way or the another.
>
> * * *
>
> My best guess today is I have no recollection of giving Judge Porteous a gun or a cruise. I have no recollection one way or the other.

---

[571] Konnerup Dep. Ex. 34 at 13-14 (Sworn Statement of Sharon Konnerup, taken in American Motorists Ins. Co. v. American Rent-all, Inc., et al, No. 322-619 (24th Jud. Dist. Ct., Jeff. Par., La., Sept. 7, 1995)) (Ex. 234).

[572] Id. at 14-16.

[573] Konnerup Dep. at 5 (Ex. 194).

[574] Cline Dep. at 11 (Ex. 195). Judge Porteous actually awarded Cline's client $1,126,319.79 after a non-jury trial. The case is described on appeal at Tracy v. Jefferson Parish, 523 So.2d 266 (La. Ct. App. 1988) (Ex. 196(a)).

[575] Cline Dep. at 14-15 (Ex. 195). See also, Judgment, Cabral v. National Fire Insurance Co., No. 374-310 (24th Jud. Dist. Ct., Jeff. Par., La.), May 22, 1989 (Ex. 196(a)).

[576] Cline Dep. at 18 (Ex. 195). That case was American Motorist Ins. Co. v. American Rent-all, No 322-619 (24th Jud. Dist Ct., Jeff. Par., La.). It was reported on appeal at 579 So.2d 429 (La. Sup. Ct. 1991) (Ex. 196(f)).

* * *

Q. Is it possible that you did?

A. I have no recollection.

Q. [S]o you're saying it is possible, you just don't recall?

A. I have no recollection of doing that, and I just can't answer that question. I don't know, I mean, I don't have any recollection.[577]

Cline testified he owned more that ten firearms, though he denied being a "collector."[578]

XIII. OTHER INSTANCES OF JUDGE PORTEOUS ACCEPTING THINGS OF VALUE FROM PARTIES AND ATTORNEYS WHILE A FEDERAL JUDGE, AND HIS NON-DISCLOSURE OF THOSE TRANSACTIONS

A. INTRODUCTION

Judge Porteous's acceptance of things of value from attorneys with matters before him in the *Liljeberg* case was not an isolated incident. He also accepted hunting trips and expensive meals at high-end restaurants from parties, their attorneys, and even witnesses, without making appropriate disclosures to the opposing attorneys who appeared before him. Judge Porteous's acceptance of these things of value in cases in addition to the *Liljeberg* case provides additional evidence of his intent to inappropriately use his Federal judgeship to obtain personal benefits.

B. JUDGE PORTEOUS'S RECUSAL PRACTICES AS A FEDERAL JUDGE

Judge Porteous had no procedures in place to recuse himself in the event of a conflict, in contrast to the practice of other Federal judges.

Judge Porteous's courtroom clerk, Richard Windhorst, testified that he had previously clerked for District Court Judge Morey L. Sear, who provided Windhorst a "conflict list." If a company on the list was a party in a case assigned to Judge Sear, Windhorst was instructed to call the clerk's office and have the case reassigned to another judge. Judge Richard Haik maintained a "recusal list" for the same purpose. As described later in this section, Judge Haik made sure to include on that list companies which provided him

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[577] Cline Dep. at 21-22, 24-25 (Ex. 195). In contrast to Cline's lack of recollection as to whether he gave Judge Porteous a firearm or a cruise, Cline had a detailed memory of the facts of the Tracy v. Jefferson Parish case that took place in the late 1980's, which Cline described as follows:

> Q. [H]ow can you sue Jefferson Parish for somebody slipping on a water meter manhole?
>
> A. Well, because the grass grew about 16 to 18 inches under the cover, which means that the grass, when the cover's not on it, there's not much light in there. So it takes a while for the grass to grow 16 to 18 inches.
>
> So the [P]arish inspected the meters and read the meters supposedly every month or whatever, every other month. I'm not sure what the evidence showed back then. But it showed that they had plenty of notice that the grass was under there.
>
> And after we reported the accident, they came out and cut all the grass and put a nice cover on there and took pictures and said, "Well, look, this is how it was." And, of course, we already had pictures. We had an expert out there, and that wasn't so.

Cline Dep. at 9-10 (Ex. 195).

[578] Cline Dep. at 25-26 (Ex. 195).

with hunting trips.[579] In contrast, Judge Porteous had no such list and had no such procedures. He recused himself only on matters on which his sons, who were attorneys, were involved.[580]

C. THE *ALLIANCE GENERAL* CASE AND OTHER CASES WHERE LEVENSON REPRESENTED A PARTY

1. The Alliance General Case

From 1996 to 1999, during roughly the same time that the *Liljeberg* case was pending before him, Judge Porteous was also presiding over *Alliance General Insurance Co. v. Louisiana Sheriffs' Automobile Risk Program.*[581] In that case, which was filed in March 1996, the plaintiff, an insurance company, sued various Sheriffs Associations ("the Sheriffs"), attempting to void an auto insurance policy on the grounds that the Sheriffs made misrepresentations in procuring the policy as to the nature and extent of the claims. The Sheriffs were represented by Allen Usry. Usry, in turn, retained Levenson.

During the pendency of that case, Usry and/or Levenson invited Porteous on at least one, and perhaps two, hunting trips to Usry's Mississippi property. In May 1999, Judge Porteous decided a summary judgement motion in favor of the Sheriffs—Levenson's and Usry's client—which effectively ended the litigation. In December 1999, Levenson and/or Usry paid for Judge Porteous to hunt at the Blackhawk hunting facility.[582]

2. Other Levenson Cases Before Judge Porteous

Levenson had other cases with Judge Porteous as well, and in fact had cases pending before Judge Porteous at all times from March 20, 1996 (prior to his becoming involved in the *Liljeberg* case) through 2007.[583] Judge Porteous's relationship with Levenson prior to and during the *Liljeberg* case has been described in prior sections. That same relationship, whereby Levenson frequently paid for Judge Porteous's meals, continued at least until 2003, when they traveled to Washington, D.C. for a Mardi Gras

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[579] Haik Affidavit (Ex. 186).

[580] Windhorst Dep. at 5-6 (Ex. 184).

[581] Civ. No. 2:96-cv-00961-GTP (E.D. La.), filed March 15, 1995, closed May 28, 1999. See PACER Docket Report (Ex. 28).

[582] This trip occurred while the Liljeberg case was under advisement with Judge Porteous.

[583] These were:

- "First National Bank v. Evans, Civ. No. 2:96-cv-01006-GTP (E.D. La.), filed March 20, 1996, closed September 19, 1997. In this case, Judge Porteous appointed Levenson to represent a missing party. Levenson was paid approximately $470. See PACER Docket Report (Ex. 28(c)); Levenson Dep. at 32-33 (Ex. 30).
- Joseph v. Sears Roebuck & Co., Civ. No. 2:97-cv-001923-GTP (E.D. La.), filed January 21, 1997, closed July 24, 1998. Levenson did not recall this case. See PACER Docket Report (Ex. 28(d)); Levenson Dep. at 33 (Ex. 30).
- Liberty Mutual Fire Insurance v. Ravannack, Civ. No. 2:00-cv-01209-CJB-DEK. (E.D. La.), filed April 19, 2000, closed June 13, 2007. This complicated products liability case was reassigned from Judge Porteous to Judge Carl Barbier in 2006. See PACER Docket Report (Ex. 28(e)); Levenson Dep. at 34 (Ex. 30).
- Holmes v. Consolidated Companies, Inc., Civ. No. 2:00-01447-GTP (E.D. La.), filed May 17, 2000, closed May 22, 2001. Levenson represented the defendant in an employment discrimination case. The case settled for what Levenson described as a "minimal amount." See PACER Docket Report (Ex. 28(f)); Levenson Dep. at 34-36 (Ex. 30).
- Morales v. Trippe, Civ. No. 2:04-02483-GTP-DEK (E.D. La.), filed August 31, 2004, closed April 18, 2005. This personal injury case settled for the insurance policy limits. See PACER Docket Report (Ex. 28(g)); Levenson Dep. at 37-38 (Ex. 30).

event.[584] At no time in any case that Levenson had before Judge Porteous did Judge Porteous disclose to the opposing party that he had a close relationship with Levenson, that they had traveled together frequently (including during the pendency of the case), and that Levenson had paid for meals on those trips.[585]

D. Judge Porteous's Relationship with Richard Chopin and Acceptance of Hunting Trips from Diamond Offshore

1. Attorney Richard Chopin

Attorney Richard Chopin was a friend of Judge Porteous for years. They first met when they taught trial advocacy at Louisiana State University Law School.[586] They were perceived by others to be friends.[587]

Chopin wrote a letter to Second Circuit Judge Ralph Winter, dated March 28, 2008, supportive of Judge Porteous, in which Chopin described Judge Porteous as an "outstanding judge" and among "one of finest judges before whom I have ever appeared." He stated he had never "heard, seen or experienced any impropriety in Judge Porteous'[s] conduct" and characterized the allegations against Judge Porteous as having the appearance of a "witch hunt." Letter from Richard A. Chopin, Esq., to Hon. Ralph K. Winter, March 28, 2008 Chopin Dep. Ex. 58 (Ex. 258). Chopin also solicited other attorneys to write letters in support of Judge Porteous. Chopin Dep. at 70-71 (Ex. 182); Chopin Dep. Ex. 59 (Ex. 259).

Chopin testified that he took Judge Porteous out to lunch, but he stated that Judge Porteous reciprocated.[588] Chopin also testified that Judge Porteous would have used a credit card to charge meals at expensive restaurants in the period subsequent to Judge Porteous filing for bankruptcy and when Judge Porteous was under court-ordered restrictions from incurring new debt.[589]

2. Diamond Offshore

Diamond Offshore ("Diamond") is an oil rig company with headquarters in Houston, Texas, that has been sued on occasion as a result of injuries to others or damage to property that occurs in the operation of Diamond's rigs. If the injuries or damages occurred in the Gulf of Mexico, the civil suits were frequently brought in the Eastern District of Louisiana, and would occasionally be assigned to Judge Porteous. Chopin was frequently retained by Diamond to defend the company in litigation.

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[584] Levenson Dep. at 25 (Ex. 30); Danos Dep. I at 66-67 (Ex. 46).

[585] Levenson Dep. at 38-39 (Ex. 30).

[586] Chopin Dep. at 17-18 (Ex. 182).

[587] Levenson Dep. at 28-29 (identifying Chopin as an attorney who took Judge Porteous to lunch) (Ex. 30); Gardner Dep. at 38 (identifying Judge Porteous and Chopin as friends) (Ex. 36). See also Baynham Dep. at 19 ("My understanding was that they had been friends for a long time.") (Ex. 158); Danos Dep. I at 23 (Porteous and Chopin became friends when Porteous was a State judge) (Ex. 46); Danos Dep. I at 68 (Chopin was one of the attorneys who took Judge Porteous to lunch on occasion) (Ex. 46).

[588] Chopin claimed he and Judge Porteous split the costs of meals. Chopin is the only attorney interviewed who has stated that Judge Porteous paid for more than a small fraction of the meals. Chopin Dep. at 56-57, 65 (Ex. 182).

[589] Chopin Dep. at 64-66 ("I'm going to assume [Judge Porteous] charge[d], but it could have been, you know, where we were just getting a sandwich and paid cash. But certainly he's charged them.") (Ex. 182). Chopin's representation that Judge Porteous paid for meals with him by credit card is not corroborated by any of Judge Porteous's credit card records in the Committee's possession.

3. 2000-2007—Judge Porteous Accepts Six Hunting Trips From Diamond

Diamond owned or leased a hunting property in Texas that it used for entertainment purposes. In the late 1990's, Diamond arranged a hunting trip for attorneys and others in the claims management part of the business. Chopin was invited, and, according to a Diamond employee who had some responsibility for the trips, Chopin, in turn, recommended that Diamond invite Judge Porteous.[590]

The documentary evidence confirms that Diamond perceived Chopin to be associated with Judge Porteous in connection with these trips. In connection with Judge Porteous's attendance on the 2001 trip, the communications from Diamond to Judge Porteous concerning that trip stated that Judge Porteous could provide his information to Chopin and that Chopin would act as an intermediary.[591]

Judge Porteous went on six Diamond-sponsored hunting trips. These occurred in early January in 2000, 2001, 2003, 2005, 2006, and 2007. In each of these 6 years, Chopin was also present. Diamond documents reflect that Judge Porteous and Chopin shared a room on at least the 2005 and 2006 trips.[592]

In connection with the hunting trips, Diamond paid all of Judge Porteous's expenses. Diamond flew Judge Porteous, Chopin and others from New Orleans to the hunting facility in Texas. It provided air transportation (including by private aircraft), meals, lodging, and an open bar, and paid for hunting licenses if necessary. If the guest shot a deer, the deer would be cleaned and butchered, and the processed meat sent to the guest.[593] The only expense a guest was required to cover was the cost of mounting a deer head if this service was requested.

4. Specific Cases Assigned to Judge Porteous Involving Diamond and/or Chopin

Notwithstanding the fact that Judge Porteous had started in January 2000 to attend all-expense-paid, high-end hunting trips sponsored by Diamond, he continued to preside over litigation in which Diamond was a named defendant, without disclosing his receipt of Diamond trips.[594]

The Diamond cases in front of Judge Porteous (since he first started attending the Diamond hunting trips) include:

- *Sylve v. Oceaneering Int'l, Inc., British Borneo Exploration, and Diamond Offshore Drilling, Inc.* was filed March

[590] Chopin did not deny that he was the impetus to Diamond's inviting Judge Porteous, but testified that he did not remember doing that. Chopin Dep. 19-20 (Ex. 182).

[591] Chopin Dep. at 21-22 (Ex. 182); Chopin Dep. Ex. 51 (Ex. 251). As late as November 15, 2006, Chopin was still involved in inviting Judge Porteous on these hunting trips. In an email to Diamond's General Counsel, Chopin wrote: ". . . I had lunch with Judge Porteous yesterday and he asked if I heard anything about the hunt. . . . I know he would be thrilled to be invited again. . . ." Diamond Documents at D0075 (Ex. 177).

[592] Porteous did not disclose the 2000, 2001 and 2003 Diamond hunting trips in his financial disclosure reports. He did disclose the hunting trips as gifts in his 2005, 2006 and 2007 his financial disclosure reports. See Exs. 106(a), 107(a), 109(a), 111(a), 112(a) and 113. By 2006, Judge Porteous knew he was under a criminal investigation.

[593] Bradley Dep. at 27-28 (Ex. 181).

[594] All the Diamond cases assigned to Judge Porteous either settled or were reassigned, so unlike the Liljeberg case, Judge Porteous had only limited opportunities to issue dispositive rulings in those cases. Thus, no particular ruling by Judge Porteous has been subject to judicial scrutiny in his handling of the Diamond cases.

1999.[595] Even though Diamond was a named defendant, any liability on Diamond's part would have been covered by an insurance policy. The insurance company (Oceaneering International) was thus responsible for managing the defense. However, Diamond was not dismissed from the case. Diamond took Judge Porteous hunting in January 2000, while the case was pending and 2 months prior to trial. Trial commenced March 13, 2000, and the parties settled on March 14, 2000.

- *Boothe v. Diamond Offshore Mgt.* was filed February 20, 2001.[596] Diamond was represented by Chopin. This case was filed about a month after Judge Porteous had attended his second Diamond hunting trip with Chopin in January 2001. A year later, in February 2002, the case was reassigned from Judge Porteous to Judge Jay C. Zainey.
- *Johnson v. Diamond Offshore* was filed in September 2003 and was pending until March 2005.[597] Diamond was represented by Chopin until August 2004, at which time Chopin was replaced by another attorney. In January 2005, during the case's pendency, Judge Porteous went on his fourth Diamond hunting trip. In this case, as with the Sylve case above, Diamond was indemnified by a third party. The case settled.
- *Jones v. Diamond Offshore* was filed March 31, 2004 and was resolved in June 2006.[598] In January 2005, during the pendency of the case, Judge Porteous went on his fourth Diamond hunting trip. In 2006, the case was reassigned from Judge Porteous to Judge Carl Barbier and settled for a modest amount.

Although Judge Porteous did not end up presiding over jury or non-jury trials involving Diamond, and was not otherwise significantly involved in determinations as to the liability of Diamond, in none of these four cases were the plaintiffs or their attorneys made aware that Judge Porteous had gone on hunting trips paid for by Diamond.

One additional case, *Farrar v. Diamond Offshore,*[599] deserves specific mention. Diamond was represented by Chopin in a personal injury case brought by plaintiff Farrar alleging negligence. The case was filed in March 2003—2 months after Judge Porteous had taken his third Diamond hunting trip (also attended by Chopin). The parties settled in April 2004 on terms acceptable to plaintiff's counsel, Peter Koeppel. However, Koeppel's observations illustrate the consequences of Judge Porteous's failure to disclose his relationship with both Diamond and Chopin. After testifying that he was unaware that Judge Porteous had gone on one or more hunting trips paid for by Diamond and attended by Diamond's counsel, Koeppel testified that if he had known of that fact, he would have felt "ethically . . . obligated to inform my client . . . to seek their consent in terms of either proceeding forward or ad-

[595] Civ. No. 2:99-cv-00841-GTP (E.D. La.). See PACER Docket Report (Ex. 180(d)).
[596] Civ. No. 2:01-cv-00441-JCZ (E.D. La). See PACER Docket Report (Ex. 180(f)).
[597] Civ. No. 2:03-cv-02505-GTP-ALC. (E.D. La.). See PACER Docket Report (Ex. 180(g)).
[598] Civ. No. 2:04-cv-00922-CJB-ALC (E.D. La.). See PACER Docket Report (Ex. 180(h)).
[599] Civ. No. 2:03-cv-00782-GTP (E.D. La.). See PACER Docket Report (Ex. 178).

vising the court to recuse himself." He further testified that information that the Judge had accepted a trip from Diamond would have been important to his clients: "[P]eople who work out offshore on drilling rigs tend to be rather unsophisticated and wary of the legal system in general. I can't say that for every one of them, but in general. So it would be important to tell Them."[600]

D. Judge Porteous's Acceptance of Hunting Trips from Rowan Companies

1. Rowan, Baynham, Hedrick and Dr. Cenac

Rowan Companies ("Rowan") was an oil rig company with headquarters in Houston, Texas. It also owned and operated drilling rigs in the Gulf of Mexico, and was on occasion sued for damages as a result of injuries or damages to property that occurred in the operation of the rigs. When the injuries or damages occurred in the Gulf of Mexico, civil suits were often brought in the Eastern District of Louisiana. On occasion, Judge Porteous was assigned these cases. Rowan, like Diamond, leased or owned a property in Texas and sponsored hunting trips for invited guests.

The Rowan hunting trips were similar to the Diamond trips. Rowan paid for all expenses, including transportation to and from the location (by private plane on occasion), lodging, meals, liquor, hunting licenses, and meat processing.[601]

Bill Hedrick was the Rowan Vice President who supervised Rowan's claims management process, and was responsible for retaining outside counsel to defend Rowan in litigation. Hedrick would frequently retain T. Patrick Baynham, a New Orleans attorney, to represent Rowan. Baynham, like Chopin, specialized in maritime defense.[602] In mid-November 2001, Hedrick met Judge Porteous for the first time at an overnight hunt at the camp of Dr. Christopher Cenac, Sr.[603]

2. Hunting Trips and Meals with Rowan, Hedrick and Baynham

On January 16, 2002, about 2 months after first meeting Judge Porteous, Hedrick paid for dinner with Judge Porteous and others. The bill was $392 at "Eleven 79" restaurant.[604]

On November 4-7, 2002, Judge Porteous went hunting at the invitation of Hedrick at the Rowan hunting facility in Texas. Hedrick was also in attendance.[605]

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[600] Koeppel Dep. at 6-7 (Ex. 183).

[601] Baynham Dep. at 5 (Ex. 158).

[602] Their firm's offices are on the same floor in the same building. Chopin Dep. at 47-48 (Ex. 182). Over the years, Chopin and Baynham have represented both Rowan and Diamond.

[603] Dr. Cenac is an orthopedist who is frequently retained by Diamond and Rowan, as well as Chopin and Baynham, as a medical expert witness. Hedrick recalled this hunt, and stated he perceived Judge Porteous and Dr. Cenac to be friends. Hedrick Dep. at 5-6 (Ex. 166). It is not known how Judge Porteous initially came to be friends with Dr. Cenac.

[604] Hedrick's receipts and expense report for the meal have been obtained. See Rowan Documents at RH 000110-11 (Ex. 154). These contain a January 16, 2002 entry for "Judge Porteous" with the amount of $392 and the corresponding receipt. Hedrick identified these documents in his deposition. Hedrick Dep. at 12 (Ex. 166); Hedrick Dep. Ex. 92 (Ex. 292).

[605] Several witnesses have described these trips. See Hedrick Dep. at 8-10 (Ex. 166); Baynham Dep. at 28-30 (Ex. 158) and Koeppel Dep. at 11-13 (Ex. 183).

On January 16, 2003, Hedrick paid for dinner with Judge Porteous, his wife, and others. The bill was $591.36, again at Eleven 79.[606]

3. Hanna v. Rowan case before Judge Porteous

On November 21, 2002—2 weeks after the first hunting trip—the complaint in *Hanna v. Rowan Company Inc.*[607] was filed and assigned to Judge Porteous.[608] This case involved a claim for damages allegedly sustained by plaintiff Hanna when a ladder on which he was climbing or standing broke, causing him to fall and injure his back. Rowan was represented by Baynham. As of the date the case was filed, Judge Porteous had already gone on the Rowan hunting trip, and had been the guest of the Rowan Vice President at two meals, where Rowan had paid $392 and $591. This case was pending until August 2005, when settlement was reached in the midst of a jury trial.

During the pendency of the case, on August 25, 2004, Hedrick again took Judge Porteous to lunch. Also in attendance was Magistrate Judge Daniel E. Knowles, III. This time, the meal was at the Steak Knife and the bill was $142.00.[609] Then, on November 16-19, 2004, while the *Hanna* case was still pending, Judge Porteous attended another Rowan hunting trip, where Baynham and Hedrick were both in attendance.[610]

A few days after the hunting trip, at Hedrick's suggestion, Baynham called Judge Porteous to arrange for a lunch for the three of them. It was scheduled for December 9, 2004, to coincide with the date of a scheduled settlement conference with the Magistrate Judge in the Hanna case.[611]

On December 7, 2004—2 days prior to the lunch—Judge Porteous issued an order denying Hanna's Motion for Summary Judgment.[612]

Hedrick was unable to attend the December 9, 2004 lunch. Baynham, knowing that Chopin was a friend of Porteous, asked Chopin to go in Hedrick's place. Baynham did not know Porteous well, so it made things easier for Baynham to invite Chopin. The three of them had what Baynham described as an "extended lunch" at Restaurant 1827.[613] Neither Chopin nor Baynham could locate a receipt for this lunch. Baynham believed that Chopin must have

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[606] Rowan Documents at RH000112-13 (Ex. 154). The first of those pages, RH 000112, references a January 16, 2002 entry for "Judge Porteous" with the amount of $591.36. The second page sets forth the corresponding receipt. Hedrick identified these documents in his deposition. Hedrick Dep. at 12-13 (Ex. 166); Hedrick Dep. Ex. 93 (Ex. 293). Hedrick was reimbursed by Rowan for any meals he spent hosting Judge Porteous. These were treated as business expenses—presumably because it was in Rowan's corporate interest to have good relations with the Judge hearing some its cases.

[607] PACER Docket Report, Hanna v. Rowan Company, Inc., et al, Civ. No. 2:03-cv-03258-GTP-JCW (E.D. La.) (Ex. 156).

[608] PACER Docket Report, Hanna v. Rowan Company, Inc., et al, Civ. No. 2:03-cv-03258-GTP-JCW (E.D. La.) (Ex. 156).

[609] Hedrick Dep. at 13-14 (Ex. 166); Hedrick Dep. Ex. 94 (Ex. 294).

[610] Baynham Dep. at 12; Baynham Dep. Exs. 63-64 (Dep. Exs. 263 and 264); Rowan Documents at RH 000204 (Ex. 151). This trip was reported by Judge Porteous in his 2004 Financial Disclosure Report, which he filed in May 2005. This report was filed while the Hanna case was pending and prior to the settlement of that case in August 2005. See Ex. 105(a).

[611] Baynham Dep. at 16-17 (Ex. 158); Baynham Dep. Ex. 67 (Ex. 267).

[612] PACER Docket Report, Hanna v. Rowan Company, Inc., et al, Civ. No. 2:03-cv-03258-GTP-JCW (E.D. La.) (Ex. 156); Young Dep. at 6 (Ex. 159); Young Dep. Exs. 72, 73 (Exs. 272, 273).

[613] Baynham Dep. at 20 (Ex. 158). Chopin Dep. at 51 (Ex. 182). Both Baynham and Chopin described the lunch as including several drinks. Baynham informed Hedrick in an email the following day, December 10, 2004, that he had had an "extended lunch" with Judge Porteous. Baynham Dep. at 21 (Ex. 158); Baynham Dep. Ex. 68 (Ex. 268).

paid for it,[614] and Chopin believed that Baynham would have paid for it.[615]

On March 24, 2005, while the Hanna case was still pending, Judge Porteous had yet another lunch with Hedrick. Hedrick's expense report reflects that this lunch also took place at Eleven 79 restaurant and cost $130.00.[616]

None of the meals or trips that took place while the case was pending (or prior thereto) were ever disclosed to Hanna's counsel, Timothy Young.[617]

In August 2005, the Hanna trial commenced, and settled mid-trial. Hanna received a cash settlement. Hanna's attorney, Young, was satisfied with the settlement, so this is not a case like *Liljeberg* where a party or counsel was the recipient of an unfavorable verdict by Judge Porteous that was reversed by the Court of Appeals. Young testified that "perhaps" he would have wanted to know about the lunches, and "most likely, yes" he would have wanted to know about the hunting trips.[618] He further testified that if he had known of this information, he would have discussed it with his client.[619] Notably, Baynham himself stated that he expected Judge Porteous to recuse himself.[620]

In October 2006, the fact that Rowan took Judge Porteous hunting during the pendency of the *Hanna* case in 2004 was reported in the New Orleans Times-Picayune. In an article entitled "Company Facing Suit Took Judge Hunting," the New Orleans Times-Picayune reported:

> In 2003, a seaman named Robert Hanna sued his employer, an offshore drilling company, after stairs on one of its ships collapsed beneath him and dropped him several feet to the floor.
>
> His case against the Rowan Companies went to trial in U.S. District Court in New Orleans in August 2005. Within 2 days, attorneys announced they had agreed to a settlement, the judge dismissed the jury and everyone appeared to walk away satisfied.
>
> What Hanna might not have known, however, is that while his personal injury suit was pending, well before trial began, Rowan treated the presiding judge, Thomas Porteous Jr., to a $1,000 hunting trip.[621]

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[614] Baynham Dep. at 21-22 (Ex. 158).
[615] Chopin Dep. at 52 (Ex. 182).
[616] Rowan Documents at RH000105 (Ex. 153) and RH000288 (Ex.165). Hedrick identified these documents in his deposition. Hedrick Dep. at 14 (Ex. 166); Hedrick Dep. Ex. 95 (Ex. 295).
[617] Baynham Dep. at 16 (Ex. 158); Young Dep. at 8 (Ex. 159).
[618] Young Dep. at 9-10 (Ex. 159).
[619] Young Dep. at 10 (Ex. 159).
[620] Baynham Dep. at 26-27 (Ex. 158).
[621] K. Moran, "Company Facing Suit Took Judge Hunting," New Orleans Times-Picayune, Oct. 29. 2006 (Ex. 119(j)).

F. *TURNER V. PLEASANT*—ANOTHER CASE WHERE COUNSEL SOUGHT JUDGE PORTEOUS'S RECUSAL

1. Introduction

In 2004, Judge Porteous faced a recusal motion in the case Turner v. Pleasant,[622] arising from his relationship with Pleasant's attorney, Dick Chopin. Just as Lifemark's recusal motion in the *Liljeberg* case threatened to expose Judge Porteous's prior dealings with the attorneys in that case, the recusal motion in *Turner v. Pleasant* threatened Judge Porteous with the disclosure that he had been taking hunting trips from Diamond, including having gone on a Diamond hunting trip with defense counsel Chopin during the pendency of the case. As discussed below, there are striking similarities between how Judge Porteous handled the recusal motions in *Turner v. Pleasant* and *Liljeberg.*

2. Background—Procedural History

On November 30, 2001, the complaint in *Turner v. Pleasant* was filed. This was a personal injury case alleging that the defendant (Pleasant) operated his boat in a negligent fashion, causing an excessive wake that tossed Mrs. Turner in the air and caused her to sustain a compression fracture of her back.

The plaintiffs were represented by Ernest Souhlas and his partner Carter Wright; the defendant was represented by Chopin. The defense medical expert was Dr. Christopher Cenac, with whom Judge Porteous had previously hunted and had a social relationship.[623] On January 3-5, 2003, while the case was pending, Judge Porteous went on a Diamond hunting trip which Chopin also attended.[624]

About 3 months after Judge Porteous and Chopin went on the hunting trip, on April 22-23, 2003, a non-jury trial was held in the Turner case. Dr. Cenac was one of the defendant's medical experts.[625]

Nearly 9 months after trial, on January 27, 2004, Judge Porteous issued his opinion in favor of the defendant.[626] In reaching his decision, he specifically credited the testimony of Dr. Cenac.[627]

3. Souhlas's Motion for a New Trial and Motion to Recuse Judge Porteous

After the April 2003 trial in *Turner v. Pleasant,* and while the case was awaiting Judge Porteous's decision, Souhlas learned that Judge Porteous had gone hunting with Chopin while the case was pending.[628] Accordingly, on February 5, 2004, a week after Judge

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[622] PACER Docket Report, Turner v. Pleasant, Civ. No. 2:01-cv-03572-GTP (E.D. La.) (Ex. 179(a)).

[623] Also, when Turner v. Pleasant was pending, Dr. Cenac had been the King of Mardi Gras in Washington D.C. in 2003. Judge Porteous was a guest at that event.

[624] Guest List for January 3-5, 2003, Diamond Hunting Trip, D0081 (Ex. 177).

[625] PACER Docket Report, Turner v. Pleasant, Civ. No. 2:01-cv-03572-GTP (E.D. La.) (Ex. 179(a)).

[626] Order and Reasons, Turner v. Pleasant, Civ. No. 2:01-cv-03572-GTP (E.D. La., Jan. 22, 2004) (Ex. 179(c)).

[627] Order and Reasons, Turner v. Pleasant, Civ. No. 2:01-cv-03572-GTP (E.D. La., Jan. 22, 2004) at 5 (Ex. 179(c)).

[628] Souhlas testified that after he had tried the case, he "was told by a person that they [Judge Porteous and Chopin] had a close personal relationship and they went on many hunting trips together" and that was the first time he had been made aware of that fact. Souhlas Dep. at 14 (Ex. 185). Chopin did not include in any pleading an allegation that Souhlas was aware of the hunting trip at the time of the trial.

Porteous issued his decision, Souhlas filed a motion for a new trial and also moved to recuse Judge Porteous.[629]

In that motion, after arguing that Judge Porteous's decision was contrary to the facts elicited at trial, Souhlas requested, in the alternative that "this Court grant a new trial and recuse itself in this matter based upon . . . the grounds that the findings of fact and the conclusions of law reflect partially [sic: should be 'partiality'] and bias in favor of the defendant and/or defense counsel in this case."[630]

In his opposition to the motion, Chopin responded primarily by attacking Souhlas:

> In an act of desperation never previously witnessed by the undersigned, the plaintiffs have vituperatively attacked the Court and its integrity. Not only are the plaintiffs' claims flagrantly in violation of all rules, they are reprehensible. Moreover, the plaintiffs do not even attempt to offer any support for their new allegations.
>
> * * *
>
> The defendants will not dignify the plaintiffs allegations by according them any additional print, except to say that the plaintiffs' motion for recusal also should be denied.[631]

Souhlas, in his reply to Chopin's opposition, specifically addressed Chopin's contention that he (Souhlas) had not offered any support for his claims of bias. He specifically alleged that Judge Porteous "may have a close personal relationship with defense counsel, Richard A. Chopin," that "the relationship includes social contacts and hunting trips," and that "some of the social contacts took place while this case was under advisement"[632]—assertions which were in fact true.

On March 22, 2004, Judge Porteous denied Souhlas's motion. In doing so, he did not discuss or address any of the factual assertions, terming them "unsubstantiated." Judge Porteous stated:

> To suggest that the Court has any partiality for the defendant and/or defense counsel is utterly unsubstantiated given that the Court has often demonstrated its complete independence and the absence of any partiality or favoritism in prior cases involving defense counsel. Additionally, in a previous non-jury case involving one of plaintiff's counsel, Mr. Souhlas, where a substantial verdict was rendered in favor of the plaintiff, there was no suggestion of any partiality by the court towards plaintiffs' counsel, even though he has been a friend of this judge for over twenty years. This flagrant attack on the credibility of this Court is not only unfounded and without merit, but not sup-

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[629] Plaintiffs' Motion for New Trial and/or Motion to Recuse, Turner v. Pleasant, Civ. No. 2:01-cv-03572-GTP (E.D. La., Feb. 7, 2004) (Ex. 179(d)).

[630] Plaintiffs' Memorandum in Support of Motion for New Trial and/or Motion to Recuse at 7, Turner v. Pleasant, Civ. No. 2:01-cv-02572-GTP (E.D. La., Feb. 7, 2004) (Ex. 179(d)).

[631] [Defendant's] Memorandum in Opposition to Plaintiffs' Motion for New Trial and/or Motion to Recuse at 7, Turner v. Pleasant, Civ. No. 2:01-cv-02572-GTP (E.D. La., Feb. 17, 2004) (Ex. 179(e)).

[632] Plaintiffs' Supplemental Memorandum in Support of Motion for New Trial and/or Motion to Recuse at 3, Turner v. Pleasant, Civ. No. 2:01-cv-02572-GTP (E.D. La., Feb. 17, 2004) (Ex. 179(f)). In fact, the hunting trip occurred while the case was pending trial.

> ported by any evidence. This Court finds that no reasonable man would harbor doubts about this judge's impartiality, and therefore, recusal is not warranted.[633]

4. Souhlas's Appeal to the Fifth Circuit

Souhlas appealed to the Fifth Circuit, and raised the same issues as to Judge Porteous's relationship with Chopin that he had raised below. He argued that the factual allegations had neither been addressed nor disputed, by either Judge Porteous or Chopin, in the District Court proceedings.[634]

In response, Chopin relied on Judge Porteous's language in his ruling denying the recusal, including Judge Porteous's statement that he and Souhlas had been friends for 20 years.[635]

In his reply brief to the Fifth Circuit, Souhlas reasserted the specificity of his allegations, i.e., Judge Porteous's ongoing social relationship with and hunting trip with Chopin during the pendency of the proceedings. Souhlas further addressed Judge Porteous's contention that he and Judge Porteous were longtime friends, and specifically denied "that a close personal relationship exists between plaintiffs' counsel and the District Court."[636]

In January 2005, while the case raising the issue of Judge Porteous's relationship with Chopin, Judge Porteous and Chopin shared a room together on another Diamond sponsored hunting trip.[637]

On March 31, 2005, the Fifth Circuit denied the appeal.[638] As to Souhlas's motion to recuse, the Fifth Circuit noted only that the allegation was unsubstantiated.

5. Discussion of Judge Porteous's Handling of the Recusal Motion in Turner v. Pleasant

It is noteworthy that at the time of Souhlas's motion, in February 2004, the Farrar v. Diamond case (a case with Chopin as Diamond's counsel that was discussed above) was pending in front of Judge Porteous. Thus, if either Chopin or Judge Porteous were to have disclosed that they had gone hunting together as guests of Diamond while the Turner case was pending, such a disclosure could have caused problems for Judge Porteous and Chopin in connection with the Farrar case (and also revealed that Judge Porteous had accepted prior Diamond trips as well).[639] Accordingly, the entire thrust of Judge Porteous's (and Chopin's) response to Souhlas's allegations was to assert that the allegations were unproven (not that they were false), to disclose no relevant infor-

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[633] Order and Reasons, Turner v. Pleasant, Civ. No. 2:01-cv-02572-GTP (E.D. La., Mar. 25, 2004) at 4 (emphasis supplied) (Ex. 179(g)). Judge Porteous referenced a personal injury case that Souhlas had filed in1996. The plaintiff in that case had stepped in a hole on a city street, resulting in permanent damage to his right leg. Judge Porteous awarded the plaintiff $650,000. The facts are set forth in Wykle v. City of New Orleans, 154 F.3d 416 (5th Cir. 1998).

[634] Brief on Behalf of Plaintiffs-Appellants [Turner], Turner v. Pleasant, No. 04-30406, 2004 WL 3588422, at *1, 29-30 (5th Cir., Jul. 12, 2004) (Ex. 179(h)).

[635] Original Brief on Behalf of Defendants/Appellees [Pleasant], Turner v. Pleasant, No. 04-30406, 2004 WL 3588420, at *28-29 (5th Cir., Aug. 11, 2004) (emphasis supplied) (Ex. 179(i)).

[636] Reply Brief on Behalf of Plaintiffs-Appellants [Turner], Turner v. Pleasant, No. 04-30406, 2004 WL 3588421, at *14 (5th Cir., Aug. 30, 2004) (Ex. 179(j)).

[637] Room Assignment Sheet [for Diamond Hunting Trip January 7-9, 2005] at D0089 (Ex. 177).

[638] Turner v. Pleasant, No. 04-30406, 2005 WL 744568 (5th Cir. Mar. 31, 2005) (Ex. 179(k)).

[639] A few weeks after Judge Porteous denied Souhlas's recusal motion, on April 20, 2004, Chopin settled the Farrar case with attorney Koeppel. See PACER Docket Report, Farrar v. Diamond Offshore Co., Civ. No. 2:03-cv-00782-GTP (E.D. La.) (Ex. 178).

mation which would permit a fair assessment of the merits of the recusal motion, and to attack Souhlas for raising the issue.

Moreover, Judge Porteous's statement that Souhlas "has been a friend of this judge for over twenty years" deserves particular scrutiny—both for what Judge Porteous may have intended to be the legal or factual significance of that purported relationship, as well as for the veracity of the assertion. One reading of Judge Porteous's "friend" statement was that he intended to imply there was a symmetry between his relationship with Souhlas and his relationship with Chopin—the implication presumably being that if he were friends with both men then Souhlas's complaint could not be meritorious since Judge Porteous would have no more incentive to be partial to Chopin than to be partial to Souhlas.[640] However, not only is this argument indefensible even if it were true; but Souhlas testified at a deposition that he was not a "friend" of Judge Porteous. Souhlas never went to lunch or dinner with Judge Porteous, never traveled with Judge Porteous on any trips, did not go to his swearing-in, had never been to Judge Porteous's house, had never had Judge Porteous to his house, had never invited Judge Porteous to his annual "hoe-downs" (events to which he invited a broad swath of the New Orleans legal community), and had never met Judge Porteous's wife—in fact, did not even know her name.[641]

Thus, as he did in the *Liljeberg* case, Judge Porteous, when faced with allegations that would threaten to disclose his relationship with parties and attorneys who had given him things of value, handled the motion in a manner calculated to seal off further inquiry into those relationships. He disclosed no pertinent material facts about his relationship with Chopin, failed to address the discrete allegations known and raised by the moving counsel, and made deceptive statements that distorted the factual record as to his relationship with the attorney at issue.[642] By so distorting the record, Judge Porteous assured affirmance on appeal of his denial of the recusal motion, and a victory below for Chopin. Souhlas's clients were never informed by the Judge who denied them compensation for their serious injuries that he was a close friend and frequent lunch guest of the defendant's lawyer Chopin and had gone on a hunting trip with him while the case was pending and shortly prior to trial; nor were they informed that Judge Porteous had been a

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[640] This is similar to Judge Porteous's line of questioning of Mole at the Fifth Circuit Hearing, in which he pointed out that Gardner, Lifemark's attorney, also went to Las Vegas as part of his son's bachelor party celebration, just as Amato did.

[641] Souhlas Dep. at 18-21 (Ex. 185).

[642] In addition, the positions taken by counsels in the respective cases are remarkably similar: they attacked the moving party while offering no facts, even in response to specific allegations, and each counsel left it up to Judge Porteous to decide what would be disclosed. Chopin wrote, for example, that Souhlas "vituperatively attacked the Court and its integrity," and characterized plaintiffs' claims as "reprehensible." Similarly, the Liljebergs characterized Lifemark's motion as containing "unsubstantiated innuendo" in support of a "scurrilous conclusion." Chopin, like counsel for the Liljebergs, offered no factual explanations, but argued that the relationship was not proven. Chopin wrote, for example: "[P]laintiffs do not even attempt to offer any support for their new allegations." [Defendant's] Memorandum in Opposition to Plaintiffs' Motion for New Trial and/or Motion to Recuse at 7, Turner v. Pleasant, Civ. No. 2:01-cv-03572-GTP (E.D. La.), Feb. 17, 2004 (Ex. 179(e)). The counsel for the Liljebergs wrote: "Lifemark's motion includes no evidence whatsoever pertaining to the Court's alleged affinity for [counsels] . . ." Memorandum in Opposition to Lifemark's Motion to Recuse at 2, Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc., No. 93-1794 (E.D. La.), Oct. 15, 1996 (Ex. 53).

house guest of the defendant's expert witness, whose credibility was at issue.[643]

G. Disclosures of Trips Starting in 2005

1. Financial Disclosure Reports

Judge Porteous did not disclose the 2000, 2001, or 2003 Diamond hunting trips on his Financial Disclosure Reports, nor did he disclose his 2002 Rowan hunting trip.

In his report for calendar year 2004 (filed May 12, 2005), Judge Porteous reported the 2004 Rowan hunting trip as a "gift" valued at $1000,[644] and, in his report for 2006 (filed May 14, 2007), he reported the 2006 Rowan hunting trip as a "gift" valued at $800.[645] By 2005, Judge Porteous knew he was under a criminal investigation.

In each of his Reports for calendar years 2005 (filed July 24, 2006),[646] 2006 (filed May 14, 2007)[647] and 2007 (filed May 9, 2008),[648] Judge Porteous reported the respective Diamond hunting trips as a "gift," each valued at $1,000.

2. Judge Porteous's Only Disclosure of Diamond Hunting Trips

In May 2005, the case of *Pioneer Natural Resources, Inc. v. Diamond Offshore*[649] was filed. It was originally assigned to Judge Ivan L. R. Lamelle. In July 2007, the case was reassigned to Judge

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[643] While Judge Porteous's hunting trips may superficially call to mind the duck-hunting trip that Justice Scalia and Vice President Cheney attended together while the case Cheney v. U.S. Dist. Court for Dist. of Columbia, No. 03-475 (Sup. Ct.) was pending, the situations are materially different. Vice President Cheney was named in an institutional capacity only, not in his individual capacity. As Justice Scalia explained:

> Richard Cheney's name appears in this suit only because he was the head of a Government committee that allegedly did not comply with the Federal Advisory Committee Act . . . and because he may, by reason of his office, have custody of some or all of the Government documents that the plaintiffs seek. If some other person were to become head of that committee or to obtain custody of those documents, the plaintiffs would name that person and Cheney would be dismissed, and it was the prerogatives of the Office of the Vice President that were at stake.

Justice Scalia noted that the Vice President was represented by Government lawyers and that throughout the litigation, the Vice President's position had been described as the position of "the government." Cheney v. U.S. Dist. Court for Dist. of Columbia, 541 U.S. 913, 918 (2004) (Scalia, J., denying recusal motion). In contrast, Diamond and Rowan had substantial personal financial interests at stake in pending and future cases before Judge Porteous at times when Judge Porteous accepted their offers to spend money on him—money that came from the company treasuries and were expended in pursuit of their business interests.

Moreover, the fact of the Scalia-Cheney hunting trip was publicly disclosed and was certainly known to all counsels in the case before Justice Scalia. In contrast, there was a concerted and sustained effort to keep Judge Porteous's hunting trips a secret from litigants who would have reason to believe their interests before the court might be affected.

It should also be kept in mind that there are unique practical, structural considerations to recusal at the Supreme Court level. As to the notion that he should err on the side of recusal, Justice Scalia explained:

> That might be sound advice if I were sitting on a Court of Appeals. . . . There, my place would be taken by another judge, and the case would proceed normally. On the Supreme Court, however, the consequence is different: The Court proceeds with eight Justices, raising the possibility that, by reason of a tie vote, it will find itself unable to resolve the significant legal issue presented by the case. . . . Moreover, granting the motion is (insofar as the outcome of the particular case is concerned) effectively the same as casting a vote against the petitioner.

Id. at 915. In contrast, there was absolutely no structural impediment to Judge Porteous's recusing himself. He could have easily been replaced by another district judge who had not accepted things of value from Diamond or Rowan.

[644] Judge Porteous's Financial Disclosure Report (2004) (Ex. 110(a)).
[645] Judge Porteous's Financial Disclosure Report (2006) (Ex. 112(a)).
[646] Judge Porteous's Financial Disclosure Report (2005) (Ex. 111(a)).
[647] Judge Porteous's Financial Disclosure Report (2006) (Ex. 112(a)).
[648] Judge Porteous's Financial Disclosure Report (2007) (Ex. 113).
[649] Case No. 2:05-cv-00224-DEK. See PACER Docket Report (Ex. 180(l)).

Porteous. On September 26, 2007, Judge Porteous made a disclosure to both counsels indicating that he had been on Diamond hunting trips, that he wanted the attorneys to consult with their clients and affirmatively represent they did not object to his continuing to preside over that case. [650]

This 2007 disclosure, occurring after DOJ had sent its complaint letter to the Fifth Circuit, is the only known instance of Judge Porteous having informed counsel of having taken hunting trips paid for by Diamond or Rowan. [651]

XIV. JUDGE PORTEOUS'S CONDUCT IN RELATION TO THE "GIFT BAN" PROVISIONS OF FEDERAL LAW

A. THE STATUTE

At all pertinent times, the applicable Federal law, 5 U.S.C. § 7353(a)(2) (the Ethics Reform Act of 1989 [652]), provided:

[Except as permitted by agency ethics regulations] no . . . officer or employee of the . . . judicial branch shall solicit or accept anything of value from a person—. . . whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

Thus, to determine whether it was acceptable for Judge Porteous to accept "anything of value" from attorneys and parties with matters before him, it is necessary to examine the Judicial Conference's regulations implementing this provision.

B. THE REGULATIONS

The Gift Regulations promulgated by the Judicial Conference of the United States [653] track the statutory prohibition, but address two separate circumstances—a Federal judge's solicitation of a gift and a judge's acceptance of a gift.

The term "gift" is broadly defined, with narrow exceptions, one being for "modest items of food."

> § 3. Definition of "Gift."
>
> "Gift" means any gratuity, entertainment, forbearance, bequest, favor, the gratuitous element of a loan, or other similar item having monetary value but does not include . . . modest items of food and refreshments, such as soft

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[650] This event is noted in the docket entries for September 26, 2007 reads as follows:

> ORDERED that counsel notify Clerk of Court by 10/9/2007 4:00 PM if their clients consent to the undersigned continuing to handle this matter. FURTHER ORDERED that failure to notify the Clerk shall result in the undersigned's recusal from this matter.

PACER Docket Report (Ex. 180(l)).

[651] In fact, even this disclosure was not entirely complete. On the 2007 Diamond hunting trip, the attorney representing Diamond in the Pioneer case was also in attendance. This fact was not disclosed to Pioneer's counsel.

[652] Ethics Reform Act of 1989, Pub. L. No. 101-194, §§ 301 and 303, 103 Stat. 1716 (1989).

[653] Unless otherwise noted, references to the "Gift Regulations" refer to the Regulations of the Judicial Conference of the United States under Title III of the Ethics Reform Act of 1989 Concerning Gifts that were promulgated in 1997. (Ex. 364). The regulations discussed in the text were in effect from August 1997 through August 2003 and thus cover the period when most of the conduct at issue occurred. These Gift Regulations were revised in 2003 in ways that are not relevant to the substance of the discussion. See 2003 Gift Regulations (Ex. 365).

drinks, coffee and donuts, offered for present consumption other than as part of a meal. [654]

As to the solicitation of a gift, the Gift Regulations are unambiguous in prohibiting a judge from soliciting things of value from attorneys or parties with matters in front of him. Those regulations provide:

> § 4. Solicitation of Gifts by a Judicial Officer or Employee.
>
> (a) A judicial officer . . . shall not solicit a gift from any person who is seeking official action from or doing business with the courts (or other employing entity), or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer['s] official duties, including in the case of a judge any person who has come or is likely to come before the judge. [655]

As to the acceptance of a gift, the regulations permit a judge to receive only certain gifts. Section 5 of the regulations provides:

> § 5. Acceptance of Gifts by a Judicial Officer or Employee; Exceptions.
>
> A judicial officer or employee shall not accept a gift from anyone except for——
>
> * * *
>
> (c) ordinary social hospitality;
>
> (d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, birthday, and the gift is fairly commensurate with the occasion and the relationship;
>
> (e) a gift from a relative or close personal friend whose appearance or interest in a case would in any event require that the officer or employee take no official action with respect to the case;
>
> * * *
>
> (h) any other gift only if:
>
> * * *
>
> (2) in the case of a judge, the donor is not a party or other person who has come or is likely to come before the judge or whose interests may be substantially affected by the performance or nonperformance of his or her official duties[.] [656]

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[654] There are other narrow exceptions, such as plaques, certificates, and trophies, and certain rewards and prizes, including random drawings.

[655] There is no material difference in this definition in the 2003 Regulations.

[656] The other section 5 exceptions to the Gift Regulations have no application to the facts of this inquiry such as certain gifts incident to a public speaking engagements, or invitations to bar-related functions or activities devoted to the improvement of the law, the legal system, or the administration of justice.

C. Application of the Gift Ban Statute and Regulations to Judge Porteous's Conduct

1. Solicitation and/or Acceptance of Cash, Other Things of Value, and Overnight Trips (other than Meals at Restaurants)

Judge Porteous's solicitation and acceptance of things of value from attorneys and parties with matters before him are proscribed by statute and regulations because they are "things of value" given by attorneys and parties "whose interests may be substantially affected by the performance or nonperformance of the [Judge's] official duties." As to some items—such as Judge Porteous's soliciting money from Amato during the pendency of a case, accepting the payments for his Las Vegas hotel room and payment towards his son's bachelor party dinner from Creely, and accepting hunting trips from Diamond and Rowan—the application of the statute and regulations is straightforward. None of the section 5 exceptions permitted Judge Porteous to accept those items while he had cases with those attorneys or parties in front of him.[657]

2. Meals at Restaurants

Judge Porteous accepted hundreds of meals from attorneys and parties with matters pending before him. Unless there is an exception that would allow him to accept these meals, the statutory prohibition against accepting "anything of value" from attorneys and parties "whose interests may be substantially affected by the performance or nonperformance of the [Judge's] official duties" prohibits his acceptance of these meals. This conduct will be discussed in light of possible exceptions.

The exception in the definition of "gift" for "modest items of food." The definition of "gift" in the regulations provides an exception for "modest items of food and refreshments such as soft drinks, coffee and donuts, offered for present consumption other than as part of a meal." This provision—explicitly permitting a judge to accept light refreshments (even from attorneys and parties with matters before him)—would be unnecessary if a judge were otherwise free to accept expensive meals at high-end restaurants paid for by parties or attorneys with matters before him. Moreover, a lunch consisting of food and drinks at a restaurant such as Ruth's Chris Steak House is not, under any interpretation, a "modest item of food . . . such as soft drinks, coffee and donuts."

The exception under section 5(c) of the regulations for "ordinary social hospitality." Section 5 of the regulations provides that "[a] judicial officer or employee shall not accept a gift from anyone except

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[657] Section 5(d) provides an exception to permit a judge to accept a "gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship." Creely's payment of close to $1,000 for Judge Porteous's hotel accommodations as a contribution towards his son's bachelor party dinner is not "fairly commensurate with the occasion." Section 5(e) permits judges to accept a "gift from a relative or close personal friend whose appearance or interest in a case would in any event require that the officer or employee take no official action with respect to the case." This provision appears to permit a Federal judge to accept a gift if, upon accepting the gift, the judge would thereafter recuse himself or herself, that is, "take no official action with respect to the case." Indeed Judge Porteous could have accepted the "gifts" from Creely and Amato. Section 5(h) permits judges to accept "any other gift," but only if "the donor is not a party or other person who has come or is likely to come before the judge or whose interests may be substantially affected by the performance or nonperformance of his or her official duties." In this case, the donor—an attorney or a party (Rowan or Diamond)—would constitute a "party or other person who has come or is likely to come before the judge or whose interests may be substantially affected by the performance or nonperformance of his or her official duties."

for [certain exceptions]." One of those exceptions is set forth in Section 5(c), which permits a judge to accept "ordinary social hospitality." The term "ordinary social hospitality" is not defined in the Judicial Conference regulations, but is similar to and conveys the same meaning in context as the phrase "personal hospitality of any individual" used in the Ethics in Government Act. The latter phrase is defined as "hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property of facilities owned by that individual or his family."[658] If "ordinary social hospitality" included expensive meals at restaurants, then this definition would subsume and render meaningless the narrow carve-out in the definition for "soft drinks, coffee and donuts." It would make little sense for the regulations to explicitly permit a judge to accept donuts from counsel in a meeting during trial when a different provision would permit counsel to take that same judge to an expensive restaurant during the trial.

As Professor Geyh testified, Judge Porteous's acceptance of the meals violated both the gift rules (because they were not "ordinary social hospitality") as well as other ethical canons that prohibit his exploitation of his position for personal gain:

> Codes of conduct permit judges to accept "social hospitality" without running afoul of restrictions on the gifts judges may receive, and friends and former colleagues who take each other to lunch can be a conventional form of social hospitality. This, however, was not ordinary "social hospitality." These lawyers reportedly paid Judge Porteous's lunch bills countless times for years with no meaningful reciprocation by the judge. Moreover, this one-way payment practice appears to be what Judge Porteous wanted and expected. Former State Judge Ronald Bodenheimer testified that when Bodenheimer became a judge, Porteous told him that, once a judge, he would "never have to buy lunch again. . . . There will always be somebody to take you to lunch." In other words, Judge Porteous was trading on his position as a judge in contravention of the ethical principle that a judge should not "lend the prestige of judicial office to advance the private interests of the judge."[659]

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[658] The Ethics and Government Act defines "personal hospitality of any individual" as "hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property of facilities owned by that individual or his family." Ethics in Government Act, Section 109(14), codified at Title 5, United States Code, Appx. 4, Sec. 109(14). Such "personal hospitality" is not required to be disclosed in the Financial Disclosure Reports.

[659] Prof. Geyh TF Hrg. IV at 8-9 (written statement at 2-3). Furthermore, Professor Geyh explained there is no such thing as "ordinary social hospitality" extended by a corporation—an entity that is not in the business of making friends but is instead in the business of making money. Prof. Geyh TF Hrg. IV at 16 (written statement at 10). This discussion does not address the circumstance where a judge and an attorney alternate paying for meals on a rotating basis. As Prof. Geyh stressed, and Judge Porteous himself stated, Judge Porteous sought and expected the attorneys to pay for his meals—not the other way around—and in fact he virtually never reciprocated.

D. Actions by Judge Porteous That Appear to Violate Federal Law

The following actions by Judge Porteous would appear to violate the gift ban of 5 U.S.C. § 7353, and the Judicial Conference regulations promulgated thereunder:

1) Judge Porteous's solicitation and acceptance of approximately $2500 from Amato in June or July 1999 while the *Liljeberg* case was pending. At that time, Amato had a financial interest in the resolution of the *Liljeberg* case that would have been "substantially affected by the performance of [Judge Porteous's] official duties."

2) Judge Porteous's acceptance of Creely's payment for his hotel room and for a portion of his son's bachelor party dinner in Las Vegas in May 1999 while the *Liljeberg* case was pending. At that time, Creely, as Amato's partner, had a financial interest in the resolution of the *Liljeberg* case that would have been "substantially affected by the performance of [Judge Porteous's] official duties."

3) Judge Porteous's acceptance of Creely's and Amato's payment of approximately $1,500 to celebrate Judge Porteous's 5 years on the bench in late 1999 while the *Liljeberg* case was pending. At that time, Amato and Creely had an interest in the resolution of the *Liljeberg* case that would have been "substantially affected by the performance of [Judge Porteous's] official duties."

4) Judge Porteous's acceptance of hunting trips paid for by Diamond without disclosure or recusal. In at least three instances, Judge Porteous accepted Diamond-sponsored trips while Diamond had cases pending in front of him and thus had interests which may have been "substantially affected by the performance of [Judge Porteous's] official duties." Even in the situations where a Diamond case was not actually pending at the time of the hunting trip, based on the routine and predictable nature of his being assigned cases involving Diamond, Judge Porteous would have known that he was accepting something of value from an entity "whose interests may be substantially affected" in subsequent litigation that would be assigned to him.[660] At a minimum, after having attended trips and accepted value from Diamond, Judge Porteous should have disclosed his receipt of the trips to counsel (and recused himself if counsel sought recusal).

5) Judge Porteous's acceptance of three hunting trips paid for by Rowan. In connection with the 2004 trip, when the Hanna case was pending, Rowan had an interest in the resolution of that case which would have been "substantially affected by the performance of Judge Porteous's official duties." Moreover, based on the routine and predictable nature of his being assigned Rowan cases, Judge Porteous would

[660] Judge Haik, who also attended the Diamond hunting trips, immediately recused himself after the first trip from hearing cases where Diamond was a party. See Affidavit of Judge Richard Haik (Ex. 186).

have known that he was accepting something of value from an entity "whose interests may be substantially affected" in subsequent litigation that would be assigned to him. At a minimum, after having attended trips and accepted value from Diamond, Judge Porteous should have disclosed his receipt of the trips to counsel (and recused himself if counsel sought recusal).

6) Judge Porteous's acceptance from various attorneys and parties of hundreds of meals at high-end restaurants while those attorneys had matters pending before him.

XV. THE DOJ'S DECISION NOT TO PROSECUTE JUDGE PORTEOUS

As noted at the outset, DOJ decided not to prosecute Judge Porteous. Several observations are in order.

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.

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 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.

Third, even though aspects of Judge Porteous's conduct may appear to support a criminal prosecution, the Department faced numerous practical obstacles that would necessarily have impacted its considerations as to whether prosecution was in order for certain categories of conduct. One problem in particular involved the statute of limitations—a potentially insurmountable hurdle in a criminal prosecution, but not a bar to impeachment. Some of the most corrupt conduct, such as Judge Porteous's relationship with the Marcottes and his initiation of the "curatorship" scheme with Creely and Amato, was time-barred by the statute of limitations. Nonetheless, such conduct, even if it cannot be used to support a Federal criminal prosecution, is profoundly relevant to the determination of whether Judge Porteous should remain a Federal judge.

Fourth, another problem facing the DOJ was the existence of various procedural and evidentiary rules that would have affected the DOJ's ability to demonstrate before a jury the complete picture of Judge Porteous's conduct. The four Articles of Impeachment involve different types of conduct, in different spheres of activity, and at different times. For example, even assuming no statute of limitations issues existed, a bankruptcy fraud charge could not necessarily have been brought in the same proceeding as a corruption charge; likewise, evidence of Judge Porteous's relationship with the

Marcottes would not necessarily have been admissible in a trial on bankruptcy issues. [661]

Fifth, the Impeachment Task Force has interviewed new witnesses and uncovered new evidence that simply was not considered by the Department, including evidence related to conduct that was time-barred for criminal prosecution. For example, it obtained depositions and public testimony from Louis Marcotte and Lori Marcotte, corroborating court records, as well as the depositions of their employees and associates relating to the Marcottes' relationship with Judge Porteous. Additionally, the Task Force obtained and considered the curatorship records that corroborate and expanded the scale of the financial relationship with Creely and Amato that was not otherwise developed by the DOJ; it obtained the recusal hearing transcript in connection with the *Liljeberg* case; and, finally, the Task Force and the Committee had the benefit of the Fifth Circuit hearings which expanded on the evidence available to the DOJ.

XVI. CONCLUSION

The following language from the House Report accompanying the Judge Walter L. Nixon, Jr., and Samuel B. Kent Articles of Impeachment aptly sets out the core principles underlying and justifying the Impeachment Resolution against Judge Porteous:

> The [House's] role is not to punish [Judge Porteous], but simply to determine whether articles of impeachment should be brought. Under our Constitution, the American people must look to the Congress to protect them from persons unfit to hold high office because of serious misconduct that has violated the public trust. Where, as here, the evidence overwhelmingly establishes that a Federal judge has committed impeachable offenses, our duty requires us to bring articles of impeachment and to try him before the United States Senate. [662]

XVII. COMMITTEE CONSIDERATION

On January 27, 2010, the Committee met in open session and ordered the resolution, H. Res. 1031, favorably reported without amendment by a rollcall vote of 24 to 0, a quorum being present.

XVII. COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following

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[661] These considerations were touched on by the panel of legal scholars who testified at the December 15, 2009 Task Force Hearing. Ms. Jackson Lee asked the panel to opine on the DOJ decision not to seek prosecution. Professor Michael Gerhardt, University of North Carolina School of Law, responded: "I think it has no impact. I think it is of no real consequence." Professor Gerhardt stressed that impeachment is not a criminal proceeding, the burden is different, the House can consider different evidence, and it would not be bound in any event if there were a conviction, as the House must make an independent judgment as to the evidence. Gerhardt TF Hrg. IV at 41. Professor Akhil Reed Amar, Yale Law School, agreed. He noted the different purposes of impeachment and criminal prosecution, testifying that impeachment "remov[es] a position that the judge should never should have had in the first place. It is not like putting someone in prison, taking away their very life. It is not even retributive." Amar TF Hrg. IV at 41. Professor Charles Geyh, Indiana University Maurer School of Law, concurred, specifically noting that the statute of limitations would impact DOJ but not Congress. Geyh TF Hrg. IV at 41-42.

[662] Walter Nixon Impeachment Report, at 33-34.

rollcall votes took place during the Committee's consideration of H. Res. 1031:

1. Impeachment Article 1. Approved 29 to 0.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Delahunt			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Gutierrez			
Ms. Baldwin	X		
Mr. Gonzalez			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Ms. Wasserman Schultz	X		
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney	X		
Mr. Harper	X		
Total	29	0	

2. Impeachment Article 2. Approved 28 to 0.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Delahunt			
Mr. Cohen	X		
Mr. Johnson	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Gutierrez			
Ms. Baldwin	X		
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Ms. Wasserman Schultz	X		
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert	X		
Mr. Jordan			
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney	X		
Mr. Harper	X		
Total	28	0	

3. Impeachment Article 3. Approved 23 to 0.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Delahunt			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley			
Ms. Chu	X		
Mr. Gutierrez	X		
Ms. Baldwin	X		
Mr. Gonzalez			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert			
Mr. Jordan			
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney			
Mr. Harper	X		
Total	23	0	

4. Impeachment Article 4. Approved 25 to 0, with one Member passing.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Delahunt			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Gutierrez	X		
Ms. Baldwin	X		
Mr. Gonzalez			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert			
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney			
Mr. Harper	X		
Total	25	0	

5. Motion to report the resolution. Approved 24 to 0.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Delahunt			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Gutierrez	X		
Ms. Baldwin	X		
Mr. Gonzalez			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks			
Mr. Gohmert			
Mr. Jordan			
Mr. Poe	X		
Mr. Chaffetz			
Mr. Rooney			
Mr. Harper	X		
Total	24	0