

In The Senate of the United States
 Sitting as a Court of Impeachment

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

The House of Representatives' Proposed Findings of Fact

The House of Representatives (the "House") respectfully submits the following proposed findings of fact in support of the four Articles of Impeachment against Judge G. Thomas Porteous, Jr.:

Background

1. Judge Porteous graduated from Louisiana State University in 1968 and the Louisiana State University law school in May 1971.

See Agreed Stipulation of Fact 5.

2. From approximately October 1973 through August 1984, Judge Porteous served as an Assistant District Attorney in Jefferson Parish, Louisiana. Judge Porteous was permitted to hold outside employment while working as an Assistant District Attorney.

See Agreed Stipulation of Fact 8.

3. From January 1973 until July 1974, Judge Porteous was a law partner of Jacob Amato, Jr. at the law firm of Edwards, Porteous & Amato.

See Agreed Stipulation of Fact 9.

4. Attorney Robert Creely worked at the law firm of Edwards, Porteous & Amato for some period of time between January 1973 and July 1974.

See Agreed Stipulation of Fact 10.

5. Judge Porteous was elected to be a judge of the 24th Judicial District Court in Jefferson Parish, Louisiana in August 1984. He took the bench on August 24, 1984, and remained in that position until October 28, 1994.

See Agreed Stipulation of Fact 11.

6. 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.

Agreed Stipulation of Fact 12.

7. Judge Porteous's confirmation hearing before the Senate Judiciary Committee was held on October 6, 1994.

See Agreed Stipulation of Fact 13.

8. Judge Porteous was confirmed as a United States District Court Judge for the Eastern District of Louisiana by the United States Senate on October 7, 1994.

See Agreed Stipulation of Fact 14.

9. Judge Porteous received his judicial commission on October 11, 1994.

See Agreed Stipulation of Fact 15.

10. Judge Porteous was sworn in as a United States District Court Judge for the Eastern District of Louisiana on October 28, 1994.

See Agreed Stipulation of Fact 16.

Article I

A. The Curatorship Scheme

11. At some point while he was a state court judge, Judge Porteous began to ask Robert Creely for small amounts of money, which Mr. Creely estimated to be in the range of \$50 to \$100. These cash requests continued "for a fairly long period." 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." Mr. Creely gave Judge Porteous money in response to these requests.

See Creely SITC at 257:16-18, 298:6-9. See also HP Ex. 12 (Creely 5th Cir. Hrg. at 199); HP Ex. 440(a) (Creely Task Force Hrg. at 20) (Judge Porteous would ask for money for "tuition" and "living expenses").

12. Eventually, Judge Porteous began to request more substantial sums of money from Mr. Creely, in the range of \$500 to \$1,000. At that point, Mr. Creely told Judge Porteous, in substance, that "things had to change. We had to figure something else out, because this can't go on like this." Mr. Creely "felt imposed upon." He told Judge Porteous: "I'm tired of giving you money, I'm tired of you asking for money. This isn't what friends are supposed to do to one another."

See Creely SITC at 259:6-11, 340:17-19, 259:13-16.

13. After Mr. Creely expressed that he did not want to give Judge Porteous cash, Judge Porteous started assigning Mr. Creely curatorship cases. “[H]e then started calling [Creely] and saying, look, I’ve been sending you curators, you know, can you give me the money for the curators?” Although Mr. Creely sought to avoid linking the requests of cash with the assignment of curatorships, Judge Porteous “made [that] correlation.”

See Creely SITC at 268:2-4, 263:17. *See also* HP Ex. 440(a) (Creely Task Force Hrg. at 23) (agreeing that Judge Porteous was taking official actions in appointing curatorships to enrich himself).

14. The duties of an assigned curator were to represent the interests of an absent party. Mr. Creely did not want these curatorships, even though they involved minimal work. The work was administrative for the most part and was performed by Mr. Creely’s secretary. Mr. Creely received curatorship cases from Judge Porteous beginning in 1988 and continuing through 1994 until Judge Porteous became a federal judge. The Amato & Creely firm received approximately \$200, plus expenses, for each curatorship case that Mr. Creely handled.

See Creely SITC at 260:5; Amato SITC at 130:8-15, 130:17-20. *See also* HP Ex. 440(a) (Creely Task Force Hrg. at 21-22); HP Ex. 188.

15. Even though Mr. Creely did not want the curatorships, the fact that Judge Porteous assigned the curatorships made it “easier [for Creely] to give [Judge Porteous] cash” since it “wasn’t costing [Creely] anything.”

See Creely SITC at 271:3-8. *See also* HP Ex. 440(a) (Creely Task Force Hrg. at 23) (curatorships were a “justification to help him out so that I didn’t have to go and spend my own money on him”); HP Ex. 12 (Creely 5th Cir. Hrg. at 209-10) (curatorships were “basically a way for me to supply him funds as before instead of coming out of my pocket. It was being provided through the curatorships.”).

16. On at least one occasion, Judge Porteous called Mr. Creely’s secretary to ask about the curatorships he (Judge Porteous) had assigned. This call was particularly bothersome to Mr. Creely and evidenced in Mr. Creely’s mind that Judge Porteous linked his assignment of curatorships to Mr. Creely with his requests of cash from Mr. Creely.

See Creely SITC at 262:25 – 263:12.

17. Mr. Creely discussed Judge Porteous’s requests for curatorship proceeds with his law partner, Jacob Amato. Mr. Creely expressed his “entire dissatisfaction about giving this cash to him [Judge Porteous] and the fact that he’s calling and making a correlation between curators and cash.” In response, Mr. Amato told Mr. Creely to “[k]eep paying him, it doesn’t cost us anything, it’s not costing us any money, just if he asks for money from time to time, let’s continue giving it to him.” Mr. Creely went to Mr. Amato in part because he [Creely] “was getting tired of being leaned on and said [to Amato] [‘]I need some help, you know, you need to help out.[’]”

See Creely SITC at 264:6-9, 264:12-15, 376:9-10.

18. Mr. Amato confirmed that Mr. Creely informed him “that the judge was sending curators to him and that he would, in turn, give money to the judge.” Mr. Amato did not feel comfortable giving Judge Porteous cash from the curators, and said it would turn out badly, but was not “strong enough” to say no.

*See Amato SITC at 124:25 – 125:2, 125:23 – 126:4. See also HP Ex. 440(b) (Amato Task Force Hrg. at 99–100) (“Mr. Creely came to me one day and said that Tom – or Judge Porteous asked him for some money based upon sending curatorships. . . . Bob [Creely] would tell me Judge Porteous needs, you know, \$500, \$1,000, whatever it is for the curatorships, and we would each draw a check for whatever half the amount that he requested.”). Mr. Amato also testified before the House Impeachment Task Force that “[J]udge Porteous sent curator cases to Bob Creely and at some point asked that he be—receive some of that money.” *Id.**

19. To give money to Judge Porteous, Mr. Amato and Mr. Creely would each “take a draw check,” from their law firm’s account “either for the full amount or for something less than the full amount than was our regular draw.” Mr. Amato and Mr. Creely would thereafter cash their checks and would put the cash “in an envelope and give it to Judge Porteous.”

See Amato SITC at 127:13-16; Creely SITC at 376:13, 273:18; Amato SITC 127:16-17.

20. Mr. Amato and Mr. Creely referred to the money they were giving Judge Porteous as the “curator money.”

See Amato SITC at 216:15-19.

21. Mr. Amato had no doubt that when Judge Porteous asked for money during the period when he was sending Mr. Creely curatorships, that Judge Porteous was requesting part of the curatorship proceeds.

See Amato SITC at 127:1-4. See also HP Ex. 440(b) (Amato Task Force Hrg. at 107).

22. Mr. Amato knew that giving money to Judge Porteous was wrong and constituted a kickback.

See Amato SITC at 126:10-13. See also HP Ex. 440(b) (Amato Task Force Hrg. at 127).

23. The payments to Judge Porteous were made in cash “to avoid any kind of a paper trail,” and because Judge Porteous wanted cash.

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

24. Pursuant to Judge Porteous’s requests, Mr. Creely and Mr. Amato made the curatorship payments to Judge Porteous every few months.

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

25. Mr. Creely estimated that Judge Porteous received more than 50% of the curatorship fees. Mr. Amato also accepted the estimate that he and Mr. Creely paid Judge Porteous approximately 50% of the curatorship proceeds.

See Creely SITC at 337:5-8; Amato SITC at 129:14-15.

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

See Findings of Fact 27 through 29, below.

27. At the Fifth Circuit Hearing, Judge Porteous admitted that he received cash from Mr. Creely and Mr. Amato as follows:

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.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 119).

28. Judge Porteous confirmed that he started assigning Mr. Creely the curatorships after Mr. 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.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 134).

29. Judge Porteous acknowledged essential aspects of the curatorship scheme in his Fifth Circuit testimony. He also admitted that his receipt of cash from Mr. Amato and Mr. Creely "occasionally" followed his assignment of curatorships to Mr. Creely.

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

A. Occasionally.

See HP Ex. 10 (Porteous Fifth Cir. Hrg. at 130–133).

30. Even though Judge Porteous’s requests for and receipts of cash went through Mr. Creely, Mr. Amato had “no doubt” that Judge Porteous knew that the monies coming back to him were from Mr. Amato as well.

See Amato SITC at 217:2-5.

31. Mr. Amato believes that on occasion he may have personally given the curator money to Judge Porteous.

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

32. It was well known to Judge Porteous that Mr. Amato and Mr. Creely were 50/50 law partners.

See Amato SITC at 214:24-25; Creely SITC at 249:24 – 250:1, 326:21 – 327:3, 327:13-17. *See also* HP Ex. 440(b) (Amato Task Force Hrg. at 100).

33. Judge Porteous, in questioning Mr. Amato at the Fifth Circuit Hearing, acknowledged that the curatorship money provided to Judge Porteous came from Mr. Amato in addition to Mr. 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.

See HP Ex. 20 (Amato 5th Cir. Hrg. at 258–259).

34. Mr. Amato and Mr. Creely each gave Judge Porteous approximately \$10,000 in cash from the curatorship scheme.

See Amato SITC at 131:19-22 (“Over time my best, not estimate but guesstimate would be something under 20,000 or around \$20,000 over a period of 10, 12 years, 15 years, I don’t know.”); Creely SITC at 272:2-4 (“[M]y best estimate of what I gave Judge Porteous was \$10,000, while he was on the state bench.”). *See also* HP Ex. 440(b) (Amato Task Force Hrg. at 101, 108) (agreeing that the total amount was “in the neighborhood of 10 [thousand] to 20 thousand [dollars]”); HP Ex. 20 (Amato 5th Cir. Hrg. at 242, 247).

35. Available curatorship records from 1988 to 1994 show that Mr. Creely was assigned 192 curatorships by Judge Porteous during this timeframe. The fees paid to Mr. Creely, and his law firm Amato & Creely, would have started at \$150 in 1988, increased to \$200 sometime in 1988, and stayed at \$200 until 1994. The payment to Mr. Creely for the 192 curatorships that have been identified is approximately as follows:

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

Based on available evidence, Judge Porteous assigned curatorships to Mr. Creely resulting in the firm of Amato & Creely receiving fees amounting to at least \$37,500 from 1988 through 1994.

See House Chart 40 (previously marked as HP Ex. 190); HP Ex. 188 (Letter from Jefferson Parish Court Clerk re: curator fee amounts), HP Exs. 189(1)–(226) (Curatorships).

36. The assignment of curatorships to Mr. Creely and the requests for cash from the curatorship proceeds by Judge Porteous came to an end when Judge Porteous took the federal bench in October 1994.

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

B. Lunches and Other Things of Value

37. When Judge Porteous was a state court judge, Mr. Amato took him to lunch “on a regular basis[;] . . . a couple times a month,” amounting to “potentially hundreds of lunches.” The restaurants to which Mr. Amato took Judge Porteous included the Beef Connection, the Red Maple, Bertucci’s, Christy’s, Antoine’s, Smith & Wolensky’s and Galatoire’s. Mr. Amato paid for food and drink – typically “at least two” vodka drinks for Judge Porteous and sometimes more. Mr. Amato, or other attorneys who may have been in attendance, paid for all but a handful of these lunches, with Judge Porteous paying “rarely,” that is, a “couple of times, two, three times out of a hundred.”

See Amato SITC at 119:9-12, 122:7-9, 121:9-11, 122:16, 210:12-13. *See also* HP Ex. 20 (Amato 5th Cir. Hrg. at 255).

38. When Judge Porteous was a state court judge, Mr. Creely took him to lunch approximately twice a month. Mr. Creely believed that Amato took Judge Porteous out to lunch more frequently than he (Creely) did. When Mr. Creely and Judge Porteous went to lunch together, either Mr. Creely paid, or someone else paid, “but not Judge Porteous.”

See Creely SITC at 252:10-12, 254:5-9.

39. Both Mr. Amato and Mr. Creely also took Judge Porteous on hunting and fishing trips where they paid all pertinent costs for Judge Porteous. Mr. Creely invited Judge Porteous to attend, and Mr. Creely paid for, hunting trips to Mexico and also trips to Mr. Creely's house boat. Judge Porteous accepted these invitations but never paid.

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

40. In or about late 1994, Mr. Amato and Mr. Creely paid for a portion of an “investiture party” in honor of Judge Porteous becoming a federal judge.

See Danos SITC at 872:2-15 (estimating the attorneys put in about “\$500 each” toward the party).

41. In the summer of 1994, Judge Porteous, through his secretary Rhonda Danos, collected money from attorneys – including Mr. Amato and Mr. Creely – to give to his son Timothy Porteous, for an externship in Washington D.C. Specifically, Judge Porteous asked Ms. Danos to get “sponsors” for his son’s externship.

See T. Porteous SITC at 1243:25 – 1244:9 (“I remember the conversation [Judge Porteous] had had, that he came home and said Bob [Creely] and uncle Jake [Amato] gave you some money, and they said to have a great time and enjoy the experience.”); Danos SITC at 872:19 – 874:5 (describing her phone calls to attorneys, including Amato and Creely, and others seeking money for Timothy Porteous’s externship). *See also* HP Ex. 440(b) (Amato Task Force Hrg. at 104) (confirming that he contributed money for Judge Porteous’s son).

C. The Liljeberg Case

42. 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”]. This case involved a dispute between a hospital and a pharmacy, and involved antitrust law, bankruptcy law, real estate law, and contract law. The case was filed in 1993, and had been assigned to other judges before being transferred to Judge Porteous in January 1996. The matter was particularly contentious, with millions of dollars at stake.

See Mole SITC at 379:13-15; Amato SITC at 189:14-19. *See also* HP Ex. 50 (Pacer Docket Report at p. 5 (Docket No. 1), p. 20 (Docket No. 190)).

43. The Liljeberg case was set for a non-jury trial before Judge Porteous, beginning on November 4, 1996. On September 19, 1996, approximately six weeks prior to the scheduled trial date, the Liljebergs filed a motion to enter the appearances of Jacob Amato and Leonard Levenson as their attorneys. Judge Porteous granted the motion on September 26, 1996.

See HP Ex. 51(a) (Motion to Substitute Counsel); HP Ex. 51(b) (Order).

44. Mr. Amato was hired on a contingent fee basis, and his law firm would receive 8% of any award. Mr. Amato estimated that if the Liljebergs prevailed at trial, the fee would have been between \$500,000 and \$1,000,000, but his firm would receive nothing if the Liljebergs did not prevail. The motion to enter Mr. Amato’s appearance clearly identified him with the firm

“Amato and Creely.” Mr. Amato knew that one of the reasons he was retained was because of his friendship with Judge Porteous.

See Amato SITC at 133:2-11, 134:13-15, 220:7-8. *See also* HP Ex. 51(a) (Motion to Substitute Counsel) (listing Mr. Amato as being with the law firm Amato & Creely, P.C.); HP Ex. 52 (Motion to Recuse at 3) (stating that Levenson and Amato were to receive a contingent fee).

45. The decision by the Liljebergs to add Mr. Amato and Mr. Levenson so close to the trial date aroused the concerns of Lifemark’s lead counsel, Joseph Mole. As a result of these concerns, Mr. Mole asked other persons about their knowledge of the attorneys and their relationship with Judge Porteous. After speaking to several individuals, Mr. Mole “developed some serious concerns that Mr. Amato and Mr. Levenson’s presence in the case would be a problem that would keep the case from having a fair result.”

See Mole SITC at 383:11-14.

46. On October 1, 1996, Mr. Mole, on behalf of his client Lifemark, filed a motion to recuse Judge Porteous. Mr. Mole has described his motion as arguing that “the entry of two of [Judge Porteous’s] closest friends into the case at that late time when the Liljebergs already had at least four law firms involved on their side who knew the case very well would create an appearance of impropriety, so I asked him to step down.” Mr. Mole drafted the motion carefully, alleging in substance “that there was a close relationship between Judge Porteous and Mr. Amato and Mr. Levenson, that they were known to socialize together, that Mr. Amato and the judge had been law partners and that the timing created suspicion that it was the best thing for the judge to do, to avoid the appearance of impropriety, to step aside.”

See Mole SITC at 384:18-23, 385:3-7, 385:16-23, 432:22-23 (stating that “[t]his is the only motion to recuse I’ve ever been involved with”). *See also* HP Ex. 52 (Memorandum in Support of Motion to Recuse); HP Ex. 440(c) (Mole Task Force Hrg. at 141-142) (describing his motion as arguing “that the judge shouldn’t be handling a case where two of his closest friends, if not his very closest friends, had just signed up 6 weeks before trial, whose facts had been in litigation since 1987 in one court or another, and that I didn’t believe they had anything to add, 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”).

47. Lifemark’s recusal motion did not allege an actual conflict of interest or that Mr. Amato (or his partner Mr. Creely) had given money to Judge Porteous because Lifemark’s counsel (Mr. Mole) had no idea what, if anything, Mr. Amato (or Mr. Creely) had ever given to Judge Porteous. If Mr. Mole had known that fact, he would have raised it.

See Mole SITC at 385:24 – 386:10. *See also* HP Ex. 65 (Mole 5th Cir. Hrg. at 169-170).

48. The Liljebergs filed their Opposition, dated October 9, 1996, which was signed by Mr. Levenson; Lifemark filed its Reply to the Opposition, dated October 11, 1996; and the Liljebergs filed a Memorandum in Opposition to Lifemark’s Reply, dated October 15, 1996, again signed by Mr. Levenson. 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.”

See HP Ex. 53 (Liljebergs' Opposition to Lifemark's Motion to Recuse); HP Ex. 54 (Lifemark's Reply to Liljebergs' Opposition); HP Ex. 55 (Liljebergs' Opposition to Lifemark's Reply at 2).

49. On October 16, 1996, Judge Porteous held a hearing on the recusal motion. Both Mr. Amato and Mr. Levenson were present. In that hearing, Judge Porteous made no disclosure of the kickback arrangement that he had previously enjoyed with Mr. Amato. Instead, Judge Porteous made the following statements:

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.

* * *

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

* * *

Mr. Mole: I don't know what the Court wants to do with that issue, whether or not the Court wants to make a statement or accept the statement.

The Court: No, I have made the statement. Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes.

* * *

Mr. Mole: The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns.

The Court: Well, luckily I didn't have any campaigns. So I'm interested to find out how you know that. I never had any campaigns...

* * *

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

* * *

The Court: [T]his is the first time a motion for my recusal has ever been filed. . . . I guess it got my attention. But does that mean that any time a person I perceive to be friends who I have dinner with or whatever that I must disqualify myself? I don't think that's what the rule

suggests. . . . Courts have held that a judge need not disqualify himself just because a friend, even a close friend, appears as a lawyer.

* * *

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

I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them the opportunity if they wanted to ask me to get off. . . .

[In the Bernard case] the court said Section 450 requires not only that a Judge be subjectively confident of his ability to be even handed but [that an] informed, rational objective observer would not doubt his impartiality. . . . I don't have any difficulty trying this case. . . .

[I]n my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right."

See HP Ex. 56 (Recusal Hearing Transcript at 4, 6–7, 8, 10–11, 17–19).

50. During the recusal hearing, Judge Porteous discussed the issue of whether the attorneys had given him campaign contributions and challenged Mr. Mole on that issue:

[D]on't misstate, don't come up with a document that clearly shows well in excess of \$6,700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for all Program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers.

See HP Ex. 56 (Recusal Hearing Transcript at 10).

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

On Wednesday, October 16, 1996, the court heard oral argument on Lifemark Hospitals, Inc.'s Motion to Recuse. The Court, having reviewed the motion to recuse, the opposition, the reply, and the response to the reply and having heard oral argument, for reasons stated in open court denies the Motion to Recuse.

See HP Ex. 57 (Judgment at 1).

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

See HP Ex. 58 (Lifemark’s Petition for Writ of Mandamus); HP Ex. 59 (Order Denying Petition for Writ of Mandamus).

53. Judge Porteous never disclosed – either at the recusal hearing or anytime thereafter – the fact that Mr. Amato and Mr. Creely, through the curatorship scheme, had given him thousands of dollars in cash. Mr. Amato believed that Judge Porteous was at that time “obligated” to have done so, that Judge Porteous’s failure to disclose that financial relationship at the recusal hearing was “dishonest,” and, indeed, that Judge Porteous should have recused himself. Mr. Amato also thought that Judge Porteous’s statements, concerning the fact that the only time he received cash from Mr. Amato and Mr. Levenson involved modest campaign contributions, were “misleading” in that Judge Porteous did not disclose the cash he had received directly from Mr. Creely and Mr. Amato.

See Mole SITC at 385:24 – 387:1; Amato SITC at 230:3-6, 138:1-2, 144:10-13. *See also* HP Ex. 440(b) (Amato Task Force Hrg. at 103) (agreeing that monies given from Amato and Creely to Judge Porteous was a “material fact that would have been relevant to Joseph Mole and Lifemark”).

54. Mr. Amato himself did not make any disclosures at the recusal hearing. He described the consequences of disclosure as follows: “I would be disbarred, my law partner would be disbarred and that the judge would be sanctioned or defrocked, derobed by the judicial commission. At the time they were two of my best friends.” Mr. Amato thus left the decision as to what would be disclosed to Judge Porteous, because “[t]he judge knew as much as I knew.”

See Amato SITC at 139:4-8, 138:17-18. *See also* HP Ex. 440(b) (Amato Task Force Hrg. at 103); HP Ex. 20 (Amato 5th Cir. Hrg. at 248–249).

55. With Mr. Amato (and Mr. Levenson) remaining silent in the courtroom, the few factual disclosures about the relationship between Judge Porteous and Mr. Amato (and Mr. Levenson) were made by Judge Porteous, and these were limited to the statements that he was “a friend with Mr. Amato and Mr. Levenson,” had been a former law partner with Mr. 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 Mr. Amato, through his firm Amato & Creely, had given him thousands of dollars in cash, including monies funded through the assignment of curatorships to Mr. Creely. Judge Porteous did not address Mr. 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 been hunting and fishing with Mr. Amato and Mr. Creely as their guest on several occasions. Judge Porteous also did not disclose that Mr. Amato and Mr. Creely had helped pay for his party to celebrate his appointment to the federal bench or had given money to help support Judge Porteous’s son in connection with the summer 1994 externship.

See HP Ex. 56 (Recusal Hearing Transcript at 4, 7–8). *See also* T. Porteous SITC at 1240:15-24 (testifying that his relationship with Mr. Amato and Mr. Creely has been a “best friend, family

relationship”), 1250:14-24 (testifying that Creely used to come over to the Porteouses’ house for parties).

56. By suggesting merely that he had “dinner with” or “gone along to lunch with” the two men, with no elaboration, Judge Porteous affirmatively concealed what was really the truth: that Mr. Amato (and Mr. Amato’s partner Mr. Creely) had paid for hundreds of his lunches and dinners at expensive restaurants for a decade or longer for which Judge Porteous virtually never reciprocated. Judge Porteous diverted the hearing from the true issues raised in the recusal motion to the issue of whether the attorneys had given him campaign contributions – denying that fact – and criticizing Lifemark’s attorney for raising the issue.

See HP Ex. 56 (Recusal Hearing Transcript at 7, 11).

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

See Mole SITC at 390:5-7, 390:9 – 392:8. *See also* HP Ex. 65 (Mole 5th Cir. Hrg. at 174, 177–180); HP Ex. 60(a) (Motion of Lifemark to Enroll Additional Counsel of Record).

58. Mr. Gardner also gave cash to Judge Porteous when Porteous was a state court judge.

See Gardner SITC 1586:7, 1618:6-7.

59. Judge Porteous admits in his Fifth Circuit testimony that Mr. Gardner gave him cash.

See HP Ex. 32 (Gardner 5th Cir. Hrg. at 461) (questioning by Judge Porteous).

60. 53.3 Mr. Gardner was also given curatorships by Judge Porteous.

See Gardner SITC 1589:5-7.

61. Judge Porteous admits in his Fifth Circuit testimony that he gave Mr. Gardner curatorships.

See HP Ex. 32 (Gardner 5th Cir. Hrg. at 463) (questioning by Judge Porteous).

62. Mr. Gardner contributed to Judge Porteous’s son’s externship in Washington D.C. in 1994. Mr. Gardner also testified that Mr. Creely called him complaining about being asked to contribute to Judge Porteous’s son’s externship.

See Gardner SITC 1589:17-24, 1590:5-25.

63. Judge Porteous conducted a bench trial in the Liljeberg case in June and July 1997.

See HP Ex. 50 (PACER Docket Report at pp. 39–41).

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

See HP Ex. 50 (PACER Docket Report at p. 44 (Docket Nos. 471–472)).

65. Mr. Amato continued to take Judge Porteous to lunches after the Liljeberg trial ended and prior to Judge Porteous issuing his written decision in that case. The restaurants where Mr. Amato took Judge Porteous included Ruth's Chris Steak House, the Beef Connection, Andrea's, and Emeril's.

See HP Ex. 440(b) (Amato Task Force Hrg. at 103–104).

66. From May 1999 to April 2000 (during which time the Liljeberg case was pending), the following chart reflects some of the meals attended by Judge Porteous and paid for by Mr. Amato as reflected on Amato's credit card statements and his calendars.

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"

Date	Restaurant	Amount	Calendar Notes
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]

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

67. In connection with his son Timothy's bachelor party, Judge Porteous went on a trip to Las Vegas, Nevada from May 20-23, 1999, while Liljeberg was pending, with several of his friends, including Mr. Creely and Mr. Gardner. Mr. Creely paid for Judge Porteous's hotel room and some incidental room charges, and he also paid for a portion of Timothy's bachelor party dinner at the Golden Steer. These payments amounted to more than \$1,100. During that trip, Mr. Creely accompanied Judge Porteous and others to a strip club, where Mr. Creely gave a club employee \$200 to pay for a lap dance for Judge Porteous and a courthouse employee.

See Creely SITC at 289:23 – 290:2, 289:17-22, 354:1-10, 291:7-18. See also HP Ex. 377 (Caesars Palace Record reflecting that Creely signed for Judge Porteous's room charges); HP Ex. 378 (consisting of: (1) Caesars Palace records reflecting Judge Porteous's room charges including charges of \$86.11, \$86.11 and \$378.70, and (2) the Amato & Creely corporate American Express statement for May 1999 showing charges for \$86.11, \$86.11, and \$378.70 – from Judge Porteous's hotel room at Caesars Palace – and for \$560.58 – from Creely's payment at the Golden Steer bachelor party dinner – for a total in excess of \$1,100, which did not include other payments Creely made on Judge Porteous's behalf on that trip).

68. Judge Porteous admitted in his Fifth Circuit testimony that Mr. Creely paid for his hotel room on the May 1999 Las Vegas trip.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 140) ("It appears Mr. Creely paid for [my room].").

69. On June 29, 1999 – after his son's wedding and prior to issuing his decision in Liljeberg – Judge Porteous solicited approximately \$2,000 to \$2,500 from Mr. Amato while the two men were on a fishing trip. Mr. Amato described Judge Porteous's request as follows:

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

See Amato SITC at 141:5-14. See also HP Ex. 440(b) (Amato Task Force Hrg. at 104) (fishing trip occurred on June 29, 1999); HP Ex. 283 (Amato's June 1999 calendar showing the name "Mitch Martin" written in the box for June 29, 1999); HP Ex. 440(b) (Amato Task Force Hrg. at 104–105)

("It was a weekday, and a friend of mine has a fairly large boat So we went fishing that night. Judge Porteous was drinking. We were standing on the front of the boat, the two of us, and he was—I don't know how to put it. He was really upset. He was—had a few drinks. He said, "My son's wedding was more than I anticipated. The girl's family can't afford it. I invited too many guests. Would I lend him, give him, provide him, however you want to call it, something, like \$2,500, to pay for part of the wedding or the after-rehearsal party of something?"): HP Ex. 20 (Amato 5th Cir. Hrg. at 240).

70. Mr. Amato subsequently gave Judge Porteous \$2,000 in cash in an envelope.

See Amato SITC at 141:23-24.

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

There was a fishing trip that I wouldn't go on, didn't want to go on. And Judge Porteous and Mr. Amato went on this fishing trip. In general – I don't remember word for word how it went. It was 11 years ago. But the judge and he ended up in some sort of a conversation, either on the front or the back of the boat where the judge became – loss of words, became emotional about not being able to satisfy or pay for the obligation that he needed money for and asked Jake Amato to help him out. And that was what was related to me.

See Creely SITC at 294:4-14.

72. Part of Mr. Amato's motivation to give Judge Porteous the money that Judge Porteous requested was the fact that the Liljeberg case was pending:

Q. Let me ask you now, Mr. Amato, did the fact that you stood to make a lot of money enter your head when he asked you for the cash?

A. It did, yes, it did.

See Amato SITC at 142:23 – 143:1, 232:23 – 233:21 (testifying that part of the reason he gave Judge Porteous money was "because he was a federal judge").

73. When asked to quantify how much of his motivation to give Judge Porteous the money was based on friendship and how much was based on the fact that this was a federal judge sitting on a case worth a potential half million to a million dollars, Amato answered: "20 percent because he was a federal judge."

See Amato SITC at 233:9-21.

74. Judge Porteous, testifying in the Fifth Circuit hearing, admitted that he actually received money from Mr. Amato for the purposes Mr. 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.

* * *

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.

Q. Your impression was that it was a loan was what you just said, correct?

A. Yes.

Q. Did you ever pay back the loan?

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

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 121, 136-138).

75. Contrary to Judge Porteous's assertion, both Mr. Creely and Mr. Amato deny that the \$2,000 Judge Porteous requested and received was a wedding gift.

See Amato SITC at 231:3-11; Creely SITC at 359:25 – 360:8.

76. On one occasion, Ms. Danos recalled that Judge Porteous asked her to pick up an envelope from the Amato & Creely firm. When she picked up the envelope from Mr. Amato's secretary, she asked what was inside it, to which the secretary "kind of rolled her eyes back. And I said, never mind, I don't want to know."

See Danos SITC 870:9 – 871:16.

77. There is no evidence that Judge Porteous ever repaid Mr. Creely and Mr. Amato for any of the money they gave him over the years.

78. In late 1999, during the pendency of the Liljeberg case, Mr. Amato and Mr. 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. Mr. Amato estimated they paid between \$1,000 and \$1,500.

See Amato SITC at 145:12-21; Danos SITC at 871:17-24. *See also* HP Ex. 440(b) (Amato Task Force Hrg. at 105) (at the Task Force Hearing, Mr. Amato estimated \$1,700).

79. Judge Porteous and Mr. Amato had conversations about the Liljeberg case, outside the presence of other counsel, while Judge Porteous had the matter under advisement.

See Amato SITC at 147:4-8.

80. Notwithstanding Judge Porteous's statement at the October 16, 1998 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 Mr. Mole of any of his post-recusal hearing (and post-trial) contacts with Mr. Amato or Mr. Creely in order to provide Mr. Mole the opportunity to move to recuse.

See Mole SITC at 399:2-19. *See also* HP Ex. 65 (Mole 5th Cir. Hrg. at 193) (testifying that he would have been "very alarmed to find out that Jake was giving money to the judge during the case as being under submission for decision by Judge Porteous"); HP Ex. 440(c) (Mole Task Force Hrg. at 145)

("All of those things were the things I—sort of things I feared were happening or would happen, but had—I had no knowledge of.")

81. On April 26, 2000, Judge Porteous issued a written opinion in the Liljeberg case, ruling in all major aspects for Mr. Amato's and Mr. Levenson's clients, the Liljebergs, and resulting in a "resounding loss" for Lifemark.

See Mole SITC at 400:17-18.

82. Lifemark appealed Judge Porteous's decision to the Fifth Circuit Court of Appeals.

See Mole SITC at 401:5-7.

83. In August of 2002, the Fifth Circuit Court of Appeals, reversed Judge Porteous's decision in most significant aspects. In doing so, the Fifth Circuit characterized various aspects of Judge Porteous's ruling as "inexplicable," "a chimera," "constructed entirely out of whole cloth," "nonsensical," "absurd," "close to being nonsensical."

See HP Ex. 63 (Fifth Circuit Opinion in Liljeberg).

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

See Mole SITC 404:6-11.

Article II

A. Overview – The Impact of Louisiana State Judges on the Bail Bonds Business

85. Starting in or about the late 1980s, Louis Marcotte was in the bail bonds business as the owner of Bail Bonds Unlimited ("BBU"), doing business in the 24th Judicial District Court ("24th JDC"), Jefferson Parish, located in Gretna, Louisiana. He worked closely with his sister, Lori Marcotte.

See Louis Marcotte SITC at 503:4-24.

86. In the 24th JDC where Judge Porteous presided as a state judge until October 1994, the bond-setting practices of the state judges had enormous financial impact on Louis Marcotte's bail business. If the bonds were set too high and the prisoner could not afford to pay the premium to the bondsman (typically 10% of the bond), the bondsman would make nothing. If the bond was set too low, or the prisoner was released on his personal promise to reappear, the bondsman would not make any money.

See Louis Marcotte SITC at 506:22 – 507:3.

87. In the 24th JDC, the practice of the Marcottes was that they (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 the bond, run credit reports, and ultimately determine how much the prisoner could afford to pay in the form

of a premium. The Marcottes would use the information they were able to obtain in making a recommendation to one of the judges in the 24th JDC as to the amount of bond that the judge should set.

See Louis Marcotte SITC at 504:20 – 505:3, 523:9-14. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 42).

88. As a general matter, the Marcottes wanted bonds to be set at the highest amount for which the individual who was arrested could afford to pay the premium, but no higher. Every time a judge set bond at the Marcottes' request, the Marcottes made money.

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

89. The procedures in the 24th JDC during the relevant time period called for bond to be initially set by a sitting magistrate assigned to that duty. However, any judge in the courthouse could set bond, so if the Marcottes thought that the sitting magistrate would set the bond too high or too low, they would seek out a judge to set the bond at their recommended 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.”

See IIP Ex. 442 (Louis Marcotte Task Force Hrg. at 43); HP Ex. 448 (Lori Marcotte Sen. Dep. at 49:2-4 (“[Sometimes] we didn’t even call the magistrate if we knew it was someone that wouldn’t help us.”); HP Ex. 447 (Louis Marcotte Sen. Dep. at 139:22 – 140:11) (Louis went to Judge Porteous if he thought he could do better with Judge Porteous than the Magistrate, not just if the Magistrate were unavailable).

B. The Relationship Between Judge Porteous and the Marcottes

I. Meals

90. In the early 1990s, the Marcottes started to develop a relationship with Judge Porteous. They met him through Adam Barnett, another bondsman who would work with the Marcottes. Barnett was close to Judge Porteous, and the Marcottes used Barnett to approach Judge Porteous to set bonds.

See Louis Marcotte SITC at 509:7-20, 560:12 – 561:10. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 10:14-18); HP Ex. 447 (Louis Marcotte Sen. Dep. At 18:12-18, 23:2-4).

91. After the Marcottes started to get to know Judge Porteous, they began to take Judge Porteous to lunch, along with his secretary, Rhonda Danos. Louis Marcotte allowed Judge Porteous to bring whomever Judge Porteous wanted to bring. The meals were expensive and involved significant consumption of alcohol, particularly by Judge Porteous.

See Louis Marcotte SITC at 509:21-25, 510:16-25, 511:1-7, 512:1-7 (“lots of drinking”); Duhon SITC at 661:12-16, 663:18-25; Danos SITC at 892:12-20 (“a few times a month”). *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 22:1-3).

92. The Marcotte lunches with Judge Porteous started in or around 1992.

See HP Ex. 448 (Lori Marcotte Sen. Dep. at 15:23 – 16:25; 60:16-25). It should be noted that former state judge Alan Green was elected in October of 1992. *See* PORT Ex. 1007 (list of judges who served on 24th JDC). In questioning Ms. Marcotte at the evidentiary hearing, defense counsel represented that Green was elected in November 1993. In response, Ms. Marcotte stated: “I thought it was sooner.” *See* Lori Marcotte SITC at 646:15-19. That colloquy confirms not only the specificity and certainty of Ms. Marcotte’s recollection as to dates that the Marcottes’ relationship with Judge Porteous and the lunches began, but the accuracy of her recollection that they started in 1992, especially in the face of a mistaken representation of fact by defense counsel.

93. Louis Marcotte estimated the lunches with Judge Porteous occurred “around once a week and sometimes twice a week” and identified the restaurants as including the Beef Connection and Ruth’s Chris [Steak House], and other “high-end restaurants.”

See Louis Marcotte SITC at 512:8-17. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 44); HP Ex. 448 (Lori Marcotte Sen. Dep. at 66:13 – 67:6) (Ruth’s Chris Steak House, the Beef Connection, and the Red Maple).

94. To arrange these lunches, Judge Porteous would sometimes call Louis Marcotte, and Louis Marcotte would sometimes call Judge Porteous. Or, in other instances, the Marcottes would call Rhonda Danos and she would set up the lunch.

See Louis Marcotte SITC at 510:11-15. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 44) (“It started out with me calling him for lunch. And then, as we got closer and developed a relationship, he would call and then I would call.”)

95. Louis Marcotte paid for the lunches with Judge Porteous through his company, BBU. Judge Porteous never paid for a lunch that he attended with the Marcottes.

See Louis Marcotte SITC at 514:7-16 (“none,” “never”). *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 45) (Of a hundred lunches that Judge Porteous may have attended with Louis Marcotte, Judge Porteous “didn’t pay for any.”).

96. The Marcottes wanted there to be a lot of people at the lunches because Judge Porteous liked to have people around him, and the Marcottes wanted him to have a good time. In addition, it helped the Marcottes for other judges who were guests at their lunches to see them with Judge Porteous, because it made Louis Marcotte “look like a businessman instead of a bondsman.”

See Louis Marcotte SITC at 511:8-18. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 61:4-11, 61:22 – 62:2, 62:15-20) (describing how a lunch would come about: “As soon as a judge gets elected, let’s try to get him at the table. Let’s try to train him. And that was an opportunity for Judge Porteous to have an entourage with him too. Let’s invite two or three judges and their staff and the table would be big like this.”).

97. No matter how many people were in attendance at the lunches, the Marcottes viewed these lunches, and the monies they spent on them, as money being spent on and for the benefit of Judge Porteous.

See Louis Marcotte SITC at 514:17-20. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 122:13 – 123:1); HP Ex. 447 (Louis Marcotte Sen. Dep. at 38:5 – 39:1, 137:14-21) (Louis became tired of drinking in the middle of the day when he needed to work at his business).

98. At one of the lunches, Judge Porteous helped the Marcottes form a relationship with Judge Alan Green, who was ultimately convicted of a corruption offense arising from his relationship with the Marcottes. Lori Marcotte described this lunch 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 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.

See HP Ex. 442 (Lori Marcotte Task Force Hrg. at 57); HP Ex. 448 (Lori Marcotte Sen. Dep. at 58:15-21).

2. Car Repairs

99. When Louis Marcotte was first dealing with Judge Porteous through Adam Barnett and did not have direct contact with him, Adam Barnett on occasion asked Louis Marcotte to share the expenses associated with taking care of Judge Porteous’s cars, and, on occasion a portion of the bond premium for a bond that was set by Judge Porteous for Barnett would be used to pay for car repairs.

See Louis Marcotte SITC at 515:12-20. *See also* HP Ex. 447 (Louis Marcotte Sen. Dep. at 23:23 – 24:4, 95:4-12, 34:3-20, 45:4-12, 134:12-20) (“Adam and I would share the costs of the car but Porteous didn’t know it was coming from me. He just through Adam was doing it.”).

100. Louis Marcotte was ultimately able to “edge Adam [Barnett] out” of the relationship with Judge Porteous, and began to deal with Judge Porteous directly.

See Louis Marcotte SITC at 515:12-20.

101. After Adam Barnett was “edged out,” the Marcottes, through their employees, Jeff Duhon and Aubry Wallace, began to take care of Judge Porteous’s various automobiles (including those of his family). 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, including tires, radios, transmission, and body work.

See Louis Marcotte SITC at 515:4-7, 516:4-11; Duhon SITC at 657:10-17 (“brakes, air conditioning, transmission and things like that”). *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 45–46); HP Ex. 448 (Lori Marcotte Sen. Dep. at 85:11-16).

102. On occasion, Mr. Duhon would go to Judge Porteous’s chambers to pick up the keys so he could take care of the cars.

See Duhon SITC at 657:19-20; Griffin SITC AT 1842:7-19 (“I know [the Marcottes] were coming to get the keys” to do something with Judge Porteous’s cars).

103. Louis Marcotte would make repairs to Judge Porteous’s cars “once a month or once every three months.”

See Louis Marcotte SITC at 516:13-15; Duhon SITC at 658:10-16. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 60:20-24) (“His car was broken a lot.”).

104. Judge Porteous gave Aubry Wallace the security code to the courthouse parking lot, and on occasion Wallace would get the keys to Judge Porteous’s car from under the floor mat.

See Wallace SITC at 682:14-19.

105. On several occasions when Mr. Wallace returned the car to Judge Porteous, the Marcottes would leave presents in the car for Judge Porteous, such as liquor and coolers of shrimp.

See Wallace SITC at 685:23 – 686:11.

106. Louis Marcotte, through BBU, paid for all Judge Porteous’s car repairs, and Judge Porteous never reimbursed him.

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

3. Trip to Las Vegas with Judge Giacobbe and Attorney Bruce Netterville

107. In or about 1992, Lori Marcotte took Rhonda Danos to Las Vegas. Judge Porteous did not attend this trip

See Lori Marcotte SITC at 610:7-17.

108. In approximately 1993 or 1994, the Marcottes paid for a trip for Judge Porteous to Las Vegas. Louis Marcotte wanted to take Judge Porteous to Las Vegas to build a better relationship with him. Also in attendance was another state judge, George Giacobbe. Louis Marcotte also had some local lawyers, including Bruce Netterville, join them. Mr. Marcotte wanted the lawyers on the trip because he knew that bail bondsmen do not enjoy a great reputation and it would not look good for Judge Porteous to be going to Las Vegas only with him.

See Louis Marcotte SITC at 518:21 – 520:5; Lori Marcotte SITC at 610:16 – 611:2. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 46).

109. Louis Marcotte and Lori Marcotte split the costs of Judge Porteous’s trip with the attorneys and paid Judge Porteous’s secretary, Rhonda Danos, with cash. The Marcottes paid for the trip in cash “to hide it from the world.”

See Louis Marcotte SITC at 520:6-17; Lori Marcotte SITC at 611:2-14; Danos SITC at 876:20-21 (recalling being reimbursed by Marcottes for a trip, but not recalling if it were Louis or Lori, or check or cash). *See also* HP Ex. 442 (Lori Marcotte Task Force Hrg. at 56) (Lori Marcotte recalled “standing in [Danos’s] office, with another attorney, handing her the money.”).

4. Home Repairs

110. In or about 1994 – while Judge Porteous was still a state judge – Judge Porteous told Louis Marcotte that a storm blew his fence down. Mr. Marcotte sent Jeff Duhon and Aubry Wallace to do the repairs at Judge Porteous’s house. Mr. Duhon purchased the necessary materials, consisting of poles, concrete, two by fours, and boards. Louis Marcotte paid for the materials. Mr. Duhon estimated that he repaired about 85 feet of fence and that the project took about three days.

See Louis Marcotte SITC at 18:4-8; Duhon SITC at 660:17-20, 660:24-25, 659:19 – 660:6; Wallace SITC at 686:12 – 687:3. See also HP Ex. 442 (Louis Marcotte Task Force Hrg. at 46).

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

See Danos SITC 895:19 – 896:18. See also HP Ex. 448 (Lori Marcotte Sen. Dep. at 22:4-22, 26:17-21 (“[W]e wanted to spend money to make her happy.”), 110:4-24 (1992 Las Vegas trip with Danos during which they flew over the Grand Canyon), 111:21 – 112:15 (provided Danos things of value because she controlled access to Judge Porteous, was the “gatekeeper,” and because she helped them with bond matters)).

C. Judge Porteous’s Actions on Behalf of the Marcottes

1. Setting Bonds

112. The Marcottes gave Judge Porteous things of value described in the prior findings to induce him to take steps in his judicial capacity on their behalf, primarily setting bonds as they requested.

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

113. The Marcottes would go to Judge Porteous in cases where the bonds were set too high (and they thus needed, in effect, a bond reduction) or when the bonds had not been set at all and he was asked to set bond as an initial matter. Judge Porteous had great discretion in setting bonds.

See Louis Marcotte SITC at 521:9-18. See also HP Ex. 447 (Louis Marcotte Sen. Dep. at 74:4-8).

114. When the Marcottes would approach Judge Porteous about setting bonds, they would ask Judge Porteous to set a bond that would maximize their profits, that is, at the greatest amount that the prisoner could afford. They would produce a “worksheet” that would reflect what a defendant could afford, and they would ask Judge Porteous to “approve the worksheet.” On occasion, the Marcottes would be very specific as to how much the prisoner could afford.

See Louis Marcotte SITC at 521:19-24, 523:2-7, 524:17 – 525:1; Duhon SITC at 662:11-21.

115. Judge Porteous would make himself available to set bonds, and the Marcottes enjoyed easy access to him. The Marcottes would go by his chambers, would drop off paperwork with Rhonda Danos, or call at his house.

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

116. Judge Porteous would set bonds for the Marcottes that other judges did not want to handle.

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

117. Judge Porteous would spend extra effort to figure out ways to set or reduce bonds in order to help the Marcottes. He would be inventive and take risks in “splitting bonds.”

See Lori Marcotte SITC at 650:10-19. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 53:5-10, 57:3-19, 114:25 – 115-14).

118. Judge Porteous knew that by setting bonds for the Marcottes, he was helping them make money.

See Louis Marcotte SITC 525:2-5.

119. An inherent and inevitable consequence of Judge Porteous’s willingness to set bonds at levels requested by the Marcottes was that some families would suffer financially by being charged the very maximum they could afford, instead of the amount that was necessary to secure a family member’s appearance in court.

120. Louis Marcotte and Judge Porteous would occasionally discuss how to defend various bond-setting policies and practices that were of value to the Marcottes, including how to justify “splitting bonds” as a way of addressing prison over-crowding.

See Bodenheimer SITC at 1306:3-18.

121. After the Marcottes took Judge Porteous to lunch or took care of his car, Judge Porteous would be “more apt to do things” for them.

See Louis Marcotte SITC at 528:8-10, 603:3-7. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 123:2-6) (agreeing that “because of those things [the Marcottes] were doing, Judge Porteous took the extra step every time he could exercise discretion in [their] behalf”).

122. Typically, no defense attorney or representative from the District Attorney’s Office was involved in the setting of bonds – the conversations were solely between the Marcottes and Judge Porteous.

See Mamoulides SITC 1768:22-23 (“[M]y office didn’t participate in the setting of bonds and all.”), 1800:8-11 (“[W]e stayed away. We wouldn’t recommend bond And it was always done without a DA there. That could be in the middle of the night or whatever.”), 1802:15-20

(“[W]e didn’t recommend bonds unless we were specifically asked by the sheriff’s office or somebody on a flight problem or whatever. It was done without us being there before we even got a charge. And I didn’t want my people participating in that.”). *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 113:9 – 114:4 (no District Attorney involvement in the “vast, vast, majority of the bonds that Judge Porteous set”)); HP Ex. 447 (Louis Marcotte Sen. Dep. at 14:7-14).

123. If Judge Porteous were not a state judge, and had could not have assisted the Marcottes in setting and reducing bonds, lending his prestige, and taking judicial actions at their request, the Marcottes would not have taken him to lunch, taken him to Las Vegas, fixed his cars, or fixed his house.

See Louis Marcotte SITC at 537:12-20.

124. Louis Marcotte described the reasons he gave Judge Porteous things of value: “I wanted service, I wanted access, and I wanted to make money.” As Louis starkly put it: “He would do more when we would do more for him.

See HP Ex. 442 (Louis Marcotte Task Force Hrg. at 47); HP Ex. 447 (Louis Marcotte Sen. Dep. at 62:20-21, 123:10-25).

2. Expunging the Duhon Conviction

125. In 1993 at Louis Marcotte’s request, Judge Porteous expunged the burglary conviction of Jeffery Duhon. Duhon, an employee of the Marcottes, was also married to Lisa Marcotte (Louis’s other sister). At the time, Louis Marcotte wanted Duhon to obtain a bail bondsman’s license, but Duhon was not eligible because of the burglary conviction. Marcotte approached Judge Porteous and asked him to expunge the conviction. Pursuant to Louis Marcotte’s request, Judge Porteous did expunge the conviction. Judge Porteous’s action in expunging Duhon’s conviction was noteworthy because Duhon had been sentenced by Judge E. V. Richards, not Judge Porteous, “[s]o what [Judge Porteous] did was he took the conviction out of another section and brought it in his section and then expunged the record.”

See Louis Marcotte SITC at 528:10 – 530:20; Duhon SITC at 655:10-15. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 48); HP Ex. 448 (Lori Marcotte Sen. Dep. at 100:12-18) (“My brother was the hound, keep going, let’s get it done, let’s get it done, let’s get it done.”).

126. Duhon had nothing to do with getting the expungement done or paying the lawyer who handled the paperwork. Louis Marcotte told Duhon that he (Marcotte) had taken care of it and Duhon had no recollection of a lawyer filing papers on his behalf.

See Duhon SITC at 665:22 – 666:16; 670:4-8.

D. The July – August 1994 Background Check of Judge Porteous

127. On August 1, 1994, Louis Marcotte was interviewed as part of Judge Porteous’s standard background check. Judge Porteous told him that the FBI was going to be coming to interview him.

See Louis Marcotte SITC at 532:10-15. *See also* HP Ex. 69(b) (FBI Background Check at PORT 472-473).

128. Louis Marcotte was initially interviewed on August 1, 1994 and 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 candidate to associate with anyone of questionable character.

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.

See HP Ex. 69(b) (FBI Background Check at PORT 503-504).

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

See Louis Marcotte SITC at 531:16 – 532:16. *See also* HP Ex 442 (Louis Marcotte Task Force Hrg. at 49); HP Ex. 447 (Louis Marcotte Sen. Dep. at 39:16-21) (four or five Absolut Vodkas).

130. Louis Marcotte's statement to the FBI that he had no knowledge of the candidate's financial situation was false. In truth and in fact, Louis Marcotte knew that Judge Porteous was having financial problems. Louis Marcotte drew that conclusion from Judge Porteous's beat up cars, and knowledge of Judge Porteous's costly lifestyle, including the fact that Judge Porteous gambled a lot and drank.

See Louis Marcotte SITC at 532:23 – 533:8. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 49) ("[B]y looking at the surroundings and the problems with the drinking and the cars and asking people for repairs and stuff like that, you know, one would think that, hey this guy is struggling. And by looking at the cars, you could see that he was struggling."); HP Ex. 447 (Louis Marcotte Sen. Dep at 139:3-5) (Louis Marcotte had never seen anybody drink as much as Judge Porteous at the lunches).

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

See Louis Marcotte SITC at 533:14 – 534:2, 603:12-17. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 50) (acknowledging that he "was lying" not only because of his knowledge of Judge Porteous's "actions with the gambling, the drinking" but because of Louis Marcotte's

knowledge of his own relationship with Judge Porteous, which gave him leverage over Judge Porteous).

132. Louis Marcotte lied to the FBI to protect Judge Porteous and help him get his lifetime appointment, because Judge Porteous had been good to him, and also because Marcotte wanted to protect himself.

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

133. At a subsequent interview on August 17, 1994, the FBI interviewed Louis Marcotte about an allegation that Judge Porteous received money from an attorney to lower bail in the “Keith Kline” case. Louis Marcotte did not have first-hand knowledge of the facts in that case.

See Louis Marcotte SITC at 534: 12 – 535:1. *See also* HP Ex. 69(b) (FBI Background Check at PORT513–514).

134. Louis Marcotte’s false statements to the FBI on Judge Porteous’s behalf were part of the corrupt relationship between Marcotte and Judge Porteous, characterized by Marcotte doing things for Judge Porteous and Judge Porteous doing things for Marcotte. Louis Marcotte told the FBI in 1994 what he believed Judge Porteous wanted him to say.

See Louis Marcotte SITC at 535:6-22. *See also* HP Ex. 447 (Louis Marcotte Sen. Dep. at 55:23 – 56:1 (“Q. Did [Judge Porteous] ever ask you to lie to the FBI at that point or tell you to say specific things? A. No, he didn’t. But I think he expected me to say all good about him.”).

135. Louis Marcotte met with Judge Porteous soon after the FBI interviews and told Judge Porteous, in substance, “thumb’s up” or that he (Marcotte) had given Judge Porteous “a clean bill of health.”

See Louis Marcotte SITC at 535:13-22). *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 51, 64) (after FBI interview he shortly thereafter met with Judge Porteous and “told him [Judge Porteous] everything that they asked about” and that he had given Judge Porteous “a clean bill of health.”).

E. Judge Porteous’s October 1994 Set-Aside of Wallace’s Felony Conviction

136. Marcotte’s employee, Aubry 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 by Judge Porteous the same day to a suspended sentence of three years incarceration and placed on probation for two years. At the time of his May 1989 burglary arrest, Wallace was under indictment for felony drug charges (PCP and cocaine) for an offense alleged to have occurred on December 15, 1988. At the time of his guilty plea and sentence for the burglary charge, the drug charges remained outstanding. Judge Porteous did not sentence Wallace under the Article 893E of the Louisiana Code of Criminal Procedure that would permit the sentence to be set aside if Wallace successfully completed probation.

See HP Ex. 81 (*State v. Wallace*, case file for drug case); HP Ex. 82 (*State v. Wallace*, case file for burglary case).

137. On February 26, 1991, while he was on probation for the burglary conviction, Wallace pleaded guilty to the felony drug charges of possession of over 28 grams of cocaine and possession of PCP and was sentenced to five years incarceration. As a result of Wallace's incarceration on the drug charges, Judge Porteous entered an order dated December 11, 1991: "IT IS HEREBY ORDERED BY THE COURT that the subject's probation is hereby terminated unsatisfactorily."

See HP Ex. 81 (State v. Wallace, case file for drug case); HP Ex. 82 (State v. Wallace, case file for burglary case).

138. Wallace completed his sentence on the drug case and was released from prison in August of 1993.

See Wallace SITC at 705:22-23.

139. At around the time of his Judge Porteous's nomination to be a federal judge, Louis Marcotte asked Judge Porteous to set aside the felony burglary conviction of Wallace. (This incident is also discussed in the Article IV Factual Findings).

See Louis Marcotte SITC at 535 (line 23) to 536 (line 6) Louis Marcotte asked Judge Porteous, in substance, "could you get this guy's record expunged so he can become a licensed bail agent."

140. Louis Marcotte continued to press Judge Porteous to get him to set aside Wallace's conviction.

See Louis Marcotte SITC at 536:4-7.

141. Judge Porteous agreed that he would set aside Wallace's conviction after he (Judge Porteous) was confirmed.

See Louis Marcotte SITC at 536:8-12, 536:17-23. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 51).

142. Judge Porteous set aside Wallace's conviction on October 14, 2001, after he had been confirmed by the Senate.

See Louis Marcotte SITC at 536:24 – 537:5.

143. Judge Porteous's action in setting aside Wallace's conviction was a favor that Judge Porteous did for Louis Marcotte and was worked out between Judge Porteous and Mr. Marcotte.

See Louis Marcotte SITC at 547:6-9; Wallace SITC at 690:11 – 691:18, 714:4-7. *See also* HP Ex. 442 (Louis Marcotte Task Force Hr. at 51) ("Q. Was there any question in your mind that he set aside the conviction as a favor to you? A. Yes, he did it for me.").

**F. November 1994 – Judge Porteous’s Interview by
the Metropolitan Crime Commission.**

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

See Goyeneche SITC at 719:6-14.

145. After receiving the allegation, Rafael Goyeneche, the President of the MCC, researched the procedural and legal background of the Wallace case.

See Goyeneche SITC at 721:17 – 722:14.

146. On November 8, 1994, 11 days after Judge Porteous was sworn in as a Federal Judge, Goyeneche, along with a colleague, interviewed Judge Porteous in his Chambers in the Federal Court building.

See Goyeneche SITC at 727:6-22. See also HP Ex. 69(b) (FBI Background Check at PORT594–597).

147. Goyeneche reduced that interview to a memorandum shortly after it occurred, and that Memorandum constitutes a fair and accurate record of what Judge Porteous said at that time.

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

148. At the outset of the interview, Judge Porteous stated: “[L]ets not sugar coat anything, in other words you guys think I’m dirty.”

See Goyeneche SITC at 728:9-18. See also HP Ex. 69(b) (FBI Background Check at PORT594).

149. In the interview with the MCC, Judge Porteous falsely denied having “frequent” lunches with the Marcottes, falsely denied that the Marcottes paid his way to Las Vegas, and falsely and vehemently denied that he amended Wallace’s sentence out of friendship or at the request of Louis Marcotte. Those portions of the interview were as follows:

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

See Goyeneche SITC at 731:13 – 732:10. See also HP Ex. 69(d) (MCC Intelligence Report at PORT594–597).

150. In addition, Goyeneche believed that Judge Porteous’s action in amending Wallace’s sentence was unlawful and not permitted under the Louisiana sentencing laws which provide authority for a Judge to amend a sentence.

See Goyeneche SITC at 735:4-23. See also HP Ex. 69(d) (Sentencing Guidelines at PORT 672).

151. Goyeneche informed Judge Porteous that in Goyeneche’s opinion, Judge Porteous’s actions in amending Wallace’s sentence were improper under Article 881 because that Article limits the court’s discretion to amend sentences to instances prior to the beginning of the execution of the sentence, and Wallace’s sentence was amended after completion of his jail term for a narcotics conviction and while he was on supervised parole. In response, “[Judge Porteous] admitted that his actions were contrary to Article 881 but defended his actions by stating that the assistant district attorney who was present in the Court should have objected to the amendment of Wallace’s sentence.”

See Goyeneche SITC at 736:5-16. See also HP Ex. 69(d) (MCC Intelligence Report at Port 597).

152. Judge Porteous ended the interview by telling Goyeneche to “do what you think you have to do.”

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

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

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

See HP Ex. 119(a) (Times-Picayune article: “Amending Sentence Questioned, Federal Judge Defends Actions”).

G. Judge Porteous’s Relationship with Louis Marcotte and Lori Marcotte While He was a Federal Judge

1. Overview

154. When Judge Porteous became a federal judge, he could do less for the Marcottes, and, accordingly, the Marcottes did less for him. They continued to pay for some lunches and

drinks, and he assisted them by helping to recruit state judges to fill his former position as the go-to judge for the Marcottes in setting bonds.

See Louis Marcotte SITC at 537:21 – 538:20.

155. Though the Marcottes' relationship with Judge Porteous slowed down when he became a federal judge, it did not come to an end. The Marcottes continued to maintain an association with Judge Porteous, and took him to lunch, albeit less frequently. Judge Porteous "brought strength to the table" on any issues for which the Marcottes sought his assistance, particularly in maintaining and forging relationships with other state judicial officers and business executives.

See HP Ex. 442 (Louis Marcotte Task Force Hrg. at 52). *See also* Lori Marcotte SITC at 611:25 – 612:10. As Louis Marcotte explained, "It would make people respect me because, you know, I am sitting with a Federal judge." As Lori described: "So going to lunch with Judge Porteous as a federal judge, other judges in the 24th Judicial Court would view us as trusted people because we were hanging around with a federal judge."

2. Maintaining the Marcotte-Porteous Relationship

156. Louis Marcotte and Lori Marcotte continued to take Judge Porteous to lunches when he was a Federal judge – typically with others, and frequently with other state judges. The following chart reflects lunches at the Beef Connection at which Judge Porteous was in attendance in the period for which records exist and were obtained.

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

See HP Ex. 372(a) (August 6, 1997); HP Ex. 372(b) (August 25, 1997); HP Ex. 372(c) (November 19, 1997); and HP Ex. 372(d) (August 5, 1998). The exhibits for the last two dates also include the pertinent pages from a BBU calendar that contain a reference to Judge Porteous on the given date. *See* HP Ex. 373(c) (February 1, 2000) and HP Ex. 373(d) (November 7, 2001). The exhibits supporting the first four dates in this column 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.

3. PBUS Convention in New Orleans – July 1996.

157. In July 1996, the PBUS held its annual convention at the Hotel Sonesta in New Orleans, at which Judge Porteous was a speaker. The convention was hosted by the Marcottes, who paid for many of the expenses of that convention, including food and drinks for Judge Porteous.

See Lori Marcotte SITC at 614:12-25. See also HP Ex. 90(a) (Professional Bail Agents of the United States Mid-Year Conference Program).

4. PBUS Convention at the Beau Rivage – July 1999.

158. In July 1999, the PBUS held its annual convention at the Beau Rivage resort in Biloxi, Mississippi, at which Judge Porteous was a speaker. Again, the Marcottes paid for some of the events and entertainment at that convention. 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.

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

159. Judge Porteous did not disclose the reimbursement in connection with the July 1999 PBUS convention 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, 6/9-6/1 2/99, 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).”

See Agreed Stipulation 160. See also HP Ex. 105(a) (1999 Financial Disclosure Form).

5. Judge Porteous’s Assistance to the Marcottes

a. Helping with Justice of the Peace Charlie Kerner, Justice of the Peace Kevin Centanni and Insurance Company Representative Norman Stotts

160. Judge Porteous, well-knowing that the Marcottes had formed a corrupt relationship with him, used the power and prestige of his office as a federal judge to help the Marcottes by vouching for their honesty, vouching for their practices, and recruiting a successor.

See Findings of Fact 164–166, below.

161. Justice of the Peace Kerner was from Lafitte, Louisiana, where Rhonda Danos was from. The Marcottes set up a lunch with Kerner and Judge Porteous, through Ms. Danos, at the Beef Connection in 1997. At that lunch, Louis Marcotte took out a Louisiana law book and started telling Justice of the Peace Kerner how he could set bonds. Judge Porteous also

vouched for the Marcottes, telling Justice of the Peace Kerner that he could trust the Marcottes and that the Marcottes were good people. Justice of the Peace Kerner was uncomfortable in the relationship Judge Porteous was encouraging him to form with the Marcottes and had no interest in pursuing that relationship.

See Lori Marcotte SITC at 612:11 – 613:8. *See also* HP Ex. 448 (Lori Marcotte Sen. Dep. at 117:12-25); HP Ex. 447 (Louis Marcotte Sen. Dep. at 110:12 – 111:1, 112:24 –113:1).

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

See HP Ex. 448 (Lori Marcotte Sen. Dep. at 118:9-15).

163. The Marcottes also took Judge Porteous out to lunches with Norman Stotts. Stotts worked for the insurance company on behalf of which the Marcottes wrote bonds, and Stotts would decide what type of bond writing authority the Marcottes were allowed to have. He was important to the Marcottes' business. The Marcottes brought Judge Porteous to meals with Stotts "to develop trust, reputation, stability on our part, that was a good way for the insurance company to give us a high writing level." Having Judge Porteous present "made us look important."

See Lori Marcotte SITC at 613:9 – 614:11).

b. 1999 – Helping with Newly Elected State Judge Ronald D. Bodenheimer

164. In 1999, Louis Marcotte asked Judge Porteous to speak to newly elected state judge Ronald Bodenheimer on the Marcottes' behalf in order that Bodenheimer could "step into [Judge Porteous's] shoes." He told Judge Porteous: "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."

See Louise Marcotte SITC at 538:24 – 539:12. *See also* HP Ex 442 (Louis Marcotte Task Force Hrg. at 53).

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

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

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

See Louis Marcotte SITC at 539:25 – 540:10. *See also* HP Ex. 442 (Louis Marcotte Task Force Hrg. at 53); HP Ex. 448 (Lori Marcotte Sen. Dep. at 74:13-16) (“some repairs on his house”); HP Ex. 447 (Louis Marcotte Sen. Dep. at 86:5-8, 115:21 – 116:5).

167. In March 2002, Louis Marcotte invited Judge Porteous to lunch at “Emeril’s” restaurant that Marcotte arraigned as part of an attempt to improve his relationship with newly elected State Judge Joan Benge. Louis Marcotte wanted Judge Porteous there “to talk about bail and how good it is for the system, you know, so she would start doing bonds.” Judge Bodenheimer was also in attendance at that lunch. Judge Porteous in fact joined the lunch.

See Louis Marcotte SITC at 541:17 – 542:2. *See also* HP Ex. 447 (Louis Marcotte Sen. Dep. at 112:2-9) (“I thought that, you know, by using a Federal judge sitting there, that it would accelerate the amount of bonds that they [Bodenheimer and Benge] were doing for us, you know, we’re bringing strength to the table.”).

168. Ronald Bodenheimer pleaded guilty in March of 2003 to Conspiracy to Commit Mail Fraud on a “deprivation of honest services” theory. Among the overt acts charged in the Information was that Bodenheimer:

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.

See Bodenheimer SITC at 1296:4-19. *See also* HP Ex. 88(d) (Superseding Bill of Information at 3).

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

See Bodenheimer SITC 1298:12 – 1299:8. *See also* HP Ex. 88(f) (United States v. Bodenheimer, Factual Basis at 10).

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

See HP Ex. 88(h) (United States v. Bodenheimer, Judgment and Probation/Commitment Order).

6. Louis Marcotte Affidavit

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

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

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

172. Louis Marcotte believed that the affidavit was “completely false” “[b]ecause all of the meals and the cars and the wining and dining, the trips, all that was for him to do bonds.”

See Louis Marcotte SITC at 545:3-6.

173. Louis Marcotte knowingly signed the false affidavit to protect and help Judge Porteous.

See Louis Marcotte SITC at 545:7-20.

7. Alan Green's Criminal Conviction

174. 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. As noted above, Judge Porteous played an instrumental role in assisting the Marcottes in forming a relationship with Green when he was a state judge.

See HP Ex. 93(a) (United States v. Green, Indictment).

175. The Indictment (in Count Two) alleges that Green “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;” 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; and 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 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 profits and minimize its liability.”

See HP Ex. 93(a) (United States v. Green, Indictment).

176. On June 29, 2005, the jury found Green guilty of Count Three of the Indictment, which incorporated by reference the scheme set forth above. Judge Green was sentenced on February 9, 2006, to 51 months incarceration, to be followed by three years of supervised release.

See Ex. 93(b)(United States v. Green, Judgment in a Criminal Case) (referencing date and counts of conviction).

H. The Bond Practices and Policies of Others

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

See Mamoulides SITC 1795:10-1978:1.

178. If Mamoulides had been informed that Judge Porteous was taking judicial actions to benefit the Marcottes, who were doing him favors, he would have told Judge Porteous that it was wrong.

See Mamoulides SITC 1806:17 – 1807:6.

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

179. In March 2004, Louis Marcotte pleaded guilty to Racketeering Conspiracy. That conspiracy was alleged to have commenced prior to 1991. The temporal scope of the scheme is consistent with the inception of the corrupt relationship between Marcotte and judges in the 24th JDC as having commenced with their relationship with Judge Porteous. Similarly, the Information's elaboration of the acts of the judicial conspirators describes the actions of Judge Porteous. The Information described the racketeering conspiracy, in pertinent part, as follows:

3. It was a further part of the conspiracy that, in return for things of value, certain judges would make themselves available to BBU; quickly respond to the requests of BBU; and set, reduce, increase, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

4. It was a further part of the conspiracy that, to allow BBU to maximize profits, the conspirator judges would engage in the practice of "bond splitting." . . . At BBU's request, the conspirator judge would set the commercial portion of the bond at an amount the defendant could afford and would set the balance in some other manner. BBU would then post the commercial portion of the bond and collect a percentage of that bond as commission. This practice allowed BBU to maximize its profit and minimize its liability.

See HP Ex. 71(a) (United States v. Marcotte, Bill of Information at 4).

180. Louis Marcotte was sentenced August 28, 2006 to 38 months incarceration, followed by three years supervised release.

See HP Ex. 71(c) (United States v. Marcotte, Judgment in a Criminal Case).

181. Lori Marcotte pleaded guilty at the same time as Louis Marcotte to Conspiracy to Commit Mail Fraud.

See HP Ex. 71(a) (United States v. Marcotte, Bill of Information at 14–15).

182. Lori Marcotte was sentenced August 28, 2006 to three years probation, including six months of home detention.

See HP Ex. 73(d) (United States v. Marcotte, Judgment in a Criminal Case).

183. In response to questioning by Mr. Schiff, Louis Marcotte described Judge Porteous's overall impact on the Marcottes' business as follows:

Q. Was there any judge in the courthouse who was more helpful to you in your bail bonds business than Judge Porteous?

A. I would think for the duration of the time, it would be Porteous, then it would be Green and the Bodenheimer. Bodenheimer and Green were running pretty close neck and neck

Q. And Bodenheimer and Green, did they both end up going to jail?

A. Yes they did.

See HP Ex. 447 (Louis Marcotte Sen. Dep. at 120:24-121:11).

J. Findings Addressing Certain Issues Raised by Judge Porteous

184. Judge Porteous's statute of limitations waiver permitted the Department of Justice to toll the running of the statute from April 5, 2006 through September 8, 2006. In other words, the Department, in that period, could prosecute all offenses as to which the statute of limitations had not expired as of April 5, 2006. Because the statute of limitations on relevant Federal offenses is 5 years, the tolling agreement permitted the Department to bring charges for all offenses committed after April 5, 2001. Thus, by that waiver, the Department could not have brought criminal charges based on criminal conduct committed by Judge Porteous (related either to the Marcottes or to Amato and Creely) while a state judge. In his opening statement, defense counsel stated: "Judge Porteous signed three tolling agreements to allow the government to prosecute him, regardless of the running of the statute of limitations. He waived that protection. As will be shown, the Justice Department investigated these very claims and found that they did not warrant criminal charges." To the extent counsel implied that the tolling agreement permitted the Department to prosecute crimes committed prior to April 5, 2001, that statement is inaccurate.

See PORT Exhibit 1003 (statute of limitations waivers). *See also* Title 18, United States Code, Section 3292.

185. The House was able to locate some documents reflecting bonds set by Judge Porteous in the last two months of his service as a state judge. Notwithstanding Judge Porteous's use of his summary bond chart throughout the trial, the House does not represent, and the record does not

establish, that these are all the bonds that Judge Porteous set in that time period, as opposed to these being simply some of the bonds that the House was able to locate that corroborate that Judge Porteous set bonds for the Marcottes. There is no basis to conclude that these are all the bonds Judge Porteous set for the Marcottes in that period, and no witness has testified to that fact

Article III

A. Judge Porteous's Financial Circumstances: 1996–2001

186. By the time Judge Porteous took the federal bench in October 1994, he had a history of gambling and was an “established player” 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. 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 (1) Beau Rivage Casino in Biloxi, Mississippi, (2) Caesar’s Palace in Las Vegas, Nevada, (3) Caesar’s Tahoe, in Lake Tahoe, Nevada, (4) Casino Magic in Bay St. Louis, Mississippi, (5) Grand Casino Biloxi in Biloxi, Mississippi, (6) Isle of Capri in Biloxi, Mississippi, and (7) Treasure Chest Casino in Kenner, Louisiana. His credit limits ranged from \$2,000 to \$5,000.

See HP Ex. 326 (Porteous Central Credit Inc. Gaming Report).

187. An “established player” or “rated player” at a casino is a player who has filled out a credit application with the casino in order to open up a line of credit. Casinos will thereafter rate that player, “meaning they will keep track of how much he bets, how much he wins, how much he loses.” Rated players are thereafter able to draw on their line of credit at the casino to gamble and are also provided with “comps” from the casinos, in the form of complimentary or reduced rates on hotel rooms, or free meals and drinks.

See Horner SITC at 999:4-25. *See also* HP Ex. 441(a) (Horner Task Force Hrg. at 23).

188. From 1996 through 2000, Judge Porteous’s financial circumstances deteriorated substantially. During this period, Judge Porteous made a series of withdrawals from his Individual Retirement Account (“IRA”) in 1997, 1998, 1999 and 2000, such that his IRA account balance, which was approximately \$59,000 at year-end 1996, dropped to approximately \$9,000 by the time Judge Porteous ultimately filed for bankruptcy in March 2001. During this time, his outstanding credit card balances increased steadily and were in excess of \$198,000 when he filed for bankruptcy.

See HP Ex. 38 (Porteous IRA records); HP Ex. 127 (Porteous Bankruptcy Schedules at SC0092) (showing Judge Porteous’s liabilities owed to unsecured creditors to be \$198,246.73).

189. In the 1997 through 2000 time period, when Judge Porteous drew down on his IRA, he would receive funds by check. On these occasions, he would deposit the funds into a Fidelity money market account. On many occasions, he used this account to write checks to casinos to pay gambling debts.

See Horner SITC at 996:9 – 997:6. See also HP Ex. 383 (Porteous IRA records); HP Ex. 529 (Pre-bankruptcy checks to casinos, written from Judge Porteous’s Fidelity account); House Chart 16 (“Judge Porteous’s Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts”).

B. Concealment of Liabilities on Financial Disclosure Reports

190. 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.

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

191. Part VI of the Financial Disclosure Report required Judge Porteous to report liabilities by means of a letter code, the pertinent categories being “J” for liabilities of \$15,000 or less, and “K” for amounts between \$15,001 and \$50,000. The filer is required to list all liabilities to credit card companies where the balance exceeded \$10,000 at any point in the year, and to list the liabilities as of the close of the calendar year for which the Report was filed.

See Horner SITC at 969:1 – 971:7. See also, e.g., HP Ex. 103(b) (“Filing Instructions for Judicial Officers and Employees”); House Chart 34 (“Instructions as to the Reporting of Liabilities on the Financial Disclosure Forms”).

192. For calendar years 1996 through 1999, Judge Porteous filed false Financial Disclosure Reports in which he concealed the extent of his credit card debts. The following chart sets forth the debts actually disclosed by Judge Porteous, his true liabilities, and what he should have reported if he had filed an accurate form.

Year	Disclosed	Not Disclosed (December Balance)
1996	Box Checked: “None (No reportable liabilities)”	1) Citibank account, 0426 (\$14,846.47) – J [less than \$15,000]
1997	Box Checked: “None (No reportable liabilities)”	1) MBNA MasterCard 0877 (\$15,569.25) – K [between \$15,001 and \$50,000] 2) MBNA MasterCard 1290 (\$18,146.85) – K 3) Travelers 0642 (\$11,477.44) – J
1998	1) MBNA – J 2) Citibank – J	1) MBNA MasterCard 0877 (\$16,550.08) – K 2) MBNA MasterCard 1290 (\$17,155.76) – K

Year	Disclosed	Not Disclosed (December Balance)
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

See Horner SITC at 971:11 – 977:3. *See also* HP Exs. 102(a), 103(a), 104(a) and 105(a) (Judge Porteous’s Financial Disclosure Reports for 1996, 1997, 1998 and 1999, respectively); HP Ex. 167 (Citibank statement for account 0426 (December 12, 1996)); HP Ex. 168 (MBNA statements for accounts 0877 (December 19, 1997) and 1290 (December 4, 1997), and Travelers account 0642 (December 30, 1997)); HP Ex. 169 (MBNA statements for accounts 0877 (December 19, 1998) and 1290 (December 4, 1998)); HP Ex. 170 (MBNA statements for accounts 0877 (closing date December 18, 1999) and 1290 (closing date December 4, 1999), Citibank accounts 0426 (closing date December 10, 1999) and 9138 (closing date December 21, 1999), and Travelers Bank account 0642 (closing date December 30, 1999)). *See also* House Charts 30–33 (re: Judge Porteous’s non-disclosure of credit card debts on his Financial Disclosure Forms).

193. Judge Porteous personally instructed his secretary, Rhonda Danos, as to how the liability section of his Financial Disclosure Reports should be prepared. As she testified: “He’d fill out the portion and I’d just copy it. . . . I’d just put exactly [on the Report] what was given to me.”

See Danos SITC at 879:23 – 880:8.

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

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

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

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

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

C. Judge Porteous’s Actions – May 2000 through Early 2001

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

See Lightfoot SITC at 1072:24 – 1073:1. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 41).

196. Mr. Lightfoot worked with Judge Porteous and his wife in the summer of 2000 to compile documentation regarding their assets and debts for the purpose of developing a workout proposal for the Porteouses' creditors in an effort to avoid a bankruptcy filing. The workout plan would have entailed a partial payment to all creditors.

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

197. Throughout the time period leading up to the filing of his bankruptcy, Judge Porteous concealed from Mr. Lightfoot numerous facts, including that he gambled or had incurred gambling debts.

See Lightfoot SITC at 1074:25 – 1075:2. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 42).

198. Casinos have their own credit systems and share credit information with each other. Casinos will run a "central credit report" which is "a credit report specifically aimed at gamblers and casinos and it tracks gaming activity of the casino's customers. With the central credit report a casino can determine whether or not a gambler has a good credit history at the casinos or a bad credit history at casinos." Judge Porteous had gambled at casinos for years, had filled out numerous applications at casinos, had taken out credit at casinos, and had casinos run his credit history. Judge Porteous would have known or reasonably believed that it would impact his ability to obtain credit from casinos in the future, and thereby impact his ability to gamble, if he were to default on any casino debts or if the casinos were to know that he had filed for bankruptcy. Accordingly, Judge Porteous structured his financial activities surrounding his bankruptcy, and concealed material facts from his attorney in order to conceal his gambling activities and thus preserve his ability to take out credit from casinos while he was in bankruptcy.

See HP Ex. 441(a) (Homer Task Force Hrg. at 25–26). *See also id.* at 19 ("[I]f a gambler gets a negative history on his central credit report, what happens is the other casinos generally cut him off.").

199. During the early months of his representation of Judge Porteous, Mr. Lightfoot gave Judge Porteous worksheets to fill out. Mr. Lightfoot's worksheets sought information that would ultimately be contained in a bankruptcy filing.

See Lightfoot SITC at 1073:21-23, 1074:22-24, 1076:4-7. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 42).

200. Mr. Lightfoot sought from Judge Porteous information as to all of Judge Porteous's assets and debts.

See Lightfoot SITC at 1073:21-23. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 42).

201. Mr. Lightfoot told Judge Porteous, as he told all his clients, not to incur any new debts, because, in Mr. Lightfoot's view, "it is not good faith for such a person [considering bankruptcy] to continue making debt."

See HP Ex. 441(b) (Lightfoot Task Force Hrg. at 42–43).

202. Among the documents that Judge Porteous provided Mr. Lightfoot in the summer of 2000 was a pay stub from May 2000 that showed Judge Porteous's net monthly income to be \$7,531.52.

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

203. Judge Porteous never informed Mr. Lightfoot that he gambled or had gambling debts.

See Lightfoot SITC at 1076:21 – 1077:2, 1091:17-19. *See also* HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 446); HP Ex. 441(b) (Lightfoot Task Force Hrg. at 43, 65) (“I didn’t know [Judge Porteous] gambled . . . whatsoever.”)

204. Judge Porteous never informed Mr. Lightfoot that he and his wife had a Fidelity money market account, which he used on occasion to pay gambling debts.

See HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 436, 448).

205. In August of 2000, during the time that Judge Porteous was consulting with Mr. Lightfoot for the purpose of attempting a workout of Judge Porteous’s debts, Judge Porteous requested a credit limit increase at the Treasure Chest Casino from \$2,500 to \$3,000.

See HP Ex. 326 (Porteous Central Credit Inc. Gaming Report).

206. On September 28, 2000, Judge Porteous wrote a check drawn on his Fidelity money market account in the amount of \$490 to Casino Magic.

See Horner SITC at 996:12 – 997:1. *See also* HP Ex. 529 (checks written to casinos from Judge Porteous’s Fidelity account); House Chart 16 (“Judge Porteous’s Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts”).

207. On November 30, 2000, Judge Porteous wrote a check drawn on his Fidelity money market account in the amount of \$1,600 to pay the Treasure Chest Casino. To fund that check, Judge Porteous withdrew \$3,000 (paying a 20% penalty) from his IRA on or about November 27, 2000 and deposited the proceeds – a \$2,400 check – into his Fidelity account.

See Horner SITC at 996:12 – 997:6. *See also* HP Ex. 383 (Porteous IRA records); HP Ex. 529 (checks written to casinos from Judge Porteous’s Fidelity account); House Chart 16 (“Judge Porteous’s Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts”).

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

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

209. On December 26, 2000 – five days after Mr. Lightfoot sent Judge Porteous the workout letters – Judge Porteous traveled to Caesars Lake Tahoe and took out a \$3,000 marker. Judge Porteous did not disclose to Mr. Lightfoot this gambling trip or the \$3,000 extension of credit.

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

210. Judge Porteous periodically provided Mr. Lightfoot with updated credit card statements to reflect his current liabilities.

See Lightfoot SITC at 1105:14-18. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 43).

211. Throughout the workout period, from about June of 2000 through February of 2001, Judge Porteous did not inform Mr. Lightfoot that he had in fact incurred casino debt; he concealed from Mr. Lightfoot that he possessed a Fidelity money market account, and he did not disclose to Mr. Lightfoot that he gambled.

See e.g., Finding of Fact 226 below.

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

See Lightfoot SITC at 1075:21-25. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 43).

213. Chapter 13 bankruptcies are sometimes described as “wage earner’s plans,” in that they are only available to individuals who are receiving a monthly income. There is no liquidation in a Chapter 13, and a debtor is therefore allowed to keep his property. In exchange for that opportunity, debtors must provide the bankruptcy trustee “with at least as much in value as they would have received had it been a liquidating Chapter 7 bankruptcy.”

See Keir SITC at 1184:7-12. *See also* HP Ex. 441(c) (Keir Task Force Hrg. at 68).

D. Acts Taken by Judge Porteous in the Weeks Immediately Preceding Bankruptcy

214. Once the decision to file for bankruptcy was made, in the period from approximately February 27- March 27, 2001, Judge Porteous engaged in a series of acts: (1) to pay off casinos of outstanding indebtedness so he would not have to list them as unsecured creditors; and (2) to structure certain other financial affairs in anticipation of filing for bankruptcy. The conduct culminated in Judge Porteous’s filing for bankruptcy under a false name on March 28, 2001, and filing a series of false schedules and forms on April 9, 2001.

See Proposed findings 225–226 below.

1. Grand Casino Gulfport Markers – Unsecured Creditor as of March 28, 2001

215. On February 27, 2001, Judge Porteous gambled at the Grand Casino Gulfport (“Grand Casino”) and took out two \$1,000 markers.

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

216. Grand Casino records reflect that the casino deposited the markers for collection at some point prior to March 24, 2001, and that Judge Porteous’s balance as of that date was \$0. However, the markers were returned as “uncollected” and the \$2,000 amount due and owing from Judge Porteous to the casino was again reflected on the Grand Casino records as of April 3,

2001. FBI Agent Horner determined that there was a problem with Judge Porteous's bank account number on the markers. Although the casino records reflect that Judge Porteous did not owe \$2,000 on March 28, 2001, in truth and in fact: (1) the casino record was in error because the markers were never properly deposited in the initial attempt, and (2) for the reasons set forth in Finding of Fact 217, Judge Porteous knew that the Grand Casino had not in fact collected on those markers as of March 28, 2001, and that the \$2,000 remained due and owing as of that date.

See Horner SITC at 983:22 – 986:16, 1003:19 – 1005:7. *See also* HP Ex. 301(a) (Grand Casino Gulfport Patron Transaction Report); House Chart 6 (“Undisclosed Creditor (Grand Casino Gulfport)”); Ex. 301(a) Grand Casino Gulfport Patron Transaction Report; Horner SITC 983-986; 1003-04.

217. On March 27, 2001, while the \$2,000 in Grand Casino markers were still outstanding, Judge Porteous deposited \$2,000 into his Bank One checking account in the form of \$1,960 cash and a \$40 check from his Fidelity account. The account otherwise would not have had sufficient funds to have paid the markers at that time. Judge Porteous made sure the deposit was exactly \$2,000 by including a \$40 check drawn on his Fidelity account along with the \$1,960 cash deposit. This deposit of the exact amount that was outstanding demonstrates: (1) that Judge Porteous was well aware that on March 27, he had outstanding indebtedness of \$2,000 to the Grand Casino Gulfport; (2) that outstanding indebtedness to a casino in the form of markers is a debt that must be reported; and (3) that he sought to make sure that the casino debt was paid and would not, therefore, have to be disclosed.

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

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

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

2. Treasure Chest Casino Markers – Preferred Payment to Creditor Pre-Bankruptcy

219. On March 2, 2001, Judge Porteous gambled at Treasure Chest and took out seven \$500 markers. He repaid four markers in chips that same day but left the casino owing \$1,500.

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

220. On March 27, 2001, Judge Porteous paid \$1,500 cash to the Treasure Chest Casino to pay off his outstanding indebtedness. This payment demonstrates: (1) that Judge Porteous was well aware that on March 27, 2001 he had outstanding indebtedness of \$1,500 at the Treasure Chest

Casino, and (2) that he sought to make sure that the casino debt was paid and would not, therefore, have to be disclosed in his bankruptcy filing.

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

3. Post Office Box

221. On March 20, 2001, Judge Porteous opened a post office box. The purpose of opening the P.O. box was to use that address in his bankruptcy filing.

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

4. Income Tax Return

222. On March 23, 2001, the Porteouses signed their income tax return for the year 2000 and claimed a tax refund in the amount of \$4,143.72.

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

5. Fleet Credit Card – Preferred Payment to Creditor Pre-Bankruptcy

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

See Danos SITC at 877:14 – 878:10. *See also* HP Ex. 329 (Fleet credit card statement, with accompanying check written by Rhonda Danos).

224. The March 23, 2001 credit card payment to Fleet was handled by Judge Porteous in a manner that was inconsistent with the payments in prior months.

- The January 17, 2001 Fleet statement in the amount of \$1,144.46 was partially paid by way of a \$100 check drawn on the Porteouses’ Bank One checking account. That payment was credited to the Porteous’s Fleet account on February 2, 2001 – over two weeks later.
- The February 16, 2001 Fleet statement in the amount of \$1,251.07 was partially paid by way of a \$370 check drawn on the Porteouses’ Bank One checking account. That payment was credited to the Porteous’s Fleet account on March 3, 2001 – over two weeks later.
- In contrast, the March 15, 2001 Fleet statement in the amount of \$1,088.41 was paid in full with a check from Ms. Danos’s account, written on March 23, 2001 – five days prior to bankruptcy.

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

225. Judge Porteous, in the days prior to filing for bankruptcy, continued to conceal material facts from his lawyer, Mr. Lightfoot. Judge Porteous did not disclose to Mr. Lightfoot that he had taken out \$3,500 in markers from the Treasure Chest Casino and had repaid the final \$1,500 of that amount the day before his Initial Bankruptcy Petition was filed; Judge Porteous did not disclose to Mr. Lightfoot that he had taken out \$2,000 from Grand Casino Gulfport on February 27, 2001 and that that indebtedness was outstanding; and Judge Porteous did not disclose to Mr. Lightfoot that he had filed for a federal income tax refund of \$4,143.72. Similarly, although Judge Porteous had kept Mr. Lightfoot current on other credit cards, Judge Porteous did not disclose to Mr. Lightfoot the existence of the Fleet credit card or the fact that he had paid it off in full. Also, Judge Porteous had not disclosed to Mr. Lightfoot that he had received a salary increase and that the pay stub he had provided Mr. Lightfoot the prior summer was not accurate.

See Lightfoot SITC at 1090:9-17 (Treasure Chest markers), 1077:3-7 (Grand Casino indebtedness), 1086:7-17 (tax refund), 1088:11-14 (salary increase). See also HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 445) (existence of or payment to Fleet credit card).

226. At the Fifth Circuit Hearing, in response to questioning by Chief Judge Jones, Mr. Lightfoot testified that he had no knowledge of Judge Porteous's gambling:

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.

See HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 453).

E. March 28, 2001 – Judge Porteous Files His Initial Voluntary Bankruptcy Petition Under the False Name “G.T. Ortous”

227. 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.

See HP Ex. 125 (Initial Petition).

228. The Initial Petition was filed with the false names “G.T. Ortous” and “C.A. Ortous” as the debtors and also listed the P.O. Box address obtained by Judge Porteous on March 20, 2001, instead of Judge Porteous's actual residential address. Judge Porteous signed the petition twice – once over the typed name “G.T. Ortous;” and the other “under penalty of perjury that the information provided in this petition is true and correct.”

See HP Ex. 441(b) (Lightfoot Task Force Hrg. at 44). See also HP Ex. 125 (Initial Petition).

229. Judge Porteous admitted at the Fifth Circuit Hearing that the names used in the Initial Petition were false.

Q: Your name is not Ortous, is it?

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.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 55). Federal Rule of Bankruptcy 1005 requires that the caption of a bankruptcy petition include the name of the debtor and “all other names used by the debtor within six years before filing the petition.” FED. R. BR. P. 1005 (1975).

230. Mr. Lightfoot proposed the scheme to file under a false name to avoid embarrassment to Judge Porteous.

See Lightfoot SITC at 1079:22 – 1080:7. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 44); HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 435).

231. Mr. Lightfoot further explained that the local newspaper published the names of people who file bankruptcy, that he was trying to keep Judge Porteous’s name out of the paper.

See Lightfoot SITC at 1080:2-13. *See also* HP Ex. 441(b) (Lightfoot TF Task Force Hrg. at 44).

232. Judge Porteous willingly went along with Mr. Lightfoot’s suggestion to file under a false name. He did not protest in any way, nor suggest that it would be wrong for a Federal judge to file an official document with the court, signed under penalty of perjury, with a false name.

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

233. Judge Porteous’s filing for bankruptcy in a false name constituted perjury for which “advice of counsel” is no defense. There is never an excuse for knowingly lying on a document that is being signed under penalty of perjury in a bankruptcy proceeding.

See Keir SITC at 1186:7-13, 1187:19 – 1188:3; Hildebrand SITC at 1883:14-17.

234. As an attorney himself, and what’s more, as a federal judge, Judge Porteous is not in the same position vis-à-vis his attorney as a lay client being advised about arcane procedures of bankruptcy law.

235. Mr. Lightfoot told the bankruptcy trustee, S.J. Beaulieu, that the false name on the Initial Petition was a typographical error.

See Beaulieu SITC at 1524:8-22.

236. Mr. Lightfoot had no knowledge that Judge Porteous was concealing his gambling from him, or that Judge Porteous was concealing other relevant facts:

Q. At the time [of filing the schedules], you believed that Judge Porteous was acting in good faith?

A. I did.

Q. When he came to you, when you helped him with the workout, when you prepared the bankruptcy petition and schedules and statement, you did not know anything about gambling?

A. I didn't.

Q. He clearly did not disclose that to you in any way, shape or form?

A. No, sir.

Q. And you had no idea that he was concealing facts from you?

A. No, sir.

See Lightfoot SITC at 1174:2-15. Lightfoot further testified that if he had known that Judge Porteous gambled, he would have asked Judge Porteous many more questions about that topic because “[i]f there are gambling debts, they have to be listed, and you must tell me about them. If you have markers that haven't been redeemed, you could have a bad check problem when they try to pass the marker through as a bad check. So it gives me an opportunity to have a conversation about all those concerns of mine.” *Id.* at 1173:13-19.

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

1. The Amended Petition

237. Judge Porteous amended his Initial Petition on April 9, 2001, two weeks after it was filed, replacing the false names and listing his actual residential address in Metairie, Louisiana.

See HP Ex. 126 (Amended Petition).

2. The Bankruptcy Schedules and Statement of Financial Affairs

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

See HP Ex. 127 (Bankruptcy Schedules and Statement of Financial Affairs); HP Ex. 345 (2001 Instructions for Completing Bankruptcy Schedules at p. 45).

239. Prior to filing the Bankruptcy Schedules and Statement of Financial Affairs, Mr. Lightfoot provided Judge Porteous with draft copies and specifically reviewed them with Judge Porteous “at least twice” and “at length.” Judge Porteous then signed both his Bankruptcy Schedules and his Statement of Financial Affairs under penalty of perjury, declaring that the documents were true and correct.

See Lightfoot SITC at 1084:21 – 1086:2. See also HP Ex. 441(b) (Lightfoot Task Force Hrg. at 46); HP Ex. 127 (Bankruptcy Schedules at SC00111, SC00116).

3. False Representations in the Bankruptcy Schedules

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

240. Category 17 on Schedule B (“Personal Property”) of the Bankruptcy Schedules required Judge Porteous to disclose “other liquidated debts owing debtor including tax refunds.” (emphasis added). 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.” Notwithstanding the fact that Judge Porteous had filed for a \$4,143.72 federal income tax refund on March 23, 2001 – five days before filing his Initial Petition – in response to Category 17 on Schedule B, the box “none” is marked with an “X.” Judge Porteous signed that form under penalties of perjury

See HP Ex. 127 (Bankruptcy Schedules at SC00096, SC00116); HP Ex. 345 (2001 Instructions for Completing Bankruptcy Schedules at 62)

241. Judge Porteous knowingly filed a false bankruptcy schedule under penalty of perjury when he failed to disclose that he had filed for a tax refund for the year 2000 shortly before filing for bankruptcy.

See Keir SITC at 1191:2-18.

242. During his Fifth Circuit testimony, Judge Porteous acknowledged that he checked “none” in response to this question.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 80).

243. At the Fifth Circuit Hearing, Judge Porteous was shown his tax 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.”

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 82).

244. According to Mr. Lightfoot, the tax refund should have been disclosed, and if he had known of the pending refund, he would have disclosed it.

See Lightfoot SITC at 1086:18 – 1087:7. See also HP Ex. 441(b) (Lightfoot Task Force Hrg. at 46); HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 447).

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

See IIP Ex. 141 (2000 Porteous Federal Tax Return); HP Ex. 144 (Porteous Bank One records); HP Ex. 10 (Porteous 5th Cir. Hrg. at 83).

246. Mr. Lightfoot would have filed an amended schedule to disclose the refund if he had found out about the refund after the initial schedules were filed.

See Lightfoot SITC at 1087:8-19. See also HP Ex. 441(b) (Lightfoot Task Force Hrg. at 47) (“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.”)

247. Knowledge of that tax refund also would have been important to the trustee who was assigned to Judge Porteous’s case – S.J. Beaulieu – who would have considered the refund in deciding whether to approve the proposed Chapter 13 plan. Beaulieu explained his reasons as follows, in response to questioning from Senator Whitehouse:

Q. Sen. Whitehouse. Now, my question to you is would it have made any difference to the plan that you approved if you had known of the tax return and the other preferences. . . .

Basically I’m trying to sort out did it, did it make a difference to anybody that these expenses or assets weren’t properly listed since this was a Chapter 13?

A. [After discussing the payments to the creditors] \$4000 [for the tax return] means about \$300 swing a month; \$3600, or \$4000 a [year]. So now you’re talking about \$12,000 going into the kitty.

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

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

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

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

A. Yes sir.

See Beaulieu SITC at 1549:4 – 1550:21.

248. In the Southern District of Texas – where Judge Greendyke presided – the procedure regarding tax refunds in the year 2000 was to treat the refunds as “part of the Chapter 13 debtor’s disposable income,” which was “required to be committed to payments in Chapter 13 cases.”

See HP Ex. 295 (Heitkamp 5th Cir. Hrg. at 397).

249. Chief Bankruptcy Judge Duncan Keir from the District of Maryland also concluded that the requested refund should have been disclosed, and that Judge Porteous committed perjury and falsified a court document by not disclosing it:

[T]he right to receive the refund is an asset. And since he had already filed the return quantifying the amount of the refund, it was what is known as a liquidated sum. Liquidated does not mean collected; it means quantified.

And the tax year having ended before the bankruptcy, he had the entitlement to it, it was his asset. Assets are required to be listed on schedule B under pain and penalty of perjury.

Question 17 of schedule B requires you to list liquidated sums owed to the debtor, and it specifically says “including tax refunds.” And he did not put it down, so he falsified the schedule.

See Keir SITC at 1191:5-18. *See also* HP Ex. 441(c) (Keir Task Force Hrg. at 70, 77) (“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.”).

250. In his Fifth Circuit testimony, Judge Porteous claimed that he called Mr. Lightfoot when he received the refund, and that they discussed what he should do with it. Mr. Lightfoot specifically denies that such a call occurred. Rather, Mr. Lightfoot recalled a “conversation with the judge about a tax return for a later year, and not that particular year” where the issue was whether the tax refund had to have been turned over pursuant to Judge Greendyke’s order.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 83–84). *See also* Lightfoot SITC at 1141:15-17, 1142:13-20 (Lightfoot recalled needing to “look to the confirmation order” since it was not a typical order issued in New Orleans); HP Ex. 124 (Lightfoot 5th Cir. at 437).

b. Omitted and Undervalued Financial Accounts

251. Question 2 on Schedule B (“Personal Property”) requires the debtor to list, among other things, “checking, savings or other financial accounts.” In response, Judge Porteous disclosed the current market value of Judge Porteous’s Bank One Checking Account – into which his monthly salary was deposited – as \$100. However, the day prior to filing his Initial Petition,

Judge Porteous had deposited \$2,000 into the account – the amount he owed on the Grand Casino markers – so he knew that the account held at least that amount. Moreover, 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. At no time during that month did Judge Porteous’s balance drop to as low as \$100.

See Horner SITC at 994:18 – 995:14. *See also* HP Ex. 127 (Bankruptcy Schedules at SC00095); HP Ex. 143 (Porteous Fidelity money market statements); HP Ex. 144 (Porteous Bank One records). *See also* House Chart 5 (“Undisclosed Account Balance (Bank One Account)”).

252. 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.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 79–80).

253. At the time of his bankruptcy filing, Judge Porteous also had a Fidelity money market account that he used regularly. He had used this account in the past to deposit monies he withdrew from his IRA account, and he had paid gambling debts to casinos from that account (and did so in the Fall of 2000). In the days shortly prior to filing for bankruptcy, Judge Porteous wrote numerous checks drawn on the Fidelity account, including a check for \$40 on March 27, 2001.

See Horner SITC at 995:15 – 997:20. *See also* HP Ex. 383 (Porteous IRA records); HP Ex. 529 (Fidelity checks); HP Ex. 143 (Fidelity money market statements). *See also* House Chart 16 (“Judge Porteous’s Use of Fidelity Account Pre-Bankruptcy to Pay Gambling Debts”); House Chart 4 (“Judge Porteous’s Undisclosed Fidelity Money Market Account”).

254. Judge Porteous did not disclose his Fidelity money market account in response to Question 2 on Schedule B. Judge Porteous never told Mr. Lightfoot about this account, and he did not include it on the worksheets that he filled out for Mr. Lightfoot in the summer of 2000. During his Fifth Circuit testimony, Judge Porteous acknowledged the existence of his Fidelity money market account, and acknowledged that it was omitted from his Schedule B.

See Horner SITC at 997:21-25. *See also* HP Ex. 127 (Bankruptcy Schedules at SC00095); HP Ex. 124 (Lightfoot 5th Cir. Hrg. at 436, 448); HP Ex. 10 (Porteous 5th Cir. Hrg. at 85–87).

c. Understated Income

255. 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 Mr. Lightfoot in the summer of 2000. The 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. Judge Porteous never disclosed to Mr. Lightfoot that his judicial salary had increased in 2001. In 2001, Judge Porteous’s net judicial salary had increased to \$7,705.51 per month. Judge Porteous’s net income, therefore, was understated by \$173.99 a month, or \$2,087.88 annually, or over \$6,000 for the three year life of the proposed Plan.

See HP Ex. 127 (Bankruptcy Schedules at SC00108–09); HP Ex. 144 (Porteous Bank One records); HP Ex. 441(b) (Lightfoot Task Force Hrg. at 47).

256. Judge Porteous also 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 would typically reach 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 by several hundred dollars. Thus, 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 thereafter to about \$8,500 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 Horner SITC at 1013:21 – 1014:12. See also HP Ex. 451 (Porteous Bank One records for Aug.–Sept. of 2001, 2002, and 2003); HP Ex. 441(a) (Horner Task Force Hrg. at 26) (testifying that from “August through December [2001], the pay that is deposited in his account every month is about \$8,500”).

d. Schedule of Unsecured Creditors

257. Judge Porteous owed \$2,000 in outstanding markers to the Grand Casino Gulfport on March 28, 2001. These markers did not clear Judge Porteous’s account until April 5-6, 2001. Though he listed numerous creditors on Schedule F, “Creditors Holding Unsecured Nonpriority Claims,” this casino debt was not included.

See Horner SITC at 983:22 – 984:16, 985:6-8, 1003:19 – 1005:7. See also HP Ex. 127 (Bankruptcy Schedules, Schedule F at SC00102–105); HP Ex. 301(a) (Grand Casino Gulfport Patron Transaction Report). See also House Chart 6 (“Undisclosed Creditor (Grand Casino Gulfport”).

e. Signed Declaration

258. 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.

See HP Ex. 127 (Bankruptcy Schedules at SC00111).

4. False Representations in the Statement of Financial Affairs

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

259. 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. 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.

See HP Ex. 127 (Statement of Financial Affairs at SC00112).

260. Relying on the information that Judge Porteous had provided, Mr. Lightfoot entered the answer: “normal installments” to Question 3 – a term that “was intended to cover the normal installments on his two leased cars and his two home mortgages.”

See HP Ex. 127 (Statement of Financial Affairs at SC00112); HP Ex. 441(b) (Lightfoot Task Force Hrg. at 48).

261. As discussed in Findings of Fact 262 to 264, that answer – “normal installments” – was false, as a result of Judge Porteous’s actions in the weeks immediately preceding filing for bankruptcy.

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

See HP Ex. 127 (Statement of Financial Affairs at SC00112); HP Ex. 302 (Porteous Treasure Chest Customer Transaction Inquiry). *See also* Horner SITC at 986:18 – 988:19; Lightfoot SITC at 1090:1 – 1091:2; HP Ex. 441(b) (Lightfoot Task Force Hrg. at 48). *See also* House Chart 2 (“Undisclosed Payments to Creditors within 90 Days of Bankruptcy – Treasure Chest Casino”).

263. Second, Judge Porteous also failed to disclose that on March 23, 2001, he had his secretary, Rhonda Danos, pay off his wife’s Fleet credit card balance of \$1,088.41. Judge Porteous’s March 23, 2001 payment to Fleet (by way of the Danos check) was credited by Fleet on March 29, 2001. Because this check was not received by Fleet until the day after Judge Porteous initially filed for bankruptcy, Judge Porteous could claim that the payment to Fleet was not in fact made within the 90 days preceding his bankruptcy filing, and thus it was not required to be reported on the Statement of Financial Affairs. However, if this were the case, then Judge Porteous should have listed Fleet as an unsecured creditor, which he did not.

See HP Ex. 127 (Bankruptcy Schedules, Schedule F at SC00102–105; Statement of Financial Affairs at SC00112); HP Ex. 140 (Fleet credit card statements); HP Ex. 329 (Fleet credit card statement with accompany check written by Rhonda Danos). *See also* Horner SITC at 993:25 – 994:17. *See also* House Chart 1 (“Undisclosed Payments to Creditors within 90 Days of Bankruptcy – Fleet Credit Card”).

264. Third, as discussed in the above Findings, on February 26, 2001, Judge Porteous took out \$2,000 in markers at the Grand Casino, which were in fact outstanding as of the date he filed for bankruptcy (March 28, 2001) and were not reported on the Schedule of Unsecured Creditors.

However, if Judge Porteous believed that the markers had in fact been repaid prior to filing for bankruptcy, that payment should have been disclosed in response to Question 3 on his Statement of Financial Affairs. Again, Mr. Lightfoot was unaware of the Gulfport markers.

See HP Ex. 127 (Bankruptcy Schedules, Schedule F at SC00102–105). *See also* Horner SITC 983:22 – 984:16, 985:6-8, 1003:19 – 1005:7; Lightfoot SITC at 1091:15-19. *See also* House Chart 6 (“Undisclosed Grand Casino Markers”).

b. Gambling Losses

265. Question 8 on the Statement of Financial Affairs required Judge Porteous to “[j]ist all losses from . . . gambling within one year immediately preceding the commencement of this case or since the commencement of this case.” In response, the box for “none” is checked.

See HP Ex. 127 (Statement of Financial Affairs at SC00113).

266. An analysis by the FBI of Judge Porteous’s gambling activities in the year preceding his bankruptcy filing revealed that Judge Porteous accrued \$6,233.20 in net gambling losses during that year.

See Horner SITC at 1000:1-14, 1001:5-12. *See also* HP Ex. 337 (FBI Gaming Losses Chart). FBI Agent Horner was asked about this chart during his SITC testimony and he also explained this chart both to the Impeachment Task Force and to the Fifth Circuit Special Committee, testifying that Judge Porteous’s losses totaled \$12,895.35, but Judge Porteous also had winnings of \$5,312.15. 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. *See* HP Ex. 338 (Horner 5th Cir. Hrg. at 317–318, 322); HP Ex. 441(a) (Horner Task Force Hrg. at 16).

267. During his Fifth Circuit testimony, Judge Porteous admitted that his response of “none” to Question 8 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.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 99).

c. Declaration

268. 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.

See HP Ex. 127 (Statement of Financial Affairs at SC00116).

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

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

269. On April 6, 2001, Judge Porteous requested a one-time credit increase at the Beau Rivage Casino from \$2,500 to \$4,000. On April 7–8, 2001, Judge Porteous took out \$2,000 in markers at the Beau Rivage Casino. He left the casino owing \$1,000, which was not paid back until May 4, 2001. On approximately April 30 – May 1, 2001, Judge Porteous repaid the Beau Rivage for the outstanding April 7-8, 2001 markers, 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 Ms. Danos, and she deposited it into her personal bank account on May 1, 2001. On April 30, 2001, Ms. Danos wrote a check payable to the Beau Rivage in the amount of \$1,000, and the memo line referenced Judge Porteous. That payment was credited against Judge Porteous's Beau Rivage account on May 4, 2001.

See HP Ex. 303 (Beau Rivage Credit History); HP Ex. 304 (Beau Rivage Balance Activity); HP Ex. 382 (records related to \$1,000 Beau Rivage payment). *See also* House Chart I1 ("Judge Porteous's Use of Secretary Danos to Pay His Casino Debts in April 2001").

270. Judge Porteous's repayment of the Beau Rivage debt by endorsing a check to Ms. Danos and having her write a check to the casino, thus bypassing Judge Porteous's account altogether, is evidence of his intent to hide gambling debt incurred between the time of filing for bankruptcy and the Creditors Meeting.

See HP Ex. 304 (Beau Rivage Balance Activity).

271. On April 10, 2001, Judge Porteous took out \$2,000 in markers at the Treasure Chest Casino. He paid all the markers back the same day in chips.

See HP Ex. 305 (Treasure Chest Customer Transaction Inquiry).

272. On April 30, 2001, Judge Porteous submitted a casino credit application to Harrah's Casino and requested a \$4,000 credit limit. This application lists "\$0" for indebtedness. Judge Porteous signed the application.

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

273. On April 30, 2001, Judge Porteous took out \$1,000 in markers at Harrah's Casino. 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, so they were not paid back until May 30, 2001.

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

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

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

2. Bankruptcy Creditors Meeting

275. On May 9, 2001, the Section 341 Creditors Meeting was held in Judge Porteous's bankruptcy case. A Section 341 Creditors Meeting is a statutorily mandated meeting of creditors and equity security holders that is held by the bankruptcy trustee. The purpose of a Section 341 Creditors Meeting is to examine the debtor under oath regarding his petition and bankruptcy schedules.

See HP Ex. 129 (Trustee's Memo to Record); HP Ex. 441(b) (Lightfoot Task Force Hrg. at 49). *See also* 11 U.S.C. § 341 (2003).

276. Bankruptcy trustee S.J. Beaulieu, Jr. presided over the hearing, which was attended by Judge Porteous and his attorney Mr. 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." During his testimony before the Fifth Circuit Special Committee, Judge Porteous acknowledged receiving the pamphlet from the bankruptcy trustee. Section 6 of this pamphlet discussed credit while in Chapter 13 and specifically provided:

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

See HP Ex. 130 (Creditors Meeting Hearing Transcript (indicating that Judge Porteous was given a copy of the pamphlet)); HP Ex. 148 (Chapter 13 "Rights & Responsibilities" Pamphlet); HP Ex. 10 (Porteous 5th Cir. Hrg. at 60).

277. 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."

See HP Ex. 130 (Creditors Meeting Hearing Transcript at SC00595–96).

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

Porteous that he was “on a cash basis now.” Judge Porteous did not disclose at the hearing that between the time of filing for bankruptcy and the date of the Creditors Meeting, he had incurred additional debt by taking out markers at casinos. Nor did he disclose that he had increased a credit line at a casino, concealed a credit card in his bankruptcy filing, or that he had outstanding markers owed to Harrah’s Casino on the date of the meeting.

See HP Ex. 130 (Creditors Meeting Hearing Transcript at SC00598).

279. After the Creditors Meeting on May 9, 2001, Judge Porteous continued to gamble, to take out casino markers, and to incur new debt. Judge Porteous’s activities between May 9, 2001 and June 28, 2001 included the following:

- On May 16, 2001, Judge Porteous took out a \$500 marker at the Treasure Chest Casino. He repaid the marker the same day in chips.
- On May 26–27, 2001, Judge Porteous took out \$1,000 in markers at the Grand Casino Gulfport. He paid back \$900 on May 27, 2001 and paid back the remaining \$100 on June 5, 2001.
- On June 20, 2001, Judge Porteous took out a \$500 marker at the Treasure Chest Casino. He repaid the marker the same day in chips

See HP Ex. 308 (Treasure Chest Customer Transaction Inquiry); HP Ex. 309 (Grand Casino Patron Transaction Request); HP Ex. 310 (Treasure Chest Customer Transaction Inquiry).

H. The June 28, 2001 Confirmation of Judge Porteous’s Bankruptcy Plan, and Judge Porteous’s Violations of the Confirmation Order

I. The Order’s Prohibition Against Judge Porteous Incurring New Debt

280. On June 28, 2001, U.S. Bankruptcy Judge William Greendyke signed an Order Confirming the Debtor’s Plan and Related Orders (the “Confirmation Order”). Among its terms, the Confirmation Order prohibited Judge Porteous from incurring new debt without the permission of the trustee:

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

See HP Ex. 133 (Confirmation Order).

281. During his Fifth Circuit testimony, Judge Porteous testified that he understood the Confirmation Order at the time the order was entered. 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. First, on December 20, 2002, the bankruptcy trustee granted Judge Porteous’s request to refinance his home. And second, on January 2, 2003, the bankruptcy trustee granted Judge Porteous’s request to obtain two new car leases.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 62); HP Ex. 441(b) (Lightfoot Task Force Hrg. at 49–50); HP Ex. 339 (Beaulieu letter approving home refinancing); HP Ex. 340 (Beaulieu letter approving new car leases).

282. If Judge Greendyke had known of Judge Porteous’s actions in connection with his bankruptcy filing, Judge Greendyke would not have signed the Confirmation Order, and “would probably have *sua sponte* objected on the basis of lack of good faith.” The good faith of the debtor is a confirmation requirement.

See HP Ex. 335 (Greendyke 5th Cir. Hrg. at 384–85).

2. Violations of the Confirmation Order

283. Judge Porteous was subject to the terms of his Chapter 13 repayment plan for three years. Notwithstanding Judge Greendyke’s Confirmation Order that “[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee,” Judge Porteous: (1) took out 42 markers over the course of fourteen different gambling trips at four 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 credit card. Judge Porteous did not have the permission of the trustee or the bankruptcy court to engage in these activities. Each of these violations of the Confirmation Order are discussed in detail in the Findings of Fact below.

See HP Ex. 133 (Confirmation Order at ¶ 4).

284. It is not acceptable for a debtor to ignore a bankruptcy court order if the debtor finds the provisions of the order to be too onerous or if the debtor thinks the order is unlawful.

See Keir SITC at 1193:6-19; Barhiant SITC at 1928:13 – 1929:2.

a. Casino Markers

285. After the Confirmation Order was issued, Judge Porteous continued to gamble and to incur debt at casinos on a regular basis, without seeking permission from the bankruptcy trustee. He obtained casino markers on his existing lines of credit at the casinos, and sought an increase on one of his lines of credit.

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

286. Judge Porteous intentionally violated Judge Greendyke’s Confirmation Order by incurring debt in the form of taking out casino markers subsequent to the issuance of the Order.

See Keir SITC at 1193:25 – 1194:16. See also Hildebrand SITC at 1885:5-15.

287. Signing a casino marker is a form of debt within the meaning of the Bankruptcy Code because Judge Porteous would thereby be obligated to pay the casino. Mr. Lightfoot, Mr. Beaulieu, Judge Keir, and Mr. Hildebrand all agree that “markers” are a form of indebtedness.

See Keir SITC at 1194:17 – 1195:22; Lightfoot SITC at 1179:3-24; Beaulieu SITC at 1540:22-25; Hildebrand SITC at 1884:19-22. See also HP Ex. 441(b) (Lightfoot Task Force Hrg. at 53, 64) (“I have had some cases involving gambling, people who had markers, and, of course, they are a civil liability. It is a debt like any other debt in that sense. So it has to be listed. I would have listed and do list anybody who has a casino-type debt.”).

288. 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.

See HP Ex. 10 (Porteous 5th Cir. Hrg. at 64–65).

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

Date	Casino	Number of Markers	Total Dollar Amount	Repayment Date(s)
07/19/2001	Treasure Chest	1	\$500	07/19/2001
07/23/2001	Treasure Chest	1	\$1,000	07/23/2001
08/20–21/2001	Treasure Chest	8	\$8,000	08/20-21/2001 (\$5,000) 09/09/2001 (\$2,000) 09/15/2001 (\$1,000)
09/28/2001	Harrah’s	2	\$2,000	10/28/2001
10/13/2001	Treasure Chest	2	\$1,000	10/13/2001
10/17-18/2001	Treasure Chest	9	\$5,900	10/17/2001 (\$1,500) 11/09/2001 (\$4,400)
10/31/2001-11/01/2001	Beau Rivage	6	\$3,000	11/01/2001
11/27/2001	Treasure Chest	2	\$2,000	11/27/2001
12/11/2001	Treasure Chest	2	\$2,000	12/11/2001
12/20/2001	Harrah’s	1	\$1,000	11/09/2002

02/12/2002	Grand Casino Gulfport	1	\$1,000	02/12/2002
04/01/2002	Treasure Chest	3	\$2,500	04/01/2002
05/26/2002	Grand Casino Gulfport	1	\$1,000	05/26/2002
07/04-05/2002	Grand Casino Gulfport	3	\$2,500	07/05/2002 (\$1,200) 08/11/2002 (\$1,300)
TOTAL		42	\$33,400	

See Horner SITC at 1009:23 – 1011:2. See also HP Ex. 311 (July 19, 2001 markers from Treasure Chest: Judge Porteous repaid the entire \$500 in chips the same day); HP Ex. 312 (July 23, 2001 markers from Treasure Chest: Judge Porteous repaid the entire \$1,000 in chips the same day); HP Ex. 313(a)–(b)) (August 20–21 markers from Treasure Chest: Judge Porteous repaid \$5,000 in chips on August 21 and 22, 2001; he repaid \$2,000 in cash on September 9, 2001; and he repaid the final \$1,000 in cash on September 15, 2001); HP Ex. 314 (September 28, 2001 markers from Harrah's: Judge Porteous wrote a check to Harrah's on September 28, 2001 for these two markers, but the casino did not deposit the check until October 28, 2001); HP Ex. 315 (October 13, 2001 markers from Treasure Chest: Judge Porteous repaid the entire \$1,000 in chips the same day); HP Ex. 316. (October 17–18 markers from Treasure Chest: Judge Porteous repaid \$1,500 in chips on October 17, 2001 and repaid \$4,400 on November 9, 2001 – \$1,800 with a check and \$2,600 with cash); HP Ex. 317 (October 31–November 1 markers from Beau Rivage: Judge Porteous repaid the entire \$3,000 in chips on the same trip); HP Ex. 318 (November 27, 2001 markers from Treasure Chest: Judge Porteous repaid the entire \$2,000 in chips on the same day); HP Ex. 319 (December 11, 2001 markers from Treasure Chest: Judge Porteous repaid the entire \$2,000 in chips on the same day); HP Ex. 320 (December 20, 2001 markers from Harrah's: Judge Porteous wrote a \$1,000 check to Harrah's on December 20, 2001, but Harrah's held the check for eleven months, and it did not clear the casino until November 9, 2002); HP Ex. 321 (February 12, 2002 markers from Grand Casino Gulfport: Judge Porteous repaid the entire \$1,000 on the same day); HP Ex. 322 (April 1, 2002 markers from Treasure Chest: Judge Porteous repaid the entire \$2,500 in chips on the same day); HP Ex. 323 (May 26, 2002 markers from Grand Casino Gulfport: Judge Porteous repaid the entire \$1,000 on the same day); HP Ex. 325 (July 4–5, 2002 markers from Grand Casino Gulfport: Judge Porteous repaid \$1,200 on July 5, 2002; he wrote a \$1,300 check for the balance on July 26, 2002, but the check did not clear the casino until August 11, 2002).

290. To make his November 9, 2001 payment of \$4,400 to the Treasure Chest Casino, Judge Porteous used his undisclosed Fidelity money market account. On October 25, 2001, Judge Porteous withdrew \$1,760 from his IRA. He obtained those proceeds by check, and deposited them into his Fidelity money market account on October 30, 2001. He thereafter wrote a check for \$1,800, payable to the Treasure Chest Casino, drawn on that account. (Judge Porteous repaid the remaining \$2,600 on November 9, 2001 in cash.)

See Horner SITC at 1011:11-23. See also HP Ex. 316 (Treasure Chest Casino Customer Transaction Inquiry); HP Ex. 530 (IRA and Fidelity records showing \$1,760 withdrawal from IRA and \$1,800 check written out of Fidelity to the Treasure Chest Casino); House Chart 19 (“Judge Porteous’s use of Undisclosed Fidelity Account in Bankruptcy to Pay Casino Debts”) (referred to as “Chart 18” in the SITC transcript).

291. To make the August 11, 2002 payment of \$1,300 to the Grand Casino Gulfport, Judge Porteous once again used his undisclosed Fidelity money market account. He wrote a check to the Grand Casino on July 26, 2002, which did not clear the casino until August 11, 2002.

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

292. 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.

See HP Ex. 441(c) (Keir Task Force Hrg. at 79) (“The debt is incurred when the marker is taken. That is when the debt arises. You owe the money. And it is the incurrence of the debt that was prohibited by the order.”).

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

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

See Horner SITC at 1008:23 – 1009:14. *See also* HP Ex. 341(a) (Capital One Credit Application); HP Ex. 341(b) (Capital One Statements). FBI Agent Horner specifically identified Judge Porteous’s Capital One Credit Application during his Task Force hearing testimony. *See* HP Ex. 441(a) (Horner Task Force Hrg. at 18).

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

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

c. Judge Porteous’s Application For a Casino Credit Increase and Use of the New Credit Limit

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

See HP Ex. 324 (Grand Casino Gulfport Credit Line Change Request); HP Ex. 325 (Grand Casino Gulfport Patron Transaction Report). *See also* HP Ex. 441(a) (Horner Task Force Hrg. at 18) (identifying the Grand Casino Credit Line Change Request and identifying Judge Porteous’s signature on the document; testifying that a casino will not increase a gambler’s credit line without the gambler proactively requesting the credit line increase).

3. Mr. Lightfoot's Knowledge of Judge Porteous's Post-June 28 Conduct

296. Judge Porteous did not tell Mr. Lightfoot that he had taken out markers, applied for a new credit card, or sought credit line increases at casinos. Mr. Lightfoot considers these acts to be violations of Judge Greendyke's Confirmation Order.

See Lightfoot SITC at 1099:17 – 1100:7. *See also* HP Ex. 441(b) (Lightfoot Task Force Hrg. at 51).

I. Judge Porteous's Conduct, In Total, Disqualifies Him from Remaining a Federal Judge

297. The "defense" of "no harm, no foul" is not available to one who violates a bankruptcy judge's court order.

See Keir SITC at 1197:8-23.

298. Judge Porteous's filing his Initial Petition using a false name was perjury. It also falsified a record of the United States Bankruptcy Court for the Eastern District of Louisiana.

See Keir SITC at 1186:7-25.

299. Judge Porteous's false statements in connection with his personal bankruptcy 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 has 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." Mr. 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.

See Keir SITC at 1199:7-18 ("it's a requirement under Section 1325 of the Code that a plan be proposed in good faith"). *See also* HP Ex. 441(c) (Keir Task Force Hrg. at 74); HP Ex. 335 (Greendyke 5th Cir. Hrg. at 385); HP Ex. 441(b) (Lightfoot Task Force Hrg. at 42-43).

300. Judge Porteous's actions in connection with his bankruptcy proceedings "cast a cloud on the integrity of the judiciary."

See Keir SITC at 1198:17-23.

301. The bankruptcy system depends on the honesty and candor of the debtors in disclosing financial information.

See Keir SITC at 1185:11-25; Hildebrand SITC at 1878:1-9, 1878:16 – 1879:8; Barliant SITC at 1921:16-19.

302. Judge Keir testified to the affect on the bankruptcy system as the result of Judge Porteous's actions:

Because Judge Porteous served as a judge, he obviously must have known what the words "under penalty of perjury" mean. And by falsely putting down information or omitting information and admittedly falsely doing it in the petition,

he obviously must have known he was committing a perjurious act. And that seems to be – to go certainly to intent.

In addition, although not part of the bankruptcy code, it's my view that these actions cast a cloud, if you will, on the integrity of the judiciary, and that public officials, whether they're elected or appointed, have a duty to not have that kind of cloud cast on the integrity of the government.

If the public has no confidence in its courts, there aren't enough police officers, there are not enough judges, there are not enough officials of any kind that are . . . going to keep the peace in the public and make this an orderly society. There has to be that level of confidence, and this kind of activity certainly would attack and weaken that.

See Keir SITC at 1198:9 – 1199:6. *See also* HP Ex. 441(c) (Keir Task Force Hrg. at 72, 69–70) (explaining that “the whole system demands and depends upon the honesty of the honest but unfortunate person who seeks relief.” Individuals simply can't just decide “that they can do whatever they want, ignoring laws, and so long as you can't measure the particular damage of the violation, there is no violation at all. That would be chaos.”)

Article IV

303. As of the summer of 1994, Judge Porteous was engaged in two corrupt schemes, one with Creely and the law firm Amato & Creely (the “curatorship scheme”), the other with the Marcottes and their bail bonding operation. Each scheme involved Judge Porteous using his judicial power to enrich himself. With Amato & Creely, he would assign curatorships in order to receive a portion of the proceeds. With the Marcottes, he would help them by setting bonds as directed to maximize their profits and setting aside/expunging convictions of the Marcotte's employees. In return, Judge Porteous would receive a stream of benefits from the Marcottes.

See Proposed Findings of Fact in Articles I and II.

A. Judge Porteous's Statements

304. 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.

See HP Ex. 69(b) (Porteous Background Check Documents).

305. Judge Porteous filled out and signed a document entitled “Supplement to Standard Form 86 (SF-86).” (The Standard Form 86 is entitled “Questionnaire for Sensitive Positions (For National Security)”). That form sets forth the following question and answer by Judge Porteous:

10S. [Question] Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President if publicly known? If so, please provide full details?

[Answer] NO

Judge Porteous signed that document under the following statement:

I understand that the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 dated April 27, 1994 and a false statement on this form is punishable by law.

See HP Ex. 69(b) (Porteous Background Check Documents at PORT 0298).

306. As part of the background check, Judge Porteous was interviewed by the FBI on July 6 and 8, 1994 about the contents of this form.

See HP Ex. 69(b) (Porteous Background Check Documents, at PORT 0298).

307. Judge Porteous, when interviewed by the FBI on July 6 and 8, 1994, was asked a series of questions designed to elicit information which might bear upon his fitness to serve as a federal judge. The FBI Agents, in their write-up of the interview, recorded Judge Porteous as stating:

ORTEOUS 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.

See HP Ex. 69(i) (Un-redacted copy of Porteous FBI interview).

308. In or about late July 1994, the FBI in New Orleans sent to FBI Headquarters in Washington D.C. the results of its initial background check. After review by FBI Headquarters, further investigation was requested. In particular, FBI Headquarters directed by way of a teletype that the agents ask specific questions of specific persons related to specific allegations concerning Judge Porteous's bond-setting practices. The agents were directed to inquire of specific persons whether Judge Porteous had received monies from an attorney to reduce bond in the "Keith Kline" case and whether he had improperly reduced a bond for money in another case. The agents were then directed to re-interview Judge Porteous to provide him with an opportunity to address the allegations.

See HP Ex. 69(b) (Porteous Background Check Documents at PORT 0478-480).

309. The instructions from FBI Headquarters to the agents in New Orleans, set forth in a teletype, specifically directed the agents to ask the "coercion/integrity" questions of the individuals who were to be interviewed or re-interviewed.

See HP Ex. 69(b) (Porteous Background Check Documents at PORT 0462-463).

310. Judge Porteous was interviewed a second time by the FBI on August 18, 1994, about concerns related to 1993 allegations that he had received monies from an attorney and a bail bondsman to reduce bond for Keith Kline. He was also questioned about his reduction of an unrelated bond where the bondsman was Adam Barnett. In the August 18, 1994 interview, FBI Agent Hamil, as directed by FBI Headquarters, also asked Judge Porteous the

“coercion/integrity” questions. In that interview, which Hamil memorialized in an FBI “302” on the same day, Judge Porteous stated “that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion.”

See Ex. 69(b) (Porteous Background Check Documents at PORT 0493-494).

311. Judge Porteous was nominated for the position of federal judge on August 25, 1994.

See Ex. HP 9(a) (President Clinton’s Nomination of Judge Porteous).

312. On September 6, 1994, Judge Porteous, in his United States Senate Committee on the Judiciary “Questionnaire for Judicial Nominees,” was asked the following question and gave the following answer:

[Question] Please advise the Committee of any unfavorable information that may affect your nomination.

[Answer] To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

The signature block in the form of an “Affidavit,” reads as follows:

AFFIDAVIT

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana, this 6 day of September, 1994.

It is signed by Judge Porteous and by a notary.

See Ex. HP 9(f) (Question 11 and Signature Block, pp 33-34).

313. Judge Porteous’s answers in response to the questions on all four occasions – two times by the FBI, once by the White House, and once by the Senate – were in each instance false, made with the intent to deceive, and made with intent of procuring the judicial office without disclosing material information which would have affected his obtaining the federal office.

See HP Ex. 69(b) (Supplement to Standard Form 86 at PORT 0298); HP Ex. 69(b) (FBI Interview dated August 18, 1994 at PORT 0492-494); HP Ex. 69(i) (FBI Interview dated July 8, 1994); and 9(f) Certified Copy of Judge Porteous’s Questionnaire for Judicial Nominees).

314. At no time during these interviews or in filling out the questionnaires did Judge Porteous inform the FBI, the White House, or the Senate that, at the very time he was being considered for a federal judgeship, he was engaged in two on-going corrupt relationships, namely, the “curatorship scheme” with Creely and the firm of Amato & Creely, and the corrupt relationship with the Marcottes and their bail bonding business.

See HP Ex. 69(b) (Supplement to Standard Form 86 at PORT 0298); HP Ex. 69(b) (FBI Interview dated August 18, 1994 at PORT 0492-494); HP Ex. 69(i) (FBI Interview dated July 8, 1994); and 9(f) Certified Copy of Judge Porteous’s Questionnaire for Judicial Nominees).

315. Judge Porteous’s knowledge of his relationship with Louis Marcotte should have been disclosed in either the questions he completed or in his interviews with the FBI.

B. The Marcotte Interviews

316. On August 1, 1994, Louis Marcotte was interviewed by the FBI. That interview is discussed at Finding 127–135. In substance, Louis Marcotte lied to the FBI about his knowledge of Judge Porteous’s financial circumstances, his alcohol usage, and in response to the general “integrity” questions. Louis Marcotte informed Judge Porteous of the substance of the August 1, 1994 interview and told Judge Porteous that he [Louis] had given Judge Porteous a “clean bill of health.” Thus, at the time Judge Porteous was re-interviewed by the FBI on August 18, and at the time he filled out his September 6 Senate questionnaire, he knew he could confidently conceal his corrupt relationship with Louis Marcotte from the FBI because Louis had misled the FBI.

C. The Creely Interview

317. On August 1, 1994, Robert Creely was interviewed by the FBI as part of Judge Porteous’s background check. In that interview, Creely stated that he “knows of no financial problems on the part of the candidate, and the candidate appears to live within his economic means.”

See HP Ex. 69(b) (Porteous Background Documents at PORT 0476-477).

318. Creely’s statement that he “[knew] of no financial problems of Judge Porteous” was false, as Creely knew Judge Porteous had significant financial problems.

See Creely SITC 277:19-280:9 (“[N]o, he was not living within his means.”).

319. On the same day of Creely’s interview, Judge Porteous assigned Creely a curatorship, and continued to assign him curatorships – perpetrating the corrupt scheme – through his confirmation and swearing in.

See HP Ex. 189-219 (curatorship assigned by Judge Porteous to Creely on August 29, 1994) HP Ex. 189-222 (Sep. 21, 1994); HP Ex. 189-223 (Sep 13, 1994); HP Ex. 189-224 (August 1, 1994); HP Ex. 189-225 (August 9, 1994); HP Ex. 189-226 (August 18, 1994).

D. The Aubrey Wallace Set Aside and Judge Porteous's

320. At around the time of Judge Porteous's nomination, Louis Marcotte made several requests of him to set aside Aubry Wallace's conviction.

See Findings 136–143.

321. Louis Marcotte has consistently described this set of events surrounding the Wallace set aside. In his Senate deposition, he testified that in 2004, he was interviewed by the FBI. At that time, he had no idea that over six years later he may be called upon to relate this set of events in connection with the possible impeachment of Judge Porteous. At that deposition, Louis was asked the following about his 2004 statement to the FBI:

Q. So when you were saying things back then [in October 2004], you had no idea that in 2010, six years later, somebody was going to cover the same ground with you, did you?

A. I had no idea.

Q. I want to ask you about one statement that you made at the time in October 15th, 2004. I'm just going to read you the statement and ask if it's true, okay?

A. Okay.

* * *

Q. [Q]uote: "Porteous waited until the last days of his term as a 24th judicial district court judge to expunge Aubry 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 his background investigation for the Federal judicial appointment. Porteous told Marcotte 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."

Is that a true statement?

A. That's a true statement.

Q. Okay. So when Mr. Turley asked if you had conversations with this lawyer who was involved, you had direct conversations with Judge Porteous about setting aside Wallace's conviction, is that right?

A. Yes, I did,

Q. And he said in substance, I'm going to hide that from the Senate because I don't want that to be known before they confirm me?

Isn't that what he said in substance?

A. Not in exactly those words but that's what he meant.

See HP Ex. 447 (Louis Marcotte Sen. Dep at 143:23-145:12).

322. Similarly, in his Task Force Testimony, in response to questions of Mr. Schiff, Louis Marcotte described the conversations he had with Judge Porteous concerning Wallace's set aside as follows:

Mr. SCHIFF. Can you tell us a little bit about the conversations you had with him where he indicated that he was concerned with confirmation if they found out about this or if the newspapers made it public?

Mr. LOUIS MARCOTTE. Yeah. He just didn't want to make himself—he was worried about the confirmation, but he was trying to—he didn't want anything to come up that would, you know, cause him a problem from being confirmed.

Mr. SCHIFF. And can you tell us what his words were, as best you can recall, how he expressed to you his concern that things might become public?

Mr. LOUIS MARCOTTE. He said, "Louis, I am not going to let Wallace get in the way of me of becoming a Federal judge and getting appointed for the rest of his life to set aside his conviction. Wait until it happens, and then I'll do it."

See HP Ex. 442 (Louis Marcotte TF Hrg. III at 60).

323. On September 20, 1994, Robert Rees, on behalf of Wallace, filed a "Motion to Amend Sentence."

See HP Ex. 82 (Motion to Amend Sentence, Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.), Sep. 20, 1994); HP Ex. 69(d) (Transcript of Proceedings, State of Louisiana v. Aubrey Wallace, No. 89-2360 (24th Judicial Dist. Ct., Jeff. Par.), Sept. 21, 1994 at PORT 0620-624).

324. On September 21, 1994, Judge Porteous held a hearing and amended Wallace's sentence so that the underlying burglary plea was under "Article 893E," a provision of the sentencing law which permits the defendant, upon successful completion of probation, to seek the conviction be set aside. Judge Porteous entered the order amending sentence orally at the hearing, and the following day entered a written order.

See HP Ex. 69(d) (Transcript of Proceedings, State of Louisiana v. Aubrey Wallace, No. 89-2360 (24th Judicial Dist. Ct., Jeff. Par.), Sept. 21, 1994 at PORT 0620-624); HP Ex. 82 (Order (amending sentence), Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.), Sep. 22, 1994.)

325. On that date, September 21, 1994, after having amended the sentence, there was nothing to prevent Judge Porteous from setting aside the conviction. However, consistent with his

previously expressed intent, Judge Porteous chose to wait until after he was confirmed by the Senate to set aside the conviction.

See Rees SITC 1986:8-1987-6.

326. Judge Porteous was confirmed by the Senate on October 7, 1994.

See HP Ex. 9(c) (Congressional Record Reflecting Senate Confirmation of Judge Porteous).

327. On October 14, 1994, Judge Porteous held a hearing at which he orally set aside Wallace's conviction. He issued a written order the same date to the same effect.

See HP Ex. 69(d) 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 0625-629; HP Ex. 82 (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.)

328. Judge Porteous's actions in handling the Wallace set-aside matter were consistent with his expressed intent to conceal from the Senate his corrupt relationship with Louis Marcotte.

E. The "Catchall" Questions

329. The questions are sufficiently precise, and Judge Porteous was well aware of the conduct at issue that would naturally be disclosed in response to these questions, to conclude that the false answers were knowing and intentional. As Professor Akhil 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. . . .

See HP Ex. 443 (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. 34-35 (Dec. 15, 2009) (testimony of Prof Amar) (hereinafter "Amar Task Force Testimony"); *See* also Mackenzie SITC 2039:6-2040:4 (kickbacks to attorneys should have been disclosed in response to the catchall questions).

330. The "catchall" questions serve several valid and necessary purposes. 1) they dissuade persons from seeking Office if they know that to obtain it, they will need to lie under oath to conceal material facts; 2) they prevent an unworthy candidate from moving through the confirmation process and thereafter defending his or her failure to disclose because no question required the disclosure of negative information; and 3) it is not feasible to design a questionnaire that lists every possible species of disqualifying misconduct. Moreover, under no circumstances does the candidate have the right to lie.

See Mackenzie SITC 2052:16-2054:23; 2077:24-2078:8; 2079:19-21 (“I’m not opposed to the catchall questions.”); *Amar Task Force Testimony at 34-35*. (“[I]t would really be unfortunate if you had to ask specific questions of a green eggs and ham variety. Were you a crook in a box? Were you a crook with a fox? Were you a crook in the rain? On a train? You know, we know what those questions at their core was about, and he lied at the core. There is vagueness at the periphery, but this was really central.”); *Id.* at 42 (If a person does not want to answer the questions: “All he has to do is say, [‘]I do not wish to be considered for this position.[’]”)

331. The catchall nature of the questions posed to Judge Porteous are necessary to prevent an unworthy candidate from successfully moving through the confirmation process, and thereafter defending his or her failure to disclose because no question in the process required the disclosure of the negative information.

See Mackenzie SITC at 2077:14-2078:8, 2079:19-21 (“I’m not opposed to the catchall questions.”).

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES



Adam Schiff, Manager

By



Bob Goodlatte, Manager



Alan I. Baron

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

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