

COPY



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

June 18, 2008

BY HAND

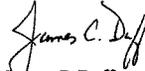
Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

Dear Madam Speaker:

At a special session held yesterday, the Judicial Conference of the United States by its members present determined unanimously, upon recommendation of its Committee on Judicial Conduct and Disability, to transmit the enclosed Certificate, report, and record of proceedings in a judicial misconduct matter to the House of Representatives, in accordance with 28 U.S.C. § 355(b)(1). Two members were not present and did not participate in the Conference's deliberations on this matter.

Please be advised that the Certificate is a "determination" within the meaning of the following provision in section 355(b)(1): "Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination." The Judicial Conference will make no public statement on this matter, but has transmitted the Certificate and report to the subject judge and to the chief judge of the Fifth Circuit Court of Appeals in her capacity as chair of the Judicial Council of the Fifth Circuit.

Sincerely,


James C. Duff
Secretary

Enclosures

HP Exhibit 7(a)



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

COPY

CERTIFICATE

TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES:

Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.

The determination is based on substantial evidence that:

- a) Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him. Parts F(1)(a), (2)(a), and G of Report of the Committee are incorporated by reference.
- b) Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard of the bankruptcy court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1). Parts F(1)(c), (2)(c), and G of the Report of the Committee are incorporated by reference.
- c) Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in cases in which lawyers who appeared before him had given him cash and other things of value and for the Fifth Circuit Judicial Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value. Parts F(1)(a), (b), (2)(a), (b), and G of the Report of the Committee are incorporated by reference.

HP Exhibit 7(b)

TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES

Page 2

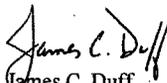
d) Judge Porteous violated several criminal statutes and ethical canons by presiding over In re: Liljeberg Enters. Inc. v. Lifemark Hosps. Inc., No. 2:93-cv-01784, *rev'd in part by* 304 F.3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Code of Conduct for United States Judges.

Parts F(1)(b), (2)(b), and G of the Report of the Committee are incorporated by reference.

e) Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344. Parts F(1)(d), (2)(d), and G of the Report of the Committee are incorporated by reference.

f) The conduct described in (a) through (e) has individually and collectively brought disrepute to the federal judiciary.

Executed this 17th day of June, 2008.


James C. Duff
Secretary

**REPORT AND RECOMMENDATIONS
OF THE JUDICIAL CONFERENCE
COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY**

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES	2
A. Procedural Background.....	4
B. The Issue before the Conference.....	12
C. Procedural Concerns.....	14
D. Validity of the Fifth Circuit Proceedings.....	17
E. Definition of Impeachable Conduct.....	18
F. Conduct by Judge Porteous that Might Warrant Consideration of Impeachment.....	21
1) The Evidence.....	21
a) Financial Disclosure Forms.....	21
b) Solicitation and Receipt of Cash and Things of Value.....	22
c) Bankruptcy Fraud.....	24
d) Bank Fraud.....	25
2) Nature of the Offenses.....	26
a) Financial Disclosure Violations; Perjury; Abuse of Judicial Power.....	26
b) Solicitation and Receipt of Illegal Gratuities; Deprivation of the Right to Honest Services; Abuse of Judicial Power.....	27
c) Bankruptcy Fraud; Perjury.....	31
d) Bank Fraud.....	32
G. Conclusion; Response to The Fifth Circuit Dissent.....	32
H. Certification.....	36
I. Misconduct Proceeding.....	37
Appendix A.....	40

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee on Judicial Conduct and Disability submits the following report and recommendations. This matter, In Re: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous Jr. under the Judicial Conduct and Disability Act of 1980, No. 07-05-351-0085 ("Act"), was certified to the Conference by the Judicial Council of the Fifth Circuit pursuant to 28 U.S.C. § 354(b)(2)(A) upon the Council's determination that Judge Porteous may have engaged in conduct that might constitute one or more grounds for impeachment under Article II of the United States Constitution. On February 13, 2008, the Executive Committee referred that Certification to the Committee on Judicial Conduct and Disability.

The Committee finds substantial evidence that Judge Porteous has engaged in misconduct that may warrant consideration by the Congress of impeachment under Article II of the United States Constitution. As detailed below, there is substantial evidence that Judge Porteous made numerous false statements under oath, including on his financial disclosure forms; solicited and received cash and things of value from lawyers appearing in cases before him; in soliciting and receiving the cash and things of value, used means that avoided a direct paper trail and did not report these benefits as required on his financial disclosure forms; committed fraud and perjury in his personal bankruptcy action; and secured renewal of a bank loan through fraud. There is substantial reason to conclude that these acts constituted serious crimes, abuses of judicial power, and brought disrepute on the judiciary. The Committee therefore recommends to the Conference that pursuant to 28 U.S.C. § 355(b)(1), it certify and transmit to the House of Representatives the records of this proceeding and the Conference's determination that consideration of impeachment may be warranted. A proposed certification can be found at Part H of this report.

The Committee also recommends that it be authorized to invite the Judicial Council of the Fifth Circuit to: (i) make an express decision on whether to continue at this time or suspend

proceedings pursuant to 28 U.S.C. § 354 regarding sanctions for misconduct by Judge Porteous under the Judicial Conduct and Disability Act; and (ii) consider whether to direct that, under Section 354(a)(2)(A)(i), no further cases be assigned to Judge Porteous for two years or until final action regarding impeachment and removal from office by the Congress, if earlier than two years.

Because of the seriousness of the matter, the lack of direct precedents in the Conference's history, and the existence of a dissent by members of the Fifth Circuit Judicial Council filed after the Council's certification, the Committee has compiled an extensive Report and Recommendations.

The Report and Recommendations is self-contained and comprehensive and the accompanying exhibits are transmitted principally for reference purposes. Those exhibits are as follows: (1) the Report of the Special Committee of the Fifth Circuit Judicial Council, (2) Judge Porteous's response thereto, (3) the Special Committee's ("SC") response to him, (4) the certification of the Fifth Circuit Judicial Council, (5) a dissenting statement by members of the Council, and (6) a Memorandum and Supplemental Memorandum filed on behalf of Judge Porteous with the Conference. Additional transcripts and other documents too voluminous to copy and transmit are available in the General Counsel's Office in the Administrative Office. Conference Rule 10 states that the Report of this Committee is an internal document - - analogous to a clerk's memorandum to an appellate court - - and need not be provided to the subject judge. Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Might Have Engaged in Impeachable Conduct R. 10. Because the Committee's Report and Recommendations is based entirely on the record compiled by the Special Committee and does not expand on the allegations in the original complaint, the Committee will not, absent a contrary direction from the Conference, transmit a copy to, or seek comment from, Judge Porteous.

A. PROCEDURAL BACKGROUND

On May 18, 2007, the United States Department of Justice (“DOJ”) completed a twenty-two-page complaint, pursuant to 28 U.S.C. § 351(a), alleging that Judge G. Thomas Porteous Jr., United States District Judge for the Eastern District of Louisiana, “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” under the Act.¹ [SCR. 2; DOJ Cmplt. dated 5.18.2007] The complaint was filed by John C. Keeney, Deputy Assistant Attorney General for the Criminal Division of the DOJ. [SCR. 3; DOJ Cmplt. at 22] The DOJ complaint detailed several allegations of serious misconduct. The underlying information was obtained through an investigation by the Federal Bureau of Investigation (“FBI”) and a grand jury empaneled in the Eastern District of Louisiana. [DOJ Cmplt. at 1] The investigation concerned whether Judge Porteous had committed or conspired to commit a number of crimes, including bribery of, or receipt of illegal gratuities by, a public official in violation of 18 U.S.C. §§ 201 and 371, the deprivation of honest services through mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submitting false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filing false declarations, concealing assets, and acting in criminal contempt of court during his personal Chapter 13 bankruptcy proceeding in violation of 18 U.S.C. §§ 152 and 401. [DOJ Cmplt. at 1] Ultimately, the DOJ decided not to prosecute Judge Porteous. [SCR. 3]

After receiving the complaint, Chief Judge Edith Hollan Jones of the Fifth Circuit appointed the SC, pursuant to 28 U.S.C. § 353(a), to investigate the complaint. The committee consisted of Chief Judge Jones, Circuit Judge Fortunato P. Benavides, and District Judge Sim Lake. Judge Porteous was provided notice of this action. [SCR. 2] Ronald G. Woods, investigative counsel for the SC, coordinated with the DOJ attorneys to obtain and organize grand jury testimony and other documents compiled by the government that were relevant to the SC’s investigation. [SCR. 5; SCHK. 269]

¹The DOJ complaint was finalized on May 18, 2007 but was not actually filed until May 21, 2007. Because the report is referred to as the May 18 report elsewhere in the record, we adopt the same terminology.

In May 2006, Judge Porteous had sought a certificate of disability from Chief Judge Jones. In his request, he cited his alcohol abuse, the loss of his home in Hurricane Katrina, his wife's sudden death, and the grand jury investigation. [SCR. 5 n.2; SC. 851-56] That request was denied. Chief Judge Jones denied a subsequent request that she reconsider her initial denial because the documentation of a permanent medical disability was insufficient. [SC. 853; SCR. 5] On June 11, 2007, Judge Porteous,² through counsel, offered to retire voluntarily if he was certified by the Fifth Circuit's Judicial Council as disabled and unable to continue his duties as a federal judge. Judge Porteous wanted to receive "all customary retirement benefits" upon waiver of the length-of-service requirement, as permitted by 28 U.S.C. § 354(a)(2)(B)(ii) and Rule 13(f)(5) of the Fifth Circuit's Rules Governing Complaints of Judicial Misconduct or Disability. [SC. 851-56]

By letter dated June 25, 2007, the SC declined to recommend Judge Porteous's disability proposal to the Fifth Circuit Judicial Council. [SC. 857-58] Because the SC's investigation was in its beginning stages and because it wanted to file a comprehensive report with the Fifth Circuit's Judicial Council, the SC declined to recommend what it considered to be a "preemptive settlement." [SC. 857] The SC also declined to recommend the disability proposal because it was unauthorized under the Act. The statutory provisions authorize waiver only of the length-of-service requirement but not of the minimum age for disability retirement. *See* 28 U.S.C. §§ 354(a)(2)(B)(ii), 371, and 372. [SCR. 6] Judge Porteous was also notified that the SC would be holding an evidentiary hearing in New Orleans, that he would be afforded procedural rights in accord with Rule 11 of the Fifth Circuit's misconduct rules, and that he was to file a response -- which would determine the scope of the hearing -- by July 10, 2007. [SC. 858]

In July 2007, Judge Porteous requested a continuance because he was in the process of obtaining new counsel. [SCR. 6; SC. 859, 860-61] Judge Porteous also requested a discovery

²To the extent that the ensuing discussion relates to Judge Porteous's claims of disability, claimed psychiatric conditions, or offers to resign, the Committee includes such details only because they are relevant to the argument that his due process rights were violated by deprivation of counsel and lack of time to prepare for the SC's hearing.

schedule, and that the DOJ complaint be dismissed as legally insufficient because it was not verified under oath.

The SC scheduled its hearing for September 26-28, 2007. [SC. 862-63] Judge Porteous was again advised that his response would determine the scope of the hearing and that he would receive notice of the SC's use of grand-jury witnesses and documents. [Id.] On August 2, 2007, Judge Porteous retained a new attorney and requested a further continuance of the hearing and response date. The SC extended his response deadline by one week but refused to reschedule the hearing. [SC. 864-65] The SC also obtained immunity from federal prosecution for prospective witnesses, including Judge Porteous's friends, his secretary and his bankruptcy counsel, all of whom had testified before the grand jury. [SCR. 7-8; SC. 799-848]

By letter dated August 9, through his then-counsel, Michael Ellis, Judge Porteous raised a number of objections to the DOJ Complaint, including the argument that it was legally insufficient because it was unverified, in violation of Rule 2(F), and lacked the names and addresses of the witnesses it identified, in violation of Rule 2(B)(3) of the Fifth Circuit's Misconduct Rules. [SC. 866-68]

The SC, through its investigative attorney Ronald Woods, responded by letter dated August 14. [SC. 869-72] The SC concluded that the Complaint satisfied the requirements of 28 U.S.C. § 351(a) as well as the Fifth Circuit's own misconduct rules because the facts summarized by the DOJ were based on sworn grand jury testimony, public bankruptcy court documents, subpoenaed business records, and filings and statements, some of which were made under penalty of perjury by Judge Porteous himself. [Id.] The SC also provided the names and addresses of the individuals named in the DOJ Complaint -- including Judge Porteous's secretary of approximately twenty years, his bankruptcy counsel, and persons with whom he claimed to have very close friendships. [Id.] The SC emphasized that Judge Porteous, along with his prior counsel, Kyle Schonekas, were both aware of the federal grand jury investigation that had been conducted by the Public Integrity division of the DOJ. [SC. 869-70] Schonekas had advised

Claude Lightfoot, Judge Porteous's bankruptcy counsel, to assert the attorney-client privilege during his grand jury appearance. [Id.] Schonekas had also negotiated with the DOJ on behalf of Judge Porteous through 2007, when the Department decided not to indict Judge Porteous but to file the Misconduct Complaint. [SC. 870] Finally, the SC offered to make all of its documentary evidence available for inspection at an office located in Houston, Texas. [SC. 870]

Two days later, on August 16, Ellis asserted that Judge Porteous suffered from psychiatric conditions, such as depression, anxiety, and memory lapses related to mental depression that substantially interfered with Judge Porteous's ability to perform his judicial duties or assist competently in his own defense. [SC. 874-76] Updated medical reports accompanied the letter that urged Chief Judge Jones to certify Judge Porteous as disabled. [SC. 876-92]

On August 29, 2007, to negate any claim of insufficiency as to the DOJ Complaint, Chief Judge Jones initiated a complaint of judicial misconduct, nunc pro tunc, pursuant to 28 U.S.C. § 351(b), against Judge Porteous to be effective May 21, 2007. The complaint was based on the same facts and circumstances described in the DOJ's Complaint.

The SC then requested a psychiatric evaluation of Judge Porteous under the direction of Dr. Glen O. Gabbard, Director of Baylor College of Medicine Psychiatry Clinic in Houston. [SCR. 9] Dr. Gabbard's report, provided first to Judge Porteous then to the SC, determined that Judge Porteous was capable of both performing his judicial duties and assisting in his defense against the DOJ Complaint. [SC. 200-11] Gabbard reported that Judge Porteous had stopped drinking in April 2006, that he was not clinically depressed, but that he disliked being a judge at this point in his life and expressed a strong interest in pursuing other functions "such as mediation, speaking, and teaching." [SC. 210]

As a result of the time needed for the psychiatric evaluation, the SC's hearing was postponed until October 29, 2007. [SCR. 10; SCHAT. 1, 269] Federal immunity was then

obtained for Judge Porteous's own testimony. [SCR. 10] Ellis was provided with the following: Judge Porteous's financial disclosure reports filed with the Administrative Office of the U.S. Courts; the certified bankruptcy court file; documents from Regions Bank concerning a single-payment loan Judge Porteous obtained; and the file and correspondence of Claude Lightfoot, Judge Porteous's bankruptcy counsel. [SC. 893-94] The SC also provided Judge Porteous the opportunity to review nine boxes of grand jury documents that the DOJ had produced to the SC. [SC. 909] The SC also furnished relevant grand jury transcripts and copies of "FBI 302" reports of witnesses who would be called at the hearing. [SCR. 10; SC. 895-907] Finally, the SC requested that any disputes over the admissibility of evidence be raised at least three business days before the hearing. [SCR. 10]

Prior to the start of the hearing, Ellis indicated that Judge Porteous would consider resigning and the SC prepared a "Memorandum of Understanding" to memorialize the proposed resignation agreement. [SCR. 11] Judge Porteous, however, changed his mind, and on October 15, Ellis informed the SC that Judge Porteous would not resign. [SCR. 11] The next day, on October 16, Ellis notified the SC that he was withdrawing as Judge Porteous's counsel because of an "impasse with respect to the future course of [his] representation." [SC. 911] Ellis's resignation letter advised Judge Porteous to prepare for the October 29 hearing. [SC. 912]

On October 18, the SC provided Judge Porteous with a twenty-one page document entitled "Charges of Judicial Misconduct," which outlined Porteous's alleged ethical and criminal violations, as well as the proof to be presented at the hearing. [SC. Exhibit B] On the same day, Judge Porteous requested a 90-day continuance to obtain new counsel and prepare his defense. [SC. 936-37] His request was denied. The SC cited the fact that Judge Porteous had received the DOJ Complaint in May 2007, was on notice, as of June 25, 2007, that the Committee was going to hold a hearing to investigate the allegations contained therein, and had already received two continuances based on a prior change of counsel and the medical examination related to his claim of disability. [SC. 941-42] The SC, by way of additional letters to Judge Porteous dated October 19, listed all of the evidence that had been provided to Judge Porteous or his counsel. [SC. 945-48] On October 24, the SC confirmed delivery to, and receipt

by, Judge Porteous of the following documents: personal credit card records; financial analyses of his bank accounts as well as those of his secretary; an "FBI 302" for Edward F. Butler, the former president of Regions Bank; and other records. [SC. 950-55]

On October 26, the Friday before the hearing was set to begin, the SC sent Judge Porteous an exhibit list and recited, again, the list of documents previously furnished to either Judge Porteous or to his counsel. [SC. Exhibit D-24]

The SC held its hearing on Monday and Tuesday, October 29-30, in New Orleans, Louisiana. [SCHT. 1, 269] The SC's investigative counsel presented ten witnesses, including Judge Porteous. Judge Porteous presented two witnesses. [SCHT. 3, 271-72] Ninety-six documents were admitted into evidence. Two DOJ attorneys appeared at the hearing but did not submit written or oral argument. [SCR. 12-13] Judge Porteous represented himself. [Id.] Judge Porteous presented oral argument and motions. [Id.] He cross-examined the Committee's witnesses and presented the testimony of Claude Lightfoot, Jr. and Don Gardner on his behalf. [SCR. 13]

On November 20, 2007, the SC filed a report with the Judicial Council, containing findings of fact, conclusions of law, and a recommendation of disciplinary action. [SCR. 2] Briefly stated, the SC found that: (i) Judge Porteous had solicited and/or received cash payments and things of value from lawyers who appeared before him, (ii) had not recused himself in cases in which such lawyers appeared before him, (iii) in one such case had denied a recusal motion based on his relationship with lawyers in the case and then solicited cash and things of value from the lawyers, (iv) never disclosed the cash and things of value received from lawyers on his financial disclosure forms, (v) committed fraud in his personal bankruptcy, and (vi) committed bank fraud.

The SC recommended that Judge Porteous be publicly reprimanded for his misconduct and that the Judicial Council of the Fifth Circuit certify the matter to the Judicial Conference of the United States on the ground that Judge Porteous had engaged in conduct "which might constitute one or more grounds for impeachment under Article II of the Constitution," 28 U.S.C. § 354(b)(2)(A). [SCR. 65] The report was accompanied by two volumes of exhibits as well as

the entire record, “including grand jury records, business records of certain casinos, bank and credit card companies, and testimony presented during the adversary hearing.” [Jud. Council MO&C at 1] On the same day, the Council informed Judge Porteous that he could examine the report as well as the evidence on which it is based at the Court of Appeals for the Fifth Circuit in New Orleans, and that he could file a written reply on or before December 4, 2007. Judge Porteous was also notified that he could appear at a Judicial Council meeting on December 13, 2007. [Jud. Council MO&C at 2]

Judge Porteous submitted a “Reply Memorandum” on December 5, 2007, which set forth alleged procedural defects and substantive claims. On December 10, 2007, the SC submitted a Response to Judge Porteous's Reply Memorandum, and delivered a copy to Judge Porteous. The Response noted that Judge Porteous broke “no new legal or factual ground,” rejected Porteous’s arguments, and “re-urge[d] its original Report.” [Jud. Council MO&C at 2; SC Response to Reply at 2]

At its meeting on December 13, 2007, in New Orleans, the Fifth Circuit’s Judicial Council considered the SC Report, Judge Porteous’s Reply, and the Committee Response, as well as the record of the proceedings before the SC. [Jud. Council MO&C 3] Judge Porteous appeared before the Council and spoke in his own defense.

By a Memorandum and Certification dated December 20, 2007, the Council determined, by a majority vote, that there was substantial evidence supporting the allegations listed in the SC Report. Accordingly, it accepted the SC’s Report, and determined that Judge Porteous had “engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution.” [Jud. Council MO&C at 4] The Council certified the matter to the Judicial Conference of the United States, pursuant to 28 U.S.C. § 354(b)(2)(A), and forwarded all accompanying papers, documents, and records related to the proceeding. [Jud. Council MO&C at 4-5] Four members of the Council submitted a lengthy dissent after the Council’s certification.

The Council permitted Judge Porteous to continue his civil docket and administrative duties but ordered that pending a decision by the Judicial Conference, “no bankruptcy cases or

appeals or criminal or civil cases to which the United States is a party” were to be assigned to him. [Jud. Council MO&C at 6]

On January 8, 2008, Judge Porteous was provided with a copy of all relevant papers and notified of his right to file with the Conference, by March 10, 2008, a written response to the Certificate. On February 13, 2008, the Executive Committee of the Judicial Conference of the United States referred this matter to its Committee on Judicial Conduct and Disability, pursuant to Conference Rule 2 of the Judicial Conference’s Rules for the Processing of Certificates from Judicial Councils That a Judicial Officer Might Have Engaged in Impeachable Conduct. The Committee was charged with preparing this Report with Recommendations.

Judge Porteous received an approximately 30-day extension to obtain counsel and prepare his response. On April 9, 2008, through newly-retained counsel -- Lewis O. Unglesby, Samuel S. Dalton, and Remy Voisin Starns -- Judge Porteous submitted a response to the Fifth Circuit Council’s Certification, styled a “Petition for Review,” with accompanying exhibits. On April 16, Judge Porteous, again through his counsel, filed a “Supplemental Memorandum of Law and Argument.”

B. THE ISSUE BEFORE THE CONFERENCE

This is only the second occasion upon which the Judicial Conference has considered certification under Section 355(b)(1).³ On the other occasion, see Judicial Conference of the United States, Certificate Regarding Alcee L. Hastings (March 17, 1987), the principal issue appears to have arisen from the fact that the judge in question had been indicted and acquitted. That proceeding was therefore dominated by factual disputes and by the issue regarding the effect of a jury acquittal. In contrast, in the present matter most of the pertinent facts are largely undisputed, although inferences regarding intent are in dispute. A host of other issues have been raised, however. The dissenters on the Judicial Council of the Fifth Circuit and Judge Porteous argue that the misconduct shown does not rise to the level of an impeachable offense. They also claim that the proceedings in the Fifth Circuit were legally flawed, namely that evidence of Judge Porteous's misconduct as a state court judge was improperly considered, that he was denied due process, and that Chief Judge Jones was disqualified from sitting on the SC or presiding over the Judicial Council's consideration of the matter. These concerns require a discussion based on an analysis of the nature of certification proceedings and the Conference's role under Section 355(b)(1).

When a judicial council determines that a judge "may have engaged in conduct . . . which might constitute one or more grounds for impeachment under Article II of the Constitution," the council "shall promptly certify such determination to the Conference." 28 U.S.C. § 354(b)(2)(A) (emphasis added). If the Conference determines "that consideration of impeachment may be warranted," it must certify that determination to the House of Representatives. See 28 U.S.C. § 355(b)(1).

Under these provisions, certification is neither a sanction nor a final adjudication of impeachment. Certification is not intended to serve as a sanction for misconduct under the Act.

³There have been two occasions on which the Conference has acted under Section 355(b)(2) after a felony conviction of a federal judge had become final. See Judicial Conference of the United States, Certificate Regarding Harry E. Claiborne (June 30, 1986); Judicial Conference of the United States, Certificate Regarding Walter L. Nixon (March 15, 1988).

Section 355's language clearly reflects only an intent to keep Congress informed rather than to punish a miscreant judge when there is evidence of misconduct that might warrant consideration of impeachment and removal from office. These measures are reserved by the Constitution exclusively to the Congress.

The statutory language does not call upon judicial councils or the Conference either to find facts as to what a subject judge did or to find that such conduct constitutes an impeachable offense. Final findings of fact and a definitive conclusion as to whether the subject judge's conduct meets the standards for impeachment are to be made by the Congress. Therefore, when the Conference determines that there is sufficient evidence to support factual findings that a subject judge engaged in conduct of a kind that Congress might deem sufficient to warrant impeachment, the Conference has a mandatory duty to certify that determination to the House of Representatives.

In determining whether the evidence before it meets the relevant standard, the Conference is not bound by, and does not defer to, the certification of a judicial council. Under Section 355(b)(1), certification by the Conference is mandatory if the Conference "concur[s]" in the council's determination(s) or makes "its own determination." In "concur[ring]" or making "its own determination," the Conference must "consider[]" the proceedings before the Council and make "such additional investigation as it considers appropriate." *Id.* at § 355(a). The statutory language indicates, therefore, that the Conference's consideration of a council's certification under Section 354 is de novo. "Concur" generally means "agree," in contrast to, say, "I might have made a different decision but I accept yours as being within the realm of reason or your area of discretion." Furthermore, the Conference is authorized to make "its own determination" and conduct any "additional investigation as it considers appropriate." *Id.* De novo review of factual and legal issues, therefore, is required.

C. PROCEDURAL CONCERNS

A number of concerns have been raised regarding whether: (i) Judge Porteous was accorded all his procedural rights; (ii) inadmissible evidence was admitted by the SC; (iii) the DOJ Complaint was defective; or (iv) Chief Judge Jones was disqualified from the proceeding. The Committee finds no basis for these concerns.

Claims have been made that Judge Porteous was deprived of his due process rights. Although certification proceedings differ in many respects from adversary litigation between private parties, the Committee sees no profit in an extended discussion of whether the constitutional requirement of due process applies to a certification proceeding. Although certification is not a sanction, it is an act of utmost seriousness. Before certifying a record under Section 355(b)(1) to the House of Representatives, the subject judge should be given due process rights, namely notice and an opportunity to be heard through counsel. Indeed, the Act and Conference Rules provide those rights, and the Committee finds no deprivation of statutory or constitutional procedural rights in any of the proceedings.

In Section 358(b)(2), the Act provides that rules promulgated pursuant to its provisions accord judges who are the “subject of a complaint” the right to counsel “at proceedings conducted by the investigating panel.” This language would certainly include the hearing conducted in the Fifth Circuit by the SC, and, if an “additional investigation” were conducted by the Conference, the hearing conducted by whatever body was designated to undertake the investigation.⁴

Judge Porteous and the dissenters maintain that Judge Porteous was not afforded procedural due process at the SC and Judicial Council hearings in October and December 2007, respectively. [JCD. 5, 45-47] Specifically, they argue that when Judge Porteous’s counsel withdrew on October 16, he was denied a postponement of the SC hearing, which was scheduled to begin October 29, and was forced to represent himself. [JCD. 46-47; SC. 912, 936, 941-42]

⁴The Committee believes an additional investigation to be unnecessary. The SC developed a fully adequate record.

The Committee finds no deprivation of procedural due process rights. Judge Porteous had appropriate notice of the proceedings at every significant stage. By letter dated May 24, 2007, Chief Judge Jones sent Judge Porteous a copy of the DOJ Complaint as well as notice that she was appointing the SC. On June 25, 2007, Judge Porteous was notified that the SC would hold an evidentiary hearing beginning on August 27. [SC. 857-58]

With regard to the opportunity to be heard, adequate time for preparation, and the right to counsel, Judge Porteous had two different counsel, was given several extensions of time to respond to the complaint, and obtained two postponements of the SC hearing. After Judge Porteous notified the SC that his first counsel, Kyle Schonekas, had withdrawn, he received an extension of time in which to submit his response, and the hearing was postponed until the end of September. [SC. 862] He also received an additional week in which to submit his response after retaining Michael Ellis. [SC. 865, 941] The SC hearing was postponed until October 29 in light of the need for a psychiatric examination to evaluate Judge Porteous's claim of disability, which was asserted in his August 16 reply. [SC. 874-92]

The present claim of a due process violation arises from the denial of a further continuance when Ellis resigned, and Judge Porteous thereafter proceeded pro se. However, Judge Porteous had by then been represented by two different counsel and had received two continuances based on the change of counsel and the medical examination needed to evaluate his claim of disability. [SC. 941-42] By that time, he had also ample opportunity to review the documentary evidence later introduced at the SC hearing and the prior testimony of the witnesses called.

Any lack of preparation time or of counsel to represent him was the result of Judge Porteous's indecision as to his future course of action rather than a failure by the SC to accord sufficient time. There is no reason to conclude that Judge Porteous was caught unaware by the evidence or charges against him or that additional time would have altered the record in even a trivial, much less material, way. The hearing and evidence drew upon the long DOJ investigation in which he had been represented by counsel. The salient issues concern evidence

of conduct about which there is little dispute. Judge Porteous does not deny that there were false statements in his financial disclosure forms, that he solicited and received cash and things of value from lawyers who appeared before him, that he failed to recuse in matters where such lawyers appeared, that he made false statements in personal bankruptcy proceedings, or that he made false statements to a bank when seeking renewal of a loan. To be sure, Judge Porteous and the Fifth Circuit dissenters assert an innocent or negligent state of mind, dispute how consequential the conduct was, question whether the acts were of an impeachable nature, and assert that he has been punished enough. On these matters, however, he was fully heard.

Judge Porteous also had ample time to respond to the SC Report before the Judicial Council meeting. After the SC hearing, Judge Porteous was hand-delivered a copy of the SC Report on the same day it was issued -- November 20, 2007. [5th Cir. Certification Ex. 25] On the following day, via fax and email, Judge Porteous was notified that the Judicial Council would be meeting in New Orleans on December 13 and that he had the right to appear at that meeting. [5th Cir. Certification Ex. 26] He was also referred to Rule 14 of the Fifth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability. [Id.] Under that Rule, Judge Porteous had ten days in which to file a response to the SC's Report, and he was given until December 5 to do so. [Ex. 27] During the approximately forty-five days from the conclusion of the SC hearing until the Judicial Council meeting, Judge Porteous did not retain new counsel to represent him at the December 13 meeting or to assist in drafting his response to the SC Report.

Therefore, in the Fifth Circuit proceedings, Judge Porteous had the full opportunity to exercise the rights traditionally afforded to a litigant. He had the right to counsel, though he appears to have had difficulty keeping attorneys. He and his counsel also had notice of, and access to, the evidence against him, as well as the right to present whatever evidence he desired. In fact, he presented witnesses and cross-examined those presented by the SC. He presented oral and written argument. See Rule 15 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (describing the rights afforded to subject judges at special-committee hearings).

After certification by the Fifth Circuit Judicial Council and transmittal of the record of proceedings to the Conference, Judge Porteous was given 60 days to present his views in writing to the Conference, pursuant to Conference Rule 4. Near the end of that period, he retained counsel, Lewis O. Unglesby, who sought and was given a 30-day extension. Judge Porteous's response and supplemental response have been carefully considered by the Committee. Accordingly, the process afforded to Judge Porteous easily met the due process standard.

D. VALIDITY OF THE FIFTH CIRCUIT PROCEEDINGS

In the view of the Committee, the various substantive concerns raised regarding the proceedings in the SC and certification by the Fifth Circuit Judicial Council -- admissibility of evidence, defects in the DOJ Complaint, or Chief Judge Jones's participation -- are unfounded. As noted, the Conference must make its own de novo determination to certify a matter to the House of Representatives whether by way of agreeing with a Council's certification or sending its own certification. Error in a special committee investigation or council proceeding is relevant only to the extent it goes to the validity or accuracy of the evidence before the Conference and thereby affects the ability of the Conference to make its own determination regarding certification. None of the concerns expressed have any such effect.

As to the admissibility of certain evidence, evidentiary rules play little or no role in certification proceedings where review by the Conference is de novo. To the extent that Judge Porteous and the dissenting judges in the Fifth Circuit Council argue that Judge Porteous's financial relationships with lawyers appearing before him as a state court judge are not impeachable offenses, the Committee does not disagree. Indeed, the SC itself disclaimed any intent to rely upon that evidence for that purpose. [SC. 62-63] However, where those financial relationships continued after Judge Porteous became a federal judge, evidence of them may be relevant as showing a common scheme and his knowledge and intent, which he has put in dispute, regarding those relationships. Cf. Fed. R. Evid. 404(b) (permitting the introduction of evidence of uncharged conduct "as proof of . . . motive, . . . intent, preparation, plan, [or] . . . knowledge").

With regard to the unverified DOJ Complaint, a chief circuit judge can act on information from any source and identify a complaint under Section 351(b) whether or not the document containing the information satisfies the various local rules then in effect or the new national rules. Chief Judge Jones identified a complaint in the present matter. Any claimed procedural defects in the DOJ Complaint are thus red herrings.⁵

Finally, Chief Judge Jones was not disqualified. Chief circuit judges have various roles to play with regard to disability and misconduct proceedings, which are administrative and inquisitional in their nature. See In re Memorandum of Decision of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, 517 F.3d 563, 567 (U.S. Jud. Conf. 2008) (recognizing that “although misconduct proceedings have an adjudicatory aspect, they also have an administrative and managerial character not present in traditional adjudication by courts” (internal quotation marks omitted)); see also Rule 14 cmt. of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (characterizing such proceedings as “primarily inquisitorial rather than adversarial”). The performance of one function does not render a chief circuit judge disqualified to perform the others. For example, a chief circuit judge may identify a complaint against a judge, serve on the special committee investigating it, preside over the judicial council’s consideration of the Committee’s report and investigation, and act as a member of the Judicial Conference on the proceeding. See generally Rule 25 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (discussing disqualification). Therefore, the Committee sees no reason to view Chief Judge Jones as disqualified in this matter.

E. DEFINITION OF IMPEACHABLE CONDUCT

The Committee does not believe that a detailed discussion of the nature of those acts that warrant impeachment, which have been debated since the very beginning of the Republic, is necessary. As discussed above, the Conference’s duty to certify under Section 355(b)(1) arises upon a determination that “consideration of impeachment may be warranted.” Both the statute and history of impeachment teach that this standard is met in the present matter.

⁵The DOJ is correct, however, that the underlying material was either under oath or was otherwise clearly reliable.

The dissenters in the Fifth Circuit Council argue in part that Judge Porteous's acts did not amount even to arguably impeachable conduct because they did not involve an abuse of judicial power. Although the Committee believes that some of his acts were most assuredly abuses of his power as a federal judge, as discussed in Part F(2) and G, Section 355 clearly embodies no such requirement as to certification.

Section 355(b)(2) authorizes the Conference to transmit to the House of Representatives "a determination that consideration of impeachment may be warranted" if a federal judge has been convicted of any state or federal felony. The statute imposes no restriction upon the nature of the felony, such as an abuse of judicial power requirement. Section 355(b)(1) applies where there has been no conviction but there is evidence deemed by the Conference to warrant consideration of impeachment. It would be anomalous to read into Section 355(b)(1) a limitation not in Section 355(b)(2) that would prevent certification on the ground that, while the evidence was of a serious felony, the felony did not involve a direct abuse of judicial power. Indeed, even without the inference drawn from Section 355(b)(2), it is difficult to conceive that Congress would deem many felonies -- for example, masterminding bank robberies -- not to warrant impeachment and removal if committed by a federal judge.

History also indicates that arguably impeachable acts are not limited to direct abuses of judicial power. On July 22, 1986, the House adopted four articles of impeachment against Judge Harry Claiborne, District Judge for the District of Nevada. Frank O. Bowman & Stephen L. Spinuck, *"High Crimes & Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment*, 72 S. Cal. L. Rev. 1517, 1590 (1999). The misconduct charged was income tax evasion. *Id.* For example, Article 4 charged that "[b]y willfully and knowingly falsifying his income on his federal tax return . . . Claiborne betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the judiciary, thereby bringing disrepute on the federal courts and the administration of justice by the courts." *Id.* (internal quotation marks omitted). On October 9, 1986, Claiborne was convicted on three of the four

articles of impeachment, including Article Four. *Id.* at 1591. Although the dissenters in the Fifth Circuit Council argued that Claiborne's misconduct involved bribes, it is indisputable that the acts for which he was removed involved precisely the sort of "private conduct and reporting of private financial affairs" that the Fifth Circuit dissenters maintained cannot serve as the basis for an impeachment. [JCD. 33] The Committee therefore believes that substantial evidence of a serious crime calls for certification under Section 355(b)(1), leaving the ultimate judgment to the Congress.

Judge Porteous has not been indicted or convicted of a felony, but indictment and conviction are not prerequisites to certification under Section 355(b)(1). Indeed, Section 355(b)(2) provides for certification "in case of felony conviction," while Section 355(b)(1) expressly provides for certification in the absence of a conviction. See *Hastings v. Jud. Conf. of the United States*, 829 F.2d 91, 95, 97 (2d Cir. 1987) (describing how although former district judge Alcee L. Hastings was acquitted of bribery charges, the Judicial Conference nonetheless certified to the House of Representatives its determination "that consideration of Hastings' impeachment may be warranted").

The Committee is cognizant that certification has extremely serious consequences for the subject judge and that Congress is not likely to welcome certifications based on evidence of relatively inconsequential acts that might technically be crimes. Not every omission from a financial disclosure form of a gift from a judge's close friend who has no connection with the judge's court work calls for consideration of a Section 355(b)(1) certification. Only substantial evidence of a serious crime suffices. Criminal activity involving a direct abuse of judicial power is always serious. However, it is also the case that crimes bringing disrepute upon the federal courts have been deemed sufficient to warrant removal from office in the past.

F. CONDUCT BY JUDGE PORTEOUS THAT MIGHT WARRANT CONSIDERATION OF IMPEACHMENT

1) The Evidence

We summarize our view of the evidence here. A full and detailed description with citations to the record can be found in Appendix A.

a) Financial Disclosure Forms

Judge Porteous's annual financial disclosure forms repeatedly made false statements that were material to the integrity of his office. It is undisputed that Judge Porteous solicited and received cash and things of value from attorneys appearing in litigation before him. It is also undisputed that none of these benefits were listed as "Income," "Gifts," "Loans," or "Liabilities" on his financial disclosure forms, which he signed and attested to as accurate under oath.

Judge Porteous's failure to comply with financial disclosure requirements served to conceal his solicitation and receipt of cash or other benefits from lawyers who appeared before him. It also had the effect of depriving opposing lawyers of information that could have been used to compel Judge Porteous's recusal in such cases.

The systematic false statements in Judge Porteous's financial disclosure forms has made it impossible to determine the full extent of Judge Porteous's solicitation and receipt of monetary benefits from lawyers appearing before him or of other sources of income. There is evidence of other income not reflected in his financial disclosure forms. During the years 1998-2000, Judge Porteous's bank account showed over \$80,000 in unexplained deposits that were over and above his direct deposit judicial salary. Judge Porteous also used his secretary's bank account for deposits and the payment of his personal expenses. These transactions amounted to at least \$41,000 in bills paid through her account.

Judge Porteous also substantially understated his liabilities on his financial disclosure form for the year 2000.

b) Solicitation and Receipt of Cash and Things of Value

It is undisputed that Judge Porteous solicited and received cash and other things of value from law firms and attorneys who appeared before him in litigation.⁶ These included, at a minimum, cash payments, numerous lunches, payments for travel, meals, and hotel rooms in Las Vegas, and payments for the expenses of a congressional externship for Judge Porteous's son. It is impossible to determine exact details as to the amounts, methods used, or sources of such payments because Judge Porteous concealed these transactions, as detailed below. However, there is evidence of substantial and unexplained cash income deposited in his bank account and in his secretary's bank account.

Judge Porteous stated that all of these payments were gifts or loans from close friends. All of the lawyers testified that they were gifts based on friendship. However, there is considerable evidence that the payments were related to his office.

Much of the available evidence concerns Judge Porteous's solicitation and receipt of cash payments from a law firm, Amato & Creely, with business before him as a federal judge. This was a continuation of a relationship begun when Judge Porteous was a state court judge. While he was a state court judge, the law firm had indicated to Judge Porteous that it was unhappy with having to bear the expenses of repeated payments to him. In response, Judge Porteous frequently appointed the firm to curatorship proceedings and, at Judge Porteous's suggestion, received in return a portion of the fees paid. In such cases, lending institutions bore the expenses of the firm's payments to him. This prior relationship, while not included as an arguably impeachable act, sheds light on Judge Porteous's knowledge of the firm's unhappiness regarding payments to him when he continued soliciting cash and things of value after he became a federal judge. This relationship became less regular at that time but an unknown amount of payments was made.

There was also testimony that Creely described Judge Porteous as a "rotten bastard" for soliciting money for his son's congressional externship after Judge Porteous became a federal

⁶If the payments he received were loans, as Judge Porteous stated on one occasion, they were never repaid. As he admitted, this failure to repay would require reporting as taxable income. They were not so reported.

judge. Creely was described as routinely using very rough language, but the remark was, in any conceivable context, negative.

Judge Porteous and his benefactors used methods of payment that left no paper trail. The gifts described above were always either in cash or direct payment of expenses to vendors. No checks to Judge Porteous were used. When Judge Porteous sent his secretary to pick up an envelope of cash, Creely told Judge Porteous that this was not “appropriate.” Creely felt this method was too “blatant.” Judge Porteous’s financial disclosure forms contain no record of these benefits. Had they been disclosed, opposing parties could have sought recusal, and were it denied, could have sought appellate relief. See, e.g., Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 850, 855-58 (1988) (affirming the vacatur a judgment where a district judge failed to disclose that he was a trustee of a university that had substantial business dealings with the litigant before his court).

Judge Porteous never recused himself in any matter in which donors appeared as counsel. A failure to recuse in such circumstances may be viewed as evidence of a fear that recusal would expose his long term relationship with these lawyers and/or dry up sources of income. In Liljeberg Enters. Inc. v. Lifemark Hosps. Inc., No. 2:93-cv-01784, *rev’d in part* by 304 F.3d 410 (5th Cir. 2002), his friends Jacob Amato and Lenny Levenson appeared as counsel after the case was assigned to him. Amato had given money to Judge Porteous. Levenson had helped pay Judge Porteous’s son’s living expenses during an externship in Washington D.C. and had treated Judge Porteous to lunch while he had matters pending before Judge Porteous. Although Amato and Levenson did not typically practice in federal court or frequently handle complex litigation, they were brought into Liljeberg with an 11% contingency fee to represent a client seeking a judgment of \$110 million. Moreover, they had joined the case 39 months after it was originally filed and just two months before it was to go to trial before Judge Porteous.⁷

⁷Amato and Levenson became attorneys of record in September 1996, approximately eight months after Liljeberg was assigned to Judge Porteous. [SC. Ex. 82 at 26] In October 1996, the opposing party filed a motion to recuse; Judge Porteous denied the motion. [*Id.* at 27, 29] In March 1997, the opposing party hired Gardner [*id.* at 37].

An opposing party moved to recuse Judge Porteous, in part on the ground that he had too close a relationship with Amato and Levenson. Judge Porteous denied the recusal motion without disclosing his longstanding financial relationship with Amato and Levenson. After denying the motion, and while a bench verdict was pending, Judge Porteous solicited cash from Amato. One delivery of cash was in an envelope picked up at Amato & Creely by Judge Porteous's secretary. Creely told Judge Porteous that this was not "appropriate." Creely felt this practice was too "blatant." Also, after the denial of the motion, the party opposing Amato and Levenson's client hired Don Gardner. Gardner similarly had little federal court experience, but was a close friend of Judge Porteous who had given him cash and helped pay for Judge Porteous's son's externship in Washington, D.C.. The lawyer who hired Gardner said he did so to level the playing field. Gardner's fee agreement guaranteed him a retainer of \$100,000. He was also entitled to a contingency fee of \$100,000 if Judge Porteous withdrew from the case or the case was settled. Judge Porteous admitted that he thought it was odd that new lawyers, all of whom he had to have recognized as friends and benefactors, were being hired after Liljeberg was assigned to him.

c) Bankruptcy Fraud

In the course of filing for personal bankruptcy under Chapter 13, Judge Porteous supplied false information, omitted required information, and incurred unauthorized additional debt, as follows:

- Judge Porteous filed a bankruptcy petition using a false name and a recently-acquired post office box as his residential address. This was rectified shortly thereafter.
- Despite being explicitly warned by his lawyer, the Bankruptcy Trustee, and the Bankruptcy Judge that he, as a bankruptcy debtor, could not legally incur more debt during the bankruptcy proceeding, Judge Porteous continued to incur and conceal debt through gambling markers and the use of a credit card. There is evidence that Judge Porteous planned to incur this debt before he filed for bankruptcy. Judge Porteous paid off a Fleet credit card in full immediately before filing the bankruptcy petition and then failed to list the credit card on the

relevant schedule of unsecured creditors. His wife then used the credit card to incur debt after the petition was filed.

- Because this payment to his Fleet credit card was made within 90 days of his filing for bankruptcy and the amount paid was more than \$600, he was required to list it on his bankruptcy form. He failed to do so. He also failed to list a debt payment made to cover gambling losses that was made within 90 days of his filing for bankruptcy for which the amount paid was also more than \$600. These payments constituted an undisclosed, impermissible preference among creditors. See 11 U.S.C. § 547 (empowering bankruptcy trustees with the authority to avoid debtors' preferential transfers to creditors). Notably, both of these payments were routed through his secretary's bank account.
- Judge Porteous did not reveal an upcoming tax refund on the relevant bankruptcy form even though he filed a tax return seeking the refund five days before he filed the bankruptcy petition and the form explicitly requested information related to tax refunds. After he received the refund, he made no attempt to correct the omission in his bankruptcy papers.
- Judge Porteous's bankruptcy papers understated the amount in a bank account and failed to disclose the existence of a money market account.
- Judge Porteous failed to disclose gambling losses incurred before the bankruptcy proceedings.
- An analysis of Judge Porteous's financial affairs leading up to the bankruptcy and in the two years following indicated a substantial understating of his income and overstating of his expenses in his bankruptcy filings.
- As a result of the foregoing, Judge Porteous's creditors suffered losses when he eventually received a discharge from the bankruptcy court.

d) Bank Fraud

Judge Porteous renewed a loan based in part on false representations that there had been no material, adverse change in his financial condition when he had in fact hired a bankruptcy lawyer who was attempting an unsuccessful pre-bankruptcy workout with his unsecured creditors.

2) Nature of the Offenses

The Committee finds that there is substantial evidence of serious crimes, some of which involve a direct abuse of judicial office, and all of which bring disrepute on the federal judiciary and on the administration of justice by the federal courts.

a) Financial Disclosure Violations; Perjury; Abuse of Judicial Power

The Committee finds overwhelming evidence that Judge Porteous committed perjury, 18 U.S.C. § 1621, and violated 5 U.S.C. App. 4 § 104 (failure to file or filing false reports), 18 U.S.C. § 1001 (false statements and entries generally), and abused his judicial office by signing and filing false financial disclosure documents. The Committee also finds overwhelming evidence that Judge Porteous violated Canons 2A and 5C(6) of the Code of Conduct for United States Judges. Judge Porteous's conduct in this regard meets the statutory standard "that consideration of impeachment may be warranted." 28 U.S.C. § 355(b)(1).

Pursuant to the Ethics in Government Act of 1978, codified at 5 U.S.C. App. 4 §§ 101 *et seq.*, Article III judges have a clearly-defined statutory obligation to report annually certain financial information as of May 15 for each preceding year. [SCR. 44-45] The Act requires "judicial officers," which includes judges of the United States district courts, *see* 5 U.S.C. App. 4 §§ 101(f)(11) and 109(10), to provide a full and complete statement regarding "[t]he source, type, and amount or value of income . . . from any source (other than from current employment by the United States Government) . . . received during the preceding calendar year, aggregating \$200 or more in value . . ." *Id.* at § 102(a)(1)(A). With respect to gifts, judges are required to provide

The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

Id. at § 102(a)(2)(A). With respect to loans, judges are required to provide "[t]he identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent,

brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed \$10,000 at any time during the preceding calendar year." *Id.* at § 102(a)(4). Judge Porteous has been obligated to comply with these statutory requirements since assuming status as a United States district judge in 1994.

Judge Porteous signed a jurat for each year's report that certified that all information provided was "accurate, true and complete" to the best of his knowledge and "that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." [SCR. 47]

The reports for these many years were false in highly material respects, as detailed in Part F(1)(a). These falsities also brought disrepute upon the federal judiciary and abused the power of Judge Porteous's office. The financial affairs of federal judges are required by law to be transparent, and Judge Porteous's efforts at concealment have rendered impossible full examination and disclosure regarding his financial arrangements with lawyers. Had Judge Porteous complied with his obligations, he would have had to recuse himself in cases involving those lawyers who paid him cash and things of value because opposing lawyers would have had the information to which they were entitled and could have used it in support of a request for recusal.

b) Solicitation and Receipt of Illegal Gratuities; Deprivation of the Right to Honest Services; Abuse of Judicial Power

The Committee further concludes there is substantial reason to believe that Judge Porteous, by soliciting and receiving cash and other benefits from lawyers, violated those statutes prohibiting illegal gratuities and committed mail or wire fraud by depriving the public of the right to honest services. This conduct involved an abuse of judicial power and meets the statutory standard that "consideration of impeachment may be warranted." 28 U.S.C. 355(b)(1).

Title 18 U.S.C. § 201(c)(1)(B) prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing "to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or

person.” See United States v. Sun-Diamond Growers of Cal., 526 U.S. 398, 405 (1999) (holding that an illegal gratuity “may constitute merely a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken”); Valdes v. United States, 475 F.3d 1319, 1322 (D.C. Cir. 2007) (“Unlike most of § 201’s anti-bribery provisions, the anti-gratuity provision has no requirement that the payment actually influence[] . . . the performance of an official act.”) (internal quotation marks omitted; alteration in the original); United States v. Alfisi, 308 F.3d 144, 149 (2d Cir. 2002) (“The element of a quid pro quo or a direct exchange is absent from the offense of paying an unlawful gratuity. To commit that offense, it is enough that the payment be a reward for a past official act or made in the hope of obtaining general good will in the payee’s performance of official acts off in the future.”).

Title 18 U.S.C §§ 1341 and 1343, the mail and wire fraud statutes respectively, criminalize “the use of both means of transmission in furtherance of any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.” Fountain v. United States, 357 F.3d 250, 255 (2d Cir. 2004) (internal quotation marks omitted). A “‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of honest services,” 18 U.S.C. § 1346. “Section 1346 was added to the Criminal Code in 1988 to equate a deprivation of honest services with deprivation of money or property.” United States v. Orsburn, ___ F.3d ___, 2008 WL 1976557, at *2 (7th Cir. 2008).

Generally, honest-services fraud occurs when “an employer is defrauded of its employee’s honest services by the employee or by another,” or when “the citizenry is defrauded of its right to the honest services of a public servant, again, by that servant or by someone else.” United States v. Sorich, ___ F.3d ___, 2008 WL 1723670, at *3 (7th Cir. 2008). A public official can deprive the public of his honest services in several ways, two of which are as follows: He can (1) “be influenced or otherwise improperly affected in the performance of his

duties,” or (2) “fail to disclose a conflict of interest, resulting in personal gain.” United States v. Woodward, 149 F.3d 46, 55, 57 (1st Cir. 1998) (citing United States v. Sawyer, 85 F.3d 713, 724, 729 (1st Cir. 1996)). “When an official fails to disclose a personal interest in a matter over which [he] has decision-making power, the public is deprived of its right either to disinterested decision making itself or, as the case may be, to full disclosure as to the official’s potential motivation.” Id. at 55 (internal citations omitted); see also United States v. Urciuoli, 513 F.3d 290, 298 n.5 (1st Cir. 2008) (stating that the “concealment of a material conflict of interest” can constitute honest-services fraud, and citing United States v. Panarella, 277 F.3d 678, 691 (3d Cir. 2002) (dealing with facts where a Pennsylvania legislator lied on his financial disclosure forms while voting to benefit a company that secretly paid him)).

For example, in United States v. Woodward, the defendant, a state legislator, was charged with and convicted of engaging “in a scheme to deprive the Commonwealth of Massachusetts and its citizens . . . of their right to his honest services as a state legislator, performed free from deceit, fraud, dishonesty, conflict of interest, and self-enrichment,” 149 F.3d at 54. The conviction stemmed from “his acceptance of illegal gratuities from [a lobbyist] and others, with the intent of depriving [his] constituents of his honest services as a legislator,” id. at 51. The First Circuit affirmed his conviction, finding that a rational jury could infer from the circumstances that the defendant accepted meals and entertainment from the lobbyist “with the intent to perform official acts to favor [the lobbyist’s] legislative interests.” Id. at 57 (internal citations omitted).

The Committee finds that Judge Porteous’s conduct in the Liljeberg case warrants consideration of impeachment as a violation of the prohibition on soliciting and receiving gratuities and mail and wire fraud. A judge soliciting payments from a lawyer with business in the judge’s court cannot reasonably conclude that compliance with the request is based on pure generosity rather than fear or hope related to court business. That is why judges cannot engage in fundraising for even the most worthy of causes. Canon 5B(2) of the Code of Conduct for

United States Judges. Moreover, when Judge Porteous solicited payments while the Liljeberg verdict was pending, he knew that Amato & Creely had earlier (when he was a state court judge) expressed unhappiness at having to bear the expenses of the cash payments to him. He could not reasonably believe that he could enrich himself at the firm's expense for no reason other than personal generosity. Moreover, if the payments were purely gifts, there was no reason to make them in cash or as direct payments to vendors or to omit them from his financial disclosure forms. When Judge Porteous sent his secretary to pick up an envelope with cash in it, Creely warned Porteous that this was "inappropriate." Creely felt this method was too "blatant." There was also little reason to deny the motion for recusal, or to conceal relevant information from the movant, unless Judge Porteous feared that recusal expose his relationship with the lawyers and would stop the benefits from being paid. Finally, he admitted knowing that all parties to Liljeberg believed it necessary to hire new lawyers, whom he had to recognize as his friends and benefactors, after the case was assigned to him.

Judge Porteous's misconduct in soliciting, receiving, and concealing payments of cash and things of value from lawyers appearing before him constituted an abuse of judicial power. The Code of Conduct for United States Judges makes this clear. Canon 1 states "[a] Judge Should Uphold the Integrity and Independence of the Judiciary," while Canon 2A directs that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Judge Porteous clearly violated Canon 3C(1), which states "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" and Canon 5C(1), which states "[a] judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves." Finally, he violated Canon 5C(4), which states "a judge should not solicit or accept anything of value from anyone

seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties”

c) Bankruptcy Fraud; Perjury

The Committee concludes that Judge Porteous’s conduct during the course of his bankruptcy proceedings warrants “consideration of impeachment,” the statutory standard under 28 U.S.C. § 355(b)(1). Judge Porteous filed for bankruptcy under a false name. In sworn court documents, he understated his income, overstated his expenses, and failed to disclose gambling losses and an anticipated tax refund. Likewise, he failed to disclose the existence of various financial accounts, including a credit card. By using this credit card and by taking out markers at various casinos, he continued to accumulate debt in violation of court orders. Finally, he failed to report payments routed through his secretary’s checking account to preferred creditors. As a result of the foregoing, his creditors incurred unwarranted losses, and he was enriched.

In view of these facts, Judge Porteous violated several federal statutes concerning perjury and bankruptcy fraud. See 11 U.S.C. § 521(a)(3) (providing that “if a trustee is serving in the case [the debtor] . . . shall cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties under this title”); 18 U.S.C. §§ 152(1) - (3) (prohibiting generally the concealment of assets and the making of false oaths in any Title 11 bankruptcy case), 371 (conspiracy to commit offense or to defraud United States), 401(i) (giving “[a] court of the United States” the “power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice”), and 1621 (making guilty of perjury, whoever . . . in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true”).

d) Bank Fraud

The Committee further concludes that Judge Porteous's dealings concerning a personal bank loan meet the applicable statutory standard. When seeking an extension on the date of maturity of the loan from a federally-insured bank, Judge Porteous attested that there had been no material change in his financial state. During this same period, however, he had employed bankruptcy counsel to negotiate workout agreements with his various creditors to whom he owed over \$180,000.

In view of these facts, Judge Porteous may be criminally liable for bank fraud under 18 U.S.C. §§ 1014 (prohibiting one from knowingly making a false statement to, inter alia, a federally-insured bank, for the purpose of influencing the bank's action in any way), 1344 (bank fraud).

G. CONCLUSION; RESPONSE TO THE FIFTH CIRCUIT DISSENT

Respectfully, the Committee disagrees with the dissenters on the Fifth Circuit Council -- James L. Dennis, United States Circuit Judge for the Fifth Circuit; James J. Brady, United States District Judge for the Middle District of Louisiana; Tucker L. Melancon, United States District Judge for the Western District of Louisiana; Thad Heartfield, United States District Judge for the Eastern District of Texas -- with respect to the evidence. Many of the points made by the dissenters have been discussed in other portions of this Report. The dissenters, however, also took a very different view of the evidence from that taken by the Committee, differences that require a detailed discussion.

In the dissenters' view, Judge Porteous's acts did not constitute serious criminal offenses and direct abuses of judicial power. The Committee disagrees. In fact, there is substantial evidence, outlined above, that Judge Porteous violated a number of criminal statutes and canons of the Code of Conduct for United States Judges.

Part of our disagreement stems from the fact that the Fifth Circuit dissenters tend to view each of Judge Porteous's acts and the applicable rules in isolation from the others. In their view,

the cash payments and payments to vendors were simple gifts from friends, and the failure to disclose that the gifts or loans were never repaid as required by law was an innocent or negligent mistake involving only “private conduct and reporting of private financial affairs.” [JCD. 33] In addition, they view the failure to recuse in cases in which the donors appeared as counsel, even when the adversary moved for recusal, as simply a mistake causing only an appearance of impropriety.

In the Committee’s view, the various acts must be viewed as a whole and the applicable laws and Canons as a coordinated scheme. A judge’s soliciting and receiving cash and things of value from lawyers appearing before the judge is so obviously a questionable practice that it is subject to numerous substantive, disclosure, and ethical regulations. Were it not so regulated, judges could ask for and take money from lawyers, sit on cases involving those lawyers, and deny any impropriety. Those who would claim otherwise would be left with the burden of proving the judge’s and lawyer’s contrary states of mind.

A judge may accept a substantial gift from a lawyer with business in the judge’s court only if the gift is disclosed under the statutes discussed in Part F(2)(a) and if the judge recuses himself or herself from all such business. See 28 U.S.C. § 455; Canon 5C(4) of the Code of Conduct for United States Judges (“A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties”); Canon 5C(6) of the Code of Conduct for United States Judges (“A judge should report the value of any gift, bequest, favor, or loan as required by statute or by the Judicial Conference of the United States.”).

The disclosure and recusal requirements work in tandem. Disclosure provides the impetus for carrying out the required recusal, and the failure to disclose provides a ground for criminal prosecution not dependent upon showing the intent behind the solicitation and receipt of cash. Failing to disclose while accepting money is treated as a form of fraud in the deprivation

of honest services. See, e.g., Urciuoli, 513 F.3d at 298 n.5 (concealing a “material conflict of interest” can constitute honest-services fraud). Recusal not only cleans the slate of the appearance of bias. It also ensures that the cash is indeed a gift because recusal eliminates any motive to provide the benefit for reasons other than friendly generosity. A judge who violates this scheme abuses judicial power. As detailed in Part F(2), Congress has outlawed not just quid pro quo arrangements but all payments with any job-related motive. 18 U.S.C. § 201(c)(1)(B). This is a critical distinction because a judge who solicits monetary benefits from a lawyer with business before him can hardly conclude that the lawyer’s compliance with the request is out of generosity alone. Moreover, by failing to disclose and to recuse, a judge deprives opposing litigants of information necessary to seek the mandated recusal and to be heard by a judge untainted by a serious conflict of interest.

Contrary to the views of the Fifth Circuit dissenters, the evidence of crimes is powerful, again as detailed in Part F(2). The dissenters do not seriously dispute the salient facts but minimize them as purely “private.” This view ignores the evidence that Amato & Creely had objected to giving cash out of its own funds to Judge Porteous, that the payments were concealed, that Judge Porteous was warned that the methods of payment were “inappropriate,” and that the solicitation of benefits from lawyers in Liljeberg followed Judge Porteous’s denial of a recusal motion that was based on his relationship with the lawyers for one of the parties. Similarly, the dissenters excuse Judge Porteous’s incursion of approximately \$14,000 worth of additional debt after the commencement of his bankruptcy proceeding as a good faith misunderstanding of the correct characterization of gambling markers even though Judge Porteous agreed at the SC hearing that a gambling marker was “a form of credit extended by a gambling establishment.” [SCHT. 64]

The Committee also concludes that Judge Porteous’s acts were not relatively harmless but had serious consequences. In the Committee’s view, short of a violent crime causing permanent injury or an express quid pro quo arrangement, the solicitation and acceptance of cash

from lawyers with court business without disclosure or recusal is among the most serious offenses a judge can commit. The evidence shows that lawyers were the targets of solicitations that were not entirely welcome, litigants were deprived of information needed to obtain a judge free of any conflict of interest, and litigants had to bear the extra cost of hiring lawyers believed to have influence with Judge Porteous. His bankruptcy fraud caused losses to his creditors, enriched him, and allowed him to continue his lifestyle while obtaining a discharge. We cannot agree with the Fifth Circuit dissenters that because the fraud was in their view no more than is typical in bankruptcy cases, it is not sufficiently serious to warrant consideration of impeachment. Such a justification is untenable. Finally, the fraud on the bank caused the bank to extend a loan at a loss to itself.

The dissenters, echoed by letters to the Committee from persons familiar with Judge Porteous, claim that certification is unwarranted because he has suffered enough. Under the circumstances of this case, this is a matter that is more appropriately considered by Congress.

H. CERTIFICATION

The Committee recommends that the Judicial Conference send the following certification to the House of Representatives:

Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report By the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.

The determination is based on substantial evidence that:

a) Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him. Parts F(1)(a), (2)(a), and G of Report of the Committee is incorporated by reference.

b) Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard of the bankruptcy court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1). Parts F(1)(c), (2)(c), and G of the Report of the Committee are incorporated by reference.

c) Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in

cases in which lawyers who appeared before him had given him cash and other things of value and for the Fifth Circuit Judicial Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value. Parts F(1)(a), (b), (2)(a), (b), and G of the Report of the Committee is incorporated by reference.

d) Judge Porteous violated several criminal statutes and ethical canons by presiding over In re: Lilieberg Enters. Inc. v. Lifemark Hosps. Inc., No. 2:93-cv-01784, *rev'd in part* by 304 F.3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Code of Conduct for United States Judges.

Parts F(1)(b), (2)(b), and G of the Report of the Committee are incorporated by reference.

e) Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344. Parts F(1)(d), (2)(d), and G of the Report of the Committee are incorporated by reference.

f) The conduct described in (a) through (e) has individually and collectively brought disrepute to the federal judiciary.

I. MISCONDUCT PROCEEDING

This portion of the Report and Recommendations concerns a discrete issue arising out of this proceeding.

In the course of the Committee's consideration of this matter, the Committee has concluded that the Fifth Circuit Judicial Council did not expressly determine whether the misconduct proceeding should continue while the certification process is ongoing. Rather, the Council appears to have assumed that it has no further responsibilities. The Committee believes, however, that a certificate under 28 U.S.C. § 354(b)(2)(A) does not automatically conclude or

suspend an ongoing misconduct proceeding before a judicial council. The Committee recommends that it be authorized to ask the Fifth Circuit Judicial Council to make a considered judgment as to whether the misconduct proceeding should continue or be suspended at this time.

The certification by the Fifth Circuit Judicial Council is an act that informs the Conference of evidence that the Council came upon in the course of a misconduct proceeding. The certification is not a sanction, much less an exclusive sanction, which brings closure to an ongoing misconduct proceeding under the Act. With regard to certification, the Fifth Circuit Council determined only that the judge “may have engaged in conduct . . . which might constitute” grounds for impeachment, see 28 U.S.C. § 354(b)(2)(A), a determination of relevance only to an area of exclusive congressional authority. Certification is, therefore, simply an information-sharing mechanism to aid the Congress in carrying out its exclusive responsibilities with regard to impeachment and removal from office. It is not an act that has any role under the statute as either a sanction or conclusion of a misconduct proceeding.

It is inconsistent with the Act’s purposes to view certification as automatically concluding or suspending a misconduct proceeding. If the Conference certifies the matter to the House, congressional adjournments, elections, and the need for a Congress to organize at the beginning of each session create a high probability of delay in certified proceedings. Moreover, a certification may not result in impeachment and removal from office even though a subject judge clearly engaged in misconduct. To stay misconduct proceedings automatically upon a council certification therefore allows a judge who has engaged in serious misconduct to avoid any sanction for a considerable period of time or perhaps entirely were the judge to become eligible to retire under the statutory age plus years of service. This would effectively end the impeachment process and leave the subject judge free of any sanction under the Act. Moreover, automatic suspension of misconduct proceedings leaves the judge free to hear cases even though impeachment proceedings are ongoing.

Nevertheless, the Committee also believes that a council might determine that suspension of action on a misconduct complaint is appropriate while a certification works its way through the stipulated processes. That may have been the thinking in the Hastings matter (the only prior certification under 28 U.S.C. § 352(b)(2)(A), Judicial Conference of the United States, Certificate Regarding Alcee L. Hastings (Mar. 17, 1987)), where the certification followed a jury acquittal on the main charges.

Accordingly, the Committee recommends that it be authorized to request the Fifth Circuit Judicial Council to make a considered judgment on the continuance or suspension of the underlying misconduct proceeding. If the Council determines to continue the proceeding, it should consider the propriety of a public reprimand under Rule 20(b)(1)(D)(i) and an order that no new cases be assigned to Judge Porteous for two years or until the Congress takes final action on impeachment and removal proceedings under Rule 20(b)(1)(D)(ii).

Respectfully submitted,



Ralph K. Winter, Chair
Pasco M. Bowman II
Joseph A. DiClerico, Jr.
Carolyn R. Dimmick
Dolores K. Sloviter

Appendix A

- Exhibit 1: Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, Submitted November 20, 2007
- Exhibit 2: Reply Memorandum to the Report by the Special Investigatory Committee, Submitted December 5, 2007
- Exhibit 3: Response to Reply Memorandum, Submitted December 10, 2007
- Exhibit 4: Memorandum Order and Certification of the Judicial Council of the Fifth Circuit, dated December 20, 2007
- Exhibit 5: Dissenting Statement to the Memorandum Order and Certification of the Judicial Council of the Fifth Circuit
- Exhibit 6: Petition for Review of the Memorandum Order and Certification et al. and Incorporated Memorandum of Law and Argument; Supplemental Memorandum of Law and Argument

APPENDIX A**A) Acceptance of Cash and Other Things of Value from Attorneys With Matters Before Judge Porteous**

During his tenure as both a state and federal judge, Judge Porteous received cash and other things of value from lawyers who appeared before him. These friends include Jacob Amato, Warren A. "Chip" Forstall, Jr., Robert G. Creely, Don C. Gardner, and Leonard Levenson. [SCHT. 58-59] Although much of the following occurred while Judge Porteous was a state court judge, the relationship he cultivated with these individuals is relevant to the present proceeding.

1) Cash Gifts From Creely & Amato

Judge Porteous admitted that he received cash from Creely, Amato, and/or their law firm, Creely & Amato, while he was on the state bench, and that the practice continued after he was commissioned as a federal judge. [SCR. 37; SCHT. 118-19] Judge Porteous testified that while he did not know precisely how much he received from the men or their law firm over the years, he never considered these payments as income. [SCHT. 119] Rather he consider the payments to be gifts or loans, which he admittedly never repaid. [SCHT. 119-20] He stated that he considered these payments either loans or gifts, but conceded that by not paying Creely and Amato back, the undischarged "loans" would be considered income unless forgiven as gifts. [SCHT. 119] Judge Porteous admitted that he never reported any of these cash payments from Amato or Creely on his income tax return. [SCHT. 120] Moreover, Judge Porteous testified that these cash payments continued when he became a federal judge, but he did not report these gifts on his financial disclosure forms, despite certifying that the forms were true and accurate to the best of his knowledge. [SCHT. 120-21; SC. 215-70; SCR. 38]

The testimony of Creely and Amato detail their history of giving cash to Judge Porteous. Creely testified that there came a time when Judge Porteous, a state court judge, started asking him for cash to help with his personal living expenses. [SCHT. 199-200; GJT. 43-45] Creely

explained that he and Amato, his partner, would split the payments. [SCHT. 200] They would ask their firm's bookkeeper for checks, which would be charged to them as income, then they would cash the checks and give the money to Judge Porteous, with no expectation that the money would ever be repaid. [SCHT. 200-02] Although Creely could not recall the amount of cash that he and Amato gave Judge Porteous over the "number of years" this arrangement continued, he speculated that it was "approximately \$10,000" or more. [SCHT. 201] Eventually Creely became frustrated with Judge Porteous's demands as well as suspicious that he was no longer supporting Judge Porteous's family, but his drinking and gambling.¹ [SCHT. 203; GJT. 51-52]. Creely told Judge Porteous that he and Amato could not continue giving him money. [SCHT. 202-03]

Amato's testimony largely confirms Creely's. Apparently Judge Porteous preferred to make his cash requests through Creely. [GJT. 25-26] However, Amato confirmed that he and Creely typically split the payments and estimated that they had given Judge Porteous approximately \$10,000 to \$20,000. [SCHT. 239, 247; GJT. 25-26]

2) Curatorship Scheme

The evidence indicates that Judge Porteous, while on the state bench, had an arrangement with Creely and Amato whereby he would refer certain cases to their law firm in exchange for cash payments. Creely testified that after he told Judge Porteous that he could not keep giving him cash, Judge Porteous started sending curator cases to Creely and Amato's firm. [SCHT. 202-03, 238, 243; GJT. 52-54] A curator is an attorney who is appointed, by the state district court, to represent an absentee defendant. In the type of curator cases that Judge Porteous sent to Creely & Amato, the defendant was generally the subject of a foreclosure. [SCHT. 204-06, 210] Creely testified that these types of cases came to his firm often, that each had a set fee of \$175.00

¹After Judge Porteous became a federal judge, Creely complained to a colleague, "[t]hat rotten bastard" had asked for money for his son's congressional externship. [SCHT. 468; GJT. 51] There was testimony, however, that Creely frequently spoke in such rough terms. [SCHT. 475]

per defendant plus expenses, and that Judge Porteous would request a “good portion” -- more than fifty percent -- of the curatorship fees. [SCHT. 204-09; GJT. 54] Judge Porteous took the initiative in suggesting that he receive part of the curatorship fees and would call the firm to get the money. [SCHT. 202-10; GJT. 52-54] Although the curator fees were paid to Creely & Amato by the state district court, “the sources of the money were the lending institutions that had filed the foreclosure lawsuits and thus had to post the curatorships.” [SCHT. 210] Creely characterized the curatorship arrangement not as a quid pro quo, but as a continuation of the previous arrangement whereby he could give Judge Porteous cash but without having the money coming directly out of his pocket. [SCHT. 208-09, 228-29]

Again, Amato's testimony supports Creely's. [SCHT. 237-38] Amato testified that he learned of the scheme from Creely, who was the conduit for the payments, and that although he was not happy with the arrangement, he felt obligated to participate. [SCHT. 237-39] He also described the manner in which Judge Porteous received curatorship fees as being nearly identical to Creely's description of the manner in which Judge Porteous was given pre-curatorship cash payments: when Judge Porteous needed cash from the curatorships, Creely and Amato would draw checks of equal amounts, cash them, and Creely would give the money to Judge Porteous. [SCHT. 238-39, 241-42]

3) Fishing Trip & Las Vegas Bachelor Party

Sometime in the spring or summer of 1999, Judge Porteous's son, Timmy, got married. The following two incidents or transactions involving Judge Porteous, Creely, and Amato occurred in connection with Timmy's wedding. At this time Judge Porteous was a federal judge. In re: Liljeberg Enters., Inc. v. Lifemark Hosps., Inc., No. 2:93-cv-01784, had been assigned to him for trial, after which Amato had been hired as counsel for Liljeberg.

Amato and Judge Porteous went on a fishing trip in May or June of 1999. [SCHT. 240; GJT. 19-20] During this trip, Judge Porteous asked Amato for money, claiming that he could not pay for his son's wedding. Amato testified that Judge Porteous seemed emotional and

embarrassed about the request, and that within two or three days of the trip, Amato (or, Creely and Amato, he could not recall how, exactly, the payment had been arranged) cashed a check and personally gave Judge Porteous approximately \$2,000 or \$3,000 in cash. [SCHT. 240-41, 244]

According to Creely, the payment was arranged differently: Amato told him that he had been on a fishing trip with Judge Porteous and that he had requested money for personal expenses, either for tuition or Timmy's wedding. [SCHT. 211-13] Creely and Amato each agreed to withdraw \$1,000 or \$2,000 from their firm's account and make the cash available to Judge Porteous. [SCHT. 211-13] Creely testified that Rhoda Danos, Judge Porteous's secretary, was sent to the firm to pick up the envelope of cash. Creely told Judge Porteous that this was inappropriate. Creely believed this method was too "blatant." [SCHT. 214-15] Amato testified that the \$2,000 or \$3,000 cash payment he gave to Judge Porteous may have been a different incident from that described by Creely. [SCHT. 244] He could not recall whether he told Creely about the fishing trip request. [Id.] If the incidents were separate, then Judge Porteous received over \$4,000 from Creely & Amato in May or June of 1999. In any event, it is undisputed that Judge Porteous received at least \$2,000 from them at that time.

Judge Porteous testified that he could not recall asking Amato for money during the 1999 fishing trip. [SCHT. 135] He did, however, testify that "there may have been an envelope," but he did not remember any specifics. [SCHT. 137] Judge Porteous conceded that the amount of cash could have been \$2,000. [SCHT. 136-37] Although Judge Porteous characterized this transaction as a loan, he admitted that when he filed for bankruptcy, he did not list it as such, nor was it ever repaid. [SCHT. 137-38] The payment was never reported as income on his federal tax return, nor was it reported as either income or a gift or liability on his Financial Disclosure Report for the year 1999. [SCHT. 138; SCR. 41; SC. 235-38]

Also in May 1999, Timmy Porteous had a three-day bachelor party in Las Vegas, Nevada. [SCR. 42] Among those in attendance were Creely and another lawyer-friend of Judge Porteous, Don Gardner. [Id.] Judge Porteous admitted that his flight to Las Vegas was paid for

by Warren A. "Chip" Forstall, that the cost of his hotel room at Caesar's Palace -- which exceeded \$250 -- was paid by Creely, and that many of his meals on the trip were paid for by Creely and "maybe some other people." [SCHT. 139-41] Judge Porteous reported none of these gifts on his Financial Disclosure Report for the calendar year 1999. [SC. 235-38; SCR. 43; SCHT. 141-42]

B) Financial Disclosure Violations

1) 1999 Cash Payments and Las Vegas Trip

Judge Porteous failed to report the cash he received in connection with the 1999 fishing trip as either a gift, a loan or liability, non-investment income, or some other characterization appropriate for the "additional information or explanations" catch-all portion of the report. [SC. 238] Instead, Judge Porteous withheld all information concerning the cash payment. [SCHT. 40]

Judge Porteous also failed to report any of the expenses paid for in connection with his Las Vegas trip, including his airfare, hotel, and meals. [SC. 235-38]

2) 2000 Financial Disclosure Report

Judge Porteous's Financial Disclosure Report for the calendar year 2000 -- the year preceding his declaration of bankruptcy -- is also seriously deficient. [SC. 239-42] As of December 2000, after several months of attempting a workout with his unsecured creditors, Judge Porteous had accumulated \$182,330.23 of unsecured debt with thirteen different credit card companies. [SC. 296-98; SCR. 49] Although he completed his disclosure report on May 10, 2001, after he had filed for Chapter 13 bankruptcy, Judge Porteous listed only two credit cards -- an MBNA and a Citibank account -- under the "Liabilities" section of the report. [SC. 240] He valued each at "\$15,000 or less." [SC. 240] Judge Porteous conceded that this report was "not accurate." [SCHT. 115-18] Judge Porteous's April 9 amended bankruptcy petition listed three separate Citibank credit card accounts with balances of \$23,987.39, \$20,719.58, and \$17,711.35. Thus, Judge Porteous's liabilities to Citibank alone exceeded what he disclosed by

approximately \$47,418.86. [SCR. 50; SC. 102-03] Judge Porteous also conceded that he actually had three separate MBNA accounts with an aggregate balance of \$63,587.53, a fact not accurately reported in his 2000 report. [SCR. 51; SC. 104-05, 240; SCHAT. 116-18] Only one of these MBNA accounts had a balance less than \$15,000. [SCR. 51; SCHAT. 117-18]

The omission of over \$150,000 of credit card liabilities from his 2000 Financial Disclosure Report cannot be characterized as unintentional in light of the fact that Judge Porteous had been aware of and actively trying to resolve his unsecured debt during the nine or ten months preceding the filing of the Report.

3) Unexplained Cash Deposits Between 1998 and 2000

Judge Porteous also failed to report substantial sums of cash that were deposited into his bank account and that of his secretary. According to the testimony of FBI Financial Analyst Gerald Fink, the bank records of Judge Porteous and Rhonda Danos show substantial unexplained cash deposits. [SCR. 43] Judge Porteous's accounts reflected cash deposits, over and above his direct-deposit judicial salary, totaling \$80,492 between January 1998 and December 2000. [SCR. 43-44; SCHAT. 354-55; SC. Ex. 94] Danos's account showed cash deposits, well above her direct-deposit federal salary of approximately \$29,000, of \$49,120.77 in 1999 and \$10,907.03 in 2000. [SCR. 44; SC. Ex. 93] These unexplained deposits are significant in light of the evidence that Creely, Amato, and others gave Judge Porteous cash, although none can recall precisely how much.

Danos testified that in 1999 and 2000, she paid some of Judge Porteous's bills. [SCR. 44] According to Fink's analysis, these payments totaled \$41,176.97. [SCR. 44; SC. Exs. 91, 92] Danos also testified that Judge Porteous repaid her by writing checks, which totaled approximately \$32,555. [SCHAT. 350-54, 401-19; SCR. 44]

C) Abuse of Judicial Power

One of the most disturbing examples of Judge Porteous's misconduct involves his handling of In Re: Liljeberg Enters. Inc. v. Lifemark Hosps., Inc., No. 2:93-cv-01784, a

complex property-rights dispute which consisted of four consolidated cases “arising from a failed relationship formed to build and manage a hospital and medical office building in Kenner, Louisiana.” See *In re Liljeberg Enters., Inc.*, 304 F.3d 410, 417 (5th Cir. 2002) (describing what the Court of Appeals characterized as “the latest round in the parties’ protracted litigation”). Although originally filed in June 1993, the case was assigned to several district judges before being assigned to Judge Porteous on January 16, 1996. [SCR. 54-55; SCHAT. 147; SC. Ex. 82 at 1, 20] Among the lawyers involved in the case were Amato, Gardner, and Lenny Levenson. Joseph Mole, who was not a close friend of Judge Porteous, became the lead counsel and attorney of record for one of the plaintiffs, Lifemark Hospitals, in April 1996. [SCHAT. 59; SC. Ex. 82 at 21] Amato and Levenson became attorneys of record for the defendant, Liljeberg, in September 1996. [SC. Ex. 82 at 26] Neither Amato nor Levenson was a regular federal-court practitioner who handled this sort of complex litigation. [SCR. 55, SCHAT.149] Both, however, joined the case thirty-nine months after it had originally been filed and less than two months before the case was supposed to be tried before Judge Porteous on November 4, 1996. [SCR. 56; SC. Ex. 82 at 25-26]

Judge Porteous’s relationship with Amato is described above, but the record demonstrates that he had an equally close relationship with Levenson. According to Levenson’s grand jury testimony, he provided “a couple of hundred dollars” to one of Judge Porteous’s sons for travel and living expenses while the son served as a congressional extern in Washington, D.C. [SCR. 60; GJT. 65-66] Levenson also treated Judge Porteous to lunches while he had matters pending before Judge Porteous. [SCR. 60; GJT. 33-34]

On October 2, 1996, Lifemark filed a motion to recuse Judge Porteous based on his close relationship with Amato and Levenson. [SC. 553-65; SC. Ex. 82 at 27] Although apparently unaware of a financial relationship between Amato, Levenson, and Judge Porteous, Mole, counsel for the opposing party, expressed concern over the fact that the litigation had “a decade-long history” and “the Liljebergs already had five long-standing counsel of record,” when they

“added Jacob Amato and Leonard Levenson, two of the Court’s closest friends, as additional counsel.” [SC. 555-56; SCHAT. 169] Mole also noted that the Liljebergs were seeking approximately \$110 million in damages and had given Amato and Levenson “an 11% contingency fee for less than three months involvement,” and alleged that the Liljebergs had “a documented and clear history of attempting to use political influence” to their advantage. [SC. 555-56] In response to Lifemark’s motion to recuse, however, Levenson dismissed Lifemark’s allegations as “wild speculation,” without revealing the meals to which he treated Judge Porteous nor the financial assistance he gave Judge Porteous’s son. [SC. 581-84; SCR. 60] On or about October 16, Judge Porteous held a hearing on the motion and denied it without any disclosure of his financial transactions with Amato and Levenson. [SC. Ex. 82 at 29]

In March 1997, Don Gardner became an attorney of record for Plaintiff Lifemark. [SCR 56; SC. Ex. 82 at 37] This appearance came forty-five months into the case and five months after Judge Porteous denied Lifemark’s recusal motion. [Id.] Mole testified that he sent a fee agreement letter to Gardner which guaranteed him a \$100,000 retainer “payable upon enrollment of counsel of record.” [SCR. 56; SC. 397-98] Mole testified that the fee arrangement, which contained some unusual contingencies -- an entitlement to \$100,000 if Judge Porteous withdrew or the case was settled -- was to make sure his client was not embarrassed and to ensure that Gardner, whom Mole did not know very well, remained “interested in the outcome” and loyal to Lifemark. [SCHAT. 177-81] Mole testified that he was aware of Judge Porteous’s close friendship with Gardner as well as with Amato and Levenson. [Id.] He testified that after Amato and Levenson made their appearances, he became concerned that their presence in the case, in addition to the Liljebergs’ reputation for trying to “influence the judicial process through whatever means they could,” would be a problem for his client. [SCHAT. 168] According to Mole, his conversations with members of the legal community who knew “Jefferson Parish politics” substantiated his concerns. [Id.] He also testified that his client insisted that he level

the playing field by adding to the team a lawyer who was close to Judge Porteous. [SCHT. 173-74, 186] Mole, however, testified that he was unaware that Gardner attended the Las Vegas bachelor party trip while the case was pending. [SCHT. 194]

Although Judge Porteous admittedly found it unusual that three of his close friends, none of whom regularly practiced complex litigation in federal court, were involved in the case, he was troubled by these circumstances “only to the extent that somebody thought they needed to bring somebody else in.” [SCHT. 151-52]

On June 16, 1997, the bench trial commenced and on July 23, 1997, Judge Porteous took the case under submission. [SCR. 57; SC. Ex. 82 at 39, 41] As discussed above, in May or June 1999, while Liljeberg was still under submission, Judge Porteous sought and received at least \$2,000 from Creely and Amato after a fishing trip. Again, the actual amount of cash Judge Porteous received may have been more, as Creely and Amato seemed to recall different incidents: Creely recalled one in which Danos picked up an envelope of cash from their firm, while Amato remembered personally handing Judge Porteous the cash. [SCHT. 212-15, 240-41] Moreover, Judge Porteous attended his son’s bachelor party in Las Vegas along with Creely and Gardner. [SCHT. 154-56]

On April 26, 2000, Judge Porteous rendered findings of fact and conclusions of law primarily in favor of Liljeberg. [SCR. 57; SCHT. 246; SC. Ex. 82 at 44] At no point during the litigation did he disclose to the parties his relationship with Amato, Creely, Levenson, or his relationship with Gardner who had given him cash in the past and helped pay for his son’s externship in Washington, D.C. [SCR. 59; SCHT. 153-54, 461, 465-68] Amato testified that he had never disclosed this information either. [SCHT. 245-46]

D) Bankruptcy Fraud

In or around June 2000, Judge Porteous retained bankruptcy counsel Claude C. Lightfoot to attempt to workout a settlement with his creditors. [SCHT. 52, 442-48] The workout period, however, proved unsuccessful and on March 28, 2001, Judge Porteous and his wife Carmella

filed for bankruptcy under Chapter 13 in the Eastern District of Louisiana, case number 01-12363. [SCR. 16; SC. 2, 122-24] In connection with their bankruptcy proceeding, the Porteouses knowingly filed false statements made under oath, concealed assets from the bankruptcy trustee, disobeyed bankruptcy court orders by incurring additional debt, and made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy proceeding.

Judge Porteous's bankruptcy case was assigned to Judge William R. Greendyke of the Southern District of Texas, who was sitting by designation in the Eastern District of Louisiana. [SCHT. 57; SC. 64-65] The Chapter 13 Trustee was S.J. Beaulieu Jr. [SCHT. 52; SC. 68]

1) False Initial Petition

Judge Porteous does not dispute that he and his wife purposely filed their initial bankruptcy petition under the false names of "G.T. Ortous" and "C.A. Ortous," and used as their residential address a post office box rented on March 20, 2001, approximately eight days before the bankruptcy filing. [SCHT. 52-55; SC. 122-24] The Porteouses had signed this petition, under penalty of perjury, above the printed names "Ortous." [SC. 123-24; SCHT. 55] At the Special Committee's hearing, Judge Porteous conceded that "Ortous" was not his name nor his wife's, and that the petition he signed contained false information. [SCHT. 55; SCR. 16-17]

On April 9, 2001, Judge Porteous filed an amended voluntary petition providing his name as "Gabriel T. Porteous, Jr." and his wife's name as "Carmella A. Porteous." [SCHT. 56-57] The amended petition also provided the Porteouses's residential street address in place of the post office box initially used. [SCR. 17; SCHT. 56-57]

According to Lightfoot's testimony, the false names (and presumably the use of the recently-acquired post office box) was his "stupid idea" designed not to mislead, but to help Judge Porteous avoid the negative publicity and humiliation that would necessarily accompany his bankruptcy filing. [SCHT. 435-36]

2) Incurring Impermissible Debts

Despite being warned by the trustee, Judge Greendyke, and Lightfoot, Judge Porteous violated bankruptcy court orders forbidding him from incurring additional debt during the course of his Chapter 13 case. Specifically, Judge Porteous, regularly incurred extensions of credit from various casinos despite (1) receiving a pamphlet from Beaulieu entitled "Your Rights and Responsibilities in Chapter 13" that stated "you may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy court"; (2) being told by Beaulieu at a first meeting of creditors held on May 9, 2001, that he could no longer use credit cards or incur more credit; and (3) Judge Greendyke's June 28, 2001 order that stated, *inter alia*, "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee." [SCHT. 60-62; SCR. 19; SC. 399-403]

According to the testimony of FBI case agent Wayne Horner, between August 20, 2001 and July 5, 2002, Judge Porteous took out approximately \$31,000 in gambling markers -- a form of credit extended by gaming establishments -- from various casinos in Louisiana and Mississippi. [SCR. 19 n.10, 19-20; SCHT. 298-316] Judge Porteous admitted to specific instances of obtaining gambling markers: For example, he testified that on August 20 and 21, 2001, he took out eight \$1,000 markers from the Treasure Chest Casino in Kenner, Louisiana. [SCHT. 65-66] Although Judge Porteous once contested whether the markers could be characterized as "credit," he also admitted that they were a form of "credit." [SCHT. 64-65] The record indicates that out of the \$31,000 worth of markers obtained, Judge Porteous left the casinos owing approximately \$14,000, which he eventually paid back at later dates. [SCHT. 65-70, 315-16; SCR. 20]

In addition, Judge Porteous conceded that his wife and co-debtor used a Fleet credit card, which was in her name, on March 8, 2001 at a casino in New Orleans. [SCHT. 73] This particular credit card, however, was not listed on the debtors' schedule of creditors holding unsecured, nonpriority claims ("Schedule F") -- a list filed on April 9, 2001 that required the

disclosure of all credit cards. [SC. 102-05; SCR. 21; SCHT. 74-75] In addition to failing to disclose Fleet as an unsecured creditor, the Porteouses used the card for purchases and cash advances after both the initial and amended bankruptcy petitions were filed. [SCHT. 75-76] Among the \$734.31 of debt incurred on the Fleet card in May and June of 2001, were charges from casinos in Louisiana and Mississippi. [SCHT. 76-77; SCR. 21-22; SC. 592-93]

3) Other Bankruptcy Misrepresentations

On April 9, 2001, the Porteouses and Lightfoot submitted Chapter 13 Schedules, a Plan, and a "Declaration Concerning Debtor's Schedules," signed under penalty of perjury, indicating that the Schedules were true to the best of their knowledge, information, and belief. [SCR. 25; SC. 111] The record indicates, however, that Judge Porteous made a number of misrepresentations on these Schedules.

Specifically, on April 9, 2001, Judge Porteous submitted a "Schedule B," concerning personal property, which required the disclosure of "liquidated debts owing debtor including tax refunds" as well as unliquidated claims "including tax refunds." [SC. 96] The Porteouses denied having either by checking the relevant boxes marked "none." [SC. 96, 111; SCHT. 79-80] At the time Judge Porteous responded to these questions, however, he was expecting a tax refund in excess of \$4,000. [SCR. 23-24; SCHT. 82-83] On March 23, 2001, the Porteouses had filed for a federal tax refund on their 2000 tax return in the amount of \$4,143.72. [SC. 600-01; SCR. 24; SCHT. 80-81] Nevertheless, Judge Porteous and his wife both signed, under penalty of perjury, the jurat accompanying Schedule B which asserted that the information it contained was true and accurate to the best of their knowledge, information, and belief. [SC. 111] On April 13, 2001, exactly \$4,143.72 was deposited in Judge Porteous's Bank One checking account. [SCR. 24; SCHT. 82-83; SC. 602] Judge Porteous could not recall why the refund was omitted from his bankruptcy filings. [SCHT. 84] Lightfoot testified that he had not discussed the refund with Judge Porteous prior to the filing of the amended petition and stated that if a refund were expected, the forms should so indicate. [SCHT. 437, 450-51] Although Judge Porteous

contents that this omission was merely an oversight, the refund was never reported to Beaulieu or made part of the bankruptcy estate. [SCR. 24]

In response to another question on Schedule B, Judge Porteous failed to truthfully report information regarding his “checking, savings or other financial accounts.” [SCR. 24-25] Judge Porteous listed only a Bank One checking account valued at \$100. [SCHT. 79-80, 85, 94-95] His statement from Bank One, however, showed a balance of \$559.07 on March 23, 2001. [SC. 606; SCR. 25] Judge Porteous also conceded that he had an unlisted Fidelity money market account, which, on March 28, 2001, had a balance of \$283.42. [SC. 611; SCR. 25; SCHT. 86-87] Judge Porteous’s Fidelity statement from April 20, 2001 indicated an average balance for the previous thirty days of \$320.29. [SCR. 25] Although Judge Porteous “could have sworn” that he told Lightfoot about the Fidelity account, Lightfoot testified to the contrary. [SCHT. 87, 449]

Next, Judge Porteous indicated in the “Statement of Financial Affairs” portion of his amended petition that his payments to creditors made within 90 days of the filing of the petition consisted of normal installments. [SC. 112; SCR. 26] Though he had been asked to list all payments on loans and debts aggregating more than \$600 in the 90 days prior to the bankruptcy filing, Judge Porteous failed to disclose the fact that his Fleet credit card balance of \$1,088.41 was paid in full on March 29, 2001. [SC. 618-20; SCR. 26] The source of the payment was a check in the amount of \$1,088.41 from Rhonda Danos, drawn from her Hibernia National Bank account and dated March 23, 2001. [SC. 619] On the memorandum line of the check was the name “Carmella Porteous” along with the Fleet credit card account number. [*Id.*] Judge Porteous conceded that Danos made the payment, but could not recall why. [SCHT. 97] Danos testified that she assumed she paid the bill after Judge Porteous requested her to do so because she had never spoken to Carmella Porteous about paying her bills. [SCHT. 401-03] Thus, Fleet had not been identified as an unsecured creditor, or as a creditor to whom more than \$600 was paid within 90 days of the bankruptcy filing. Danos’s payment constituted a preferred payment

to an unsecured creditor which was not disclosed on the Porteouses' "Statement of Financial Affairs" signed under penalty of perjury on April 9. [SC. 116; SCR. 27]

The record reflects that Judge Porteous made another preferred payment with respect to gambling markers from a casino in Gulfport, Mississippi. [SCR. 27-28] On February 27, 2001, Judge Porteous took out two \$1,000 markers from the Grand Casino in Gulfport. [SC 1105; SCR 27] These markers were negotiated against Judge Porteous's account on March 24, 2001. [SC. 1131; SCR. 27] On March 27, the day before Judge Porteous filed his initial bankruptcy petition, he requested that his account be changed to a 30-day hold, stating that he preferred to pick up the markers and not have them deposited. [SCR. 27; SC. 1099, 1105] Judge Porteous called the casino on April 2, 2001, to request that any fees be waived because the markers were "dropped too soon" and to the wrong account number. [SCR. 27-28; SC. 1105] This payment was not disclosed on any statement filed in connection with his amended petition. [SCR. 28]

In addition, Rhonda Danos wrote a \$1,000 check, dated April 30, 2001, to the Beau Rivage Casino in Biloxi, Mississippi on behalf of Judge Porteous. [SCHT. 403-04] According to Danos, Judge Porteous had asked her to pay off a \$1,000 outstanding marker he had with the casino probably because she was going there anyway. [SCHT. 403-04] Casino records indicate that Judge Porteous in fact had a \$1,000 balance after a two-day trip to the Beau Rivage on April 7-8, 2001. [SCR. 28; SC. 1197] This payment was not reported on Judge Porteous's bankruptcy schedules or his Statement of Financial Affairs filed on April 9, 2001. [SCR. 28]

Finally, Judge Porteous misrepresented the gambling losses he incurred during the one year preceding his bankruptcy filing. Though he could not recall having incurred losses exceeding \$12,700, he did not dispute that the number could be accurate. [SCR. 28-29] He testified that he could have incorrectly answered "none" on the Statement of Financial Affairs in response to a request to list "all losses from . . . gambling within one year immediately preceding the commencement of [the bankruptcy] case . . ." [SCR. 29; SC. 113] According to FBI Agent Horner, Judge Porteous's total gross losses for the year preceding his filing were \$12,895.35 and

his total gross winnings were \$5,312.15. [SCHT. 317-18; SCR. 29] In sum, Judge Porteous failed to disclose substantial losses to the bankruptcy court.

Significantly, Judge Porteous continued to misrepresent his financial affairs after filing for bankruptcy. According to FBI Financial Analyst Gerald Fink, during 2001 and 2002, Judge Porteous understated his income and overstated his expenses on the relevant bankruptcy schedules. [SCR. 29-30; SCHT. 365-74] Specifically, Judge Porteous stated that his income for the year 2001 would total \$67,784, but over a nine-month period, a total of \$88,865 went through his bank accounts. [SCHT. 366] In other words, Judge Porteous understated his income by approximately \$21,081. [Id.] Porteous also inflated his expenses by approximately \$13,000. [SCHT. 366-67] Combined, the understatement of his income and the inflation of his expenses left Judge Porteous with approximately \$24,825 available in 2001 and \$36,000 in 2002 -- amounts of which the bankruptcy court and trustee remained unaware. [SCHT. 367-70; SC. Exs. 72-73]

Judge Greendyke testified that had he or his trustee been aware of Judge Porteous's omissions and misrepresentations, he would not have signed the confirmation order, but would have objected on the basis of a lack of good faith -- a confirmation requirement. [SCHT. 385]

E) Bank Fraud

The record indicates that Judge Porteous willfully engaged in fraudulent and deceptive conduct concerning a debt he owed to Regions Bank in New Orleans, a federally insured institution with which he enjoyed a longstanding relationship prior to his bankruptcy proceeding. [SCR. 31] Edward Butler, the former president of Regions, was a friend of Judge Porteous for approximately twenty years. [SCR. 31; SCHT. 112, 273-75] Regions had regularly provided Judge Porteous with small, unsecured loans ranging from \$2,500 to \$5,000. [SCR. 31; SCHT. 112, 273-75] Until 2001, Judge Porteous had always repaid these loans. [SCR. 31; SCHT. 288]

In January 2000, Judge Porteous requested a \$5,000 unsecured loan from Regions, the stated purpose of which was tuition for one of his sons. [SCR. 32; SC. 274] On January 27, he

signed an unsecured promissory note for the loan that was set to mature on July 24, 2000. [SC. 272-73; SCR. 32] As part of the loan package, Judge Porteous also signed a “Disbursement Request and Authorization” statement in which he asserted, in a portion entitled “financial disclosure,” that he was representing true and correct information to Regions in connection with the loan and that there had been “no material adverse change” in his financial condition as disclosed in his more recent financial statements to the bank. [SCR. 32; SC. 274] Judge Porteous also indicated that he was not in the process of filing for bankruptcy. [SC. 276] When payment on the loan became due on July 24, Judge Porteous contacted Butler to request that the note be extended for an additional six-month term. [SCR. 32] This would make the payment due on January 17, 2001. [SC. 279-83; SCR. 32]

However, by the fall of 2000, if not earlier, Judge Porteous had retained Lightfoot as his bankruptcy counsel. [SCR. 32; SCHAT. 442-43] By December 21, 2000, Lightfoot had sent workout letters to Judge Porteous’s unsecured creditors, with the exception of Regions, in a final attempt to avoid bankruptcy. [SCHAT. 443; SC. 296]

Meanwhile, on January 17, 2001, Judge Porteous again requested a six-month extension of the promissory note. [SCHAT. 282-83] When completing the paperwork for the second extension, Judge Porteous again indicated that he was not in the process of filing for bankruptcy and that there had been no material adverse change in his financial condition. [SC. 290-91; SCHAT. 112, 283-84]

Although Judge Porteous was not in the process of filing for bankruptcy in January 2001, when he requested his second six-month extension, he had been trying to achieve a workout with his unsecured creditors with the help of his bankruptcy attorney, whom he hired around the time he requested his first extension. Thus, his financial condition had changed materially and the possibility of bankruptcy was on the horizon. As of December 2000, Judge Porteous had \$182,330.23 in unsecured credit card debt. [SC. 298] As of April 2001, his unsecured credit card debt totaled \$191,246.73. [SC. 102-05] Butler testified that had he known about Judge

Porteous's deteriorating financial condition, that he had been negotiating a workout settlement with his creditors for approximately six months, and the possibility of bankruptcy, he would have, according to the bank's standard policy in such situations, attempted to secure the loan with collateral before granting an additional six-month extension on the promissory note.

[Scht. 287, 291-92] Even Lightfoot conceded that the change in Judge Porteous's finances were what a bank in Regions' position would characterize as "material." [Scht. 456]

Judge Porteous contends that he purposely excluded Regions from the list of creditors who received workout letters in December 2000 because he wanted to ensure that his friend, Edward Butler, received payment in full. [Scht. 158-59, 288-89] In other words, he wanted to make Regions a preferred creditor. This plan, however, failed: Regions ultimately received only \$1,782.43, or 34.55 percent of its original loan. [Scr. 34; Sc. 27; Scht. 111-12]

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U.S. Circuit Judge; Carolyn Dineen King, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Rhessa H. Barksdale, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Edith Brown Clement, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Jennifer Walker Elrod, U. S. Circuit Judge; Leslie H. Southwick, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melancon, U. S. District Judge; Neal B. Biggers, U. S. District Judge; Louis G. Guirola, Jr., U. S. District Judge; Sam Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

DOCKET NO. 07-05-351-0085

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

ORDER AND PUBLIC REPRIMAND

WHEREAS, on June 17, 2008, the Judicial Conference of the United States unanimously adopted the Report and Recommendations of the Committee on Judicial Conduct and Disability concerning United States District Judge G. Thomas Porteous, Jr.;

WHEREAS, in accordance with a recommendation contained in the Report and Recommendations of the Committee on Conduct and Disability requesting

that the Fifth Circuit Judicial Council make a considered judgment on the continuation or suspension of the underlying misconduct proceeding relating to Judge Porteous;

NOW, having considered the aforementioned recommendation from the Committee on Conduct and Disability, the Council, by a clear majority vote, takes the following action:

1. The Council hereby PUBLICLY REPRIMANDS Judge Porteous under Rule 20(b)(1)(D)(i) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings for the following conduct that is prejudicial to the effective and expeditious administration of the business of the courts within the Circuit:

Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him.

Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard

of the Bankruptcy Court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1).

Judge Porteous wilfully and systematically concealed from litigants and the public certain financial transactions by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in cases in which lawyers who appeared before him had given him cash and other things of value and for the Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value.

Judge Porteous violated several criminal statutes and ethical canons by presiding over *In Re: Liljeberg Enter. Inc. v. Lifemark Hosps. Inc.*, No. 2:93-cv-01784, rev'd in part by 304 F. 3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other

things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Codes of Conduct for United States Judges.

Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344.

Judge Porteous, in his conduct described above individually and collectively, brought disrepute to the federal judiciary.

2. The Council, pursuant to Rule 20(b)(1)(D)(ii) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and 28 U.S.C. § 354(a)(2)(A)(i), orders that no new cases be assigned to Judge Porteous for two years from the date of this Order and Public Reprimand or until Congress takes final action on the impeachment proceedings, whichever occurs earlier.

3. The Council, pursuant to 28 U.S.C. §§ 332(d)(1), orders that Judge Porteous's authority to employ staff be suspended for the period of time encompassed in paragraph 2 above.

4. The Council, consistent with 28 U.S.C. §§ 332(d)(2), directs all judicial officers and employees within the Circuit, particularly the Chief Judge

of the Eastern District of Louisiana and the Clerk of Court for the Eastern District of Louisiana, to take all necessary steps to carry into effect the above orders of the Council.

In issuing this Order and Public Reprimand and executing the actions contained herein, the Council is taking the maximum disciplinary steps allowed by law against Judge Porteous. Any further action to remove Judge Porteous from office and the emoluments thereof is the responsibility of Congress.

In conjunction with the issuance of this Order and Public Reprimand, the following documents are being made available for public access:

1. Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, submitted November 20, 2007 and Volume 1 of 2 Volumes of Exhibits and Volume 2 of 2 Volumes of Exhibits;
2. Reply Memorandum to the Report by the Special Investigatory Committee, submitted December 5, 2007;
3. Response to Reply Memorandum, submitted December 10, 2007;
4. Memorandum Order and Certification of the Judicial Council of the Fifth Circuit, dated December 20, 2007;
5. Dissenting Statement to the Memorandum Order and Certification of the Judicial Council of the Fifth Circuit;
6. Petition for Review of the Memorandum Order and Certification, The Proceedings Conducted by the Special Investigatory Committee, The Fifth Circuit Judicial Council

Report, and Judge Dennis' Dissent From the Memorandum Order and Certification Pursuant to 28 U.S.C. § 357(A) and Incorporated Memorandum of Law and Argument and Exhibit 1A, Exhibit 1B, Exhibit 1C, Exhibit 2A, Exhibit 2B, Exhibit 2C, Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, Exhibit 7A, Exhibit 8, Exhibit 9, and Exhibit List;

7. Certificate to Speaker, United States House of Representatives and Report and Recommendations of the Judicial Conference Committee on Judicial Conduct and Disability, and;
8. Crime Fraud Order dated June 21, 2004, and Crime Fraud Order dated October 19, 2004.

This Order and Public Reprimand is effective immediately and concludes the matter IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980 before the Council.

DONE this 10th day of September, 2008.

FOR THE COUNCIL:



Chief Judge

Links to publicly available documents:

[Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, submitted November 20, 2007](#)

[Volume 1 of 2 Volumes of Exhibits](#)

[Volume 2 of 2 Volumes of Exhibits](#)

[Reply Memorandum to the Report by the Special Investigatory Committee, submitted December 5, 2007](#)

[Response to Reply Memorandum, submitted December 10, 2007](#)

[Memorandum Order and Certification of the Judicial Council of the Fifth Circuit, dated December 20, 2007](#)

[Dissenting Statement to the Memorandum Order and Certification of the Judicial Council of the Fifth Circuit](#)

[Petition for Review of the Memorandum Order and Certification, The Proceedings Conducted by the Special Investigatory Committee, The Fifth Circuit Judicial Council Report, and Judge Dennis' Dissent From the Memorandum Order and Certification Pursuant to 28 U.S.C. § 357\(A\) and Incorporated Memorandum of Law and Argument](#)

[Exhibit 1A](#)

[Exhibit 1B](#)

[Exhibit 1C](#)

[Exhibit 2A](#)

[Exhibit 2B](#)

[Exhibit 2C](#)

[Exhibit 3](#)

[Exhibit 4](#)

[Exhibit 5](#)

[Exhibit 6](#)

[Exhibit 7](#)

[Exhibit 7A](#)

[Exhibit 8](#)

[Exhibit 9](#)

[Exhibit List](#)

Certificate to Speaker, United States House of Representatives and Report and Recommendations of the Judicial Conference Committee on Judicial Conduct and Disability

Crime Fraud Order dated June 21, 2004

Crime Fraud Order dated October 19, 2004

Statement on Senate Action on Crime Legislation

August 25, 1994

The United States Senate made history today. The long, hard wait is finally over, and the American people are going to get the action against crime they have been demanding for over 6 years.

I want to thank the members of both parties, in the House and Senate, who answered the call of ordinary Americans to get this job done.

With a little good faith and a lot of hard work, Republicans and Democrats overcame the partisan divisions and false choices that have blocked anticrime efforts time and time again.

And because they did, children will be safer and parents will breathe a little easier. Police officers will no longer be threatened by gangs and thugs with easy access to deadly assault weapons designed only for war. Violent criminals are going to learn quickly that the revolving door on our prisons has been locked and bolted shut.

This crime bill is going to make every neighborhood in America safer, and the bipartisan spirit that produced it should give every American hope that we can come together to do the job they sent us here to do.

NOTE: Biographies of the nominees were made available by the Office of the Press Secretary.

Statement on Signing the Energy and Water Development Appropriations Act, 1995

August 26, 1994

Today I have signed into law H.R. 4506, the "Energy and Water Development Appropriations Act, FY 1995."

The Act provides a total of \$20.5 billion in discretionary budget authority for various programs in the Departments of Energy and the Interior, the Army Corps of Engineers, and several smaller agencies.

I am pleased that the Act substantially funds most of my budget requests for priority investment programs within the Departments of Energy and the Interior and the Army Corps of Engineers, including full funding for the renewable energy portions of the Climate Change Action Plan.

William J. Clinton

The White House,
August 26, 1994.

NOTE: H.R. 4506, approved August 26, was assigned Public Law No. 103-316.

Nomination for Federal Judges

August 25, 1994

The President today nominated Fred I. Parker to the U.S. Court of Appeals for the Second Circuit. The President also nominated six individuals to serve on the U.S. District Court: Helen Gillmor for the District of Hawaii; John R. Tait for the District of Idaho; Okla Jones II and G. Thomas Porteous, Jr., for the Eastern District of Louisiana; James A. Beaty for the Middle District of North Carolina; and David Briones for the Western District of Texas.

"These nominees will bring legal talent and dedication to the Federal bench," the President said. "I know they will serve our country with distinction."

Digest of Other White House Announcements

The following list includes the President's public schedule and other items of general interest announced by the Office of the Press Secretary and not included elsewhere in this issue.

August 22

The White House announced the President will attend the summit of the Asia-Pacific Economic Cooperation forum in Indonesia on November 14-16. The President also has accepted the invitations of President Fidel Ramos of the Philippines for a state visit in Manila on November 13 and of President Soeharto of Indonesia for a state visit in Jakarta on November 16.

1716

August 24

The White House announced that President Nelson Mandela of South Africa has accepted the President's invitation to make a state visit to Washington, DC, October 4-6.

The President announced his intention to nominate Yerker Andersson, Audrey McCrimmon, Debra Robinson, and Irving Zola as members of the National Council on Disability.

The President announced his intention to nominate Rhea L. Graham to be Director of the U.S. Bureau of Mines at the Department of the Interior.

August 26

In the evening, the President and Hillary and Chelsea Clinton traveled to Martha's Vineyard, MA, for their vacation.

The White House announced the President has nominated Gen. Ronald R. Fogelman, USAF, to be Chief of Staff of the Air Force.

The White House announced the President has asked a delegation of Americans, headed by C. Payne Lucas, president of Africare, to travel on his behalf to Burundi, Rwanda, and eastern Zaire, August 27-31. The delegation will urge resolution of the political crisis in Burundi and review relief efforts for Rwandan refugees.

Nominations**Submitted to the Senate**

The following list does not include promotions of members of the Uniformed Services, nominations to the Service Academies, or nominations of Foreign Service officers.

Submitted August 22

Martin Jay Dickman, of Illinois, to be Inspector General, Railroad Retirement Board, vice William J. Doyle III.

Celeste Pinto McLain, of California, to be a member of the Amtrak Board of Directors for the remainder of the

Administration of William J. Clinton, 1994

term expiring March 20, 1995, vice Carl W. Vogt.

Celeste Pinto McLain, of California, to be a member of the Amtrak Board of Directors for a term of 4 years (re-appointment).

Frederick F. Y. Pang, of Hawaii, to be an Assistant Secretary of Defense, vice Chas. W. Freeman.

Submitted August 23

Gil Coronado, of Texas, to be Director of Selective Service, vice Robert William Gambino, resigned.

Marc Lincoln Marks, of Pennsylvania, to be a member of the Federal Mine Safety and Health Review Commission for a term of 6 years expiring August 30, 2000, vice L. Clair Nelson, deceased.

Submitted August 25

Clifford B. O'Hara, of Connecticut, to be a member of the Board of Directors of the Panama Canal Commission, vice William Carl.

Reginald B. Madsen, of Oregon, to be U.S. Marshal for the District of Oregon for the term of 4 years, vice Kernan H. Bagley, resigned.

Eve L. Menger, of New York, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2000, vice Arden L. Bement, Jr., term expired.

Alfred H. Moses, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Romania.

Robert M. Solow, of Massachusetts, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2000, vice Peter H. Raven, term expired.

Anne Jeanette Udall, of North Carolina, to be a member of the Board of Trustees of the Morris K. Udall

Scholarship and Excellence in National Environmental Policy Foundation for a term of 4 years (new position).

Richard Thomas White, of Michigan, to be a member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 1996, vice Frank H. Conway, term expired.

Timothy M. Barnicle, of Maryland, to be an Assistant Secretary of Labor, vice John D. Donahue.

James A. Beaty, Jr., of North Carolina, to be U.S. District Judge for the Middle District of North Carolina, vice Richard C. Ervin, retired.

David Briones, of Texas, to be U.S. District Judge for the Western District of Texas, vice Lucius Desha Bunton III, retired.

Peter Jon de Vos, of Florida, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Costa Rica.

John A. Gannon, of Ohio, to be a member of the National Council on Disability for a term expiring September 17, 1995 (reappointment).

Helen W. Gillmor, of Hawaii, to be U.S. District Judge for the District of Hawaii (new position).

Okla Jones II, of Louisiana, to be U.S. District Judge for the Eastern District of Louisiana, vice Frederick J. R. Heebe, retired.

Bruce A. Morrison, of Connecticut, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2000, vice William C. Perkins, resigned.

Fred I. Parker, of Vermont, to be U.S. Circuit Judge for the Second Circuit, vice James L. Oakes, retired.

Joe Bradley Pigott, of Mississippi, to be U.S. Attorney for the Southern District of Mississippi, vice George L. Phillips.

G. Thomas Porteous, Jr., of Louisiana, to be U.S. District Judge for the Eastern District of Louisiana, vice Robert F. Collins, resigned.

John R. Tait, of Idaho, to be U.S. District Judge for the District of Idaho, vice Harold L. Ryan, retired.

Vincent J. Sorrentino, of New York, to be a member of the Advisory Board of the Saint Lawrence Seaway Development Corporation, vice Leo C. McKenna.

Checklist of White House Press Releases

The following list contains releases of the Office of the Press Secretary that are neither printed as items nor covered by entries in the Digest of Other White House Announcements.

Released August 22

Transcript of a press briefing by Press Secretary Dee Dee Myers

Statement by Press Secretary Dee Dee Myers announcing that the President will attend the second summit of the Asia-Pacific Economic Cooperation forum in Indonesia, November 14–15

Released August 23

Transcript of a press briefing by Press Secretary Dee Dee Myers

Statement by Press Secretary Dee Dee Myers announcing that a delegation of senior officials will visit Florida to consult on Cuban migrants

Released August 24

Transcript of a press briefing by Press Secretary Dee Dee Myers

**CONFIRMATION HEARINGS
ON FEDERAL APPOINTMENTS**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY

SEPTEMBER 28; OCTOBER 4 AND 6, 1994

Part 6 of 6

Serial No. J-103-28

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HOWARD M. METZENBAUM, Ohio

DENNIS DeCONCINI, Arizona

PATRICK J. LEAHY, Vermont

HOWELL HEFLIN, Alabama

PAUL SIMON, Illinois

HERBERT KOHL, Wisconsin

DIANNE FEINSTEIN, California

CAROL MOSELEY-BRAUN, Illinois

ORRIN G. HATCH, Utah

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ALAN K. SIMPSON, Wyoming

CHARLES E. GRASSLEY, Iowa

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HANK BROWN, Colorado

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LARRY PRESSLER, South Dakota

CYNTHIA C. HOGAN, *Chief Counsel*CATHERINE M. RUSSELL, *Staff Director*MARK R. DISLER, *Minority Staff Director*SHARON PROST, *Minority Chief Counsel*

(II)

CONTENTS

HEARING DATES

	Page
Wednesday, September 28, 1994, 10:40 a.m	1
Wednesday, September 28, 1994, 2:10 p.m	55
Tuesday, October 4, 1994	417
Thursday, October 6, 1994	645

WEDNESDAY, SEPTEMBER 28, 1994, 10:40 A.M.

STATEMENTS OF COMMITTEE MEMBERS

Kohl, Hon. Herbert	1
Cohen, Hon. William S	2
Prepared statement	3

INTRODUCTION OF NOMINEES

Graham, Hon. Bob	4
Prepared statement	5
Mack, Hon. Connie	5
Dixon, Hon. Julian C	15
Feinstein, Hon. Dianne (prepared statement)	21
Mineta, Hon. Norman Y. (prepared statement)	22

TESTIMONY OF NOMINEES

Sheldon C. Bilchik, Potomac, MD, to be Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice	7
Questioning by:	
Senator Kohl	8
Senator Cohen	12
Rose Ochi, Monterey Park, CA, to be Associate Director, Bureau of State and Local Affairs, Office of National Drug Control Policy	16
Questioning by:	
Senator Kohl	16

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Bilchik, Sheldon C.:	
Testimony	7
Questionnaire	23
Ochi, Rose:	
Testimony	16
Prepared statement	19
Questionnaire	38

WEDNESDAY, SEPTEMBER 28, 1994, 2:10 P.M.

STATEMENT OF COMMITTEE MEMBER

Leahy, Hon. Patrick J	55
-----------------------------	----

IV

INTRODUCTION OF NOMINEES

	Page
Leahy, Hon. Patrick J	56
Prepared statement	57
Jeffords, Hon. James M	57
Metzenbaum, Hon. Howard M	59
Glenn, Hon. John	60
Kaptur, Hon. Marcy	61
Wofford, Hon. Harris	62
Specter, Hon. Arlen	62
Inouye, Hon. Daniel K	63
Akaka, Hon. Daniel K	64
McCain, Hon. John	64
DeConcini, Hon. Dennis	65
Dodd, Hon. Christopher J	67
Lieberman, Hon. Joseph I. (prepared statement)	68
Nunn, Hon. Sam	69

TESTIMONY OF NOMINEES

Fred I. Parker, Burlington, VT, to be U.S. Circuit Judge for the Second Circuit	71
Questioning by:	
Senator Leahy	72
Senator Pressler	74
Helen W. Gillmor, Honolulu, HI, to be U.S. District Judge for the District of Hawaii	77
Questioning by:	
Senator Leahy	77
Senator Pressler	92
David A. Katz, Toledo, OH, to be U.S. District Judge for the Northern District of Ohio	79
Questioning by:	
Senator Leahy	78
Senator Pressler	91
Sean J. McLaughlin, Erie, PA, to be U.S. District Judge for the Western District of Pennsylvania	80
Questioning by:	
Senator Leahy	80
Senator Pressler	90
William T. Moore, Jr., Savannah, GA, to be U.S. District Judge for the Southern District of Georgia	82
Questioning by:	
Senator Leahy	82
Senator Pressler	89
Roslyn Silver, Phoenix, AZ, to be U.S. District Judge for the District of Arizona	84
Questioning by:	
Senator Leahy	84
Senator Pressler	89
Alvin W. Thompson, Windsor, CT, to be U.S. District Judge for the District of Connecticut	87
Questioning by:	
Senator Leahy	86
Senator Pressler	88

WITNESSES

Testimony of William E. Willis, Chair, and Charles English, sixth circuit representative, American Bar Association, Standing Committee on Federal Judiciary	95
Questioning by:	
Senator Leahy	95

V

ALPHABETICAL LIST AND MATERIAL SUBMITTED

	Page
Biden, Hon. Joseph R., Jr.:	
Letter from Keteles Alexander, NBA, Washington, DC, regarding nomination of Alvin W. Thompson to the U.S. District Court of the District of Connecticut, Sept. 30, 1994	406
Appendix: Judicial Selection Evaluation Guidelines	414
English, Charles E.:	
Testimony	95
Prepared statement	98
Gillmor, Helen W.:	
Testimony	77
Questionnaire	146
Katz, David A.:	
Testimony	79
Questionnaire	202
Responses to questions submitted by Senator Pressler	235
McLaughlin, Sean J.:	
Testimony	80
Questionnaire	237
Responses to questions submitted by Senator Pressler	273
Moore, William T., Jr.:	
Testimony	82
Questionnaire	275
Responses to questions submitted by Senator Pressler	310
Parker, Fred I.:	
Testimony	71
Questionnaire	100
Silver, Roslyn:	
Testimony	84
Questionnaire	314
Responses to questions submitted by Senator Pressler	359
Thompson, Alvin W.:	
Testimony	87
Questionnaire	364
Responses to questions submitted by Senator Pressler	401
Willis, William E.:	
Testimony	95
Prepared statement	97

TUESDAY, OCTOBER 4, 1994

STATEMENT OF COMMITTEE MEMBER

Simon, Hon. Paul	417
------------------------	-----

INTRODUCTION OF NOMINEES

Durenberger, Hon. Dave	417
Wellstone, Hon. Paul D	419
Boren, Hon. David L	420
Chafee, Hon. John H	423
Lautenberg, Hon. Frank R	423
Prepared statement	425
Bradley, Hon. Bill (prepared statement)	426
Simon, Hon. Paul	426
Moseley-Braun, Hon. Carol	426
Prepared statement	430

TESTIMONY OF NOMINEES

Diana E. Murphy, Minneapolis, MN, to be U.S. Circuit Judge for the Eighth Circuit	432
Questioning by:	
Senator Simon	432
Sven E. Holmes, Washington, DC, to be U.S. District Judge for the Northern District of Oklahoma	433

VI

Sven E. Holmes, Washington, DC, to be U.S. District Judge for the Northern District of Oklahoma—Continued	Page
Questioning by:	
Senator Simon	433
Vicki Miles-LaGrange, Oklahoma City, OK, to be U.S. District Judge for the Western District of Oklahoma	435
Questioning by:	
Senator Simon	435
William H. Walls, Newark, NJ, to be U.S. District Judge for the District of New Jersey	436
Questioning by:	
Senator Simon	436
Elaine E. Bucklo, Chicago, IL, to be U.S. District Judge for the Northern District of Illinois	438
Questioning by:	
Senator Simon	438
Robert W. Gettleman, Evanston, IL, to be U.S. District Judge for the Northern District of Illinois	440
Questioning by:	
Senator Simon	440

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Bucklo, Elaine E.:	
Testimony	438
Questionnaire	586
Gettleman, Robert W.:	
Testimony	440
Questionnaire	612
Holmes, Sven E.:	
Testimony	433
Questionnaire	488
Miles-LaGrange, Vicki:	
Testimony	435
Questionnaire	519
Murphy, Diana E.:	
Testimony	432
Questionnaire	442
Walls, William H.:	
Testimony	436
Questionnaire	567

THURSDAY, OCTOBER 6, 1994

STATEMENTS OF COMMITTEE MEMBERS

Metzenbaum, Hon. Howard M	645
Hatch, Hon. Orrin G	655

INTRODUCTION OF NOMINEES

Glenn, Hon. John	645
Metzenbaum, Hon. Howard M	646
Prepared statement	647
Ford, Hon. Wendell H	648
McConnell, Hon. Mitch	649
Prepared statement	649
Hutchison, Hon. Kay Bailey	652
Breaux, Hon. John B	652
Jefferson, Hon. William J	654
Prepared statement	655
Johnston, Hon. J. Bennett (prepared statement)	656
Norton Hon. Eleanor Holmes	661
Helms, Hon. Jesse (prepared statement)	668
Livingston, Hon. Bob	671

VII

TESTIMONY OF NOMINEES

	Page
Thomas B. Russell, Paducah, KY, to be U.S. District Judge for the Western District of Kentucky	650
Questioning by:	
Senator Metzenbaum	650
Okla Jones II, New Orleans, LA, to be U.S. District Judge for the Eastern District of Louisiana	657
Questioning by:	
Senator Metzenbaum	657
Senator Hatch	658
G. Thomas Porteous, Jr., Metairie, LA, to be U.S. District Judge for the Eastern District of Louisiana	659
Questioning by:	
Senator Metzenbaum	659
Senator Hatch	660
James Robertson, Rockville, MD, to be U.S. District Judge for the District of Columbia	662
Questioning by:	
Senator Metzenbaum	662
Senator Hatch	664
Kathleen M. O'Malley, Upper Arlington, OH, to be U.S. District Judge for the Northern District of Ohio	662
Questioning by:	
Senator Metzenbaum	665
Senator Hatch	667
James A. Beaty, Jr., Winston-Salem, NC, to be U.S. District Judge for the Middle District of North Carolina	668
Questioning by:	
Senator Metzenbaum	669
David Briones, El Paso, TX, to be U.S. District Judge for the Western District of Texas	669
Questioning by:	
Senator Metzenbaum	670

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Beaty, James A., Jr.:	
Testimony	668
Questionnaire	869
Briones, David:	
Testimony	669
Questionnaire	917
Jones, Okla, II:	
Testimony	657
Questionnaire	705
O'Malley, Kathleen M.:	
Testimony	665
Questionnaire	834
Porteous, G. Thomas, Jr.:	
Testimony	659
Questionnaire	756
Robertson, James:	
Testimony	662
Letter to Joseph R. Biden, Jr., Committee on the Judiciary, U.S. Senate, Washington, DC, Oct. 6, 1994	665
Questionnaire	795
Russell, Thomas, B.:	
Testimony	650
Questionnaire	672

ALPHABETICAL LIST OF NOMINEES FOR FEDERAL APPOINTMENTS

Beaty, James A., Jr., Winston-Salem, NC, to be U.S. District Judge for the Middle District of North Carolina	668
Bilchik, Sheldon C., Potomac, MD, to be Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice	7

VIII

	Page
Briones, David, El Paso, TX, to be U.S. District Judge for the Western District of Texas	669
Buckdo, Elaine E., Chicago, IL, to be U.S. District Judge for the Northern District of Illinois	438
Gettleman, Robert W., Evanston, IL, to be U.S. District Judge for the Northern District of Illinois	440
Gillmor, Helen W., Honolulu, HI, to be U.S. District Judge for the District of Hawaii	77
Holmes, Sven E., Washington, DC, to be U.S. District Judge for the Northern District of Oklahoma	433
Jones, Okla, II, New Orleans, LA, to be U.S. District Judge for the Eastern District of Louisiana	657
Katz, David A., Toledo, OH, to be U.S. District Judge for the Northern District of Ohio	79
McLaughlin, Sean J., Erie, PA, to be U.S. District Judge for the Western District of Pennsylvania	80
Miles-LaGrange, Vicki, Oklahoma City, OK, to be U.S. District Judge for the Western District of Oklahoma	435
Moore, William T., Jr., Savannah, GA, to be U.S. District Judge for the Southern District of Georgia	82
Murphy, Diana E., Minneapolis, MN, to be U.S. Circuit Judge for the Eighth Circuit	432
O'Malley, Kathleen M., Upper Arlington, OH, to be U.S. District Judge for the Northern District of Ohio	662
Ochi, Rose, Monterey Park, CA, to be Associate Director, Bureau of State and Local Affairs, Office of National Drug Control Policy	16
Parker, Fred I., Burlington, VT, to be U.S. Circuit Judge for the Second Circuit	71
Porteous, G. Thomas, Jr., Metairie, LA, to be U.S. District Judge for the Eastern District of Louisiana	659
Robertson, James, Rockville, MD, to be U.S. District Judge for the District of Columbia	662
Russell, Thomas B., Paducah, KY, to be U.S. District Judge for the Western District of Kentucky	650
Silver, Roslyn, Phoenix, AZ, to be U.S. District Judge for the District of Arizona	84
Thompson, Alvin W., Windsor, CT, to be U.S. District Judge for the District of Connecticut	87
Walls, William H., Newark, NJ, to be U.S. District Judge for the District of New Jersey	436

Judge JONES. Senator, I would follow the Constitution and the laws. My personal belief would have no effect on my abidance with the law.

Senator HATCH. I think it is essential that under the rule of law, judges not act politically. If we have judges act politically, then it undermines the whole basis of law, and it undermines the whole reason why these are lifetime appointments. So do we have your commitment that you will decide the cases based upon the law and the facts and not let political considerations influence your judgment?

Judge JONES. You have my commitment, Senator.

Senator HATCH. All right. Well, I am proud of you and proud to have you here before the committee, and I look forward to seeing you confirmed before tomorrow, hopefully. We hope we can get that done. We are doing our best. In these last few dog days, it takes a lot of work to make sure that we don't have holds on people and that we get as many judges through as we can, so we can fill these positions and do them properly. We are glad to have you here.

Judge JONES. Well, I certainly hope and pray that that occurs, too, Senator.

Senator HATCH. Thank you.

Senator METZENBAUM. Your turn to question. Do you have any questions?

[No response.]

Senator METZENBAUM. How about if I ask you a question?

Senator HATCH. No, no; let him ask one.

Senator METZENBAUM. Do you have one for him?

[No response.]

Judge JONES. This is the first time that he has been without questions since I can recall. [Laughter.]

Senator HATCH. He is a fine-looking young man is all I can say. We are proud to have him here.

Senator METZENBAUM. I have a question for you. In his decisions that he makes at home, do you think he is a fair judge?

Judge JONES. Yes.

Senator METZENBAUM. OK. That is good enough. You have passed the test. Thank you very much and you may leave if you like and we will have a few questions for Judge Porteous.

Judge JONES. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much.

Judge Porteous, do you have any opening statement you care to make?

**TESTIMONY OF G. THOMAS PORTEOUS, JR., METAIRIE, LA, TO
BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF
LOUISIANA**

Judge PORTEOUS. Other than to thank the committee for allowing us to come up and try to expedite this process, as I know you have done the entire time.

QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. Much of the expediting reflects the cooperation of the minority, headed up by Senator Hatch.

Judge PORTEOUS, what would you do if faced with a fifth circuit precedent that controlled a matter before you, but with which you personally disagreed? You just think that the decision is absolutely wrong. What would you do?

Judge PORTEOUS. My oath and my obligation and what I would do are the same. I would follow that precedent.

Senator METZENBAUM. As a judge, you have worked with judicial law clerks. In some cases, judges have their law clerks write the first draft of opinions, and then the judge edits the result. Some people believe that judicial law clerks should not play the role of judge because of the importance of a first draft and the extent to which that draft becomes the final product. We are all aware, however, of the huge Federal docket that judges face and the resulting time constraints.

How would you respond to those concerns, and how much of a problem do you think that is?

Judge PORTEOUS. It would appear to be on an individual basis, Mr. Chairman, but in my experience I will go over the particular facts and circumstances of a case either prior to that case coming to me or post the submission of that case, give my clerk an assignment of what my thoughts and concepts are on it so that I can obtain the research available to write my own decision.

I am not saying that I don't give it back to my clerk for further editing and modification, but I think it is on an individual basis. I think Federal judges are given law clerks for a valuable purpose, and that is to help them expedite their way through the Federal laws that are on the books.

Senator METZENBAUM. Now, you have served on the 24th Judicial District Court bench in the State of Louisiana for about 9 years. Are you sure you want to move to the Federal bench?

Judge PORTEOUS. Absolutely, Senator.

Senator METZENBAUM. Why?

Judge PORTEOUS. I have always thought that I can be of valuable service to the community as a judge. That is why I ran for judge in the first place. I think going from the State bench to the Federal bench, I can likewise provide whatever service I can give to the Federal judiciary, and I would very much like to move to the Federal bench, Senator.

Senator METZENBAUM. Well, I think you are going to.

Senator Hatch.

QUESTIONING BY SENATOR HATCH

Senator HATCH. Well, we congratulate you for this opportunity to serve, and congratulate your Senators for supporting your opportunity.

As a district judge, you would be bound to follow precedent laid down by the Supreme Court and by the court of appeals in which you sit. However, you are going to be faced with a lot of cases of first impression through the years. What principles are going to guide you, and what methods would you use to be able to decide those cases of first impression?

Judge PORTEOUS. If there is no Supreme Court precedent, Senator, I would then go to my circuit. Failing precedent from either of those sources, I would look to other circuits to see if they have

had analogous litigation and rendered any particular judgments thereon; likewise look to other district courts to see if they have had any analogous type litigation and judgments thereon.

Failing all that, if it is a question of interpretation of law and the law is clear as written, the process would seem to end at that point in time. And then if there are other questions that require inquiring as to the legislative intent, I would make that inquiry also.

Senator HATCH. Well, that is good. Well, I think that is fine for me.

Senator METZENBAUM. Thank you very much, Senator Hatch.

Thank you very much, and we look forward to seeing if we can't expedite your confirmation.

Senator HATCH. We will sure try.

Judge PORTEOUS. Mr. Chairman and Senator Hatch, thank you.

Senator METZENBAUM. I see Delegate Eleanor Holmes Norton, one of the most respected colleagues we have over on the other side in the House, and one who is constantly providing a leadership role in our community, and a good friend.

Would you like to present Mr. Robertson?

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Thank you very much, Mr. Chairman. It is my great pleasure to recommend to you James Robertson to be a judge on the U.S. District Court for the District of Columbia. I recommended Mr. Robertson after he was recommended to me in a list of very distinguished lawyers by my 17-member judicial commission.

Mr. Robertson is an especially distinguished lawyer in the District of Columbia. He is a deeply experienced litigator and a past president of the District of Columbia Bar, but Mr. Robertson has refused to live his professional life solely within the private bar. Early in his career, he was staff director for the Lawyers Committee for Civil Rights Under Law. Throughout his professional life, he has been a leader of the private bar in every relevant respect, including a leader of the pro bono bar, setting an example for how the private bar should involve itself in the lives of the people of this city.

As you are aware, the U.S. District Court for the District of Columbia is already a very distinguished court. I believe it will shine brighter with the addition of Mr. Robertson. I am here, therefore, this morning to strongly recommend him to you.

Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Ms. Norton, and I think we will proceed forward through the hearing with respect to Mr. Robertson.

Mr. Robertson, would you be good enough to stand, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. ROBERTSON. I do.

Senator METZENBAUM. Mr. Robertson, do you have an opening statement?

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES**

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

Residence: 4801 Neyrey Drive
Metairie, LA 70002

Office: 24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
2nd Floor, Room 200
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946

New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es)).

Carmella Ann Giardina Porteous
Vascular Technician
Vascular Laboratory, Inc.
3939 Houma Blvd., Suite 20
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

- Louisiana State University (New Orleans) 1964-1968
 Bachelor of Arts - Economics
 Degree Awarded: May, 1968
- Louisiana State University Law School 1968-1971
 Baton Rouge, LA
 Juris Doctor
 Degree Awarded: May, 1971
6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
- District Court Judge January 1, 1985 - Present
 State of Louisiana
 Division A, 24th Judicial District Court
- Co-instructor: Loyola School of Law Spring 1990
 Civil Procedure Spring 1991
- District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
 State of Louisiana
 Division A, 24th Judicial District Court
- District Attorney's Office Assistant District Attorney
 Parish of Jefferson Supervisor: February 1, 1975-August 6, 1984
 District Atty. John Mamoulides Chief Felony Complaint Div.:
 Gretna Courthouse Annex Bldg. October 8, 1973-January 31, 1975
 5th Floor
 Gretna, LA 70053
- St. Mary Dominican College
 Instructor: Criminal law and procedure 1982

Porteous & Mustakas
 3445 North Causeway Blvd.
 Metairie, LA 70002

Partner
 April 1980 - August 1984

City Attorney's Office
 City of Harahan
 6437 Jefferson Hwy.
 Harahan, LA 70123

City Attorney
 July 1, 1982 - August 23, 1984

Porteous, Lee & Mustakas
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 February 1976 - April 1980

Edwards, Porteous & Lee
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 August 1974 - January 1976

Edwards, Porteous & Amato
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 October 1973 - July 1974

Attorney General
 State of Louisiana
 P.O.Box 94005
 Baton Rouge, LA 70804

Special Counsel
 September 10, 1971 - October 7, 1973

B & L Associates
 Dick Barrios
 512 Acadia
 Baton Rouge, LA 70806
 (800) 673-0545
 (504) 751-4791
 Position: Clerk/Assistant

1970 - 1971

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana September 7, 1971

United States District Court, September 19, 1972
Eastern District of Louisiana

United States Supreme Court April 18, 1977

United States Court of Appeals, 5th Circuit October 1, 1981

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)

(2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

See Attachment "B-1"

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)

(4) Paul Fuller v. William Baratini, 574 So.2d 412, (La. App. 5 Cir., Jan., 1991)

(5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April, 1991)

(6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec., 1992)

(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May, 1993)

(8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)

(9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # _____, (La. App 5 Cir., 1994) (Not designated for publication)

See Attachment "B-2"

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir.,Feb.,1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate " or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.

Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins.Co., 563 So.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. I reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. J.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June,1985); 492 So.2d 1215

State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov.,1986); writ denied 532 So.2d 113

State v. Antoine Williams, 483 So.2d 626, (La. App 5 Cir., Feb.,1986)

State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec.,1987)

State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan.,1994)

State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157

State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April,1992)

State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*

See Attachment "B-3"

16. **Public office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General
State of Louisiana

9/10/71 - 10/7/73

Assistant District Attorney
Parish of Jefferson

2/1/73 - 8/6/84

Both were appointed positions

No unsuccessful candidacies for elective public office

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Court Judge January 1, 1985 - Present
 State of Louisiana
 Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990
 Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
 State of Louisiana
 Division A, 24th Judicial District Court

Instructor: Criminal law and procedure 1982
 St. Mary Dominican College

District Attorney's Office
 Parish of Jefferson
 District Atty. John Mamoulides
 Gretna Courthouse Annex Bldg., 5th Floor
 Gretna, LA 70053

Assistant District Attorney
 Supervisor: 2/1/75 - 8/6/84
 Chief Felony Complaint Div.:
 10/8/73 - 1/31/75

City Attorney's Office
 City of Harahan
 6437 Jefferson Hwy.
 Harahan, LA 70123

City Attorney
 7/1/82 - 8/23/84

Porteous & Mustakas
 3445 North Causeway Blvd.
 Metairie, LA 70002

Partner
 April 1980 - August 1984

Porteous, Lee & Mustakas
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 February 1976 - April 1980

Edwards, Porteous & Lee
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 August 1974 - January 1976

Edwards, Porteous & Amato
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 October 1973 - July 1974

Attorney General
 State of Louisiana
 P.O. Box 94005
 Baton Rouge, LA 70804

Special Counsel
 9/10/71 - 10/7/73

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney
 Criminal Prosecution - Attorney General & District Attorney

2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
- | | | |
|----------------------------|---|-----|
| (a) federal courts | - | 20% |
| (b) state courts of record | - | 80% |
| (c) other courts | - | 0% |
3. What percentage of your litigation was;
- | | | |
|--------------|---|-----|
| (a) civil | - | 50% |
| (b) criminal | - | 50% |
4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
- | | |
|--------------|-----|
| (a) jury | 40% |
| (b) non-jury | 60% |

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the names of the court and name of the judge or judges before whom the case was litigated; and
- (c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terribery, Carroll, Yancey & Farrell
Walter Carroll, Jr. (retired)
3100 Energy Centre

1100 Poydras St.
New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana
Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140
(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
 Sam Dalton
 2001 Jefferson Hwy.
 Jefferson, LA 70121
 (504) 835-4289

Co-Defense Counsel:
 George Troxell
 4330 Canal Street
 New Orleans, LA 70119
 (504) 488-8800

4. State of Louisiana v. Leonard J. Fagot
 Criminal # 76-2116, 24th Judicial District Court
 Division "J", Judge Patrick E. Carr
 Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.

Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
 Assistant District Attorney William Hall
 3500 N. Hullen Street

Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May, 1985); 475 So.2d 314, (La. Sept., 1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.

Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
 3170 Energy Centre
 1100 Poydras Street
 New Orleans, LA 70163
 (504) 582-2333

6. State of Louisiana v. James Nolen
 Criminal # 81-4045, 24th Judicial District Court
 Division "J", Judge Jacob Karno
 Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restrains were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
 (inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:
 (714) 275-6066

7. State of Louisiana v. Joseph Batiste
 Criminal #71-1081, 24th Judicial District Court
 Division "A", Judge Louis DeSonier
 Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. **Final Disposition:** Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights. **Final disposition of case:** Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
 Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
 Division "A", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.

Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Ion-T Chemical, Inc.
 Civil Action # , 24th Judicial District Court, State of Louisiana
 Division "B", Judge Zaccaria
 Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.

Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:

**Thomas Loop
(deceased)**

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

**Scott W. McQuaig
1500 One Galleria Blvd.
Metairie, LA 70001
(504) 836-5070**

**Edward J. Rice, Jr.
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234**

**Lawrence J. Centola, Jr.
650 Poydras St., Ste. 2100
New Orleans, LA 70130
(504) 523-1385**

**Raymond A. Pelleteri
1539 Jackson Ave., 6th Floor
New Orleans, LA 70130
(504) 561-5000**

**Jay Zainey
2543 Metairie Road
Metairie, LA 70001
(504) 831-6766**

Robert Glass
530 Natchez Street
New Orleans, LA 70130
(504) 581-9083

Patricia LeBlanc
1615 Metairie Road
Metairie, LA 70005
(504) 834-2612

Kathryn T. Wiedorn
3421 N. Causeway Blvd., 9th Floor
Metairie, LA 70002
(504) 831-4091

Allan Berger
4173 Canal Street
New Orleans, LA 70119
(504) 486-9481

Joseph R. McMahon, Jr.
111 Veterans Blvd.
Heritage Plaza, Ste. 740
Metairie, LA 70005
(504) 837-1844

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C., State of Louisiana, Division "A", Judge Louis G. DeSonier, Jr.

The brief represents my sole personal work. Trial on the summary judgment, December 18, 1980. Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.

Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure

For three years, I taught at St. Mary Dominican College. The class was a required course in the Criminal Justice program.

Co-instructor: Civil Procedure.

In conjunction with another attorney, I volunteered my time to teach third-year law students at Loyola School of Law. The emphasis was not only on the written and codified law, but also on the practical application of the law during trial proceedings. I taught the course during the Spring term in 1990 and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for numerous CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

District Court Judge

State of Louisiana

Division A, 24th Judicial District Court

**District Court Judge, Ad Hoc
State of Louisiana
Division A, 24th Judicial District Court**

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

- 1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

- 2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

781

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for numerous

782

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your

nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

- 4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

- 5. Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

784

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

785

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

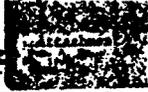
Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

FD-10
Rev. 1/79

FINANCIAL DISCLOSURE REPORT

Report Required
before Art. of 18
10-14, 1978
15 U.S.C.A. App.



1. Person Reporting (Last name, first, middle initial) Porteous (Jr.), Gabriel T.		2. Court or Organization United States District Court Eastern District of Louisiana	3. Date of Report 8-29-94
4. Title (Article III Judges indicate active or senior status; District Judges indicate full- or part-time) United States District Court Judge		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Retrospective, Date 8-25-94 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 1-1-93 - 8-25-94
7. Chambers or Office Address Division A, 24th Judicial District Ct. Gretna Courthouse - Annex Bldg. Gretna, Louisiana 70053		8. On the basis of the information contained in this report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer's Signature _____	

IMPORTANT NOTE: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions)	

II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements)	

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 1994 Year to Date	Judicial State of Louisiana	\$ 49,206.00
2	Vascular Laboratory, Inc. (S)	\$
3 1993	Judicial State of Louisiana	\$ 72,830.58
4	Southern Baptist Hospital (Final balance of annuity, retirement, of my deceased mother)	\$ 381.39
5	Vascular Laboratory, Inc. (S) (See Attachment I)	\$

ATTACHMENT I

FINANCIAL DISCLOSURE REPORT (cont'd) PORTEOUS (JR.), Gabriel T. 8-29-94

III. NON-INVESTMENT INCOME

1992 Judicial State of Louisiana	\$74,384.26
Southern Baptist Hospital (Retirement annuity deceased mother)	1,652.64
Executive Life Insurance of California (Retirement annuity deceased mother)	3,287.40
Vascular Laboratory, Inc. (S)	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting Porteous (Jr.), Gabriel T.	Date of Report 8-29-94
--------------------------------------------------------	---------------------------

IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.
 (Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCE	DESCRIPTION
<input type="checkbox"/> NONE (No cash reportable reimbursements or gifts)	
1 Exempt	
2	
3	
4	
5	
6	
7	
8	

V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/> NONE (No cash reportable gifts)		
1 Exempt		\$
2		\$
3		\$
4		\$

VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical '(S)' for separate liability of spouse, '(J)' for joint liability of reporting individual and spouse, and '(DC)' for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITOR	DESCRIPTION	VALUE CODE
<input checked="" type="checkbox"/> NONE (No reportable liabilities)		
1		
2		
3		
4		
5		
6		
7		

VALUE CODE: 1 = \$15,000 or less	2 = \$15,001 to \$50,000	3 = \$50,001 to \$100,000	4 = \$100,001 to \$250,000
5 = \$250,001 to \$500,000	6 = \$500,001 to \$1,000,000	7 = more than \$1,000,000	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Porteous (Jr.), Gabriel T.

Date of Report

8-29-94

VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets). Indicate, where applicable, owner of (1) trust holding the particular asset, (2) individual or trust, (3) trust or estate of decedent, or (4) other person or entity to whom the asset is beneficially owned. Place "(1)" after each asset name from prior disclosures.	B. Name during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period			
	(1)	(2)	(1)	(2)	EXEMPT			
					If not exempt from disclosure:			
	(1-2)	(1-2)	(3-4)	(3-4)	(1) Type of transaction	(2) Date	(3) Value	(4) Code
<input checked="" type="checkbox"/> NONE (No reportable income, assets, or transactions)								
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								

1 Income/Date Codes: (See Cal. 11 & 51) A-\$1,001 or less B-\$1,001 to \$25,000 C-\$25,001 to \$50,000 D-\$50,001 to \$100,000 E-\$100,001 to \$250,000 F-\$250,001 to \$500,000 G-\$500,001 to \$1,000,000 H-more than \$1,000,000

2 Value Codes: (See Cal. 51 & 51) J-\$10,000 or less K-\$10,001 to \$25,000 L-\$25,001 to \$50,000 M-\$50,001 to \$100,000 N-\$100,001 to \$250,000 O-\$250,001 to \$500,000 P-\$500,001 to \$1,000,000 Q-more than \$1,000,000

3 Value Method Codes: (See Cal. 52) U-Book Value V-Other W-Other (Real estate only) X-Other (Other than W) Y-Other (Other than W, X, Y) Z-Other (Other than W, X, Y, Z)

SCHEDULE 4 - IRAs, Keoghs, Profit Sharing & Other Vested Retirement Accounts - If not enough space, please attach separate schedule.

TRUSTEE OR PLAN ADMINISTRATOR	IN THE NAME OF	TYPE OF ACCOUNT	BENEFICIARY	MARKET VALUE	AMOUNT OF PLAN LOANS	MARKET VALUE LESS PLAN LOANS	ACCESS DATE
State of La. Employees Retirement System	G. Thomas Porteous, Jr.	Ret.	Carmella Porteous	92,408	0	0	12/15/06
Total							

SCHEDULE 5 - Real Estate Owned - If not enough space, please attach separate schedule.

ADDRESS & TYPE OF PROPERTY	% OWNED	TITLE IN NAME OF	YR. ACQD.	COST & IMPRVTS	PRESENT MARKET VALUE	MORTGAGE BALANCE	LENDER	LOAN MATURITY	ANNUAL LOAN PMT. AMT.	GROSS ANNUAL INCOME	ANNUAL OPER. EXP. (Net Prop. Inc.)
PERSONAL RESIDENCE Metairie, La.	100	Mr. & Mrs. G. M. Porteous, Jr.	77	805,000	225,000	94,000	Fidelity	9/2008	9981.84		
OTHER WHOLLY OWNED REAL ESTATE (Residential or Commercial)											
PARTIALLY OWNED REAL ESTATE											
Totals						Totals					

Your Portion of Market Value and Debt Your Portion of Income & Expenses

SCHEDULE 6 - Accounts Receivable, Mortgage Receivable & Notes Receivable - If not enough space, please attach separate schedule.

DUE FROM	ORIGINAL AMOUNT	PRESENT BALANCE	INT. RATE	MATURITY	PAYMENT TERMS	ARE PMTS. CURRENT?	COLLATERAL
Total							

SCHEDULE 7 - Oil and Gas Interests (Including General Partnership Interests) - If not enough space, please attach separate schedule.

FIELD NAME, PARISH/ COUNTY & STATE	TYPE OF INTEREST	SOURCE OF VALUATION	VALUATION AMT./ DATE	PRESENT LOAN BAL.	LENDER	ANNUAL PMT. AMOUNT	GROSS ANNUAL INCOME	ANNUAL OPER. EXP.
Totals							Totals	

SCHEDULE 8 - Notes Payable (Including all loans, active lines of credit and inactive lines of credit.) - If not enough space, please attach separate schedule.

NAME OF CREDITOR	TYPE OF FACILITY (Loan or Line)	ORIGINAL LOAN OR LINE AMOUNT	UNPAID BALANCE	INTEREST RATE	MATURITY DATE	UNSECURED OR SECURED (List Collateral)	ACCOUNT NUMBER
First NBC	Loan	3,614	3,614	6	*	unsecured	
Total			3,614				

* Parent Plus Loan for son's education. Payment deferred until graduation.

Please do not leave any questions unanswered. Mark N/A (Not Applicable) in any space which would otherwise be left blank. Do you or your spouse have any...

	YES	NO	With Whom?	Amount
1. Contingent liabilities (as endorser, co-maker or guarantor) on loans to individuals, corporations, partnerships or other business entities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	First National Bank of St. Bernard	\$ 4,500
2. Outstanding letters of credit or surety bonds?	<input type="checkbox"/>	<input type="checkbox"/>		\$
3. Contingent liabilities on any leases or contracts?	<input type="checkbox"/>	<input type="checkbox"/>		\$
4. Involvement in any pending legal action?	<input type="checkbox"/>	<input type="checkbox"/>		\$
5. Tax obligations past due or contested income tax liens?	<input type="checkbox"/>	<input type="checkbox"/>		\$
6. Judgments, garnishments and attachments pending?	<input type="checkbox"/>	<input type="checkbox"/>		\$
7. Other special debt or circumstances?	<input type="checkbox"/>	<input type="checkbox"/>		\$
Total Contingent Liabilities				\$ 4,500

"If you answered 'yes' to any question in this section, please attach a separate sheet giving complete details.

GENERAL QUESTIONS

Please do not leave any questions unanswered. Mark N/A (Not Applicable) in any space which would otherwise be left blank.

	YES	NO
1. Have you or your spouse or any firm in which you were a major owner ever been adjudicated a bankrupt or made a settlement with creditors? If yes, please provide details: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Are any of the assets held in trust, in an estate or in any other name or capacity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Do any of your assets secure any debts which have not been reported in the preceding schedules?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Do you have a will? If 'yes', please indicate name of executor of the estate: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Do you have disability insurance? If 'yes', please indicate in the space provided: Benefit Coverage Terms (Mort.) _____ Benefit Coverage Terms (Mort.) _____ Monthly Coverage \$ _____ Monthly Coverage \$ _____ Provider _____ Provider _____ Group or Individual Policy? _____ Group or Individual Policy? _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Do you have professional liability insurance coverage? If 'yes', please indicate in the space provided: Coverage \$1,000,000 _____ Provider Herbert L. Jamieson & Co. _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Income tax returns filed through (date): 1993 _____ Are any returns currently being audited? If 'yes', what year(s)? _____	<input type="checkbox"/>	<input type="checkbox"/>

"If you answered 'yes' to any question in this section, please attach a separate sheet giving complete details.

My signature below indicates that I have completed this Personal Financial Statement in consideration of Bank extending or continuing to extend credit to me and/or to others upon my guarantee. I understand that by signing this statement or by submitting it to Bank I have promised and certified that all of the information it contains is true and complete, that all of the assets I have listed are my own property, whether separate or community, and that the valuation of land, property or securities is accurate to the best of my belief.

I agree to give Bank written notice immediately of any change in my name, address or employment, and of any adverse change in the information in this statement or in my financial condition or in my ability to perform my obligations to Bank. If I have not given such written notice, or if I have not submitted a revised version of this statement, then Bank is entitled to conclude that this is a continuing statement, which may be relied upon as a fair and true picture of my financial condition. I further agree that as long as my relationship with Bank continues, I will furnish an updated Personal Financial Statement on at least an annual basis.

I authorize Bank to verify the information contained in this statement by contacting my spouse, my employer and others. You may exchange with, or furnish information to others regarding your credit experience with me and I agree to release you from all liability which may result. I understand that this statement, when submitted, becomes your property, and that you will retain this statement whether or not credit is granted.

Date Signed September 6, 1994

Signature [Signature]

Date Signed _____

Signature _____

Signature of spouse, if spouse is a joint applicant

The PRESIDING OFFICER. Without objection, it is so ordered.
So the bill (H.R. 4924) was deemed read the third time, and passed.

THOMAS PAINE MEMORIAL JOINT RESOLUTION—MESSAGE FROM THE HOUSE

Mr. FEINGOLD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a joint resolution (S. J. Res. 227) to approve the location of a Thomas Paine Memorial.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S. J. Res. 227) entitled "Joint resolution to approve the location of a Thomas Paine Memorial", do pass with the following amendments:

Strike all after the resolving clause, and insert:
That (a) the location of a Thomas Paine Memorial, authorized by Public Law 102-407, as amended by Public Law 102-459, within either Area I or Area II as described in Public Law 99-522 (100 Stat. 3650), is approved and (b) the location of a World War II Memorial, authorized by Public Law 103-32, within either Area I or Area II as described in Public Law 99-522 (100 Stat. 3650), is hereby approved.

Strike the preamble, and insert:
Whereas section 6(a) of the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes," approved November 14, 1966 (Public Law 89-522; 100 Stat. 3650) provides that the location of a commemorative work in the area described as Area I shall be deemed disapproved unless the location is approved by law not later than 150 days after notification of Congress that the commemorative work may be located in Area I; and
Whereas Public Law 102-407, as amended by Public Law 102-459, authorized the Thomas Paine National Historical Association U.S.A. Memorial Foundation to establish a memorial on Federal land in the District of Columbia to Thomas Paine; and

Whereas Public Law 103-32, approved May 25, 1993 (107 Stat. 90), authorized the American Battle Monuments Commission to establish a memorial on Federal land in the District of Columbia to members of the Armed Forces who served in World War II; and

Whereas the Secretary of the Interior has notified the Congress of his determination that such memorials should be located in Area I now, therefore, be it
Amend the title so as to read as follows: "Joint resolution approving the location of a Thomas Paine Memorial and a World War II Memorial in the Nation's Capital".

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

WARREN B. RUDMAN UNITED STATES COURTHOUSE—MESSAGE FROM THE HOUSE

Mr. FEINGOLD. Mr. President, I ask that the Chair lay before the Senate a

message from the House of Representatives on S. 2073.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2073) entitled "An Act to designate the United States courthouse that is scheduled to be constructed in Concord, New Hampshire, as the "Warren B. Rudman United States Courthouse", and for other purposes", do pass with the following amendments:
Strike out all after the enacting clause, and insert:

SECTION 1. WARREN B. RUDMAN UNITED STATES COURTHOUSE.

(a) DESIGNATION.—The United States courthouse to be constructed in Concord, New Hampshire, shall be known and designated as the "Warren B. Rudman United States Courthouse".

(b) LEGAL REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in subsection (a) shall be deemed to be a reference to the "Warren B. Rudman United States Courthouse".

SEC. 2. JAMIE L. WHITTEN FEDERAL BUILDING.

(a) DESIGNATION.—The Federal building located at the northeast corner of the intersection of 14th Street and Independence Avenue, Southwest, in Washington, District of Columbia, shall be known and designated as the "Jamie L. Whitten Federal Building".

(b) LEGAL REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in subsection (a) shall be deemed to be a reference to the "Jamie L. Whitten Federal Building".

SEC. 3. WILLIAM H. NATCHER FEDERAL BUILDING AND UNITED STATES COURTHOUSE.

(a) DESIGNATION.—The Federal building and United States courthouse located at 232 East Main Street in Bowling Green, Kentucky, shall be known and designated as the "William H. Natcher Federal Building and United States Courthouse".

(b) LEGAL REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in subsection (a) shall be deemed to be a reference to the "William H. Natcher Federal Building and United States Courthouse".

Amend the title so as to read: "An Act to designate the Warren B. Rudman United States Courthouse, the Jamie L. Whitten Federal Building, and the William H. Natcher Federal Building and United States Courthouse".

Mr. FEINGOLD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FEINGOLD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURES INDEFINITELY POSTPONED—H.R. 4874 AND H.R. 4677

Mr. FEINGOLD. I now ask unanimous consent that Calendar No. 672 and 673 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.
The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL SATURDAY, OCTOBER 8, 1994 AT 9 A.M.

Mr. FEINGOLD. Mr. President, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 12:34 a.m., recessed until tomorrow, Saturday, October 8, 1994, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 1994:

EXECUTIVE OFFICE OF THE PRESIDENT

G. EDWARD DESERVEE OF PENNSYLVANIA, TO BE CONSUL-GENERAL, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET; VICE EDWARD JOSEPH MAZUR, RESIGNED; MARTIN WELLS BULLY, OF MARYLAND, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE ALAN R. BLINDER, RESIGNED.

SECURITIES INVESTMENT PROTECTION CORPORATION

CHARLES T. MARINANGES, OF THE DISTRICT OF COLUMBIA, TO BE A DIRECTOR OF THE SECURITIES INVESTMENT PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1995, VICE GEORGE H. PFAU, JR., TERM EXPIRED.

FEDERAL TRADE COMMISSION

ROBERT WITKOSKY, OF MARYLAND, TO BE A FEDERAL TRADE COMMISSIONER FOR A TERM FROM SEPTEMBER 24, 1994, VICE DEBORAH KAYE OWEN, TERM EXPIRED.

NUCLEAR REGULATORY COMMISSION

ROBERT A. RUSHMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM OF 3 YEARS EXPIRING JUNE 22, 1996, VICE JAMES R. CURTIS, TERM EXPIRED.

COMMUNICATIONS SATELLITE CORPORATION

CHARLES T. MARSHALL, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF THE ANNUAL MEETING OF THE CORPORATION IN NOV. VICE RUDY ROBINETTE.

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 5362A:

To be Lieutenant general

LT. GEN. DANIEL E. HARRIS, 09-30-1977

CONFIRMATIONS

Executive Nominations Confirmed by the Senate October 7, 1994:

DEPARTMENT OF THE TREASURY

VALERIE LAU, OF CALIFORNIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY.

October 7, 1994

CONGRESSIONAL RECORD—SENATE

29127

DEPARTMENT OF STATE

THOMAS E. MCMAHARA, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASP OF MINISTER-COUNSELOR, TO BE AN ASSISTANT SECRETARY OF STATE.

THE JUDICIARY

VANESSA RUIZ, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THIS DISTRICT OF COLUMBIA COURT OF APPEALS FOR THE TERM OF 15 YEARS.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

ALAN J. DIXON, OF ILLINOIS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 107TH CONGRESS.

ALAN J. DIXON, OF ILLINOIS, TO BE CHAIRMAN OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

ENVIRONMENTAL PROTECTION AGENCY

FREDERIC JAMES HANSEN, OF OREGON, TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

DEPARTMENT OF EDUCATION

G. MARIO MORENO, OF TEXAS, TO BE ASSISTANT SECRETARY FOR INTERGOVERNMENTAL AND INTERAGENCY AFFAIRS, DEPARTMENT OF EDUCATION.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

JOEL DAVID VALDEZ, OF ARIZONA, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 15, 1995.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JORGE M. PEREZ, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 1, 1995.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NONINTEREST COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

CHARLES H. WILSON, OF FLORIDA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF 4 YEARS.

STEVEN SCOTT ALM OF HAWAII, TO BE U.S. ATTORNEY FOR THE DISTRICT OF HAWAII FOR THE TERM OF 4 YEARS.

ERICHSHOWER DURR, OF MISSISSIPPI, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF 4 YEARS.

MICHAEL S. RANON, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE CENTRAL DISTRICT OF CALIFORNIA.

MICHAEL D. CARRINGTON, OF INDIANA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF INDIANA FOR THE TERM OF 4 YEARS.

ROBERT BRADFORD ENGLISH, OF MISSOURI, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF MISSOURI FOR THE TERM OF 4 YEARS.

JOHN R. MURPHY, OF ALASKA, TO BE U.S. MARSHAL FOR THE DISTRICT OF ALASKA FOR THE TERM OF 4 YEARS.

HERBERT M. RUTHERFORD III, TO THE DISTRICT OF COLUMBIA, TO BE U.S. MARSHAL FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF 4 YEARS.

ROBERT MOORE, OF ILLINOIS, TO BE U.S. MARSHAL FOR THE CENTRAL DISTRICT OF ILLINOIS FOR THE TERM OF 4 YEARS.

SMELDON C. BILCHIK, OF MARYLAND, TO BE ADMINISTRATOR OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

STATE JUSTICE INSTITUTE

JOSEPH FRANCIS SACA, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

ROBERT NELSON BALDWIN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

FLORENCE E. MURRAY, OF RHODE ISLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

THE JUDICIARY

JAMES A. DEATY, JR., OF NORTH CAROLINA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA.

DAVID BRONER, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS.

OKLA JONES II, OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

O. THOMAS PORTEROUS, JR., OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

JAMES ROBERTSON, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA.

THOMAS B. RUSSELL, OF KENTUCKY, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY.

KATHLEEN M. O'MALLEY, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

DAVID P. HAMILTON, OF INDIANA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA.

DIANE E. MURPHY, OF MINNESOTA, TO BE U.S. CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT.

FRED I. PARKER, OF VERMONT, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT.

WILLIAM T. MOORE, JR., OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA.

DAVID A. KATZ, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

SEAN J. McLAUGHLIN, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

ELAINE F. BUCKLO, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

ROBERT W. OSTLEMAN, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

HELEN W. GILLANDER, OF HAWAII, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF HAWAII.

ROSLYN MOORE-SILVER, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA.

ALVIN W. THOMPSON, OF CONNECTICUT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT.

WILLIAM H. WALLS, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY.

SWEN E. HOLMES, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA.

VICKI MILLS-LAGRANGE, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA.

Jon
Gegenheimer
CLERK OF COURT

PARISH OF JEFFERSON
24TH JUDICIAL DISTRICT COURT



P.O. BOX 10
GRETNA, LA 70054-0010
PHONE: (504) 364-2900

April 9, 2010

ATTN: Wayne Horner, Agent
Federal Bureau of Investigation
2901 Leon C. Simon Dr.
New Orleans LA 70126

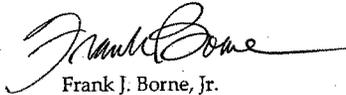
Re: Resignation of G. Thomas Porteous from La. 24th JDC

Dear Mr. Horner:

Enclosed is the certified copy of Judge Porteous's 1994 resignation letter from the Louisiana 24th Judicial District Court.

If you need further assistance, please do not hesitate to contact us.

Sincerely,



Frank J. Borne, Jr.
Administrative Assistant

UNITED STATES OF AMERICA



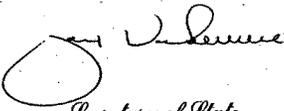
State of Louisiana

Jay Bardenne
 SECRETARY OF STATE

As Secretary of State, of the State of Louisiana, I do hereby Certify that
 attached is a true copy of the resignation for G. THOMAS PORTEOUS, JR.,
 DISTRICT JUDGE, 24TH JUDICIAL DISTRICT, DIVISION A, in the State of
 Louisiana, as shown on file in the office of the Secretary of State.

*In testimony whereof, I have hereunto set
 my hand and caused the Seal of my Office
 to be affixed at the City of Baton Rouge on,*

APRIL 6, 2010



Secretary of State



JUDGES
 G. THOMAS PORTEOUS, JR., DIVISION A
 ERNEST W. RICHARDS, IV, DIVISION B
 ALAN J. GREEN, DIVISION C
 WALTER E. KOLLIN, DIVISION D
 CLARENCE E. SMITHANIS, DIVISION E
 PATRICK J. MCCABE, DIVISION F
 M. JOSEPH TIEMANN, DIVISION G
 DOUGLAS A. ALLEN, PRO TEMPORE, DIVISION H
 JOE ELLEN GRANT, DIVISION I
 JACOB L. KARNQ, DIVISION J
 MARTHA C. SABBONE, DIVISION K
 CHARLES V. CUSHMARD, II, DIVISION L
 ROBERT J. BURNS, DIVISION M
 SUSAN M. CHEMARDY, DIVISION N
 RONALD R. LOUHIET, DIVISION O
 MELVIN C. ZENO, DIVISION P

OFFICE OF DISTRICT JUDGES
 24TH JUDICIAL DISTRICT
 PARISH OF JEFFERSON
 GRETN, LOUISIANA

TELEPHONE
 364-3884

October 25th, 1994
 Certified Mail No. Z 698 858 269
 Return Receipt Requested

Secretary of State
 Fox McKeithen
 P.O. Box 94125
 Baton Rouge, Louisiana 70809

Dear Secretary McKeithen,

Pursuant to my appointment to the U.S. District Court, for the Eastern District of Louisiana, I will take my oath of office on October 28, 1994, after completing my state court docket for that day.

Upon taking the oath, it will cause a vacancy to exist in Division "A", 24th Judicial District Court, Parish of Jefferson, State of Louisiana.

Thank you for your consideration in this matter.

Sincerely,



G. Thomas Porteous, Jr.

Sworn to and subscribed before me, notary, this
 25 day of October, 1994.


 NOTARY

RECEIVED
 COMMISSIONS DEPT.

OCT 31 1994

W. FOX McKEITHEN
 SECRETARY OF STATE

genheimer
CLERK OF COURT
THE JUDICIAL DISTRICT
OF THE STATE OF MISSISSIPPI
JEFFERSON
POST OFFICE - P.O. BOX 10
JEFFERSON, LOUISIANA 70064-0010

ATTN: Wayne Horner, Agent
Federal Bureau of Investigation
2901 Leon C. Simon Dr.
New Orleans LA 70126

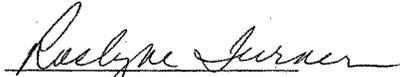


POSTAGE WILL BE PAID BY ADDRESSEE

CERTIFICATION

I, Roslyne Turner, Chief Clerk of the United States Senate Committee on the Judiciary, hereby certify that the attached document is a true and correct copy of the completed Questionnaire for Judicial Nominees, numbering 35 pages, executed by G. Thomas Porteous, Jr. on September 6, 1994, and submitted to the United States Senate Committee on the Judiciary and maintained within the official files of the Committee on the Judiciary.

Executed this 14 day of April, 2010.


Roslyne Turner

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES**

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

Residence: 4801 Neyrey Drive
Metairie, LA 70002

Office: 24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
2nd Floor, Room 200
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946 New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Carmella Ann Giardina Porteous
Vascular Technician
Vascular Laboratory, Inc.
3939 Houma Blvd., Suite 20
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Louisiana State University (New Orleans) 1964-1968
 Bachelor of Arts - Economics
 Degree Awarded: May, 1968

Louisiana State University Law School 1968-1971
 Baton Rouge, LA
 Juris Doctor
 Degree Awarded: May, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Court Judge January 1, 1985 - Present
 State of Louisiana
 Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990
 Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
 State of Louisiana
 Division A, 24th Judicial District Court

District Attorney's Office Assistant District Attorney
 Parish of Jefferson Supervisor: February 1, 1975-August 6, 1984
 District Atty. John Mamoulides Chief Felony Complaint Div.:
 Gretna Courthouse Annex Bldg. October 8, 1973-January 31, 1975
 5th Floor
 Gretna, LA 70053

St. Mary Dominican College
 Instructor: Criminal law and procedure 1982

Porteous & Mustakas
3445 North Causeway Blvd.
Metairie, LA 70002

Partner
April 1980 - August 1984

City Attorney's Office
City of Harahan
6437 Jefferson Hwy.
Harahan, LA 70123

City Attorney
July 1, 1982 - August 23, 1984

Porteous, Lee & Mustakas
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
February 1976 - April 1980

Edwards, Porteous & Lee
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
August 1974 - January 1976

Edwards, Porteous & Amato
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
October 1973 - July 1974

Attorney General
State of Louisiana
P.O.Box 94005
Baton Rouge, LA 70804

Special Counsel
September 10, 1971 - October 7, 1973

B & L Associates
Dick Barrios
512 Acadia
Baton Rouge, LA 70806
(800) 673-0545
(504) 751-4791
Position: Clerk/Assistant

1970 - 1971

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana September 7, 1971

United States District Court, September 19, 1972
Eastern District of Louisiana

United States Supreme Court April 18, 1977

United States Court of Appeals, 5th Circuit October 1, 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

- (1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)
- (2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)
See Attachment "B-1"
- (3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)
- (4) Paul Fuller v. William Barattini, 574 So.2d 412, (La. App. 5 Cir., Jan.,1991)
- (5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April,1991)
- (6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec.,1992)
- (7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May,1993)
- (8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)
- (9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # _____, (La. App 5 Cir.,1994)(Not designated for publication)

See Attachment "B-2"

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir., Feb., 1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate" or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.

Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins. Co., 563 So.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. I reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. J.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June,1985); 492 So.2d 1215

State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov.,1986); writ denied 532 So.2d 113

State v. Antoine Williams, 483 So.2d 626, (La. App 5 Cir., Feb.,1986)

State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec.,1987)

State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan.,1994)

State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157

State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April,1992)

State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*

See Attachment "B-3"

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General
State of Louisiana

9/10/71 - 10/7/73

Assistant District Attorney
Parish of Jefferson

2/1/73 - 8/6/84

Both were appointed positions

District Attorney's Office
 Parish of Jefferson
 District Atty. John Mamoulides
 Gretna Courthouse Annex Bldg., 5th Floor
 Gretna, LA 70053

Assistant District Attorney
 Supervisor: 2/1/75 - 8/6/84
 Chief Felony Complaint Div.:
 10/8/73 - 1/31/75

City Attorney's Office
 City of Harahan
 6437 Jefferson Hwy.
 Harahan, LA 70123

City Attorney
 7/1/82 - 8/23/84

Porteous & Mustakas
 3445 North Causeway Blvd.
 Metairie, LA 70002

Partner
 April 1980 - August 1984

Porteous, Lee & Mustakas
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 February 1976 - April 1980

Edwards, Porteous & Lee
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 August 1974 - January 1976

Edwards, Porteous & Amato
 139 Huey P. Long Ave.
 Gretna, LA 70053

Partner
 October 1973 - July 1974

Attorney General
 State of Louisiana
 P.O. Box 94005
 Baton Rouge, LA 70804

Special Counsel
 9/10/71 - 10/7/73

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney
 Criminal Prosecution - Attorney General & District Attorney

2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
- | | | |
|----------------------------|---|-----|
| (a) federal courts | - | 20% |
| (b) state courts of record | - | 80% |
| (c) other courts | - | 0% |
3. What percentage of your litigation was;
- | | | |
|--------------|---|-----|
| (a) civil | - | 50% |
| (b) criminal | - | 50% |
4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
- | | |
|--------------|-----|
| (a) jury | 40% |
| (b) non-jury | 60% |

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the names of the court and name of the judge or judges before whom the case was litigated; and
- (c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terribery, Carroll, Yancey & Farrell
Walter Carroll, Jr. (retired)
3100 Energy Centre

1100 Poydras St.
New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana
Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140
(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
 Sam Dalton
 2001 Jefferson Hwy.
 Jefferson, LA 70121
 (504) 835-4289

Co-Defense Counsel:
 George Troxell
 4330 Canal Street
 New Orleans, LA 70119
 (504) 488-8800

4. State of Louisiana v. Leonard J. Fagot
 Criminal # 76-2116, 24th Judicial District Court
 Division "J", Judge Patrick E. Carr
 Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.

Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
 Assistant District Attorney William Hall
 3500 N. Hullen Street

Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.

Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:

Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restraints were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:

Phil Johnson

(inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.

Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A ", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.

Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Epling v. Jon-T Chemical, Inc.
Civil Action # , 24th Judicial District Court, State of Louisiana
Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.

Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:

Thomas Loop
(deceased)

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

Scott W. McQuaig
1500 One Galleria Blvd.
Metairie, LA 70001
(504) 836-5070

Edward J. Rice, Jr.
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Lawrence J. Centola, Jr.
650 Poydras St., Ste. 2100
New Orleans, LA 70130
(504) 523-1385

Raymond A. Pelleteri
1539 Jackson Ave., 6th Floor
New Orleans, LA 70130
(504) 561-5000

Jay Zainey
2543 Metairie Road
Metairie, LA 70001
(504) 831-6766

Robert Glass
 530 Natchez Street
 New Orleans, LA 70130
 (504) 581-9083

Patricia LeBlanc
 1615 Metairie Road
 Metairie, LA 70005
 (504) 834-2612

Kathryn T. Wiedorn
 3421 N. Causeway Blvd., 9th Floor
 Metairie, LA 70002
 (504) 831-4091

Allan Berger
 4173 Canal Street
 New Orleans, LA 70119
 (504) 486-9481

Joseph R. McMahon, Jr.
 111 Veterans Blvd.
 Heritage Plaza, Ste. 740
 Metairie, LA 70005
 (504) 837-1844

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C., State of Louisiana, Division "A", Judge Louis G. DeSonier, Jr.

The brief represents my sole personal work. Trial on the summary judgment, December 18, 1980. Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.

Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure

For three years, I taught at St. Mary Dominican College. The class was a required course in the Criminal Justice program.

Co-instructor: Civil Procedure.

In conjunction with another attorney, I volunteered my time to teach third-year law students at Loyola School of Law. The emphasis was not only on the written and codified law, but also on the practical application of the law during trial proceedings. I taught the course during the Spring term in 1990 and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for numerous CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

District Court Judge

State of Louisiana

Division A, 24th Judicial District Court

District Court Judge, Ad Hoc
State of Louisiana
Division A, 24th Judicial District Court

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for numerous

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your

nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

IV CONFIDENTIAL

1. Full name (include names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Residence: 4801 Neyrey Drive (504) 455-5879
Metairie, LA 70002

Office: Division "A" (504) 364-3850
Gretna Courthouse Annex Bldg.
2nd floor, Room 200
Gretna, LA 70053

3. Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?

No.

4. Were all your taxes (federal, state, and local) current (filed and paid) as of the date of your nomination?

Yes.

5. Has a tax lien or other collection procedure (to include receipt of computer balance due notices) ever been instituted against you by federal, state, or local authorities? If so, give full details.

No.

6. Have you or your spouse ever been the subject of any audit, investigation or inquiry for either federal, state, or local taxes? If so, give full details.

No.

7. Have you or your spouse ever declared bankruptcy? If so, give particulars.

No.

8. Have you to your knowledge ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute or administrative agency regulation? If so, give full details. Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, give full details.

No.

9. Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, give particulars.

No.

10. Have you ever been sued by a client or other party? Have you ever been a party to any litigation? If so, give full particulars.

Clark, et al v. Edwards, et al.

86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity.

Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.

413-728, 24th Judicial District Court

Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature. The Indigent Defender Board has stated that they will voluntarily dismiss this suit within the next 30 days.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al, except it was filed in Federal court.

Injunction granted, statute declared unconstitutional.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court

All judges were sued as nominal parties in their official capacity. Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). Post Augustus ruling, parties petitioned in state court for refunds of the fees collected to date. Refunds denied by the trial and appellate courts. The Louisiana Supreme Court denied plaintiffs' writs on June 24, 1994.

DeGrange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine DeGrange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

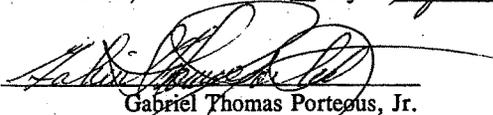
11. Please advise the Committee of any unfavorable information that may affect your nomination.

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

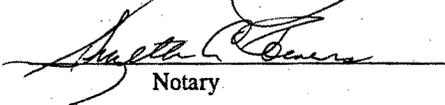
AFFIDAVIT

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.



Gabriel Thomas Porteous, Jr.



Notary