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September 23, 2010

**VIA E-MAIL**

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 c/o Alan I. Baron, Esq.  
 Special Impeachment Counsel  
 United States House of Representatives  
 The Ford House Office Building  
 Room H2-365  
 Washington, D.C. 20515

**Re: In re Porteous – House Request to Admit Additional Materials**

House Impeachment Counsel:

We write in response to the House of Representative's September 21, 2010 request (modified on September 22, 2010, and September 23, 2010) to admit various exhibits into the record of the Senate Impeachment Trial Committee (the "Committee"). In that request, the House has sought to introduce more than 450 additional exhibits into the trial record. Judge Porteous does not object to the great majority of the House's admission requests.

Judge Porteous does object, however, to the admission of a number of the House exhibits. These exhibits are misleading, contradicted by testimony, prejudicial, and/or simply irrelevant to the issues before the Senate. As such, had the House attempted to introduce these exhibits at the time of the trial, the Defense would have objected strenuously. Moreover, seeking to introduce these exhibits now deprives the Defense of the ability to rebut or cross-examine witnesses about them. It obviously contradicts the purpose of the evidentiary hearing for the House to drop or decline to call witnesses to testify and then attempt to introduce one-sided accounts of certain underlying facts. This late attempt to introduce voluminous exhibits – after the trial is completed – is a gross breach of Judge Porteous's due process rights.

The following are the House exhibits to which Judge Porteous objects, including an explanation of those objections:

- Fifth Circuit Testimony (other than that of Judge Porteous, which the Committee has already ruled upon)

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- House Exhibits 12 & 13 (Creely)
- House Exhibits 20 & 21(a) (Amato)
- House Exhibits 32 & 34 (Gardner)
- House Exhibits 43 & 44 (Danos)
- House Exhibit 65 (Mole)
- House Exhibit 124 (Lightfoot)
- House Exhibit 295 (Heitkamp)
- House Exhibit 332 (Fink)
- House Exhibit 335 (Greendyke)
- House Exhibit 338 (Horner)
  - These exhibits contain the testimony of individuals who testified before the Senate Committee or whom the parties chose not to call as witnesses before the Committee. As such, their prior testimony is either redundant of testimony already elicited before the Committee, and subject cross examination by counsel and questioning by the Senators, or was considered to be so superfluous that its repetition before the Senate Committee was not required. While Judge Porteous had an opportunity to cross examine witnesses in the Fifth Circuit proceeding, he did so without the assistance of counsel and without the full knowledge of the evidence that his defense team had developed for the Senate trial. To admit this prior testimony now would deprive Judge Porteous of the opportunity to cross examine adequately the testimony before the Senate Committee, in light of the other evidence submitted to the Committee, and would constitute a severe deprivation of due and fair process.
- House Testimony
  - House Exhibits 440, 441, 442, & 443
    - These documents contain the prior testimony of witnesses who appeared before the House Impeachment Committee and either testified before the Senate Committee or were not called to give such testimony because neither party felt that the testimony was necessary (e.g., Plattsmier). As such, the

testimony is either superfluous or unnecessary and, in any case, would be unfair to include without providing Judge Porteous with a full and fair opportunity for cross-examination before the Senate Committee. (Judge Porteous recognizes that his counsel at the time had an opportunity to cross examine witnesses during the House Impeachment proceedings, but the House Managers took the position that those proceedings were akin to a Grand Jury proceeding and Judge Porteous's opportunity for cross-examination was severely restricted.) Other testimony went to the ultimate issue of whether the conduct alleged constitutes an impeachable offense (e.g., Amar and Gerhardt), which the House Managers have agreed is inappropriate material for submission to the Senate Committee. It would violate basic concepts of fairness and due process to import this bulk prior testimony into the Senate Committee record.

- Financial Disclosure Reports and Instructions
  - House Exhibits 100(a), 100(b), 101(a), 101(b), 102(a), 102(b), 103(a), 103(b), 104(a), 104(b), 105(a), 105(b), 106(a), 106(b), 107(a), 107(b), 108(a), 108(b), 109(a), 109(b), 110(a), 110(b), 111(a), 111(b), 112(a), 112(b), 113, & 114
    - Since the Articles of Impeachment prepared and approved by the House of Representatives against Judge Porteous do not allege misconduct in connection with financial disclosure statements and do not assert any such misconduct as a basis for impeachment, these documents are irrelevant, their inclusion is prejudicial, and they should be excluded.
- Demonstratives
  - House Exhibits 190, ("Chart of Curatorships"), 327 ("FBI Chart"), 328 ("FBI Chart"), 348 (chart of credit card information), 349 (chart of payroll information), 500-28, & 532
    - These documents were created by House Impeachment Counsel, the House managers, and/or the FBI in connection with this matter and, therefore, are not evidence and should not be admitted into the record.
- Other Miscellaneous Irrelevant Materials
  - House Exhibits 21(b) & 283 (Jacob Amato Calendars)
    - During his testimony during before the Committee, Mr. Amato questioned the legitimacy and accuracy of these documents. Accordingly, unless and until this discrepancy is resolved, Judge Porteous objects to admission of this material.

Had the House chosen to introduce these documents at the time of Mr. Amato's testimony, the Defense would have objected to them as unreliable and lacking necessary foundation.

- House Exhibit 21(c) (Jacob Amato Credit Card Records) & 35(a) (Don Gardner records regarding trips to Washington)
  - These documents are not relevant to any witness testimony elicited before the Senate Committee. Had the House sought to introduce these documents at the time of Mr. Amato's or Mr. Gardner's testimony, the Defense would have had an opportunity to cross examine the witnesses regarding them. Seeking to introduce them now deprives the Defense of that basic due process right.
- House Exhibit 69(b)
  - This exhibit should not be admitted in its entirety, as it contains numerous irrelevant and/or unreliable documents, including FBI 302 reports, which the Committee has already characterized as inherently unreliable and generally excluded from the record. This document also contains unsubstantiated and, in some cases, discredited rumors, gossip, and innuendo, which has no place in the Committee record. Judge Porteous does not, however, object to the admission of a redacted version of House Exhibit 69(b), from which irrelevant and discredited portions have been removed. Judge Porteous is in the process of preparing a redacted version of House Exhibit 69(b), which will be provided to the House for its review shortly.
- House Exhibit 69(d) at PORT672-77
  - Judge Porteous objects to the introduction of this document unless the House demonstrates that the Louisiana code sections contained within the selected pages of House Exhibit 69(d) are the versions of those code sections that were in effect in 1994. If the House can make that showing, then Judge Porteous will not object to the inclusion of the selected pages in the Committee record.
- House Exhibits 88(a), 88(b), 88(c), & 88(i)
  - Given that the Committee has already accepted House Exhibit 88(d) into the record, these additional documents are unnecessary, duplicative, and irrelevant.
- House Exhibits 91(a) & 91(b)
  - These documents relate to two non-competition lawsuits between Bail Bonds Unlimited, Inc. and (1) Matthew Dennis, Robert Dennis, and Dearl Rudisaile,

and (2) Bobb Gene Hollingsworth, both of which are irrelevant to these proceedings and were not substantively discussed during the Committee's evidentiary hearing. Introduction of these documents now, when their substance cannot be subject to explanation or cross examination, would be unfairly and unnecessarily prejudicial and a clear deprivation of due process rights.

- House Exhibits 93(a), 93(b), 94(a), 94(b), & 94(c)
  - These documents relate to criminal proceedings brought against Alan Green and Norman Bowley, neither of whom testified before the Committee or were offered or relied upon as witnesses in this proceeding. These documents are thus irrelevant and unnecessary and introduction of these documents would be prejudicial unless produced subject to explanation and cross examination.
- House Exhibits 167, 168, 169, 170, & 171
  - For the same reason that the House exhibits related to financial disclosure forms should be excluded (see above), these documents should not be admitted into the Committee record. They have no relevance to the charges stated in the Articles of Impeachment and their introduction now would be prejudicial.
- House Exhibits 301(a), 301(b), 302-12, 313(a), 313(b), 314-26, 329-331, 341(a), 341(b), 370(a), 370(b), 371, 382, 451, 452(a), 452(b), 453, & 529-30
  - The admission of these documents would be prejudicial to Judge Porteous. The House has failed to establish any foundation for, elicit testimony about, and move the underlying documents into the record at a time when Judge Porteous would have had an opportunity to explain, rebut, or cross examine the testimony and the documents.
- House Exhibits 372(e), 373(a), & 373(b)
  - Judge Porteous objects to the admission of these documents because there is no documentary or testimonial evidence linking Judge Porteous to the lunches referenced within these documents. These documents are irrelevant, unreliable, and prejudicial.
- House Exhibit 376, 377, & 378
  - Judge Porteous objects to the admission of these documents because they are unreliable (according to Mr. Creely) and the House failed to establish any

foundation for this material. These documents could have been introduced during Mr. Creely's testimony, which would have given Judge Porteous the opportunity to examine the witness about them and to determine their validity, or lack thereof. To seek to introduce these documents now deprives Judge Porteous of fundamental due and fair process.

- House Exhibit 381 & 383
  - Judge Porteous objects to the admission of these documents on the basis that the House failed to establish any foundation for this material or any basis for its inclusion in the Committee record.
- House Exhibit 437 & 438
  - Judge Porteous objects to inclusion of these documents in the Senate Committee record because they are not evidence and are irrelevant to these proceedings. The referenced documents merely constitute correspondence concerning the production of documents.
- House Exhibit 439(q)
  - Judge Porteous objects to the admission of this document to the extent that it includes unsubstantiated and, in some cases, discredited rumors, gossip, and innuendo, which has no place in the Committee record. Judge Porteous believes the parties can agree upon partial redactions of this document that remove irrelevant allegations relating to third parties.
- House Exhibit 449
  - This document is irrelevant to the Senate proceedings.
- House Exhibit 450
  - This material is irrelevant to the Senate proceedings and lacks any foundation for admission into the Committee record.
- House Exhibit 531
  - This document was used by the House solely for impeachment purposes. Moreover, Professor Mackenzie specifically testified that the selected excerpts used during cross-examination (*i.e.*, chapter 7) were not written by him and instead were written by Professor Terry Sullivan and do not necessarily represent Professor Mackenzie's views.

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Finally, Judge Porteous requests that the House agree to admit into the Committee record the following three additional documents:

- Porteous Exhibit 1007 (List of 24th JDC Judges, provided by the 24th JDC Clerk)
- Porteous Exhibit 1104 (*Good Faith: A Roundtable Discussion*, 1 Am. Bankr. Inst. L. Rev. 11 (1993))
- Porteous Exhibit 2007 (Guidry 302; copy attached)

Sincerely,



Daniel C. Schwartz

Attachment

cc: Mark Dubester, Esq., House Impeachment Counsel  
Harry Damelin, Esq., House Impeachment Counsel  
Kirsten Konar, Esq., House Impeachment Counsel