PORTEOUS IMPEACHMENT

Mrs. MCCASKILL. Mr. President, I ask unanimous consent that a joint statement by myself and Senator HATCH regarding the Porteous impeachment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT STATEMENT OF SENATOR CLAIRE MCCASKILL, CHAIRMAN AND SENATOR ORRIN G. HATCH, VICE CHAIRMAN, U.S. SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE G. THOMAS PORTEOUS, JR. OF THE EASTERN DISTRICT OF LOUISIANA

Because the Senate deliberated in closed session, this statement is the only opportunity during the formal impeachment trial process to formally explain our votes and to offer some views on certain issues for future consideration. We independently evaluated the articles of impeachment brought by the House of Representatives and the motions field by Judge Porteous. Because we came to the same conclusions and share many of the same views regarding the articles and motions, we thought it most useful to file a joint statement for the record.

The unique nature of impeachment, what it is and what it is not, is an essential guiding principle for the impeachment trial process. Impeachment is a legislative, not a judicial, process for evaluating whether the conduct of certain federal officials renders them unfit to continue in office. Our impeachment precedents give some general definition to the kind of conduct that may meet this standard. The Senate, for example, convicted and removed U.S. District Judge Halsted Ritter in 1933 for bringing his court into ''scandal and disrepute.'' Similarly, during the impeachment trial of U.S. District Judge Alcee Hastings, the President Pro Tempore stated that the question is whether the defendant ''has undermined confidence in the integrity and impartiality of the judiciary and betrayed the trust of the people of the United States.''

A consistent focus on the essential nature of impeachment helps answer many of the questions that arise in the impeachment trial process. For example, it sets impeachment apart from the civil or criminal justice processes. Federal officials may be impeached for conduct covered by the criminal law for which they have been convicted, acquitted, or not prosecuted, as well as for conduct that is not criminal at all. Standards of proof that apply in those contexts do not necessarily apply in an impeachment trial; in fact, there exists no single or uniform standard of proof that the Senate as a body must apply.

There also exists no rigid standard for the form that articles of impeachment must take. The Constitution gives the ''sole power of impeachment'' to the House of Representatives, which necessarily includes substantial authority to frame articles of impeachment. As it did in the Hastings impeachment, this may result in articles that each alleges an individual act. But other cases, like the present one, may involve distinct sets or categories of conduct. Just as impeachments arise out of different sets of facts, impeachment articles may take more than one form. In every case, however, the House must prove that the conduct alleged in the articles that it frames and exhibits to the Senate justifies removing a federal official from office.

In July, Judge Porteous filed with the Senate Impeachment Trial Committee a motion to dismiss the articles of impeachment as ''unconstitutionally aggregated.'' Before the full Senate, he revised this motion to request that the Senate take a preliminary vote on each allegation, a total by his count of approximately 25, contained in the articles. The Committee denied the original motion to dismiss and we joined the Senate in unanimously defeating the revised motion. Even though the articles of impeachment include multiple allegations, we believe that each meets the standard established by the Senate Impeachment Trial Committee during the impeachment of U.S. District Judge Walter Nixon and adopted in the present case. Each article presents a coherent and intelligible accusation that properly serves as the basis for the impeachment trial. The need for proving individual elements of an offense is appropriate for the criminal law but, as mentioned earlier, impeachable offenses need not be prohibited by the criminal law at all. Requiring a separate vote on every allegation contained within an impeachment article effectively re-drafts that article, with the result that the Senate would vote on an impeachment matter that the House did not adopt. Finally, Rule 23 of the Senate's impeachment rules explicitly prohibits dividing articles of impeachment for the purpose of voting ''at any time during the trial.''

Unless absolutely necessary, impeachment trials should be decided not on the basis of motions that make broad statements or set broad precedents, but on the merits of individual cases and articles of impeachment as the House frames and exhibits them. In this case, each article of impeachment alleged not a collection of unrelated acts but coherent patterns or sets of conduct. The question for the Senate was whether the conduct alleged in each article justified removing Judge Porteous from the bench.

One somewhat novel issue raised in this case was whether a federal official may be impeached on articles that allege conduct occurring before he took federal office. The proper focus on the essential nature of impeachment is again important here. Judge Porteous argued for an absolute, categorical rule that would preclude impeachment and removal for any pre-federal conduct. That should not be the rule any more than allowing impeachment for any pre-federal conduct that is entirely unrelated to the federal office or the individual's conduct in that office.

Pre-federal conduct should not itself ordinarily be the primary basis for impeachment. Particularly egregious pre-federal conduct that, by itself, would justify impeachment and removal would likely have prevented an individual's appointment in the first place. In most cases, therefore, the question is whether a federal official's conduct since taking office warrants removal from that office. That is the question in the present case because none of the articles of impeachment against Judge Porteous is based entirely on pre-federal conduct.

The conduct alleged in Article I contained substantial pre-federal and federal conduct. The House framed the article to include a kickback scheme whereby the law firm of Jacob Amato and Robert Creely would receive curatorship case appointments from Judge Porteous in exchange for Creely and Amato paying some of the fees back to Judge Porteous through the hands of Creely. All parties agree that there was no explicit agreement regarding these cases, but it is estimated that approximately half of the fees went back to Judge Porteous. The curatorship kickback scheme, by definition, could only have occurred during Judge Porteous's time on the state bench. When Judge Porteous, after his appointment to the federal bench, could no longer assign curatorship cases to Amato and Creely, the money stopped coming to Judge Porteous from Amato and Creely.

This pre-federal conduct flowed into Judge Porteous's federal service in two documented instances. First, Amato was brought on as counsel for Liljeberg in a multi-million dollar lawsuit named Lifemark v. Liljeberg. Judge Porteous was scheduled to try the case without a jury approximately six weeks from Amato's entry into the case. Counsel for Lifemark filed a motion to recuse Judge Porteous because of the close relationship between Amato and Judge Porteous. While opposing counsel did not know of the curatorship kickback scheme, Judge Porteous did. Judge Porteous clearly should have recused himself or disclosed the scheme. Instead, he chose to misrepresent his relationship with Amato during the recusal hearing. Second, after trial in the Lifemark case, Judge Porteous took the case under advisement. During this period, Judge Porteous solicited money from Amato and received $2,000 in cash, split equally by Amato and Creely from the firm's account. There is no legitimate reason that a federal judge would solicit and accept cash from a lawyer with a case in front of him. We believe that soliciting and receiving a $2,000 cash payment from a lawyer in a case currently before him would alone have been enough to warrant Judge Porteous's impeachment and removal. When viewed with the additional factors, including the kickback scheme, the fact that the lawyer stood to make hundreds of thousands of dollars through a contingency fee if he won, that the judge misrepresented his relationship during the recusal hearing, and that the appeals court found that parts of the judge's decision in favor of this lawyer's client were ''apparently constructed out of whole cloth,'' Judge Porteous's conduct deserved the unanimous rebuke of the United States Senate and removal from the federal bench.

The allegations in Article II were very serious and no doubt tainted Judge Porteous's ability to serve on the bench. They involve Judge Porteous's relationship with a bail bonds company and its owners, Louis and Lori Marcotte. This article is, primarily though not exclusively, based upon Judge Porteous's actions prior to his service on the federal bench. The fact that this conduct is pre-federal is not alone a bar to removal, though it is a significant factor to consider when evaluating this and future articles.

We decided to vote against conviction on Article II not only because most of the alleged conduct occurred before Judge Porteous became a federal judge, but also because we were not convinced that the conduct sufficiently proven by the House rose to the level of a high crime or misdemeanor. The Marcottes, who are felons convicted of manipulating the Louisiana justice system for profit, are the only source of evidence against Judge Porteous. Unlike the evidence presented on Article I, there are limited receipts and other documentary evidence supporting the claims made by the Marcottes. We found that the timelines laid out by Louis Marcotte, Lori Marcotte, Jeffrey Duhon, and Aubrey Wallace to be inconsistent with one another and with the documentary evidence that does exist regarding this article.

The most prominent example of the inconsistent timelines deals with the allegation that Judge Porteous improperly set aside or expunged the convictions of Jeffrey Duhon and Aubrey Wallace as a favor to Louis Marcotte. Louis Marcotte testified that his corrupt relationship with Judge Porteous did not really begin until after September 1993. The Duhon conviction was expunged in 1992. In addition, Judge Porteous only performed a ministerial step in expunging the conviction. Another judge performed most of the responsibilities in setting aside and

expunging both of Duhon's convictions. Louis Marcotte testified that he hounded Judge Porteous for weeks about setting aside the conviction of Aubrey Wallace. Marcotte stated that Judge Porteous said he would set aside the conviction but not until after he had secured his ''lifetime appointment.'' As we discuss below in relation to Article IV, this statement may reflect Judge Porteous's awareness that certain decisions or actions might impede his confirmation to the federal bench. The documentary evidence shows, however, that Judge Porteous actually took some of the steps towards removing the Wallace conviction, including a hearing on the set aside motion, before his Senate Judiciary Committee confirmation hearing In addition to the conflicting timelines, the House failed sufficiently to establish that Judge Porteous's actions with respect to the Duhon or Wallace convictions were illegal or even improper under state law.

The House alleges that Judge Porteous was the Marcottes' ''go-to'' judge and would sign almost any bond that they requested. However, the House conceded that they could not point to any individual bond that was set either too high, too low, or improperly in any other way for the benefit of the Marcottes. Additionally, Judge Porteous's former criminal minute clerk suggests the opposite. The clerk indicated that Judge Porteous or a member of his staff was diligent about calling the jail for information about a prisoner for whom Marcotte requested a bond be set, instead of just taking Marcotte's word for it.

The remaining conduct alleged in Article II, that Judge Porteous used his prestige as a federal judge to recruit new state judges for the Marcottes to corrupt, was also not sufficiently proven. The House was able to document six lunches over a ten year period where Judge Porteous is alleged to have helped the Marcottes recruit and train judges. The only evidence that the House presented that Judge Porteous was present at some of these lunches was the fact that there was a reference to Absolut Vodka on the receipt and Judge Porteous was known to drink Absolut Vodka. One of the judges who was allegedly recruited by Judge Porteous, Ronald Bodenheimer, stated that Judge Porteous never told him what to do in relation to the Marcottes, nor did Bodenheimer feel that Judge Porteous ever used his position as a federal judge to pressure Bodenheimer to work with the Marcottes or to issue any bonds. Judge Porteous simply told Bodenheimer that he could trust the Marcottes when it came to providing information related to a particular offender.

While we do not take the position that any of these witnesses was lying, we believe that the House must clear a high bar in proving the guilt of a federal official in an impeachment trial. The House did not meet its burden with respect to the conduct alleged in Article II.

Three features of Article III distinguish it from the others. Article III is the only one alleging conduct that occurred entirely after Judge Porteous was appointed to the federal bench, that conduct was unrelated to either his office or his official conduct in that office, and Article III raises significant factual disputes. Unofficial conduct may constitute the ''high crimes and misdemeanors'' that justify impeachment and removal, but that conclusion must be clearly established after giving Judge Porteous the benefit of the doubt regarding remaining factual disputes.

There is no dispute that Judge Porteous filed his initial bankruptcy petition under a false name, signing the declaration ''under penalty of perjury that the information provided in this petition is true and correct.'' If there was any evidence that he intended to defraud creditors, this alone might be sufficient for impeachment and removal from office. But the evidence is to the contrary. He used the false name only to avoid the embarrassment of his real name appearing in the newspaper's listing of bankruptcies.

The false name existed for only 12 days, and he filed an amended petition with correct information the day after the false name appeared in the newspaper. The amended petition, with the correct identifying information, was then sent to creditors. The fact that so few creditors who were contacted with the correct information actually filed claims suggests that no one was prevented from filing a claim because a false name was on file for less than two weeks. Ironically, if the petition had been filed precisely the same way and the false name had been entered inadvertently rather than deliberately, it likely would not have been discovered and rectified until later in the process.

There is also no dispute that Judge Porteous's bankruptcy petition and accompanying schedules omitted certain assets and debts and inaccurately valued others. This fact might be more serious if Chapter 13 bankruptcies typically are filed without such omissions or inaccuracies. Judge Porteous introduced evidence, however, that the opposite is true, that nearly 100 percent of Chapter 13 bankruptcies contain multiple inaccuracies. For these problems to constitute ''high crimes and misdemeanors,'' there must be clear and convincing evidence that the inaccuracies and omissions were intentional or fraudulent. The record does not contain such evidence. The House forcefully presented a theory that Judge Porteous hid assets so that he would have more money to gamble away, but a theory unsupported by real evidence is not enough to remove a federal judge from office.

Several allegations in Article III raised the question whether ''markers'' used to obtain chips in casinos are checks or credit. This distinction is significant because Judge Porteous was prohibited from obtaining more credit while his bankruptcy plan was in effect. But there was far from clear and convincing evidence settling that question.

On the one hand, gamblers fill out a credit application before they obtain markers. On the other hand, casinos redeem markers by presenting them at the gambler's bank. On the one hand, markers are checks under Louisiana commercial law. On the other hand, Judge Porteous's bankruptcy attorney and the bankruptcy trustee in his case considered them to be credit. Experts testifying before the Committee at the evidentiary hearing strongly and directly disagreed. This dispute, as important as the issue may be, was simply not settled with sufficient clarity to direct a conclusion either way. As such, Judge Porteous deserves the benefit of the doubt.

Finally, Judge Porteous not only successfully completed what is considered a large Chapter 13 bankruptcy, even after the bankruptcy judge nearly doubled his monthly payment, but he actually paid more than the plan called for. That is not the conduct of someone bent on bankruptcy fraud. The question, then, is whether the allegations in Article III that the evidence clearly showed to be intentional acts were sufficient to remove Judge Porteous from the bench. We do not believe so and, therefore, voted to acquit on that article.

We looked at Article IV with particular interest because the conduct by Judge Porteous that it alleged directly implicated the Senate and the judicial confirmation process. One of us not only serves on the Judiciary Committee, but was its Ranking Member when Judge Porteous was confirmed in 1994.

In FBI interviews, as well as in questionnaires before and after his nomination, Judge Porteous was asked whether anything in his personal life could be used by someone else to intimidate or influence him, could be publicly embarrassing to him or the President, or could affect his nomination. He signed both questionnaires, which included the statement that the information provided was ''true and accurate.'' Those questions are still asked and still appear in those questionnaires as part of the confirmation process today. Judge Porteous argues that his negative answers to these questions were true because he did not believe that anything he had done, including in the relationships described in Article I and II, to be improper or embarrassing. But Judge Porteous was never asked whether he personally thought anything in his personal life was improper or embarrassing. There would be little value in asking such a question. Judge Porteous was asked whether anything in his personal life could be viewed by others, or by the public, as embarrassing or, more importantly, affect his nomination. Not only is that important information for the confirmation process, but it is information that in most cases can come only from the candidate or nominee.

What Judge Porteous may have lacked in personal scruples, he possessed in political instincts about matters that could be confirmation obstacles. Louis Marcotte testified, for example, that when he urged Judge Porteous to clear the criminal record of a Marcotte employee, Judge Porteous said he would do so only after the Senate confirmed his nomination. He did not want it coming out in the newspaper and said that he would not let anything stand in the way of his lifetime appointment. Judge Porteous waited until after his confirmation, but before he took the oath of office, to set aside one of those criminal convictions.

The propriety of setting aside that conviction is not the issue. This example simply shows Judge Porteous' awareness that perceptions of his actions might affect his appointment to the federal bench. His instinct, it turns out, was accurate because the New Orleans newspaper reported that Judge Porteous had unlawfully set aside the conviction and the Justice Department would later conclude that his decision was contrary to law. Or consider another example. Judge Porteous' financially interactive relationship with his friends Jacob Amato and Bob Creely may not have bothered him, but it certainly bothered them. While on the state court bench, Judge Porteous began assigning unsolicited curatorship cases to Creely after Creely refused to give him money. Having provided a new source of revenue, Judge Porteous began requesting, and Creely and Amato began providing, a portion of the fees generated by those cases. Amato believed that this arrangement was unethical, a kind of kickback, and warned Creely that it was going to turn out badly. Amato did not disclose it at the recusal hearing in the Lifemark case because he believed he might be disbarred and that Judge Porteous might be removed from the bench. At our evidentiary hearing, the House's judicial ethics expert opined that this conduct violated the ABA model code of judicial conduct, and even Judge Porteous' own expert suggested that it was ethically troubling.

If his own best friend thought disclosing this financial relationship might get Judge Porteous removed from the bench, it is simply not credible that Judge Porteous believed disclosure of that relationship could not affect his appointment to the bench. Instead, he apparently answered those questions in the negative for the same reason that he put off setting aside that criminal

conviction, to avoid any obstacles to a lifetime appointment. This dishonest participation in the confirmation process undermined the integrity of that process and possibly deprived the Senate of information that would have mattered in considering his nomination. His negative answers to questions he was actually asked were material and demonstrably false. For that reason, we voted to convict on Article IV.

The Senate was correct in removing Judge Porteous from the bench. He argued that it was unclear that his actions violated the public trust and warranted removal. The message from the Senate is clear that the privilege of serving the American people comes with a responsibility to be fair, honest, and to behave in a manner that inspires confidence in the courts and our system of justice.

Mr. LEAHY. Mr. President, for just the eighth time in this country's history, the Senate has voted to impeach and remove a Federal judge from the bench. Impeachment is a serious, constitutional act intended not as a form of punishment, but rather as means of protecting the integrity of our system of government. This is particularly true when we consider the impeachment of members of the judiciary. Public confidence in our courts is fundamental to the functioning of our democracy. When a judge engages in conduct that grossly violates the public trust, he or she not only becomes incapable of fulfilling the responsibilities of the office, but also brings disrepute to the entire judicial system.

Prior to the Senate's vote on December 8, I voted three times to convict a Federal judge. In each instance, I carefully considered the facts in the case, as well as my constitutional obligations and the precedent being set for future generations. I have no doubt that just as we looked back to past impeachments to guide our actions in this proceeding, we now leave new precedent that others will look to for guidance and wisdom. For this reason, I wanted to elaborate on the constitutional issues presented during this impeachment trial and explain my decision to vote to convict Judge Porteous on all four Articles of Impeachment.

First, I should note that the impeachment trial against Mr. Porteous was bipartisan, and, I believe, unquestionably fair. The Senate Impeachment Trial Committee held 5 days of evidentiary hearings, with testimony received from 26 fact and expert witnesses. The record before the Senate is well developed, and most of the facts underlying the allegations against Mr. Porteous are uncontested. These facts demonstrate that Mr. Porteous engaged in conduct that compromised the administration of justice, brought disrepute to his office, and required his removal from the bench.

The first article of impeachment alleges that as a Federal judge, Mr. Porteous failed to recuse himself in the bench trial of Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises, despite having previously engaged in a corrupt scheme with one of the attorneys before the court. The House managers established that as a State judge, Mr. Porteous assigned curatorship cases to two attorneys, one of whom was before him in the Liljeberg case, and had a portion of the fees, totaling approximately $20,000, funneled back to him. Not only did Mr. Porteous fail to disclose these facts or recuse himself from the case, he proceeded to solicit and accept $2,000 cash from those attorneys while the Liljeberg case was still under his advisement.

Out of concern for the public's confidence in our court system, I have frequently expressed disappointment about the lack of recusals by judges with conflicts of interest. There should be no doubt that recusals go to the heart of a judge's impartiality. In gross violation of his judicial ethics, Mr. Porteous engaged in a corrupt scheme with attorneys, solicited and accepted money from attorneys with pending matters before his court, and deprived the public and litigants of his honest services by failing to recuse himself.

The defense argued that article I should be dismissed because of the Supreme Court's recent ruling in Skilling. I am familiar with the Court's ruling, and have authored legislation in response to it. The Supreme Court's holding was about a specific criminal statute, not judicial conduct or impeachment standards. No reasonable judge would believe that soliciting and accepting cash payments from an attorney with a pending case would be allowable or would not be an obvious ground for recusal.

The notion that was raised by the defense that corrupt judges could not be impeached ignores the purpose of impeachment as it relates to public confidence in our justice system. The Constitution did not list a specific set of conduct that would result in impeachment. Instead, Senators should determine for themselves what conduct renders one unfit to hold public office. We must consider the type of duties that the impeached official is called upon to perform and whether the conduct engaged in impairs the official's ability to perform those duties. This analysis differs depending on the office and responsibilities of the official before us.

Article II alleges that as a State court judge, Mr. Porteous took numerous things of value and accepted personal services from a bail bondsman, while setting favorable bonds for his company. As a Federal judge, Mr. Porteous continued to receive things of value in exchange for using ''the power and prestige of his office'' to help these bondsmen form corrupt relationships with State court judges. The evidence showed a pattern before and after his Federal confirmation of capitalizing on his position of power to receive improper gifts. Moreover, as Professor Michael Gerhardt, who served as Special Counsel to the Senate Judiciary Committee during the last two Supreme Court confirmations, testified before the House Task Force on Judicial Impeachment, the Constitution does not state that improper conduct must be committed during the tenure of the Federal office; rather, ''[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].'' I agree with Professor Gerhardt on this fundamental question.

Certainly if the Senate learned after confirmation that a judge killed someone before he or she was confirmed, the Senate should not be prevented from later removing that judge. Similarly, the Senate should not be foreclosed from removing a judge for serious misconduct not revealed during the confirmation process that goes to the role of the judge. A lifetime appointment to the Federal judiciary does not entitle those unfit to serve to a lifetime of Federal salary and benefits. As chairman of the Judiciary Committee, I reject any notion of impeachment immunity if misconduct was hidden, or otherwise went undiscovered during the confirmation process, and it is relevant to a judge's ability to serve as an impartial arbiter.

With regard to the third article of impeachment, it is clear that Mr. Porteous knowingly and intentionally made material false statements and representations—including signing and filing under the name ''G.T. Orteous''—under penalty of perjury on his personal bankruptcy court filing. It is hard to imagine stronger evidence that this judge believed the law did not apply to him. A judge who lies under oath in court filings is unable to continue in an office that requires him to administer oaths and sit in judgment. Mr. Porteous's actions in his bankruptcy proceedings demonstrate a flagrant disregard for the courts as an institution, making him unfit to serve as a respected member of the judiciary.

The last article of impeachment against Mr. Porteous relates to his actions before the Senate Judiciary Committee. As chairman of the Senate Judiciary Committee, I take the word of judicial nominees that come before our committee very seriously. The process for aiding the Senate in considering these lifetime appointments relies on being able to trust and evaluate the information provided to us by nominees, so it requires their utmost candor.

Mr. Porteous knowingly made material false statements about his past to the Senate by responding ''no'' to questions on his Senate Judiciary Committee questionnaire, and to the FBI in connection with his background review, in order to obtain office. His defense to article IV is that his conduct was ''business as usual'' in New Orleans and, therefore, he believed his responses to be true. Whether he made false statements is not purely a subjective inquiry; and most certainly not where his ''belief'' in the truth of his

statements is in direct conflict with the factual knowledge on which it is based. I am convinced that Mr. Porteous's responses on the Senate questionnaire were material because had his solicitation and acceptance of cash and gifts from parties with matters before him been known to the Senate, he would not have been confirmed.

During the impeachment trial proceedings, I asked both the House managers and Mr. Porteous's defense attorneys the following question: ''The Senate Judiciary Committee requires a sworn statement as part of a detailed questionnaire by a nominee. Until this questionnaire is filed, neither the Judiciary Committee nor the Senate votes to advise and consent to the nomination. Would not perjury on that questionnaire during the confirmation process be an impeachable offense?'' Both sides unequivocally answered that perjury on the Senate questionnaire and during the confirmation process would be an impeachable offense.

As chairman of the Senate Judiciary Committee, I am particularly offended by Mr. Porteous's intentional dishonesty and disrespect for the office to which he was confirmed, and for the entire confirmation process. When a judicial nominee testifies before the Senate Judiciary Committee, they must be completely forthright and honor the promises or statements they make to us. Once confirmed, Federal judges have lifetime appointments. Impeachment is a drastic measure, but one we must take when a nominee conceals serious wrongdoing.

The House managers presented uncontested facts that Mr. Porteous engaged in conduct that violated the public trust and is now unfit to be a district court judge, or hold any other public office. Both sides were well represented in this proceeding, and I thank them for their advocacy and professionalism.

Mr. UDALL of New Mexico. Mr. President, as a member of the Impeachment Trial Committee, I had the privilege of carrying out a constitutional duty that fortunately is a rare occurrence. I commend the work of Chair MCCASKILL and Vice-Chair HATCH, as well as the staff of the committee, Senate legal counsel, and CRS. They have done an excellent job of making a complex and time-consuming process as clear and straightforward as possible.

I began the impeachment process with the belief that my legal background would help guide my judgment as to whether or not Judge Porteous is guilty. As the attorney general of New Mexico for 8 years and a former assistant U.S. attorney, I saw the impeachment process as closely analogous to a criminal trial. It turns out, however, that the two are very different in many key aspects.

Unlike a criminal trial, our role is not to punish the guilty, but is instead to protect the integrity of the judiciary. The U.S. Judicial system is the greatest in the world, but it can only remain so as long as the integrity and impartiality of our judges is never in doubt. Judge Porteous's actions were so contrary to everything we demand of our judges that I have no hesitation in voting to convict him on each article.

One of the primary aspects that make an impeachment trial unique from a criminal trial is the standard of proof. I began the impeachment process believing that the House must prove its case beyond a reasonable doubt in order for a conviction. This is not the case.

Obviously Judge Porteous would like all of us to use the standard of ''beyond a reasonable doubt,'' while the House managers would prefer a ''preponderance of the evidence standard.'' Some scholars have urged a middle ground, suggesting that the appropriate standard of proof should be ''clear and convincing evidence.'' But the fact is that we each have to make our own decision.

I believe that the ''beyond a reasonable doubt'' standard is too high. The Senate does not have the authority to take away Judge Porteous's liberty but only the authority to remove him from a position of public trust. I also believe that whether you use a clear and convincing evidence standard or a preponderance of the evidence standard, the House managers have met their burden.

Another important question each of us must decide is what constitutes an impeachable offense. Judge Porteous's attorneys argue that much of his conduct is not impeachable because it does not meet the constitutional standard of ''high crimes and misdemeanors.'' They also argue that most of his conduct occurred prior to his confirmation to the Federal bench or was not related to his duties as a Federal judge, and therefore not grounds for impeachment. I do not believe any of these arguments are persuasive.

I initially thought of ''high crimes and misdemeanors'' in the context of a criminal trial. My prosecutor experience made me ask what elements had to be proven in order to convict on each article. But now I understand that an impeachment is so fundamentally different than a criminal trial that such comparisons do not work.

Alexander Hamilton wrote that impeachable offenses ''proceed from . . . the abuse or violation of some public trust'' and ''relate chiefly to injuries done immediately to the society itself.'' The Framers also did not use the term ''misdemeanor'' to mean a minor crime, as it is used today. At the time of the Constitution's drafting, a misdemeanor referred to the demeanor or behavior of a public official.

Judge Porteous's counsel made several references to the fact that the judge was not criminally charged for his actions. But this is not a relevant consideration. The 1989 report on the impeachment of U.S. District Judge Walter Nixon provides us with guidance as to what constitutes an impeachable offense. It states:

> The House and Senate have both interpreted the phrase other high Crimes and Misdemeanors' broadly, finding that impeachable offenses need not be limited to criminal conduct. Congress has repeatedly defined [the phrase] to be serious violations of the public trust, not necessarily indictable offenses under the criminal law.
>
> Thus, the question of what conduct by a Federal judge constitutes an impeachable offense has evolved to the position where the focus is now on public confidence in the integrity and impartiality of the judiciary. When a judge's conduct calls into question his or her integrity or impartiality, Congress must consider whether impeachment and removal of the judge from office is necessary to protect the integrity of the judicial branch and uphold the public trust.

We are also faced with deciding whether impeachable offenses are limited to acts occurring after an individual became a Federal official. According to the Congressional Research Service, ''it does not appear that any President, Vice President, or other civil officer of the United States has been impeached by the House solely on the basis of conduct occurring before he began his tenure in the office held at the time of the impeachment investigation, although the House has, on occasion, investigated such allegations.''

I do not see how we can restrict our authority to impeach and convict a Federal official to conduct that only occurred after he or she took office. To do so would lead to a perverse result, one in which, as the House managers argue, ''makes the position of federal judge a lifetime safe harbor for someone who is able to hide his misdeeds and defraud the Senate into confirming him.''

In considering whether pre-Federal conduct should be considered as a basis for impeachment, Professor Michael Gerhardt testified before the House that, ''[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.

I believe this is an appropriate standard, and I believe Judge Porteous's conduct as a State court judge was incompatible with the trust we place in our Federal judges. Had his pre-Federal conduct been serious, but outside of the scope of his role as a State judge, I might have been more hesitant to consider it as a basis for impeachment. In this case, however, his corrupt conduct was directly connected to his duties as a judge. In arguing against considering pre-Federal conduct, Judge Porteous is essentially telling the Senate that although he was a corrupt State court judge, that conduct should not be considered in determining his fitness to continue as a Federal judge. I do not find this argument the least bit persuasive.

A final question is whether impeachable offenses should be limited to official acts that are directly related to his duties as a judge. Just as I don't believe pre-Federal conduct must be excluded as a basis for impeachment, I do not feel that nonofficial conduct must be excluded.

In fact, Judge Porteous's own attorney, Jonathan Turley, wrote in a law review article that ''Congress repeatedly rejected the view that impeachable conduct was limited to official acts or abuses of authority. Impeachable conduct often included acts that were incompatible with continuing to hold an office of authority, including crimes or misconduct outside the official realm.''

I believe the question to ask when considering nonofficial acts is the same as that for pre-Federal acts does the misconduct demonstrate a lack of integrity and judgment that are required in order for him to continue to function as a Federal judge? Once again, I found Judge Porteous's nonofficial conduct to reach the level of an impeachable offense. We expect a Federal judge to have the utmost respect for the rule of law, but Judge Porteous knowingly filed for bankruptcy under a false name, an act that he knew was illegal. His attorneys argue that this act was insignificant he filed amended forms a few weeks later and none of his creditors were harmed. But this argument misses the point that a Federal judge had so little respect for the legal process that he would commit perjury in order to avoid embarrassment. Such actions make him unfit for a lifetime appointment to the Federal bench.

For the reasons discussed above, I voted guilty on each of the four Articles of Impeachment.

Mrs. SHAHEEN. Mr. President, it has been a privilege to serve as a member of the Senate Impeachment Trial Committee over the past year. We have been part of a rare event in the history of this Congress and our country and it has been fascinating to watch this process unfold. I want to join my fellow committee members in thanking Chairman MCCASKILL and Vice-Chairman HATCH for leading a fair, effective, and efficient operation. They provided remarkably decisive leadership on complex legal issues while also respecting the rights and the interests of both parties to this matter.

I am proud of the report our bipartisan committee produced, and I would like to once again thank and recognize the trial committee's staff for their hard work. Their efforts were an indispensable part of this unique and historic undertaking.

Judging Articles of Impeachment drawn up by the House of Representatives is one of the more solemn duties given to Senators by our Constitution. After spending more than a week with my fellow committee members hearing the evidence against Judge Thomas Porteous, and after reviewing the parties' final submissions, I concluded that he should be convicted on all four articles and removed from office. I would like to explain the principles I used to reach this conclusion and touch on some of the evidence that supported conviction.

There has been much discussion by the parties about the standard of proof to be employed in an impeachment proceeding, and what constitutes an impeachable offense. The Constitution provides us with limited guidance on these issues. Ultimately, in keeping with precedent established by this body in the past, each Senator must individually decide what conduct is impeachment-worthy and how much proof is necessary to reach that conclusion.

In my opinion, the question before us is whether Judge Porteous's conduct calls his integrity and impartiality into question and whether we must remove him from office to protect the reputation of the judiciary and preserve the public's trust in it. Our courts are the places where citizens expect to receive a fair and legitimate resolution of their disputes. This is a cornerstone of civil society. Any conduct by a judge—whether on the job or off that causes people to seriously question his honesty and basic willingness to dispense justice fairly is a violation of the public trust.

Unfortunately, I think any reasonable citizen walking into Judge Porteous's courtroom would have ample reason to question his commitment to doing justice. This is a judge who used his judicial offices at both the State and Federal levels to routinely obtain personal perks, including meals, alcohol, a bachelor party for his son, trips, and eventually cash kickbacks totaling some $20,000.

Any reasonable citizen would also doubt this judge's ability to be impartial. The House presented substantial evidence related to a multimillion dollar piece of litigation in which Judge Porteous had an obvious conflict of interest but failed to recuse himself. He took thousands of dollars in cash gifts from a lawyer friend representing a party to the case during the course of his deliberations. He then turned around and issued a decision favoring his friend's client. Judge Porteous's ruling was overturned in an absolutely scathing opinion by the Fifth Circuit Court of Appeals, which called his decision ''inexplicable'' and ''close to being nonsensical,'' among other rebukes.

While on the State bench, the Judge maintained close relationships with bail bondsmen working for defendants in his courtroom. The evidence showed that he continuously set favorable bail levels that while perhaps within the bounds of his legal discretion had been suggested by the bondsmen to maximize their profits. For this, the judge enjoyed complimentary steak lunches, midday martinis, at least one trip to Las Vegas, as well as home and car repairs.

I was totally unpersuaded by the defense team's argument that Judge Porteous's ''pre-Federal'' conduct should be outside the scope of our deliberation. I do not believe the act of being confirmed to a Federal judgeship by the Senate erases or excuses an individual's conduct up to the point of confirmation.

Had the Senate known in 1994 what we know now about Porteous's conduct as a State judge, it would have undoubtedly disqualified him from becoming a Federal judge. No judge at any level should accept gifts that would even appear to be designed to affect his judgment or influence his decisions. Yet there is no doubt Judge Porteous did just that.

It is unfortunate that those charged with investigating Judge Porteous's fitness for office in 1994 did not raise more flags about his history. This does not eliminate our duty to act. I see no reason not to remove him from office today when these events still bear on his integrity and impartiality. Plain and simple, the judge perjured himself before this body during his confirmation by representing that nothing in his history would cast doubt on his fitness to hold office.

Finally, Judge Porteous also perjured himself during his own personal bankruptcy proceedings. The House presented evidence that he failed to disclose gambling debts during his bankruptcy, failed to disclose a number of assets, and made other willful misrepresentations in his filings like using a false name in his initial petition. I understand that this conduct may not have been a direct abuse of the judge's office, but his deception during this period reflected a lack of respect for the law and an unwillingness to follow it. A sitting Federal judge should have erred on the side of overdisclosure. Instead, I believe the House has shown that Judge Porteous repeatedly committed perjury.

Serving as a judge is a privilege, and it demands strict adherence to the highest ethical standards. The evidence in this case, taken as a whole, showed that Judge Porteous failed this test routinely over the course of some 15 years. The House presented ample credible evidence to support the charges in each of the articles, and I felt compelled to vote to convict on all four to protect the integrity of the judiciary and its credibility in the eyes of the public.

Mr. KOHL. Mr. President, I want to first commend my colleagues on the Senate Impeachment Trial Committee for the outstanding work they have done to receive and report the evidence in this case to the full Senate. Led by Senators MCCASKILL and HATCH, the committee's dedication to impartiality and integrity is something of which we can all be proud.

The Constitution gives the Senate ''the sole power to try all impeachments.'' The Senate acts as the factfinder in impeachment proceedings and determines, as individuals and as a body, whether the respondent is guilty

of ''high crimes and misdemeanors'' so as to require removal from office.

After carefully reviewing the evidence, I voted to convict Judge Porteous on each Article of Impeachment. On articles I and II, the evidence showed that Judge Porteous used his judicial office for financial gain by failing to recuse himself in a nonjury civil case and engaging in corrupt relationships with Jacob Amato, Robert Creely, and Louis Marcotte. The House managers proved by clear and convincing evidence that Judge Porteous deprived litigants of a fair trial and undermined his sworn judicial duties.

On articles III and IV, I found Judge Porteous guilty because of his dishonesty and gross misconduct. The facts were clear. He filed his bankruptcy petition under a false name, concealed assets and debt to finance his gambling habit and lied to the FBI to obtain Senate confirmation of his judicial appointment.

Finally, I voted against Judge Porteous's motion to disaggregate the articles. I did so because each article contained a series of events that sufficiently related to the charged allegation. The case against Judge Porteous can be distinguished from those of Judge Nixon and President Clinton. Here, the House presented specific, indivisible articles of misconduct which provided a clear record for us to evaluate.

As with each judicial impeachment, the Senate is faced with difficult and novel issues. However, the Constitution makes clear that impeachment is a remedial provision that cures our institutions when officials violate the public's trust and confidence. I do not come to my decision lightly, but removal and disqualification of Judge Porteous is necessary. As required by the Constitution, Judge Porteous no longer enjoys the privilege of sitting on the Federal bench or holding any Federal position ''of honor, trust or profit.'' I thank and appreciate my colleagues for their commitment and collegiality during this process.

Mr. NELSON of Florida. Mr. President, I rise today to discuss the impeachment of Judge Thomas Porteous and specifically to offer my thoughts on the Articles of Impeachment.

First, let me say as a general matter that when we as a body consider the nomination of a Federal judge, we do so with the hope and expectation that the individual being considered will uphold the law and treat people appearing in his or her courtrooms with fairness and impartiality. The lengthy record presented by the House managers demonstrated that Judge Porteous has had an ongoing pattern of conduct that does not comport with the trust that the Senate placed in him when it confirmed Judge Porteous as a U.S. district court judge in 1999.

The managers also presented sufficient evidence for me to vote in favor of each of the Articles of Impeachment. Because of the lengthy, ongoing, and egregious nature of the judge's conduct, I also voted to disqualify Judge Porteous from any future Federal office.

The most compelling evidence presented for each article was as follows:

Article I—The record demonstrated that Judge Porteous, while presiding as a U.S. District Judge, denied a motion to recuse himself in the case of Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises, despite the fact that he had a corrupt financial relationship with the law firm representing Liljeberg Enterprises. The record also demonstrated that Judge Porteous engaged in corrupt conduct after the Lifemark v. Liljeberg bench trial, and while he had the case under advisement. Judge Porteous solicited and accepted things of value from both Mr. Amato and his law partner, Mr. Creely, including a payment of thousands of dollars in cash, then ruled in favor of the law firm's client, Liljeberg Enterprises.

Article II—The record demonstrated that while Judge Porteous was a U.S. district judge for the Eastern District of Louisiana, he engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, II and his sister, Lori Marcotte. The record also demonstrated that, as part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value for his personal use and benefit, including meals, trips, home repairs, and car repairs, while at the same time taking official actions that benefitted the Marcottes.

Article III—The record demonstrated that Judge Porteous knowingly and intentionally made material false statements and representations under penalty of perjury related to his personal bankruptcy filing, and that he repeatedly violated a court order in his bankruptcy case.

Article IV—The record demonstrated that Judge Porteous knowingly made numerous material false statements about his past to both the U.S. Senate and the Federal Bureau of Investigation in order to obtain the office of U.S. district court judge. The record demonstrated that these 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 a 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 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 the statement is, to the best of my knowledge, true and accurate.''

Mr. UDALL of Colorado. Mr. President, I rise to explain my votes in relation to the impeachment of Judge G. Thomas Porteous, Jr. I take my role in the rare process of impeachment seriously, and welcome the opportunity to explain my reasoning for voting guilty on all four Articles of Impeachment and to clarify for the record the limited precedential value that I believe the conviction on Article IV should provide.

When considering the evidence presented by the House and Judge Porteous, I first had to establish what standard of proof I would use to determine his guilt or innocence on each Article of Impeachment passed by the House of Representatives. The Senate has never adopted a standard of proof like 'beyond a reasonable doubt' from the criminal context or 'a preponderance of the evidence' from a civil dispute context; rather, the Senate has allowed individual Senators to decide for themselves what standard is most appropriate. I ultimately settled on the standard suggested by the House Manager, that I be convinced of the truthfulness of the allegations and that they rise to a level of high crimes and misdemeanors.

Mr. President, our founders granted Congress the power of impeachment to protect the institutions of government from those judged to be unfit to hold positions of trust. In Federalist 65, Alexander Hamilton wrote of the jurisdiction to impeach an official: ''There are those offenses which proceed from the misconduct of public men or, in other words, from the abuse or violation of some public trust.'' This captures the standard I applied to reach a determination of guilt on each Article of Impeachment. I was convinced that Judge Porteous, through each action and through his pattern of behavior, undermined the public's faith in him as a government official and in the institution that he represented—the United States Federal Court.

With respect to Articles I, II and III, I am confident that the evidence of specific acts and the pattern of behavior displayed by Judge Porteous justifies my determination that he was guilty of high crimes and misdemeanors. Article IV, however, gives me pause. While I believe that the guilty vote on Article IV was correct, I have reservations about the precedent that scholars and future Senators might find in this impeachment. The questionnaire the judicial nominees fill out for the Senate

Judiciary Committee provides an opportunity for those nominated to answer questions about their past activities and involvement in and with the law. From these questionnaires, we are able to learn of a nominee's legal experience, find information about past statements and generally assess the fitness of the nominee for the federal bench.

On his questionnaire, Judge Porteous was asked whether any unfavorable information existed that could affect his nomination, and he answered that he did not know of any. I believe that Judge Porteous engaged in a pattern of behavior prior to, during and after his nomination to the federal district court that undermined the public's faith in him as a government official, and that this pattern of behavior rose to the level of an impeachable offense that met the standard of high crimes and misdemeanors. Having said that, I do not believe that future nominees should be subject to impeachment simply for a failure to answer a subjective, open-ended question on the Senate Judiciary Committee's questionnaire.

Judge Porteous abused the questionnaire process, misrepresented his background and misled the Senate in an egregious manner that was unique to this specific situation. However, I can imagine a scenario whereby a nominee could falsely affirm that no negative information affecting his nomination existed, yet I might not find that false answer to be an impeachable offense. I do not wish to see the nomination process become even more difficult for qualified men and women of good character, solely because of an onerous application process. Many of us have things in our backgrounds that we might miss when asked open ended questions, and the Senate should not hang the cloud of impeachment over every nominee's head because of such oversights alone—otherwise, we will find ourselves without any nominees.

As a Senator who is not a lawyer, I would like to thank my colleagues who took on the historic task of preparing and presenting this impeachment trial. Specifically, Senator CLAIRE MCCASKILL and Senator ORRIN HATCH who shared the role of chair of the Special Impeachment Trial Committee. I came away from this experience with a renewed respect for the Senate as an institution. When given the opportunity, Senators can work in a productive and civil manner, and I am sure that if he were able to see the dignity and respect with which the Senate treated this impeachment, Alexander Hamilton would be very proud.

Mr. COONS. Mr. President, as a result of today's vote on the four Articles of Impeachment against Judge G. Thomas Porteous, the Senate has fulfilled its constitutional duty to remove a threat to the public's trust and confidence in the Federal judiciary.

The conduct set forth in the first Article of Impeachment alone justifies the Senate's conviction of Judge Porteous. By coercing his former law partners to participate in a kickback scheme while a state judge, by failing to properly disclose this corrupt relationship when warranted as a federal judge in a recusal hearing and by obtaining further improper cash payments from them while taking their case under advisement, Judge Porteous misdemeaned himself in a manner that is directly contrary to the essential public trust of his office. Federal judges cannot solicit improper gifts, and they certainly cannot lie to litigants who appear before them.

The conduct described in the remaining three Articles of Impeachment is, likewise, wholly repugnant to the office of a U.S. judge. Counsel for Judge Porteous argued that the Senate's unprecedented conviction on these counts would weaken the judiciary to political attacks. I do not dismiss these arguments lightly. With only 12 impeachment trials having been completed in our Nation's history, however, novelty of the particular offenses charged is no absolute defense. My votes to convict—whether for conduct on the State bench, as a private citizen, or before the Judiciary Committee—were compelled because they revealed corruption and duplicity that, if countenanced, would destroy the integrity of the federal judiciary. While counsel argued that the behavior charged in the final three articles did not concern Judge Porteous' conduct as a Federal judge, each article charged conduct that bore an essential nexus to his Federal service.

Judge Porteous set bail bonds for the purpose of maximizing the profits of the bail bonds company, rather than protecting the public safety and guaranteeing the defendant's presence at trial. He carried out this scheme to cultivate improper benefits from the bail bonds company, trading official judicial action for personal gain. This behavior was not an isolated lapse in judgment. It lasted for more than a year, stopping only when Judge Porteous was confirmed to be a Federal judge.

Judge Porteous also lied during his bankruptcy while serving as a Federal judge. His only defense was that such conduct was not related to his service as a judge and included only acts taken as a private citizen. A judge cannot repeatedly demean a Federal court by lying to it, as here, in an attempt to avoid embarrassment and to continue to amass more gambling debts.

Likewise, Judge Porteous' lies and deceptions during his confirmation process reflect a willingness to subvert the truth, under penalty of perjury, for personal gain. His claim that any mistakes were inadvertent is simply not credible. The evidence demonstrates that Judge Porteous actively concealed the corrupt bail bonds scheme from FBI investigators, and failed to disclose much more corrupt behavior.

Our Federal courts are an enduring symbol of our national commitment to equal justice under the law. Judge Porteous' long history of corruption, deceit, and abuse of power renders him incompatible with that commitment. His removal strengthens our judiciary and confirms the integrity of those who remain a part of it.

OMNIBUS APPROPRIATIONS

MANIILAQ ASSOCIATION

Mr. HARKIN. Mr. President, in Division H of the explanatory statement accompanying the fiscal year 2011 Consolidated Appropriations Act, under the authority of the Center for Mental Health Services at the Substance Abuse and Mental Health Services Administration, please add Senator BEGICH to the list of members requesting funds for the Maniilaq Association in Kotzebue, AK, to provide suicide prevention activities in northwest Alaska.

DIVISION G

Ms. MIKULSKI. Mr. President, I rise to make a clarification regarding a project that is listed in the congressionally designated spending table to accompany Division G, the Interior, Environment and Related Agencies division of fiscal year 2011 omnibus appropriations bill. I understand that due to a clerical error, I was listed as a sponsor for the following water infrastructure project: ''City of Baltimore for Penn Station pipe relocation.'' I would like the RECORD to reflect that I am not in fact a sponsor of this project.

Mrs. FEINSTEIN. Mr. President, as the chairman of the Subcommittee on the Interior, Environment and Related Agencies, I regret that such an error was made. I would like to reconfirm that my colleague, Senator MIKULSKI, should not be listed as a sponsor for this project.

TRIBUTES TO RETIRING SENATORS

BOB BENNETT

Mr. CONRAD. Mr. President, I want to take a moment to honor a friend and colleague, Senator BOB BENNETT, who will be moving on from the Senate after 18 years of service to the people of Utah.

BOB has had a long and impressive career. Out of college, he served for several years in the Utah National Guard and worked as a congressional liaison for the Department of Transportation. Turning next to the private sector, he worked for 20 years in public relations and later in the technology field. He put that experience to good use once elected to the Senate, using his high-tech know-how to chair the Senate Special Committee on the Year 2000 Technology Problem, serve on the Senate Republican High-Tech Task Force, and work on issues from broadband infrastructure development to cyber security.

Utah and North Dakota have many things in common. Both are largely