[redacted]

Our first witness is Robert Creely, Esquire. Mr. Creely is an attorney with a law practice in the New Orleans area. He is here pursuant to subpoena and has been previously served with an immunity order that compels his truthful testimony at the proceedings before the House. Mr. Creely is joined by his counsel.

And, Counsel, can you introduce yourself for the record?

Mr. CAPITELLI. Yes, Mr. Chairman, Ralph Capitelli.

Mr. SCHIFF. Thank you, Counsel.

I will now swear the witness.

Mr. Creely, please raise your right hand.

[Witness sworn.]

Mr. SCHIFF. Thank you. You may be seated.

TESTIMONY OF ROBERT CREELY, ATTORNEY, NEW ORLEANS, LA

Mr. CREELY. I have a problem hearing. And when you were addressing Mr. Capitelli, I was going to answer his question. I have a hearing deficiency, is what I am trying to tell you.

Mr. SCHIFF. Mr. Creely, then if you—you will need to pull that microphone very close to your mouth. If you have any problem hearing us at any time, please ask that we stop and repeat the question. And we will try to make sure the mics are close to us. But, again, if you have any trouble hearing, please stop us and say, you know, would you please repeat the question?

I am going to now recognize Task Force counsel, Mr. Mark Dubester, to question the witness.

Mr. Dubester?

Mr. DUBESTER. Okay, Mr. Creely, in a nice, loud voice, just introduce yourself.

Mr. CREELY. Introduce myself? Robert G. Creely.

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Mr. DUBESTER. And, Mr. Creely, did you go to law school?
Mr. CREELY. Yes, I did, sir.
Mr. DUBESTER. And where did you go to law school?
Mr. CREELY. Loyola University.
Mr. DUBESTER. When did you graduate?
Mr. CREELY. 1974.
Mr. DUBESTER. Okay. I am going to ask you a couple introductory questions just to cover your background, and then we will get into the heart of the questions that I am going to ask you. Can you hear me okay?
Mr. CREELY. I can hear you. I am doing the best I can to hear you.
Mr. DUBESTER. Okay. First, in the 1970's, did you go to work for Mr. Amato?
Mr. CREELY. Yes, I did.
Mr. DUBESTER. And was Judge Porteous a partner of Mr. Amato at the time?
Mr. CREELY. Yes.
Mr. DUBESTER. And you knew him beforehand, but you also became friends of his when you were working with Mr. Amato and Judge Porteous, correct?
Mr. CREELY. Yes.
Mr. DUBESTER. And at some point, you and Mr. Amato went off by yourselves in your own practice. Is that correct?
Mr. CREELY. Yes, sir. That is right.
Mr. DUBESTER. And was that a full-blown partnership, 50/50 you and Jake?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. Okay. And in 1984, do you recall Judge Porteous becoming a state judge?
Mr. CREELY. Judge Porteous became a state judge in 1984, yes, sir.
Mr. DUBESTER. Okay. And you maintained a friendship with Judge Porteous after he became a state judge, correct?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. That consisted of taking him to lunch, taking him on hunting trips, other socializing of that nature, correct?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. And generally, whenever you socialized where there was money to be spent, who paid?
Mr. CREELY. Well, I did, the firm did.
Mr. DUBESTER. Okay. Okay, I want to talk to you about one of the matters which is of concern to the Members here. Did there come a time when Judge Porteous was a state judge that he made requests of you for cash?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. And can you describe what you recall about those requests, how they began and how they changed over time?
Mr. CREELY. I don't understand how they began, but over time, I began to resist making payments, and he began to use excuses such as he needed it for tuition, needed it for living expenses, things of that nature.
Mr. DUBESTER. Okay. So can you just give a feel to the Members what Judge Porteous would say to you? He would say to you what?

"Bob, I need some money"? "Bob"—what would he say? Use his voice and your voice. Tell them the conversation that would happen.

Mr. CREELY. I wish you would give me a little leniency over a 25 period of lifespan memory——

Mr. DUBESTER. Sure.

Mr. CREELY [continuing]. Back to the 1980's. But, basically, there is his living expenses, his necessities, food—not food, but education, things of that nature.

Mr. DUBESTER. Okay.

Mr. CREELY. I don't remember exactly 25 years ago a conversation between he and I about what he wanted, but he made requests. Let there be no doubt in my testimony that I gave him money.

Mr. DUBESTER. Okay. And the very first requests he made of you, were those of smaller amounts of money?

Mr. CREELY. Very small amounts of money.

Mr. DUBESTER. Okay. Now, did you like giving him money?

Mr. CREELY. No.

Mr. DUBESTER. Okay. What, if anything, did you do or say to Judge Porteous to communicate your displeasure with his requests?

Mr. CREELY. I told him, quite frankly, I thought it was an imposition on our friendship for him to continue to ask me for money.

Mr. DUBESTER. Okay. And did you say to that—did you say that to him more than once?

Mr. CREELY. Yes, sir. But, once again, you are going back 25 years. I am doing the best—my recollection is yes.

Mr. DUBESTER. And after you communicated to Judge Porteous your displeasure, what did Judge Porteous do so that you could have money to give him?

Mr. CREELY. Well, I don't know what he did so that I could have money to give him, but he started sending curatorships to the office.

Mr. DUBESTER. Okay. And in one—in 30 seconds, what is a curatorship?

Mr. CREELY. A curatorship is an appointment by the court to represent an absentee defendant.

Mr. DUBESTER. Okay. And was there a small fee, in the nature of $200 or thereabouts, that your office would receive for handling this curatorship?

Mr. CREELY. I don't remember what the fee was, but there was a fee, a small fee—I believe it was $150, $175. It could be $200, but there was a fee that we received to representing the indigent or the absentee defendant.

Mr. DUBESTER. Okay. And if the clerk's office has represented to us, that it was—by 1989, it was $200. Is that consistent with your recollection?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. Okay. Now, did you want Judge Porteous to assign you curatorships?

Mr. CREELY. I am sorry, sir?

Mr. DUBESTER. Did you want him to assign you curatorships?

Mr. CREELY. No, I did not.

Mr. DUBESTER. Were these important to your business?

Mr. CREELY. No.

Mr. DUBESTER. Okay, who actually in your office took care of these matters?

Mr. CREELY. My secretary.

Mr. DUBESTER. Okay. Now, what was the relationship of the fact that Judge Porteous gave you these curatorships in relation to his requests for money? What was the relationship between those two events?

Mr. CREELY. What was the relationship between——

Mr. DUBESTER. His assigning you curatorships and his requesting money from you?

Mr. CREELY. In my mind, there was no relationship.

Mr. DUBESTER. Okay. Well, what did he communicate to you as to why he assigned you the curatorships?

Mr. CREELY. He didn't communicate anything to me as to why he was sending me curatorships.

Mr. DUBESTER. Well, explain what was going on then.

Mr. CREELY. It would better maybe that way.

Mr. DUBESTER. Okay.

Mr. CREELY. He started sending curatorships. I complained about giving him money before and after he sent me curatorships, our office curatorships. I didn't want to give him money before; I didn't want to give him money after. I began to avoid Judge Porteous as much as I could, because I knew he was going to be asking me for money.

Eventually, one day, he called my office, and he asked my secretary if we had been getting curators. My secretary communicated that fact back to me. I then went to the judge and told him that I didn't appreciate him calling my office and, two, that I made no relationship between him giving me curators and me giving him gifts of money. And that is the evolution of that fact.

Mr. DUBESTER. In your mind, was it clear to you that Judge Porteous had assigned you curators, curatorships, so that you would have a pool of money so you could give him back cash?

Mr. CREELY. That was not in my mind, sir.

Mr. DUBESTER. I am asking, in your mind, did you understand that Judge Porteous was assigning you curatorships so that you would have cash to give him back?

Mr. CREELY. Eventually, that is what I thought he was doing, yes.

Mr. DUBESTER. And what is it that caused you to have that understanding?

Mr. CREELY. Because he kept calling my office.

Mr. DUBESTER. And how was it that he communicated the link between the curatorships and the cash?

Mr. CREELY. I don't know that he did communicate a link. I don't believe he had a record of curators that he sent; he just kept asking me to give him money over the years and I kept complaining about giving him money.

Mr. DUBESTER. Okay. But he made inquiries in your office about the curatorships that he had sent to you, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And you understood that—you understood that he linked the assignment of curatorships to you giving him cash, correct?

Mr. CREELY. I suspected that he had that feeling, yes.

Mr. DUBESTER. Okay. Now, the assignment of curatorships were official acts by Judge Porteous as a state judge, correct?

Mr. CREELY. Correct.

Mr. DUBESTER. And he could have assigned those curatorships to anybody else in the New Orleans bar, correct?

Mr. CREELY. Yes. And I am sure that he did.

Mr. DUBESTER. Okay. But the ones he assigned to you, he assigned to you and to no one else, right?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And in your mind, you knew he did that because you were giving him money, correct?

Mr. CREELY. I suspected that he had that motivation, yes.

Mr. DUBESTER. Okay. So he was taking official acts to enrich himself, correct?

Mr. CREELY. I can't speak for him, but that was my understanding.

Mr. DUBESTER. Okay. And, in fact, he took hundreds of official acts in assigning you curatorships so you would have money so he could ask you for money. These were hundreds of official acts he took as a state judge to enrich himself. Isn't that what you perceived?

Mr. CREELY. I am sorry, sir. I am very sorry.

Mr. DUBESTER. I will move on to the next question. Now, how did the fact that you had these curatorships influence your attitude about giving Judge Porteous money?

Mr. CREELY. What?

Mr. CAPITELLI. Can you repeat that one?

Mr. DUBESTER. Did the fact that you had these curatorships make it easier for you to give him money?

Mr. CREELY. Yes, sir. As I testified, I believe, on many, many previous occasions, it was a justification, okay? He was a very dear friend of ours. He was—you know, maybe I overestimated the friendship, but I considered him to be a very close friend who I loved.

Mr. DUBESTER. Okay.

Mr. CREELY. And he would give me curatorships, and it became a justification to help him out so that I didn't have to go and spend my own money on him. It was—it was a major pain in the neck, curators. I want you to know that.

Mr. DUBESTER. Okay. So to make it clear, you felt when you were giving him back these curatorship monies, it was almost as if these weren't your monies, these were monies that he had provided to you so you could then tap to give back to him?

Mr. CREELY. The monies went into our operating account. I did not keep track curator for curator what I gave him. He would make requests—maybe monthly—and I would give him money when he made these requests. I would avoid him until I couldn't avoid him anymore. Then I made a payment to him.

Mr. DUBESTER. Okay. Now, you have previously estimated that you gave him about $20,000 over time. Is that correct?

Mr. CREELY. I——

Mr. DUBESTER. Sorry, you and Mr. Amato, $10,000 each, roughly?

Mr. CREELY. Over a 10-year period of time, yes, sir.

Mr. DUBESTER. Okay. Well, except for the $2,000 we are going to talk about when he was a Federal judge, most of that happened in his last years on the state court bench, correct?

Mr. CREELY. They happened while he was on the state court bench, yes, sir.

Mr. DUBESTER. Okay. Now, the amount of curatorship fees that have been identified are close to about $40,000, and the amount may actually rise as further searching is conducted. Would that suggest to you that the amount may be as much as $30,000 or even more?

Mr. CREELY. I didn't hear him.

I have estimated and guesstimated as to the amount of cash I gave him. I cannot tell you other than guess—other than guess what I gave him. I made a guess that I gave him $10,000 and my law partner gave him $10,000.

Mr. DUBESTER. And, by the way, this was all cash, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. Now, did you feel comfortable giving Judge Porteous cash in response to his requests?

Mr. CREELY. Yes, I felt uncomfortable. I felt put upon. I felt taken advantage of. I did.

Mr. DUBESTER. Okay. Now, I want to turn to 1994. Do you recall being interviewed by the FBI in connection with its background check of Judge Porteous?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And how did—do you know how the FBI got your name to interview?

Mr. CREELY. What did he say? I am sorry?

Mr. DUBESTER. How did the FBI get your name, if you know?

Mr. CREELY. Judge Porteous gave them my name.

Mr. DUBESTER. Okay. And you just made a gesture. Were you pointing to Judge Porteous, who is sitting behind you?

Okay. Now, the FBI write-up—they did a write-up of the interview with you. And you—it says that you stated—and I am reading verbatim—"Creely advised that he knows of no financial problems on the part of the candidate and the candidate appears to live within his economic means." Do you dispute making that statement?

Mr. CREELY. No, I do not dispute giving that statement.

Mr. DUBESTER. And would that statement have been true?

Mr. CREELY. Was it—I am sorry?

Mr. DUBESTER. Was that statement true?

Mr. CREELY. The statement was probably not accurate. And the statement was—and I will tell you—we have interviewed about this beforehand—I knew nothing about his checkbook or whether it was negative at the end of the month.

Mr. DUBESTER. I understand. Mr. Creely, listen——

Mr. CREELY. All I know is what he told me. He told me he was having financial problems.

Mr. DUBESTER. Okay. So if the FBI interview quotes you as saying that you know of no financial problem, that wouldn't have been a true statement, right?

Mr. CREELY. Correct.

Mr. DUBESTER. And why would you make a statement like that to help Judge Porteous in the background check process?

Mr. CREELY. As I told you, I didn't want to do anything to impede his advancement. He was a friend. He was a very manipulative friend. And I didn't want to—I didn't want to hurt the guy.

Mr. DUBESTER. Okay. And you also—I mean, as a practical matter, you didn't want the FBI poking around in your financial relationship with Judge Porteous, did you?

Mr. CREELY. Well, if I didn't want that to happen, I would have never volunteered to give the interview. I wasn't subpoenaed to give the interview. I volunteered the interview.

Mr. DUBESTER. No, but Judge Porteous suggested that the FBI call you, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And at the time that Judge Porteous suggested that the FBI call you, Judge Porteous knew that you had given him thousands of dollars, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And that is not something that you said or would have said or could conceivably have told the FBI in that interview, correct?

Mr. CREELY. If I was asked that question, I don't know what—my response would have probably been negative.

Mr. DUBESTER. Okay. And you also indicated in response to the FBI's interview that you never knew Judge Porteous to abuse alcohol. Do you remember saying that?

Mr. CREELY. Yes. That is a pretty vague question about abusing alcohol.

Mr. DUBESTER. Okay. But the fact of the matter is, you had seen him abuse alcohol, too, correct?

Mr. CREELY. If they asked me that, they asked me that, and I would tell them no, I didn't know of him abusing alcohol.

Mr. DUBESTER. Well, do you ever remember an incident where you have saw Judge Porteous obviously having abused alcohol?

Mr. CREELY. Yes.

Mr. DUBESTER. Describe one incident. Describe the incident that you have previously testified about at a casino where you—and describe Judge Porteous's behavior when you knew that he had abused alcohol.

Mr. CREELY. Well, I guess if everybody uses alcohol, you have improper behavior from one time from another. But, yes, I know that he drank to excess and probably functioned better under alcohol than he did without alcohol.

Mr. DUBESTER. Okay. Well, was there an incident at a casino in which he was—had to actually be lectured by somebody at the casino because he was drunk?

Mr. CREELY. An incident at a casino?

Mr. DUBESTER. Yes, where he messed around with your chips because he was drunk.

Mr. CREELY. He knocked my chips over. I am not a very big gambler. He was acting in an obnoxious fashion, and he interfered with my play.

Mr. DUBESTER. Okay.

Mr. CREELY. And I got up and left.

Mr. DUBESTER. But the point simply is, not only did you not tell the FBI the truth about his financial circumstances, you also didn't tell them the truth about his drinking, correct?

Mr. CREELY. Yes. Yes——

Mr. DUBESTER. Okay. I want to turn to 1999, Mr. Creely, while—you remember your partner, Mr. Amato, had the *Liljeberg* case. Do you remember that?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And in 1999, while Mr. Amato—sorry, while that case was under advisement, do you remember going to Las Vegas with Judge Porteous for his son's bachelor party?

Mr. CREELY. I knew there was a case under advisement by Judge Porteous on the *Liljeberg* case.

Mr. DUBESTER. Okay. And in Las Vegas, what, if any, expenses did you pay on behalf of Judge Porteous?

Mr. CREELY. What expenses did I pay on behalf of Judge Porteous?

Mr. DUBESTER. Yes. Yes, sir.

Mr. CREELY. In Las Vegas?

Mr. DUBESTER. Yes, in 1999.

Mr. CREELY. As we talked about earlier, the only expense that I recall paying for him was a meal. You showed me a document——

Mr. DUBESTER. Okay, let's just talk about the meal. Was that about a $500 meal in the nature of for his son's bachelor party dinner?

Mr. CREELY. There was—yes.

Mr. DUBESTER. Okay. And you have seen documents which suggest that you also paid for Judge Porteous's room in excess of over $400. Do you recall that?

Mr. CREELY. I recall you showing me a document to that effect.

Mr. DUBESTER. Do you recall paying for his room, as well?

Mr. CREELY. I do not recall paying for his room.

Mr. DUBESTER. Do you dispute that—if the records show, in conjunction with your—in connection with your memory, that you spent close to $1,000 for Judge Porteous in Las Vegas in 1999? Do you dispute that?

Mr. CREELY. I cannot dispute the records.

Mr. DUBESTER. Okay.

Mr. CREELY. But I would like to state the meal, so that——

Mr. DUBESTER. Sure.

Mr. CREELY. There were 20 people, 25 people at a bachelor party meal for his son. I was a guest of his son. The way I recall it, the meal check came out. There were 25 adults at this dinner. Everybody put their credit card onto the waiter's tray. The meal was divided up and the tip. You know, with four or five men at my table. And there is no way you can eat a meal at a high-end steakhouse and drink for $400 or $500. I paid a portion of that meal. I didn't pay for the entire meal.

Mr. DUBESTER. Fair enough. Did you pay over $500 for—towards the bachelor party dinner?

Mr. CREELY. Whatever the record reflects. If it says $500, yes.

Mr. DUBESTER. Okay. And finally, did you ever appear in front of Judge Porteous yourself personally?

Mr. CREELY. I am sorry, sir?

Mr. DUBESTER. Did you ever appear in front of Judge Porteous personally?

Mr. CREELY. In 20 years that he sat on the state and Federal bench, I appeared before him three times, one time in state court, which was a jury trial. It was my first jury trial. The jury ruled in my favor.

The insurance company wanted to appeal that ruling. They posted a surety bond to secure payment for the judgment. The insurance company was going insolvent. I filed a motion to test the solvency of the surety. He denied my motion outright.

I had an interdiction of an elderly woman who was horribly mistreated in front of him. He ruled in my favor. Nobody could have lost that case.

When he was in Federal court—and I believe it was the early '90's—my recollection is I had a state court class action. A discovery issue came up over my entitlement to records that may have been protected by a Federal statute. And I don't remember. It was the MMTJ or MMJT are the initials for it, which prohibit state courts or any court from inquiring into financial data from financial institutions.

The defense lawyers removed it, got allotted—from state court, got allotted to Judge Porteous. They requested a TRO. He was well aware of everybody on the pleadings. He granted the defendant's TRO. In other words, he ruled against me.

We had a telephone status conference about the preliminary injunction that was coming up, and he blatantly, flat-out, over the telephone, "I am granting the preliminary injunction. If you want to make a record, come over. You are wasting your time," basically.

I made a record. I appealed him, and the United States Fifth Circuit Court of Appeals overturned his ruling. That is all I remember doing in front of him for 30 years. So I got nothing back in return from him for curators. I mean, I did this out of friendship.

Mr. DUBESTER. In none of those cases did opposing counsel know that you had given him thousands of dollars, correct?

Mr. CREELY. Well, in the one in Federal court?

Mr. DUBESTER. Yes.

Mr. CREELY. He ruled against me before I even showed up. He ruled against me before I came. To answer your question, no, but he signed a TRO. I showed up. I lost.

Mr. DUBESTER. Thank you very much.

Mr. CREELY. Without—outright lost.

Mr. SCHIFF. I thank you, Mr. Dubester.

Mr. Creely, Members of the Committee now will take a brief opportunity to follow up on the questions that were asked by our counsel.

I wanted to start out asking you about the curatorships. I think you testified earlier in answer to Mr. Dubester's questions that you didn't ask for the curatorships. Is that right?

Mr. CREELY. That is correct.

Mr. SCHIFF. So you never went to the court and sought to become an attorney handling curatorships, right?

Mr. CREELY. I was very busy. I didn't want curators.

Mr. SCHIFF. You consider them to be kind of a nuisance and not what you wanted to make your practice out of, right?

Mr. CREELY. Absolutely not.

Mr. SCHIFF. So it was Judge Porteous's initiative to send you these curatorships?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. And he took this initiative at a time when you were resisting giving him more money?

Mr. CREELY. Correct.

Mr. SCHIFF. For some time—maybe a period of years—he would hit you up for money, and you were starting to tell him it has got to come to an end, correct?

Mr. CREELY. I am sorry?

Mr. SCHIFF. For some years, you were giving him money. You got tired of giving him money, and you told him it has got to stop, right?

Mr. CREELY. Yes.

Mr. SCHIFF. And around the time you told him it had to stop, the curatorships started showing up in your office. Is that right?

Mr. CREELY. Correct.

Mr. SCHIFF. Now, during the course of your receiving these curatorships, wouldn't Judge Porteous call your office and inquire how many curators he had sent over to your office recently?

Mr. CREELY. After a period of time, I began to avoid Judge Porteous, because I knew what he wanted from me: money. And I—I didn't—I avoided him. He then called my office and asked, had we been getting the curators? That conversation was related back to me by my secretary.

I approached him and told him that the curators and what I gave him had nothing to do with each other, and if he wanted to stop giving me curators, stop giving me curators. And if he would have stopped giving me curators, I probably would have continued to help him, because he was a friend.

Mr. SCHIFF. But he would call and ask about whether you were getting the curators at the same time he would call and ask for money. Is that right?

Mr. CREELY. He would ask for money, I would avoid him, and then he would call the office and ask the—if we had been receiving the curators.

Mr. SCHIFF. And he would want to know how many curators you had received at a given time, when he would call? Is that the information you got back?

Mr. CREELY. The information I had back is he wanted to know if we were getting the curators. And then he would start hitting on me for money again.

Mr. SCHIFF. And so the conversations about the curatorships took place at the same time as the conversations about money? So the conversations the judge had with you about the curatorships, when he would call your office for curatorships, was at the same time that he would make requests for money. Is that right?

Mr. CREELY. I would have to say he was asking for money, and I was avoiding giving him money, so he called the office and asked for—if we were getting the curators. And, eventually, he would get money.

Mr. SCHIFF. And when—did he ever get money—did he ever make the request for money of your secretary, or did it always go to you directly?

Mr. CREELY. He made the request to my secretary.

Mr. SCHIFF. For money?

Mr. CREELY. Right. Well, to whether or not we were receiving curators, curators he was sending.

Mr. SCHIFF. My question is, did he ever ask your secretary to get money from you for him? Or did the request for money always go directly to you?

Mr. CREELY. The request for money, as I recall it, came directly from me. There is no telling what he did. I—he could have made that request. I am only aware of what requests he made of me.

Mr. SCHIFF. So you don't know whether he—you didn't get a message from your secretary that the judge called, he wanted to know how many curatorships he had sent over, and he wants more money? Did your secretary ever tell you something along those lines?

Mr. CREELY. I don't recall that, but she said he was looking for curators—and, I mean, this is 15 years ago.

Mr. SCHIFF. Did she tell you why he wanted to know how many curators he had sent over to your office?

Mr. CREELY. I am sure the answer to that is obvious, because he wanted money.

Mr. SCHIFF. Why is the answer to that obvious?

Mr. CREELY. I am sorry, sir?

Mr. SCHIFF. Why is the answer to that obvious?

Mr. CREELY. I think it is obvious.

Mr. SCHIFF. So it is obvious to you that the reason he was calling about the curatorships was because he wanted to call and ask you for money?

Mr. CREELY. Yes.

Mr. SCHIFF. Now, you—in your grand jury testimony, you testified, "And he then started calling me, saying, 'Look, I have been sending you curators, you know. Can you give me the money for the curators?' I said, 'Man.' So I talked to my law partner. I said, 'Jake, you know, man, what do we do?' He says, 'Well, just go ahead and give it to him.' We decided to give him the money. We would deduct the expenses. We would pay income taxes on it."

That was your testimony before the grand jury. Was that accurate testimony?

Mr. CREELY. It was as accurate as I could be, yes.

Mr. SCHIFF. So to the best of your recollection, when the judge would call, he would ask you for the money for the curators?

Mr. CREELY. That is my recollection, is he was calling to see—get an account of how many curators were there or how many curators we received so that he could ask me for money for curators.

Mr. SCHIFF. Did you and your partner, Mr. Amato, ever consider giving him checks, writing him checks when he asked for money, as opposed to giving him cash?

Mr. CREELY. No, we did not.

Mr. SCHIFF. And why didn't you write a check from the law firm instead of going through the process of taking a draw and giving him cash?

Mr. CREELY. Well, two things. One, I didn't think giving money was improper. The ethical and judicial codes is I can give money to anybody I want to. What he has to report is a different thing. If I wrote him a check, I would have to have gone through a complete accounting breakdown as to what it is for, deductions, and so forth. He wanted cash.

Mr. SCHIFF. So he told you he wanted cash, he didn't want it—he didn't want a check?

Mr. CREELY. Correct.

Mr. SCHIFF. Now, I am not sure I understood, because I think you used a double negative. Were you saying that you knew it was improper to give him money or that you thought it was proper to give him money?

Mr. CREELY. Well, it is improper for me to give him money for him to rule on a case that I want him to rule on. If I would say, "I will give you money if you rule on a case," that is improper. But my reading of the canons of judicial ethics is that I can give gifts, including cash, to judges, as long as they report it on their disclosure statement.

Mr. SCHIFF. So why didn't you write a check from the firm if it was appropriate for you to give him money?

Mr. CREELY. It would have been appropriate for him to give him money if I wrote him a check from the firm, yes.

Mr. SCHIFF. So my question is, why didn't you write a check if you thought that was an appropriate thing to do?

Mr. CREELY. Because he didn't want a check, one. Two, my law partner and I had a habit of, on a weekly basis, taking a draw, a cash draw. And out of that cash draw, we would give him monies.

Mr. SCHIFF. Mr. Creely, isn't it also correct that you didn't want a written record of your giving money to a judge?

Mr. CREELY. No, I didn't want a written record that I was giving money to a judge. But—no.

Mr. SCHIFF. At this point, let me turn to my Ranking Member, Mr. Goodlatte, for his questions.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Creely, to follow up on the Chairman's question, when you say—may I borrow that—when you say, "We decided to give him the money. We would deduct the expenses. We would pay income taxes on it." And you say you always paid him in cash, how did you account for that in the books of the law firm?

Mr. CREELY. There was—there was no way—that was a general line statement. It was income coming into the office, income coming into the office. It would go into the general account on—and there would be a file generated for each case. Each case, we would have income and expenses. The income would then go on our income tax return.

So, you know, I don't know where that statement was taken from, but——

Mr. GOODLATTE. It is your grand jury testimony regarding the curatorships.

Mr. CREELY. We would—we would get money, put it in the bank, take a draw, and give him cash. But it wouldn't be four curatorships goes into the bank and we kept track of it in that fashion. We would—we would take a draw and give him money.

Mr. GOODLATTE. And would you each take a draw at the same time? How did that work? You both were giving him money. Was that not correct?

Mr. CREELY. Yes, sir.

Mr. GOODLATTE. And did you each take a draw? Did you keep track of how much he was drawing to give him and how much you were drawing to give him? Or——

Mr. CREELY. Yes, we—at first, it was not a lot of money. Toward the end, he would ask for $500 or $1,000. I wasn't paying him $500 or $1,000 out of my pocket. So my—I went to—my law partner and I went and took a draw of an equal amount and gave him the money.

Mr. GOODLATTE. And why was it an equal draw? If he was your friend and you were giving him the money because he was your friend, why would you be concerned, you and your partner, taking equal draws from the firm? Wasn't this really a business expense for the firm that would cause you to each take an equal amount to give him funds?

Mr. CREELY. It wasn't an expense. We treated it as income and paid taxes on it.

Mr. GOODLATTE. Sure. But you were both doing it.

Mr. CREELY. Correct.

Mr. GOODLATTE. And you were doing it equally. Why would that—given as a matter of friendship, why would it matter to you if you gave it equally? Why wouldn't—that would only matter, it would seem to me, looking at this as a business undertaking that you are going to each provide funds to the judge for the benefit of your legal practice. You would say, "Well, let's each take an amount equally and give it to the judge," as opposed to, "Well, he is my friend, so I am going to give him this money. He is your friend. You give him whatever amount you want to give him."

Mr. CREELY. We took it as a draw. We treated the man as a friend. We respected his needs. And he made a request to either me or Jake, Jake or I—what monies he requested.

Mr. GOODLATTE. Do you know if other attorneys in the legal community were also giving Judge Porteous money?

Mr. CREELY. I am sorry, sir?

Mr. GOODLATTE. I said, do you know if other attorneys in the legal community in New Orleans were also giving Judge Porteous money?

Mr. CREELY. I have read—to answer your question, yes. And the reason I have read so many confidential reports that have been posted over the Internet, have written so many summarizations of my testimony and other people's testimony, it all blends together into like a soup as to what—and then you put 15 to 25 years of life, and memory into this, and it is hard to determine what you read, what you remember, and things of that nature. I mean, we are going back to 1984.

Mr. GOODLATTE. Sure. But collectively, both in terms of what you have read and what you remember, is it your impression that others were giving funds to Judge Porteous?

Mr. CREELY. Yes.

Mr. GOODLATTE. And did you know of any of those at the time that you were also giving funds to Judge Porteous? Were you aware that others were giving funds to him?

Mr. CREELY. At what time? From——

Mr. GOODLATTE. At the time—well, during the timeframe between when you started giving funds to him and when you stopped giving funds to him. Were you aware at that time that others were giving funds to him?

Mr. CREELY. A 25-year period of time, and I have only heard people complain. I can only assume—if you want me to assume——

Mr. SCHIFF. Mr. Creely, can you talk more closely into the microphone? You may want to pull it—thank you.

Mr. CREELY. I can only assume that, if you were a good friend of Judge Porteous, that he would ask you for cash.

Mr. GOODLATTE. That was your impression that was a common practice of his?

Mr. CREELY. My impression or my guesstimation would be yes.

Mr. GOODLATTE. And can you tell us why you and Mr. Amato were brought into the *Liljeberg* case?

Mr. CREELY. I was never brought into the *Liljeberg* case. Mr. Amato was brought into the *Liljeberg* case. I was—never had one single meeting involving a *Liljeberg* case.

Mr. GOODLATTE. But your firm was brought into the *Liljeberg* case?

Mr. CREELY. Firm was brought into the *Liljeberg* case.

Mr. GOODLATTE. The listing referred to Amato and Creely in the filing with the court. So your firm was brought into the *Liljeberg* case.

Mr. CREELY. If that is what the listing says, I have no reason whatsoever——

Mr. GOODLATTE. Did you ever have any conversations with Mr. Amato about the reason why the firm was brought in to the case?

Mr. CREELY. No.

Mr. GOODLATTE. No. You have no idea why that was? Was it the type of case that you or Mr. Amato would ordinarily be brought into?

Mr. CREELY. Myself, I handled very complex cases over the past 10 years, multi-party class-action litigation that involve neutrinal litigation, neutrinal litigation in Federal court involving hundreds of lawyers, been involved in probably 10 class-action multi-party cases in state court. I handled cases in Federal court, maritime cases in Federal court——

Mr. GOODLATTE. What about Mr. Amato? Since you said you didn't personally do anything in that case, what about Mr. Amato?

Mr. CREELY. Mr. Amato, to my knowledge, did not have a large—did not have a Federal practice.

Mr. GOODLATTE. But you had no conversations with him about why he was being brought into work on the *Liljeberg* case 6 weeks before trial?

Mr. CREELY. I don't recall any specific conversation, but——

Mr. GOODLATTE. Let me move on to another area.

Mr. SCHIFF. And, Mr. Creely, you really need to talk directly into the microphone. You have a habit of——

Mr. CREELY. I have an eye infection, and I am trying to keep away from anything that may be contagious to somebody. I am very sorry.

Mr. GOODLATTE. Mr. Creely, during his time on the Federal bench, did Judge Porteous ever use court employees, such as his secretary, to either pick up money from you or request money of you for private purposes?

Mr. CREELY. The only time I recall is during the 1999 period of time, I believe his secretary came by to pick up money.

Mr. GOODLATTE. This would have been Rhonda Danos?

Mr. CREELY. Yes, sir.

Mr. GOODLATTE. And she came by to pick up an envelope with $2,000 in cash in it?

Mr. CREELY. That is my understanding, yes.

Mr. GOODLATTE. Would that have included cash from both you and Mr. Amato? Or is that just your cash?

Mr. CREELY. Well, we—cash Mr. Amato asked me to give him to give to the judge.

Mr. GOODLATTE. So the two of you each—not—didn't write a check, but you each put cash in an envelope from each of you, and then the judge's secretary came over and picked up that cash? Is that your recollection?

Mr. CREELY. It is my understanding.

Mr. GOODLATTE. All right. Are you aware of any other situation in which Judge Porteous used a court employee—I am sorry. You need to use the microphone.

Mr. CREELY. Why he was on the Federal bench?

Mr. GOODLATTE. Or the state bench, either one.

Mr. CREELY. You need to use the microphone, Counsel, so we can hear what you are trying to say.

Mr. CAPITELLI. I am sorry—hearing on that. Would you repeat that question?

Mr. GOODLATTE. Yes. My question was, in addition to the instance involving Rhonda Danos that he just testified about. Are you aware of any other instances while he was a Federal or state court judge where he used court employees for the purpose of picking up money after making some of these requests?

Mr. CREELY. No, sir.

Mr. GOODLATTE. Thank you.

Mr. Chairman, those are the only questions I have.

Mr. SCHIFF. I thank the gentleman.

Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Creely, what—how many curatorships do you think you had over the period of years from Judge Porteous?

Mr. CREELY. There is a list that was requested by Mark through these proceedings. I have not—I knew a list existed.

Mr. COHEN. Ten, twenty, a hundred?

Mr. CREELY. I would say 100, at least.

Mr. COHEN. At least 100. And what did the average curatorship pay? How much did you get paid for the average——

Mr. CREELY. I would say between $150 and $175.

Mr. COHEN. And you hated doing these? You didn't like doing them; it was a nuisance. Is that correct?

Mr. CREELY. I am sorry.

Mr. COHEN. You say it was a nuisance. You didn't like doing them?

Mr. CREELY. I didn't do them. They were purely—they were purely administrative. There were secretarial-type things. All you did was provide a note of evidence to the court that you made an attempt to provide or find the absentee defendant, and that was all you did.

Mr. COHEN. Do you know if other people were curators in Judge Porteous's court?

Mr. CREELY. Yes.

Mr. COHEN. And did those people, to the best of your knowledge, give Judge Porteous money, as well?

Mr. CREELY. Judge Porteous testified to the fact that they did.

Mr. COHEN. Just about every one of them? Just about all of them?

Mr. CREELY. Oh, I don't know about just about all of them. I know he testified that at least one lawyer gave him money.

Mr. COHEN. Did you give money to other judges other than Judge Porteous?

Mr. CREELY. Campaign contributions.

Mr. COHEN. Those were checks?

Mr. CREELY. Yes, sir.

Mr. COHEN. But you never gave cash to another judge?

Mr. CREELY. No.

Mr. COHEN. So the only reason you gave cash to Judge Porteous is because he asked for it and he was your friend. Is that right?

Mr. CREELY. The only reason I gave it to him was because he was a friend in need.

Mr. COHEN. Do you—because he was a friend in need.

Mr. CREELY. In need.

Mr. COHEN. All right.

Mr. CREELY. I got nothing back in state court for doing that, nothing.

Mr. COHEN. But your firm was hired to this particular case. Is that correct?

Mr. CREELY. Yes, sir.

Mr. COHEN. And you are a senior partner in the firm?

Mr. CREELY. Yes, sir.

Mr. COHEN. Did you benefit from the overall profits of the firm? Did you share in the profits?

Mr. CREELY. Of the law firm?

Mr. COHEN. Yes, sir.

Mr. CREELY. Yes, sir.

Mr. COHEN. And so how can you say you never benefited from it when your firm was appointed and might have won a judgment?

Mr. CREELY. Well, the only way I benefited is the excess curators that I didn't give to him in the form of cash. I didn't benefit by any case, because every case I had in front of him, he ruled against me.

Mr. COHEN. How about in the case where Mr.—your partner, did you—have a partner in your firm was hired?

Mr. CREELY. I had a partner that was hired on the case that we didn't get paid any money on.

Mr. COHEN. Didn't get paid any money, because it was reversed on appeal.

Mr. CREELY. Yes, just like I—much like I—reversed on the case he tried for me.

Mr. COHEN. Right. But if it hadn't been reversed on appeal, you would have benefited from that, right?

Mr. CREELY. I would have benefited by it, but, sir, none of those cases were resolved in state court. That case was earmarked, destined for Federal appeal court. They all are. Every large case that I have, with minor exception, is finally adjudicated in the appellate court, particularly on legally—on legal and most of the time factual issues. That case was never going to be resolved in state court, in my mind—I mean, in Federal court, in my mind, never.

Mr. COHEN. But you have got to get a judgment in federal—district court to be adjudicated and get a—and get a final recovery in the appellate level. Is that not correct?

Mr. CREELY. I just had a case that I got a class-action 680 people that I got a judgment in state court, and the appellate court reversed it—reduced it by 60 percent. There is a lot of times you try cases and you take an appeal and the court either raises, lowers, takes away, gives to. You never know what the court of appeals is going to do.

Mr. COHEN. I am aware of that, but I am losing your logic, sir. You—if—you can't get to Federal court, to appellate court, unless you win at the district level. Is that correct?

Mr. CREELY. No. If you lose at the judicial level, you can take an appeal to the appellate court, sir, just like the other side on this case. Apparently—and I hadn't read the judgment—they lost. They took an appeal.

Mr. COHEN. Were they not the defendants in that case?

Mr. CREELY. Whoever the defendants were, they were. I don't know who the defendants are. All I know is Lifemark or something to that effect. I don't know the names of all the defendants. I was completely excluded from that case, every aspect of that case.

Mr. COHEN. Have you—what else did you—did you provide to Judge Porteous, other than cash? You paid for lunches and dinners. Is that correct?

Mr. CREELY. You know, I would take him to lunch and to dinners, as other people did. And I hunted with him. He and I were more or less adult from almost high school—best of friends. I hunted with him. I fished with him. We were friends, and everybody in the city of New Orleans knew we were friends, everybody.

Mr. COHEN. And what else did you give him, other than hunt with him—when you hunted or fished with him, you—what did you—did you extend some benefits to him financially that he wouldn't have to pick up?

Mr. CREELY. In what? What, like paying for fuel or gasoline for the boat or something like that?

Mr. COHEN. Yes.

Mr. CREELY. Well, no. Nobody paid for a hunting or fishing trip when they came with me. Nobody.

Mr. COHEN. What other type things did you do for Judge Porteous?

Mr. CREELY. The best of my recollection, I took him on three hunting trips in 20 years out of the country, two when he was on the state court bench, one early on when he was on the Federal bench.

Mr. COHEN. No football tickets, nothing like that? No football tickets?

Mr. CREELY. I have no recollection of buying him a football ticket.

Mr. COHEN. No further questions, Mr. Chairman.

Mr. SCHIFF. I thank the gentleman.

Mr. Lungren of California?

Mr. LUNGREN. Thank you very much.

Mr. Creely, did your firm get curatorships from other judges?

Mr. CREELY. Yes.

Mr. LUNGREN. In those instances, did any other judges ask you for money to help them with their personal expenses?

Mr. CREELY. No, but they asked for campaign contributions.

Mr. LUNGREN. But did they ever ask you for money for personal expenses?

Mr. CREELY. No.

Mr. LUNGREN. Did they ever ask you for money in cash?

Mr. CREELY. No.

Mr. LUNGREN. Did they ever send a member of their court staff to your office to pick up cash?

Mr. CREELY. No.

Mr. LUNGREN. So this is not a normal type of the legal culture of New Orleans?

Mr. CREELY. This is not a—it is not normal, but our friendship was very different——

Mr. LUNGREN. Let me ask you about the proprietorship—propriety, excuse me. In the Federal case, where there is a motion of recusal involving your law firm, do you think your law firm had any obligation—or representative of your law firm had any obligation whatsoever to inform the other parties through their attorneys or the other attorney that your—that the judge in the case had been the beneficiary of thousands of dollars of cash donations, contributions, gifts, whatever you want to call it, from your law firm?

Mr. CREELY. Absolutely, but I was not a party of that recusation proceeding, didn't even know it was going on. Yes.

Mr. LUNGREN. To your knowledge, did a representative of your law firm of which you are a senior member make that information available on the public record to the other attorney or attorneys involved?

Mr. CREELY. I don't believe he did.

Mr. LUNGREN. That is all I have. Thank you.

Mr. SCHIFF. I thank the gentleman.

Mr. Creely, we see—or Mr. Johnson?

Mr. JOHNSON. Yes, thank you, Mr. Chairman.

Are you now facing or do you expect to face or have you faced state bar disciplinary proceedings in Louisiana?

Mr. CREELY. I received an inquiry, but nothing else. I think that they have deferred until this is over with.

Mr. JOHNSON. They have deferred what?

Mr. CREELY. I think that they are deferring until this procedure is over with.

Mr. JOHNSON. What about Judge Porteous? Has he, to your knowledge, been the subject of a bar complaint?

Mr. CREELY. I have no idea.

Mr. JOHNSON. Were you the subject of a bar complaint or did the state bar just take this up on its own motion?

Mr. CREELY. The state took it up on its own motion when they—one of—one of the news channels or something broke a story in the newspaper, posted documents entitled "Confidential," and I got a letter from the disciplinary council that they were going to look into this matter.

Mr. JOHNSON. Approximately when was that?

Mr. CREELY. Pardon me?

Mr. JOHNSON. Approximately when was that?

Mr. CREELY. I think it—I think it happened 2 years ago.

Mr. JOHNSON. So have you had to respond at all in writing to this letter of inquiry or notice of inquiry?

Mr. CREELY. No, I have not had to explain it. I am sure I will.

Mr. JOHNSON. Do you—why did you—feeling so uncomfortable about it, why did you continue to give Judge Porteous cash money? And tell me, when did it start? And when is the last time you gave him some cash?

Mr. CREELY. It may be hard to believe, but when you don't have any cases in front of a judge, okay, with the exception of the jury trial——

Mr. JOHNSON. And you are speaking of you personally or the firm?

Mr. CREELY. I think—I think my law partner may have had a couple of cases in front of him, and he ruled against him, too, in state court. And we are talking about state court. But it may be hard to believe, but everybody has a friend, and we have all had friends.

Mr. JOHNSON. But, I mean, you felt uncomfortable at giving him some money. What was it that made you feel uncomfortable?

Mr. CREELY. About——

Mr. JOHNSON. And why did you feel uncomfortable?

Mr. CREELY [continuing]. At that point in time—at that point in time, what made me feel comfortable about it——

Mr. JOHNSON. Uncomfortable.

Mr. CREELY. Uncomfortable?

Mr. JOHNSON. Yes. You have testified here today that it made you feel uncomfortable to be leaned on, if you will, for cash money.

Mr. CREELY. Because I began to feel like I was getting taken advantage of. I don't—I don't know if anybody——

Mr. JOHNSON. Well, what do you mean when you say "taken advantage of"? What do you mean?

Mr. CREELY. That I don't believe, in my mind, that he was using the money for the things that he told me he was using it for.

Mr. JOHNSON. What did he tell you he was using the money for?

Mr. CREELY. Tuition, things household related.

Mr. JOHNSON. What did you later find out about his use of the money that you gave?

Mr. CREELY. Just word of mouth, seeing him live a higher lifestyle than you would expect, but I want you to understand that the motivation for trying to help a friend, I mean, the love of a wife is one thing. The love of another person because you care about them and—is a different thing. And I really cared about him and really——

Mr. JOHNSON. Well, has he ever given you anything, Judge Porteous? Did he care that much about you that he would give you anything?

Mr. CREELY. No.

Mr. JOHNSON. Did he ever pay for his meals?

Mr. CREELY. No.

Mr. JOHNSON. Did he ever pay for his trips to hunt——

Mr. CREELY. No.

Mr. JOHNSON [continuing]. And fish? You paid it all?

Mr. CREELY. Well, when you say trips, hunting trips, of course. I had a boat. I had a camp. Nobody paid for anything when they came with me, nobody. Nobody paid anything.

Mr. JOHNSON. This curatorship situation, why do you resist characterizing the curatorship situation as a kickback, a kickback scheme? Isn't that a classic kickback scheme?

Mr. CREELY. I have read that word before. It was not a kickback scheme.

Mr. JOHNSON. Well, I mean, doesn't it have all of the hallmarks of a kickback scheme? I mean, he would forward you a monetary benefit for you and then call later to say, "Where is—where is the money?" Isn't that a—and to do that repeatedly, isn't that a kickback scheme?

Mr. CREELY [continuing]. Whatever the definition of a kickback scheme is, if you——

Mr. JOHNSON. So why do you not want to characterize it in that way?

Mr. CREELY. If he came to me and said, "I am going to give you curators in return for you giving me the money back," I would refer to that as a kickback scheme. That is not what happened, okay? He gave me curators, and——

Mr. JOHNSON. Which you had not asked for?

Mr. CREELY. That which I did not ask for. I did not sit down with him and contrive a situation where he would give me curators in return for him giving me money.

Mr. JOHNSON. But was it an implicit understanding, as things went on with this curatorship process?

Mr. CREELY. I am confused about your question, sir.

Mr. JOHNSON. The curatorship process, you say that you would not—there was no agreement before this scheme started, but didn't it become apparent to you during the course of the curatorship scheme that this was a way of you being able to pay Judge Porteous?

Mr. CREELY. It evolved into that, yes. He began to rely upon the curators, began to call for them, and we rationalized he is asking for money, giving him the money. And it wasn't all of the money, but, yes, it—that is what it sounds like.

Mr. JOHNSON. All right. I have no further questions at this time.

Mr. SCHIFF. Mr. Pierluisi?

Mr. PIERLUISI. Mr. Creely, I apologize if some of my questions are repetitive. I will try not to ask you questions you were posed before.

But let me ask you, you have been talking about your friendship with Judge Porteous, and I want to explore that a bit. Do you have a large circle of friends at home? I mean, how many friends do you have, would you say?

Mr. CREELY. How many friends do I have?

Mr. PIERLUISI. Yes, friends, people who consider themselves your friends.

Mr. CREELY. How many friends do I have? It is funny. When you are doing well, you have a lot of friends. When things are looking bad for you, you don't have as many friends as you did before. So back then in that period of time, I had considered myself as having a considerable number of friends.

Mr. PIERLUISI. And that is roughly how many, at the time of the relevant events here?

Mr. CREELY. Sir, you know, I couldn't tell you. I had acquaintances; I had friends.

Mr. PIERLUISI. What is the difference between an acquaintance and a friend, in your mind?

Mr. CREELY. How many friends what?

Mr. PIERLUISI. I am just saying, how do you distinguish an acquaintance from a friend, in your mind? What is the difference?

Mr. CREELY. The difference is just a long-term friendship, a friendship that you have had for years and years and years with that person.

Mr. PIERLUISI. Do you visit with friends at their homes?

Mr. CREELY. Pardon me?

Mr. PIERLUISI. Do you visit with friends at their homes?

Mr. CREELY. Yes.

Mr. PIERLUISI. Do your friends visit at your home?

Mr. CREELY. Yes.

Mr. PIERLUISI. And you do that with close friends or with any friend?

Mr. CREELY. Visit with them?

Mr. PIERLUISI. Visit with them at home and so forth.

Mr. CREELY. Yes.

Mr. PIERLUISI. Did you visit with Judge Porteous at his home?

Mr. CREELY. Yes.

Mr. PIERLUISI. You would go to his home?

Mr. CREELY. Yes.

Mr. PIERLUISI. How often?

Mr. CREELY. Well, often would be he would have a Christmas party with a great number of people there. I would go. On occasion, he would have different functions. And his friends that were very close to him brought me into their friendship circles. They had parties that I attended with Judge Porteous and his wife and kids. So, you know, yes, we visited——

Mr. PIERLUISI. Did he visit you at your home?

Mr. CREELY. Yes, he visited me at my home.

Mr. PIERLUISI. How often?

Mr. CREELY. I can't give you that number. He visited with me on occasion. I am not a real social home type person where I have

dinner parties and a lot of parties. I have had a few parties at my former home that I sold in 2003, but I didn't—I wasn't a real party type person.

Mr. PIERLUISI. Did you feel you were a close friend of his, of Judge Porteous?

Mr. CREELY. Did I think I was a close friend?

Mr. PIERLUISI. Yes.

Mr. CREELY. I thought he was a close friend of mine. And I thought I was a close friend of his.

Mr. PIERLUISI. You appeared on a regular basis before his court, did you not? Or—did you appear before his court while he was a judge?

Mr. CREELY. Did I appear in his court?

Mr. PIERLUISI. Yes.

Mr. CREELY. As I indicated earlier, in 20 years, I appeared in front of Judge Porteous three times. He ruled against me two out of the three times. Two cases he ruled against me were major cases, one in—when he was on the district case, the interdiction case, which doesn't even warrant talking about. A freshman in law school could have won that case.

The case in Federal court was a removal action. It was originally filed in state court. The defendants removed it to Federal court on a motion to quash a discovery request under a very specific Federal statute. Without calling anybody, he read the papers that were filed by the defendant, granted their TRO. We had a conference by telephone. His response was, "I have read the pleadings. You can make"—and we immediately filed pleadings. "I have read the pleadings. You can come argue your motion; you will lose."

That was his basic—with all counsel on the telephone, I requested a record be made. I made a record. And he did just what he told me he was going to do over the telephone, ruled against me.

I had to get relief in the form of a reversal from the United States Fifth Circuit Court of Appeals, which took me a year, and it cost—basically, I guess you could say, we lost the case. I mean, it was—it was a year away from resolution at that point in time.

So, yes, I had three cases in front of him in 20 years.

Mr. PIERLUISI. Did you feel that your friendship was—that your friendship was an issue at any point in time where you appeared before him?

Mr. CREELY. Absolutely not. Judge Porteous did not—didn't—if he wanted to do me a favor, he would have granted my motion on my request to test the solvency of the surety. He did not. If he wanted to do me a favor, he would have denied motion that the plaintiffs—the defendants had in the Federal court case requesting that I not be allowed to get the discovery. He did not. He did me no favors while he was on the bench.

Mr. PIERLUISI. Did any of the parties involved in these three cases you are mentioning knew the extent of your friendship with the judge at the time?

Mr. CREELY. No.

Mr. PIERLUISI. No?

Mr. CREELY. No.

Mr. PIERLUISI. Did you feel that you had to disclose that at any point in time?

Mr. CREELY. Well, I tried a jury trial. I don't know what our relationship back when the jury trial—I don't even know the year, so I tried a jury trial. The jury made the decision in that case, not the judge, the jury. There is a stark group of jury charges that he hands out, that all the judges do. The jury made the ruling. Post-trial motions, he ruled against me, ruled against me.

Mr. PIERLUISI. Well, you are a lawyer, and you are a trial lawyer, so you know that—that even in jury trial, a judge will be making rulings throughout the whole process, evidentiary rulings, as well as all kinds of motions he needs to deal with. You know that, don't you?

Mr. CREELY. And that case ended up in the Supreme Court, and the judgment at the trial court was affirmed by the Louisiana Supreme Court.

Mr. PIERLUISI. As a lawyer, were you concerned at any point in time about the appearance of your friendship with this judge while you were appearing before him?

Mr. CREELY. No, because I always thought that he was going to do what he was going to do. He was going to do the appropriate thing.

Mr. PIERLUISI. That is what you thought. How about other people's thoughts? Did you ever—were you ever concerned about what other people could be thinking about, in terms of your friendship with the judge you were appearing before?

Mr. CREELY. Everybody in the parish or county that we practice in was aware of our friendship, everybody. I was a very popular lawyer. He was a very popular and—and charismatic judge. Everybody knew we were friends. Everybody. I am not saying, though, every single person.

Mr. PIERLUISI. Are you then implying that, because everybody knew that you were friends, that nobody was concerned about that friendship when you were appearing before him?

Mr. CREELY. If they were concerned about it, they could have filed a motion, and it would have been re-allotted to another division, and that court could have made a ruling whether or not our friendship would interfere with it. Just because you are a judge doesn't mean that you are going to—you are going to do—do something improper. It doesn't mean you are going to rule in my favor, as he did not, and we were friends.

But I—I understand what you are saying, sir. And, I mean, do I have an obligation or does every lawyer who takes a judge to lunch, who is extremely friendly with a judge have an obligation before they try a case to say, "This guy or this woman is my friend, that I have taken this person to lunch, that I have been to Las Vegas with this person, that I have taken trips with this person"? Does every lawyer have an obligation to say, "Look, I can't—I have made the maximum amount of contributions to their campaign. I have—I have organized individuals to make maximum contributions to their campaign." Does the lawyer have an obligation to do that? It is my understanding the lawyer does not.

I didn't think I had an obligation to tell people that I took Judge Porteous to lunch, that I had a friendship with him.

Mr. PIERLUISI. Did you—did you give him anything of value while he was judging any of the three cases that you were—that you mentioned?

Mr. CREELY. If—if—if what I gave him fell within the time period of time in which he was judging those cases, the answer to that would be yes.

Mr. PIERLUISI. And did I hear you right that you—in your mind, you thought that you could give him pretty much anything, so long as—and that he was the one who had to disclose it in his ethics forms? Is that how you understood this to work?

Mr. CREELY. The——

Mr. PIERLUISI. That you could give him any gift and that it was simply his onerous or burden to report it in his ethics forms? Is that what you thought?

Mr. CREELY. My understanding of—of the law is that I can make gifts to judges as long as a gift is not for him to do something in my favor judicially. I have read the canons of judicial ethics. I have consulted council with that. And that is my understanding of the law. If—that is my understanding.

Mr. PIERLUISI. Were you concerned at any point in time about the appearance of giving a gift to a judge who is ruling on a case you are trying, sir?

Mr. CREELY. If I did—do I——

Mr. PIERLUISI. Were you ever concerned about the appearance of giving a gift to a judge who is ruling on a case that you are trying?

Mr. CREELY. Not when you—not when you know the judge is going to do what he thinks is appropriate. I—I—I didn't think he——

Mr. PIERLUISI. You were not concerned about what others could think about that, you giving a gift to a judge who is ruling on a case that you are trying?

Mr. CREELY. Counsel, I don't want—sir, I don't want to be combative in any way. I am trying to be as respectful and as cooperative as I can. And I have been every bit cooperative.

Mr. PIERLUISI. I am being—and I myself am being respectful. If I am raising the tone of my voice, it is simply because—it is because I want you to listen carefully to what I am saying. But I am being respectful. I just want an answer.

Mr. CREELY. I know you are. I just don't want to be combative. I want to answer your question in as respectfully and as honorably and as honestly as I can.

Mr. PIERLUISI. Were you ever concerned about the appearance—appearance, what others could think about you, giving gifts to a judge who is trying a case that you are—who is judging a case that you are trying, sir?

Mr. CREELY. No. I didn't—the three cases, I didn't think that that would have an effect upon his outcome, and it—it did not, in fact, have an effect on any of the cases I tried in front of him. It had a negative effect.

Mr. PIERLUISI. You had mentioned before that a motion—anybody could have filed a motion requesting his recusal in the three cases that you were mentioning, that you mentioned before. That actually happened in the *Liljeberg* case, didn't it? You know that, right? That a motion for recusal was—was filed?

Mr. CREELY. I am aware of a motion to recuse from reading all these things, yes, sir.

Mr. PIERLUISI. And—and let me ask you this. It was explored a bit by—by Congressman Cohen, but you stood to benefit from these curatorships, right? From whatever fees those curatorships generated, you stood to benefit as a partner of your firm, right?

Mr. CREELY. Yes, sir.

Mr. PIERLUISI. You did?

Mr. CREELY. I got the money.

Mr. PIERLUISI. You got the money. And the same with the fees, whatever fees could—could—the firm could earn in the *Liljeberg* case, you stood to benefit from those, didn't you?

Mr. CREELY. Absolutely.

Mr. PIERLUISI. And to the best of your knowledge, while that case was pending before Judge Porteous, you gave something of value to the judge.

Mr. CREELY. Correct.

Mr. PIERLUISI. And you knew that that case was pending?

Mr. CREELY. Yes. And if you are talking about the Las Vegas trip, opposing counsel was with us on that trip.

Mr. PIERLUISI. Did you ever feel uncomfortable when giving monies or anything of value to the judge?

Mr. CREELY. I felt put upon, and I felt—so if you can relate that to being uncomfortable, I felt—I got—I felt worn out, tired of it, yes. I felt—I got tired of being asked for money.

Mr. PIERLUISI. Did you ever consider saying no to him?

Mr. CREELY. I did say no. I told him I couldn't continue to do this, and it would—a few weeks would pass by, and he would come back.

Mr. PIERLUISI. Did you feel pressured upon?

Mr. CREELY. I am sorry, sir?

Mr. PIERLUISI. Did you feel that he was exerting pressure on you?

Mr. CREELY. I felt that he was abusing a friendship, yes. I felt pressured by it. I felt he was abusing what I thought to be a friendship. I wouldn't have done that to a friend of mine, okay? I wouldn't have done what he did to me to a friend of mine. I have not done what he did to me to anybody that I know, any—anybody that I know.

So, yes, I felt imposed upon. I felt taken advantage of. And I—I was tired of it. And I explained that to him.

Mr. PIERLUISI. And that—and all of that happened while he was a sitting judge?

Mr. CREELY. Yes, sir.

Mr. PIERLUISI. I have no further questions.

Mr. SCHIFF. Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman. And I apologize for my absence. And I am going to ask a couple of questions, and staff has provided me with some of the information that Mr. Baron was able to go over as he made his presentation. And I apologize if I repeat some of it. I just want to make sure that it was said and stated, because it forms some of the basis for the questions that I ask.

Mr. Creely, quite simply, did Judge Porteous use his position as a United States district trial judge to make requests of you for money?

Mr. CREELY. Did he use his——

Mr. GONZALEZ. Did he use his position as a sitting U.S. judge——

Mr. CREELY. He used——

Mr. GONZALEZ [continuing]. To make a request of you for money?

Mr. CREELY. No. He used the same thing that he used in state court, friendship. My—and he didn't request money from me. If it is the incident you are talking about on the boat, he didn't make a request of me. I wasn't on that trip. I wasn't with them.

Mr. GONZALEZ. Okay, Mr. Creely, I didn't ask you—you never responded to any of the requests in paid money to Judge Porteous because of his position as a sitting U.S. judge, is that correct?

Mr. CREELY. Absolutely not. There was nothing—other than that one case I told you about that I had in front of him, his requests were from a friend to me——

Mr. GONZALEZ. All right.

Mr. CREELY [continuing]. Telling me he needed money.

Mr. GONZALEZ. Well, and then that is—I want to go to the next area, and that is this friendship. We all understand friendship. So let me ask you. If a friend in need, would there have been any other manner to have assisted Judge Porteous? Co-signer on a note? I mean, there are different ways, if you want to help a friend, than direct payment——

Mr. CREELY. Yes, that——

Mr. GONZALEZ. I mean, cash?

Mr. CREELY. There would have been a lot of things. And—and——

Mr. GONZALEZ. But you didn't do that.

Mr. CREELY. Being 45 years old, when you look back over your life and you say, "Do I wish I would have gotten six or seven of his friends to come confront him and tell him to quit drinking?" Yes. Do I wish I could have done a number of other things to help him out? Yes. I didn't, okay? I had a very active practice. I continued working. And I tried to help him with—with the need that he came to me and asked—asked me to help me.

Mr. GONZALEZ. But what was available to your friend, Judge Porteous, was not available to anybody that did not enjoy the position that he had, simply meaning that he was able to appoint you, using his judicial authority, to a curatorship that resulted in payment to you. And by your own testimony—I am not going to go over it, because I think Mr. Baron went over it, there was a direct connection to your appointment, to you receiving a fee, paying taxes on it, and basically returning the money to Judge Porteous. Isn't that correct?

Mr. CREELY. A portion of the money, yes, sir.

Mr. GONZALEZ. I guess I—I am just—I don't understand the huge issue here. You are admitting that as a result of the judge's position and abilities as a Federal district judge to reward you, by appointment, you were able to receive monies that you paid back, that were the basis for the loan back to the judge. Isn't that what you just said?

Mr. CREELY. What I—I mean, if you go through this for 10 years, you know, you get very confused about things. He gave me curators. The curators went to our operating account. He asked for money. I gave him money.

Mr. GONZALEZ. And this is the portion of the testimony that was made reference earlier in a PowerPoint. This is—I believe that this is—"And so I told him I had to stop. I have got to stop doing this, all right? But he started sending curatorships over to my office, all right? And he would send like two or three at a time. And then he started calling and saying, 'I been sending you curators, you know? Can you give me the money for the curators?' I said, 'Man.' So I talked to my law partner. I said, 'Jake, you know, man, what do we do?' He says, 'Well, just go ahead and give it to him.' We decided to give him the money. We would deduct the expenses. We would pay income taxes on it."

Am I missing something here?

Mr. CREELY. No.

Mr. GONZALEZ. You identified money that was being paid to you as a result of an appointment by a Federal district judge. You identify that money as the basis for you to then turn the money back over to the judge.

Mr. CREELY. It was——

Mr. GONZALEZ. Is that not—but for Judge Porteous's position and ability to do that, would you have paid him the money?

Mr. CREELY. It was a state court judge. Yes, I would—I would have paid—I would have—I would have probably given him money because I gave him money before he gave me curators, and I gave him money——

Mr. GONZALEZ. I am only talking about the money—did you give him money after receiving payment for your services as a curator?

Mr. CREELY. Before and after.

Mr. GONZALEZ. I am just talking about after at this point. You don't see the connection there, sir? And I don't mean to be harsh or whatever. I just think we are all lawyers, that we have all been in courtrooms. We know what—how witnesses answer these questions. But when you—when two and two should add up to four, it is hard to live with an answer when you are telling me it is five.

Mr. CREELY. Sir, of course there can be a connection there, you know?

Mr. GONZALEZ. But there was a connection, Mr. Creely. That is what we are all up here to establish, in part. And I think it is indisputable there is a connection by your own testimony.

Mr. CREELY. The—the——

Mr. GONZALEZ. If I was your friend——

Mr. CREELY. The curators——

Mr. GONZALEZ [continuing]. And I owned a filling station on the corner, and you have been lending me money, because we are close, and you go fishing and hunting together, the difference is, as your friend at the filling station, I can't get some sort of compensation to you that you turn around and pay—and that a third party—and in this case, either litigants or the United States government—is paying you money to basically get back to me.

And I know what Mr. Johnson said. You know, we are looking at kickbacks and so. Nothing is ever clear. But on this one, I mean,

I think you have gone the direct link or the nexus between the appointment of a curatorship, the compensation you received that formed the basis to basically funnel the money back to the judge that appointed you.

Mr. CREELY. It was an evolution into him giving us curators and our justification of giving them back to him. I think I have testified to that three or four times in different ways. I can't remember every word of my testimony exactly as I have given it before, but that is, in essence, my testimony, sir.

Mr. GONZALEZ. Thank you very much, Mr. Creely.

I yield back, Mr. Chairman.

Mr. SCHIFF. I thank the gentleman.

Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

And thank you for your testimony, Mr. Creely. I am curious. Since this is a form of discovery here, and as an attorney, as a former judge and chief justice, I know lawyers talk. Did you ever hear from any other attorneys that they were asked to give money to the judge, either based on curatorships or otherwise?

I am sorry. I am not—is the mic on?

Mr. CREELY [continuing]. Nobody ever told me that the judge gave them curators and asked for money back.

Mr. GOHMERT. Well, how about just that they had then asked for money or donated money to the judge personally? Did you ever hear of that?

Mr. CAPITELLI. Excuse me. Could we ask the councilman to speak into the mic so we could hear a little better, too?

Mr. GOHMERT. Yes. Thank you. Did you ever hear any other attorney say that they had provided money to the judge or asked for money?

Mr. CREELY. Yes.

Mr. GOHMERT. Okay. And—and what other attorneys would that be? What other attorneys——

Mr. CREELY. Well, no, I am—you know——

Mr. GOHMERT. But you have—you don't know the names of the attorneys, but you know there was discussion in the area that other attorneys were asked for money like you had been?

Mr. CREELY. There are names of attorneys. Judge Porteous testified to that. He testified——

Mr. GOHMERT. Do you know of—yes, I—I know. We have got the testimony, but I am asking you personally, were you aware of anyone else who had indicated they had provided money to the judge outside of your firm?

Mr. CREELY. Other people have alluded to the fact that he had given his money, and I believe at least one other lawyer testified. I indicated that he gave money to the judge.

Mr. GOHMERT. And, look, I understand this has got to be very uncomfortable. You are sitting here at the table. The judge is right behind you. I understand that. But I am curious—that is got to be tough on you and your law firm when you are asked for money, particularly cash, particularly when a case is pending, and someone is sent over to get $1,000. I am just curious, how—how do you deal with that? Do you—as—is that considered a business expense,

as far as tax purposes? How—how do you deal with that? Do you just take that right out of your own pocket?

Because it sounds like a price of doing business. When you pay $1,000 cash, is that a business expense? I am asking. I really don't know.

Mr. CREELY. We paid income taxes on it. We absorbed it as income.

Mr. GOHMERT. No, I—I knew that you had. But I am talking about, once you gave money to the judge——

Mr. CREELY. I didn't give any money to the judge. I gave it to my law partner, and the judge apparently, because I was avoiding doing it, I was avoiding doing it——

Mr. GOHMERT. Oh, I see. You gave it to your law partner, and he provided it to the judge?

Mr. CREELY. He provided it, from what I understand, to the judge's secretary, because we were trying to avoid giving it to him.

Mr. GOHMERT. I see. Okay. Well, I didn't know—yes, I understood you paid tax on that. That was income to you. But then when you are asked by a judge to provide $1,000 cash, even though you give it to your partner and the partner gives it to the secretary, I didn't know if you later dealt with that as a business expense, because it certainly cost you as an attorney.

Mr. CREELY. Well, no, I didn't treat it as a business expense, no, sir.

Mr. GOHMERT. But you did feel like, when your partner asked for it—or I guess your partner felt like this is something we have got to do, because the judge has asked for it, correct?

Mr. CREELY. Well, do you want me to tell you what happened?

Mr. GOHMERT. Sure.

Mr. CREELY. All right. What happened—the way it was told to me is they went fishing, and the judge broke down on the boat. What part of the boat—I mean, I said the front one time, the back one time. It could have been in the middle. I don't know where.

The judge broke down, according to my law partner, and told him he was having problems financing, you know, I said, tuition. I was cross-examined. Wasn't it a wedding? I don't know whether it was a tuition or a wedding. The fact of the matter, the money was given, broke down, started crying, said he couldn't afford—I believe it was a wedding of his son, Timmy, some aspect of the wedding and needed help. He was embarrassed. My law partner came back from the trip and had a discussion with me about that, about how bad he felt about our friend, and asked me to—to give him $1,000. And I—I did. I cashed a check and gave him—gave him $1,000, gave my law partner $1,000.

Mr. GOHMERT. But even though that was given from the partner's standpoint to try to help a friend, you would expect that, since you gave that, that anybody in honesty who was asked if they had received anything from attorneys would have to acknowledge that he had received that, correct?

Mr. CREELY. Oh, I don't—I don't doubt that the—the judge received it, and I don't—and I don't dispute that it was—it was—it was designed to give to the judge. I don't—I don't dispute any of that.

Mr. GOHMERT. All right. All right. Thank you.

Mr. SCHIFF. At this point, Mr. Westling, if you would like, we will set the clock for 10 minutes, and you may question the witness.

Mr. WESTLING. Thank you, Mr. Chairman.

Mr. Creely, good afternoon.

Mr. CREELY. Good afternoon, sir.

Mr. WESTLING. You have been a friend of Judge Porteous's for many years. Is that correct?

Mr. CREELY. Yes.

Mr. WESTLING. When did you first meet him, if you remember?

Mr. CREELY. It is very hard to say. I may have met him in our later years of high school, definitely in 1974, while he was a lawyer at Gretna in a law firm.

Mr. WESTLING. So you knew him for years. You then practiced with him in approximately 1974. Is that correct?

Mr. CREELY. I am sorry?

Mr. WESTLING. Then you practiced with him—practiced law with him in around 1974?

Mr. CREELY. I didn't practice. I practiced out of the same office. I did primarily real estate closings during that period of time. I can't say I practiced with him, but we practiced out of the same facility. I worked for him.

Mr. WESTLING. Okay. And so you knew him for approximately 10 years before he went on to the state bench in 1984. Is that correct?

Mr. CREELY. Yes, sir.

Mr. WESTLING. And then you continue to know him to this day. That is also correct? You know him now, correct?

Mr. CREELY. Yes.

Mr. WESTLING. Okay. And so the 10 years on the state bench, when you have given testimony today regarding curatorships, that is limited to the period while he was a state judge. Is that correct?

Mr. CREELY. Correct.

Mr. WESTLING. All right. And so the curatorship situation ended in 1994, correct?

Mr. CREELY. Obviously.

Mr. WESTLING. Okay. The only time there has been ever any exchange of money between you and your partner and Judge Porteous that you are aware of while sitting as a Federal judge was in connection with this request arising from the fishing trip. Is that correct?

Mr. CREELY. That I am aware of, yes.

Mr. WESTLING. Okay. And then there was the trip to Las Vegas that you have testified about, as well.

Mr. CREELY. Make that clear, please.

Mr. WESTLING. Mr. Creely, did you ever give money to Judge Porteous because he was a judge or was it always because he was, first and foremost, your friend?

Mr. CREELY. The only reason I would give money to anybody was because they were my friend, unless it was a charitable contribution. I would not have given him money because he was a judge.

Mr. WESTLING. And—and I think you have testified, but at no time did you ever have an experience with Judge Porteous that led you to believe he was influenced by any of the money that you had given him over the years in his capacity as a judge. Is that correct?

Mr. CREELY. Obviously not. Two of the three cases I had in front of him, he ruled against me.

Mr. WESTLING. In terms of your experience with him in Federal court, you indicated there was only one case, is that right, that you appeared in front of him? Or do I have that incorrect?

Mr. CREELY. One case.

Mr. WESTLING. All right. And that didn't go so well for you. Is that right?

Mr. CREELY. It was a removal action from state court, wasn't filed in Federal court. It was removed on a Federal issue to his division by virtue of the request of a temporary restraining order by one of the defense counsel on a state court case.

Mr. WESTLING. In every situation where you gave Judge Porteous money, whether he was on the state or the Federal bench, it was typically because of your concern about his personal well-being. Is that right?

Mr. CREELY. Correct.

Mr. WESTLING. And you knew his family?

Mr. CREELY. Yes.

Mr. WESTLING. Do you all have—both have children?

Mr. CREELY. Yes.

Mr. WESTLING. Do they know one another?

Mr. CREELY. No. I have a 2-year-old and a 4-year-old child. I have a 27-year-old daughter. My 2- and 4-year-old do not know his children.

Mr. WESTLING. But your 27-year-old does?

Mr. CREELY. Yes.

Mr. WESTLING. Okay. And I take it that you practice in—in and around the city of New Orleans, where there is a very close relationship between lawyers and the bar. Is that right?

Mr. CREELY. Yes.

Mr. WESTLING. And that is true of lawyers between—both lawyers and the bench and the bar, correct?

Mr. CREELY. Correct.

Mr. WESTLING. And so it is not unusual, is it, to see lawyers out to lunch with a judge, whether in the state or the Federal court?

Mr. CREELY. It is very unusual not to see something like that going on.

Mr. WESTLING. It happens all the time?

Mr. CREELY. It happens every day.

Mr. WESTLING. And the community is well aware of it both inside the courthouse—inside the courthouse and outside the courthouse, correct?

Mr. CREELY. Is the community aware of that?

Mr. WESTLING. I mean, the—the—the legal community inside and outside the courthouse is aware that judges socialize with lawyers, correct?

Mr. CREELY. Of course.

Mr. WESTLING. All right. And you indicated that your friendship with Judge Porteous was well known to the community at large that practiced in and around both the Gretna courthouse and the Federal courthouse. Is that right?

Mr. CREELY. Yes. When we would—we would go fishing, we would take defense lawyers with us, we would take plaintiff law-

yers with us. One trip that I took with him on a hunting trip to Mexico, we took a defense lawyer from a large firm. We didn't disguise hunting and fishing. We hunted with other judges. We hunted with other lawyers. We hunted with plaintiff lawyers, defense lawyers. We hunted with business people.

And some of the other judges that we went hunting with—cases in front of them. I was always treated fairly. None of that was done to influence anybody's decision on anything or any case that I had.

Mr. WESTLING. And if you had believed that any of the money that you were asked for by Judge Porteous when he was in difficult personal circumstances was, in fact, designed to influence him, you would have told him, no, you would not give him that money. Isn't that right?

But if he had asked you—because he said, "Hey, I am a judge. You need to give me money." You would have told him no?

Mr. CREELY. No. But that never came up.

Mr. WESTLING. I understand.

Mr. CREELY. Nothing like that came up.

Mr. WESTLING. I understand.

Mr. CREELY. I did divorce work when he was on the—on the—on the district bench. I tried one jury trial. The cases that I handled, he couldn't hear while he was on the district bench. He was prevented from hearing them by court rule.

Mr. WESTLING. Well, you have testified at some length about the period of time when he was on the state bench in which the issues of curators came up. And I think what you have said is that you gave him money before and after the curators. Is that right?

Mr. CREELY. Correct.

Mr. WESTLING. And that, had he asked you for money without ever giving you a curatorship, you would have continued to give him money out of friendship. Is that right?

Mr. CREELY. Correct.

Mr. WESTLING. Right. I have no further questions, Mr. Chairman.

Mr. SCHIFF. Thank you, Counsel.

I would like to follow up on some of the points that have been raised. And I will begin where defense counsel—or—or Mr.—Judge Porteous's counsel left off. You said that you made payments to the judge before the curators, and you made payments to the judge after the curators, correct?

Please talk into the microphone.

Mr. CREELY. Yes, sir.

Mr. SCHIFF. And, of course, you made payments during the curators, correct? And you made payments during the time he was giving you the curators, right?

Mr. CREELY. Correct. Yes, sir.

Mr. SCHIFF. And did he give you curatorships all the way up and to the point he left the state bench?

Mr. CREELY. You have the records. I believe that he did.

Mr. SCHIFF. And so you testified that he continued to give you payments when the curators ended. He left the state bench for the Federal bench, correct?

Mr. CREELY. Yes, sir. Well, just—I didn't hear all of your question. He left the state bench and went to the Federal bench, yes.

Mr. SCHIFF. And you said the payments continued after the curatorships ended. Does that mean the payments continued while he was on the Federal bench?

Mr. CREELY. No, no, no. Nothing continued while he was on the federal—no curator payments went to him on the federal—while he was on the——

Mr. SCHIFF. No, I understand that no curatorships were given to you when he was on the Federal bench, because he couldn't, right?

Mr. CREELY. Right.

Mr. SCHIFF. But you have testified in answer to Mr. Westling's questions that you gave him money before he even started sending you the curatorships, and you continued giving him money when the curatorships ended, implication being you would have given him money regardless of the curatorships, correct?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. So your payments continued after the curatorships stopped is what you have testified, right?

Mr. CREELY. If you are trying to suggest that when he went to the——

Mr. SCHIFF. Please answer my question. You have testified that you continued giving him money after he stopped giving you curatorships, correct?

Mr. CREELY. If I said that, I did not give him money when he was on the Federal bench, without the exception of the $1,000 we talked about.

Mr. SCHIFF. So is it your testimony now that you stopped giving him money when he stopped sending you curatorships?

Mr. CREELY. I think the question is, did I stop giving him money when he left the state bench? That is the answer.

Mr. SCHIFF. So then your answer is, yes, when the curatorships stopped, you stopped giving him money?

Mr. CREELY. And he—we stopped making the requests, and we distanced ourselves when we got on the Federal bench because he became associated with an entirely different group of people. It was almost like—I don't know what he did. Our relationship just kind of like smoothed out when he got on the Federal bench.

Mr. SCHIFF. So your testimony, in answer to Mr. Westling's question, then, was incorrect? You did not continue the periodic payments to Judge Porteous after he stopped sending you the curatorships?

Mr. CREELY. That is correct.

Mr. SCHIFF. I just want to follow up on a couple of the questions that my colleagues asked. My colleague, Mr. Gohmert, asked you if you were aware of other attorneys having told you that they gave money to the judge. And you said that you were. You then made reference to Judge Porteous's testimony or prior statements.

I would like to follow up on my colleague's question. What other attorneys have told you that they have given money to Judge Porteous?

Mr. CREELY. You want me to give you names?

Mr. SCHIFF. Yes.

Mr. CREELY. Well, the person that—Don Gardner——

Mr. SCHIFF. Into the microphone, Mr. Creely.

Mr. CREELY. Don Gardner is the only person that I can remember. Lenny Levenson never acknowledged giving cash, but acknowledged a considerable amount of friendship and camaraderie, or whatever you want to call it with him, while this *Liljeberg* case was going on. And that is—that is it.

Mr. SCHIFF. Have any other attorneys, other than Mr. Gardner or Mr. Levenson, told you either while this was going on or after this was concluded that they had also given Judge Porteous money?

Mr. CREELY. No, not that I would remember.

Mr. SCHIFF. Have any other attorneys or anyone else with business before the bar, in the bail bonds business, attorneys, private individuals, have any other people told you that they have given Judge Porteous money?

Mr. CREELY. Not that I recall, no.

Mr. SCHIFF. Have any other people told you that they have been asked for money by Judge Porteous?

Mr. CREELY. Nobody has told me directly, but I have heard people talk about how he would impose upon them in different situations at gambling casinos and things like that.

Mr. SCHIFF. Now, by that, are you referring to people telling you that Judge Porteous asked them for other forms of financial support, as in gambling chips or something of that nature? What are you referring to?

Mr. CREELY. I don't have—have a recollection of that. I just have a recollection of other people indicating that he made—he was just improper in some of his requests from them. I don't—I don't have—have a—a specific recollection of it.

Mr. SCHIFF. And who, Mr. Creely, has indicated to you that the judge made an improper request to them?

Mr. CREELY. I am sorry?

Mr. SCHIFF. Who has made—who indicated to you that the judge made an improper request to them?

Mr. CREELY. I don't recall. It is just general conversation about him, about his—the way he acted, about the way he conducted himself, and people talking. It would be like a group of people talking.

Mr. SCHIFF. Mr. Creely, earlier, our Task Force counsel asked you about your interview with the FBI.

Mr. CREELY. About—yes.

Mr. SCHIFF. And you stated there that there were certain things that you did not tell the FBI, in terms of——

Mr. CREELY. Yes, sir.

Mr. SCHIFF [continuing]. Your relationship with the judge, the money, gambling, et cetera, correct?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. You did that because you didn't want to injure your friend's chance of taking the Federal bench, correct?

Mr. CREELY. Correct.

Mr. SCHIFF. I don't want to have the same problem here today. And I know you have a friendship with the judge you have testified about, but I want to ask you once again: Are you aware of any other attorneys than the ones you have mentioned that have either given the judge cash or been asked by the judge for cash?

Mr. CREELY. Other than my law partner—sir, I want you to know, I haven't talked to this man in—outside of running into him for judicial proceedings concerning this matter for years. I don't consider our friendship to exist anymore. I don't consider that I have a relationship with him anymore.

I mean, I don't have any reason to help him. I have been injured beyond repair because of this. I can't tell you the pain, and I can't tell you the remorse, and I can't tell you the financial hardship that this has caused me.

Mr. SCHIFF. Let——

Mr. CREELY [continuing]. Myself more——

Mr. SCHIFF. Let me ask you, Mr. Creely, about the time when you were friends. And Mr. Amato's friendship with the judge predated your own. Is that right?

Mr. CREELY. Predated mine?

Mr. SCHIFF. Yes.

Mr. CREELY. Yes.

Mr. SCHIFF. And Mr. Amato was a partner of the judge's before you were—you joined the firm?

Mr. CREELY. Yes.

Mr. SCHIFF. Now, you have testified you have had the judge over to your house. You have been over to his house, correct?

Mr. CREELY. Sorry. I am not doing—what was that again, sir? What was that one?

Mr. SCHIFF. You testified that you had the judge over to your house, you have been over to the judge's house. Is that right?

Mr. CREELY. Yes.

Mr. SCHIFF. Mr. Amato was also friends with the judge?

Mr. CREELY. Yes.

Mr. SCHIFF. Mr. Amato, you have seen at the judge's home, also?

Mr. CREELY. Well, I would have to tell you I don't know, but I can tell you my personal experience with Mr. Amato. He has been my law partner for 30-say-plus years. And he lived around the corner from my home. And out of the 30 years that I knew Mr. Amato, I believe I was invited to his house on two occasions, twice. We did not have a social relationship between our families. So I don't know if Judge Porteous was invited to his house. I don't if Judge Porteous went to his house. I can only tell you that, if you had a law partner for 30-some-odd years, you would think you would be invited to his house more than one or two times over that period of time. I know he came to my house on several occasions. But——

Mr. SCHIFF. Sir, let me get back to my question, though. My question was, did you ever see your partner, Mr. Amato, at the judge's home?

Mr. CREELY. Did I see Amato at the judge's home?

Mr. SCHIFF. Correct.

Mr. CREELY. The annual Christmas party that I think Judge Porteous had, I may have seen him there. I have no independent recollection of that. I know that we had mutual friends that had places in the country where they would have annual feasts, if I may say it, of game, food, things of that nature. I would see Jake. I would see Porteous and all of our mutual friends at those gatherings.

Mr. SCHIFF. And in the course of your 30-year partnership, you have only been to your partner's house, Mr. Amato's house, a couple times. Is that right?

Mr. CREELY. I went to Porteous's house a couple of times, yes.

Mr. SCHIFF. In your 30-year partnership with Mr. Amato, you have only been to Mr. Amato's house a couple of times?

Mr. CREELY. Yes, but not very many. It may have been three, but I have not visited his home on a regular basis. It was very infrequent and——

Mr. SCHIFF. And during the times that—the infrequent times you visited Mr. Amato at his home, was Judge Porteous ever present?

Mr. CREELY. No. Judge—I have never seen Judge Porteous at Amato's house.

Mr. SCHIFF. And to your knowledge, has Judge Porteous ever been to Mr. Amato's house?

Mr. CREELY. Been to where?

Mr. SCHIFF. To your knowledge, has Judge Porteous ever been to Mr. Amato's home?

Mr. CREELY. I would be guessing. To my knowledge, no.

Mr. SCHIFF. Now, you mentioned in your testimony that you stood nothing to benefit by virtue of your relationship with Judge Porteous. That was the kind of gist of your testimony, wasn't it? Was it the gist of your—is it the gist of your testimony, Mr. Creely, that you stood nothing to benefit from your relationship with Judge Porteous, by virtue of his being a judge?

Mr. CREELY. I got no benefit?

Mr. SCHIFF. Was that—is that your testimony, Mr. Creely?

Mr. CREELY. I got no benefit from him being a judge. I got no benefit at all from him being a judge.

Mr. SCHIFF. Now, at the same time, Mr. Creely, you and your partner divided the proceeds of the firm pretty evenly?

Mr. CREELY. Yes, sir. We divided proceeds from the firm, if that was your question.

Mr. SCHIFF. Yes. You divided them fairly evenly? Do you divide the proceeds of the firm evenly between yourself and Mr. Amato?

Mr. CREELY. Yes, sir. Yes. He may have gotten a little more, but yes.

Mr. SCHIFF. And do you know why Mr. Amato, your partner, was brought into the *Liljeberg* case only 6 weeks before trial?

Mr. CREELY. Do I know that? I don't know that.

Mr. SCHIFF. Mr. Creely, wasn't he brought in because of his and your friendship with the judge?

Mr. CREELY. Weren't brought in from our friendship, because I didn't know the Liljebergs from anything. It was a group of lawyers that were brought into that case. And I don't—I didn't know the Liljebergs from anybody.

Mr. SCHIFF. So it wasn't based on your firm's long representation of the Liljebergs?

Mr. CREELY. No, I didn't know who the Liljebergs were. I may have met the Liljebergs one or two times during the course of the entire relationship. The meetings on *Liljeberg* weren't held at Amato and Creely. The business records and things weren't held at Amato and Creely.

Mr. SCHIFF. But the legal community understood your relationship and Mr. Amato's relationship with Judge Porteous, right?

Mr. CREELY. Correct.

Mr. SCHIFF. Isn't that why you were brought into this case by this company, Liljeberg, that you knew nothing about, 6 weeks before trial?

Mr. CREELY. That is an answer that you want me to say yes to?

Mr. SCHIFF. I want you to give us the truth, Mr. Creely.

Mr. CREELY. I am trying to be truthful, okay? That may very well have been the reason why he was brought in. Maybe the Liljeberg family thought that they could get an advantage by somebody who knew the judge. I had no—I was not privy to any of those discussions. I was not privy to signing up the contract. I don't even know what the contract reads, have no idea.

Mr. SCHIFF. Mr. Creely, given the amounts of money that were involved in the *Liljeberg* case, were you aware that if the Liljebergs prevailed, as they did in the district court before Judge Porteous, that you and your partner stood to make between $500,000 to $1 million?

Mr. CREELY. Whatever the percentages were, I had no idea what the judgment was going to be. I didn't know what the judgment, from what I read, was. And I think we had a 6 percent—I think—I don't know. I haven't seen the contract. I think the contract gave us 6 percent of the gross fee if we won, but I had no idea if we were going to win, two, whether the court of appeals was going to affirm any award.

But whatever we—whatever award was going to be rendered, or whatever award we would get, we would get money off of it, yes. I was aware of that.

Mr. SCHIFF. And during the pendency of this case, where your firm stood to earn between $500,000 to $1 million, the judge asked you for $2,500 in cash, and you and your partner gave it to him, right?

Mr. CREELY. My recollection, it was $2,000 in cash. And, yes, I did give it to him. I gave him my portion of it. I gave to Jake who gave it to him.

Mr. SCHIFF. Now, you testified earlier that something along the lines that the district court judgment, Judge Porteous's decision in that case, really didn't matter because the case would be appealed. Is that your testimony?

Mr. CREELY. My testimony is—my experience is, every major case that I have had ends up in the court of appeals, unless it is settled. And if it is legal issues, most of the time, they end up in the court of appeals.

Mr. SCHIFF. Are you trying to suggest to us, Mr. Creely, that somehow the district court decision really makes no difference to you or your clients, whether the judge rules for you, against you?

Mr. CREELY. The district court decision makes a lot of difference, because the law is what the law is, that if the district court interprets the law in a particular inappropriate fashion, it is always corrected by the court of appeal. If the district court misapplies facts to cases or makes factual—makes manifestly erroneous factual findings, the court of appeals always corrects that, just like the

case I had with him. He was totally wrong on the law, and the court of appeal corrected him.

I don't know what the legal issues were in this case, but the court of appeal—that is why—the Fifth Circuit Court of Appeals is a very sophisticated court, from what I understand it.

Mr. SCHIFF. Mr. Creely, is there a reason why you want to suggest that a trial judge's decision is of no consequence to your client in a multi-million-dollar litigation? Is there a reason you want to make that suggestion here today?

Mr. CREELY. Of course a decision had consequences from the trial court judge. Who wants to go up losing? Who wants to go to the court of appeals losing a case? I don't——

Mr. SCHIFF. Well, and more than that, doesn't the trial court decision have an impact on the settlement value of the case?

Mr. CREELY. The judge's ruling?

Mr. SCHIFF. Doesn't that have an impact on the settlement value of the case?

Mr. CREELY. I am sure it would have an impact on the settlement value of the case. If you were awarded $10,000, it wouldn't—it would be much more settling. If he awarded a lot of money, it would impact settlement. But from what I understand subsequent to all of this, there was no real settlement discussions that took place among settling this case.

Mr. SCHIFF. Mr. Creely, I want to ask you one last question, and then I will turn it over to my colleagues. You testified a couple times that you tried to avoid giving the judge money. You tried to go out of your way to avoid being put in a position of being asked for money. Why was that difficult? Why couldn't you avoid him? Where would you see him when he asked you for money?

Mr. CREELY. You name it. I mean, anywhere. I mean, we could have been at lunch. We could have been—I could have been at the courthouse. I could have been walking down the street.

Mr. SCHIFF. Were there times, Mr. Creely, that he asked you for money while you were in the courthouse?

Mr. CREELY. No, you are asking to me an estimation. I am——

Mr. SCHIFF. No, Mr. Creely, I am not asking you to make estimations. I am asking you, did Judge Porteous ever ask you for money while you were in the courthouse?

Mr. CREELY. He could have. I don't know. He—you know, we went out together. We had lunch together. He could have asked me for money anywhere.

Mr. SCHIFF. Mr. Creely, nothing compelled you to take him out to lunch, right?

Mr. CREELY. Of course not.

Mr. SCHIFF. But you did, as a result of being an attorney, have to appear in the courthouse, didn't you?

Mr. CREELY. Yes, sir, I appeared in the courthouse. I didn't practice law in front of him for 10 years.

Mr. SCHIFF. Mr. Creely, my question is, as a lawyer, you had to go to the courthouse periodically, whether you were in his court or not, didn't you?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. And as he was in the courthouse, did it make it difficult for you to avoid him completely because your business took you to the same building?

Mr. CREELY. The question is, I had to go to the courthouse?

Mr. SCHIFF. The question is, you said you wanted to avoid him. Was that difficult because you had to work in the same building?

Mr. CREELY. We worked in the same building.

Mr. SCHIFF. Do we need to repeat the question, Mr. Creely? You said you were trying to avoid the judge because he kept hitting you up for money.

Mr. CREELY. Right.

Mr. SCHIFF. Was it difficult to avoid the judge completely because you had to practice in the same courthouse?

Mr. CREELY. It was—yes, because this was the courthouse that he practiced law in, which was the Gretna courthouse. This was the hearing—this was the courthouse where they handled divorce cases. It was in a different building, all right?

The domestic relations section of the court was in a different building than the courthouse that Judge Porteous practiced law in. So you would—you would go to this building for relief on divorce cases. I believe back in the 1980's, if you disagreed with rulings and hearing officers and so forth, you would have a trial in this building.

Mr. SCHIFF. Mr. Creely, I am sorry, but the court reporter and the transcript won't reflect what cup you are pointing to for a building. Let me just ask you very simply: Did your work as a lawyer take you into the same building where Judge Porteous either had his chambers or the courtroom in which he appeared?

Mr. CREELY. Yes.

Mr. SCHIFF. And when you would meet the judge for lunch, would you meet him in his chambers prior to going to lunch?

Mr. CREELY. While we were in the courthouse?

Mr. SCHIFF. When you would meet Judge Porteous for lunch, did you meet him in his chambers on occasion and then go from his chambers to lunch?

Mr. CREELY. There is a possibility, yes.

Mr. SCHIFF. In the microphone, Mr. Creely.

Mr. CREELY. There is a possibility, yes.

Mr. SCHIFF. And is it also a possibility that, while in his chambers before going to lunch, that he requested money from you?

Mr. CREELY. There is a possibility, yes.

Mr. SCHIFF. Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I don't believe any on our side have any additional questions of this witness. Thank you.

Mr. SCHIFF. At this point, Mr. Creely's testimony having concluded, we will recess for lunch and return in 45 minutes. Will that—in 45 minutes.

We are in recess.

[Recess.]

[redacted]

Mr. SCHIFF. Our second witness today is Jacob Amato, Esquire. Mr. Amato is an attorney with a law practice in the New Orleans area. He is here pursuant to subpoena and has previously been served with an immunity order that compels his truthful testimony at proceedings before the House. I will now swear the witness.

Mr. Amato, please raise your right hand. I don't know if you are able to rise.

[Witness sworn.]

Mr. SCHIFF. Thank you. You may be seated.

Mr. Dubester, you may now question the witness.

000440(b)

Mr. DUBESTER. Okay—please introduce yourself to the Members of the panel.

Okay. Will you just—I am sorry. Okay.

And, Mr. Amato, are you an attorney?

TESTIMONY OF JACOB AMATO, JR., ATTORNEY, NEW ORLEANS, LA

Mr. AMATO. Yes, I am.

Mr. DUBESTER. And where do you practice?

Mr. AMATO. Gretna, Louisiana.

Mr. DUBESTER. And what parish is that?

Mr. AMATO. Jefferson Parish.

Mr. DUBESTER. And do you have offices which are right near the courthouse there?

Mr. AMATO. Yes, right across the street from the Gretna courthouse.

Mr. DUBESTER. Okay. Now, in the early 1970's, were you a partner with Judge Porteous?

Mr. AMATO. Yes, I was.

Mr. DUBESTER. And did Mr. Creely work for you?

Mr. AMATO. That is true. Mr. Creely did work for the law firm that—Edwards, Porteous and Amato, while he was in law school.

Mr. DUBESTER. And are you older than Mr. Creely?

Mr. AMATO. Yes, sir.

Mr. DUBESTER. And were you a peer of Judge Porteous's at law school?

Mr. AMATO. I think I am older than he is. In fact, I know I am older than he is, but I don't know. We didn't—we went—he went to LSU, and I went to Loyola, so I didn't meet him until after law school.

Mr. DUBESTER. But in any event, Creely is junior to the two of you, correct?

Mr. AMATO. Correct.

Mr. DUBESTER. And you had a relationship with Judge Porteous as a friend before Mr. Creely came and joined the practice, right?

Mr. AMATO. Correct.

Mr. DUBESTER. Okay. Now, at some point, you and Mr. Creely formed your own practice. Is that right?

Mr. AMATO. Correct.

Mr. DUBESTER. Now, in the—starting with 1984, Judge Porteous was elected state judge. Is that correct?

Mr. AMATO. I think that is correct. I don't know the exact date. It is——

Mr. DUBESTER. And you maintained a friendship with him while he was a state judge?

Mr. AMATO. Yes.

Mr. DUBESTER. Okay. Now, at some point in the—did you become aware that Judge Porteous was making requests of Mr. Creely for cash?

Mr. AMATO. At some point, yes.

Mr. DUBESTER. And how did you become aware of that?

Mr. AMATO. Mr. Creely came to me one day and said that Tom—or Judge Porteous asked him for some money based upon sending curatorships.

Mr. DUBESTER. Okay. Now, if you want to call everybody Tom and Bob, just because it is what you would refer to them, you just go ahead and do that. We will understand who you are referring to.

Mr. AMATO. I ought to be polite to everybody.

Mr. DUBESTER. Understood. Okay. And after this information or this communication came to you from Mr. Creely, what did you understand—what happened next, in terms of the request to Mr. Creely and the provision of monies to Judge Porteous?

Mr. AMATO. Well, I never got a request from Judge Porteous ever as for any percentage of the curatorships. Bob would tell me Judge Porteous needs, you know, $500, $1,000, whatever it is for the curatorships, and we would each draw a check for whatever half the amount that he requested.

Mr. DUBESTER. And you are making a reference to Bob needing money for the curatorships, so the request coming from the curatorships. What are you referring to?

Mr. AMATO. Well, the judges can send curator cases to various lawyers, and they do for various reasons, usually to help out young lawyers with fees and sometimes for—you know, for their own personal reasons. You know, you might have worked in their campaign or some campaign contributions or something. And Judge Porteous sent curator cases to Bob Creely and at some point asked that he be—receive some of that money.

Mr. DUBESTER. Okay. Now, the money that went to Judge Porteous that you have just described, did they come—was that Bob's money, or your money, or both of your money?

Mr. AMATO. It was our money.

Mr. DUBESTER. And how did that process work, in terms of it being both your money?

Mr. AMATO. Well, we each drew a salary, and we each—you know, a regular salary. And we also took draws. You know, if we had money this month, we took a little extra money. And when it was time to give Judge Porteous curator money, that the bookkeeper would write checks, $500 to me, $500 to Bob, checks would be cashed, and then some sort of way or another, Judge Porteous would receive the money.

Mr. DUBESTER. Okay. Did you personally give Judge Porteous the cash?

Mr. AMATO. I really—I am sure I had. I can't be positive when—how much, but I really can't—I can't answer that.

Mr. DUBESTER. Okay. Now, even though the requests were coming from Judge Porteous to Bob Creely, is there any question in your mind that Judge Porteous understood that the money going back to him including—it was money from you, as well as Bob?

Mr. AMATO. Of course. We owned our own office building. We had checks. We had business cards. We filed pleadings and, you know, Amato and Creely, a professional law corporation.

Mr. DUBESTER. Did you own real estate together?

Mr. AMATO. Yes.

Mr. DUBESTER. And the name on your—did you have a name on the building?

Mr. AMATO. We had our name on the building. We didn't have a big building name that said the Amato and Creely Building, but we had our——

Mr. DUBESTER. Okay.

Mr. AMATO [continuing]. Our office name on it.

Mr. DUBESTER. You have been asked several times, I think, in different contexts if you have a sense of how much money you gave—the two of you gave back to Judge Porteous. Do you have any sense?

Mr. AMATO. I would have to say over $10,000, but how much over, I don't know. But I don't think it was over $20,000. I just don't know.

Mr. DUBESTER. Okay.

Mr. AMATO. I never had a finger on it. I never fooled with it.

Mr. DUBESTER. Okay. But no—and also, most of that was being handled by Mr. Creely, correct?

Mr. AMATO. Yes.

Mr. DUBESTER. Okay. Mr. Creely has estimated—if others have estimated it to be at least $20,000, you don't dispute that, do you?

Mr. AMATO. No, I can't—I have no way to refute it.

Mr. DUBESTER. Okay. Now, did you feel you had a choice but to give Judge Porteous this money?

Mr. AMATO. Yes, I think we had a choice, but I just wasn't strong enough to put an end to it. To put an end to it, I would have to break up my law partnership and break up a friendship that I have had over a number of years with Judge Porteous, and I wasn't strong enough.

Mr. DUBESTER. Okay. Now, after Judge Porteous became a Federal judge, did you contribute to a party in his honor?

Mr. AMATO. Yes. They had a—like a reception after he was sworn in and some sort of way, and I don't know how we paid for a part of it or all of it. I am not sure.

Mr. DUBESTER. Was that at the Jefferson Hotel?

Mr. AMATO. The Jefferson Orleans. It is a banquet hall.

Mr. DUBESTER. Okay. I want to go up until 1996 now. Were you retained as one of the attorneys to represent the Liljebergs?

Mr. AMATO. I was.

Mr. DUBESTER. And was that shortly before trial was scheduled in that case?

Mr. AMATO. Not that I know of. I—that doesn't ring true, because I know I worked on it for 18 months to 2 years before it ever went to trial.

Mr. DUBESTER. Okay. It turns out trial was postponed, but do you recall when you were first retained to—or, sorry, first engaged—or first entered your appearance, rather, that that was just a few weeks before the trial date that was presently set at that time?

Mr. AMATO. I don't have any recollection of that.

Mr. DUBESTER. Okay. What was your fee arrangement with the Liljebergs?

Mr. AMATO [continuing]. Contingency fee, that I was to receive 8 percent of the gross recovery.

Mr. DUBESTER. Do you remember what your personal contingency fee was?

Mr. AMATO. Eight percent.

Mr. DUBESTER. And do you remember what Mr. Levenson's was?

Mr. AMATO. I thought it was something less than that, at 4 percent or 5 percent. I don't know. I mean, I never have negotiated or had anything to do with how—who hired Mr. Levenson.

Mr. DUBESTER. If your side had prevailed, would any fee that you received have been split with Mr. Creely?

Mr. AMATO. Of course.

Mr. DUBESTER. Okay. By the way, were you like full 50/50 partners——

Mr. AMATO. Yes.

Mr. DUBESTER [continuing]. In both expenses and income, correct?

Mr. AMATO. Yes, and at the bank, too, when you sign the notes.

Mr. DUBESTER. Okay. Now, understanding that there is a huge demand at the—in terms of what the sides are asking for, what did you realistically expect to be the range of what you could have hoped to have made if your client were successful in that case. What was that case worth to you?

Mr. AMATO. Probably somewhere between $500,000 and $800,000, but you also have to understand that I worked 2 solid years and took no other cases in order to prepare that case.

Mr. DUBESTER. Okay. So that case was exceptionally important to you?

Mr. AMATO. Of course.

Mr. DUBESTER. Now, do you recall that other side, Mr. Mole, filed a motion to recuse Judge Porteous after you and Mr. Levenson entered your appearance?

Mr. AMATO. I recall that there was a motion to recuse filed, yes.

Mr. DUBESTER. Do you recall who prepared the response for the Liljebergs?

Mr. AMATO. I didn't. I don't know who prepared it. Usually, those are prepared by Ken Fonte.

Mr. DUBESTER. Okay. And that is F-o-n-t-e, Mr. Fonte?

Mr. AMATO. Yes.

Mr. DUBESTER. And do you recall that Mr. Levenson actually ended up signing that pleading?

Mr. AMATO. I don't know. I don't know who signed it. I don't think I did, but I—it could well have been——

Mr. DUBESTER. As you sit here now, what do you recall the allegation that was made by Lifemark as part of its argument to seek the recusal of Judge Porteous?

Mr. AMATO. The friendship between myself and Mr. Levenson and Judge Porteous and that we had given him campaign contributions and that we had been—he might have alleged that we were law partners at one time. He also alleged that we had—that they had a function called Justice For All, where all the judges in Jefferson Parish got together and had one mass campaign fund, raising campaign funds for elections.

Mr. DUBESTER. I am going to cut you off. I understand—I don't think we need to go into detail with that particular aspect of the allegation. You have described generally what the substance was.

Now, was there actually a hearing in front of Judge Porteous where the Lifemarks—or Mr. Mole's motion to recuse was argued?

Mr. AMATO. I am sure there was.

Mr. DUBESTER. Do you recall that?

Mr. AMATO. In 40 years of practicing law, I can't recall every court appearance I made. I probably was there.

Mr. DUBESTER. Okay. Now, in connection with the motion to recuse, do you recall whether or not—and I guess—let me complete my thought here. Do you recall whether or not you made any disclosure to Mr. Mole that, while Judge Porteous was a state judge, you and your partner had given him tens of thousands of dollars?

Mr. AMATO. No.

Mr. DUBESTER. And to your knowledge, did Judge Porteous make that disclosure?

Mr. AMATO. Not that I know of.

Mr. DUBESTER. And wasn't that a material fact that would have been relevant to Joseph Mole and Lifemark?

Mr. AMATO. Yes.

Mr. DUBESTER. And why is it that you did not make any such disclosure as part of the *Liljeberg* recusal litigation?

Mr. AMATO. Because I probably made the biggest mistake of my career.

Mr. DUBESTER. And can you elaborate on that?

Mr. AMATO. That is why I am here.

Mr. DUBESTER. Okay.

Mr. AMATO. If he would have recused himself, I would be in Gretna today practicing law.

Mr. DUBESTER. So you don't dispute that that was important information which should have been disclosed, correct?

Mr. AMATO. At this time, no, I do not dispute that.

Mr. DUBESTER. No, in terms of what your mindset was at the time, you were not about to make a disclosure like that because you knew it would be embarrassing for Judge Porteous, correct?

Mr. AMATO. Absolutely.

Mr. DUBESTER. And you were not about to say anything or make any disclosure which would have embarrassed him and your—as a judge on the Federal bench, correct?

Mr. AMATO. That is correct. And as my friend.

Mr. DUBESTER. Did you consider the issue as to the disclosure of your financial relationship at the most basic level to be that of Judge Porteous.

Mr. AMATO. I am sorry. Would you give me that again?

Mr. DUBESTER. Okay. You indicated you weren't going to make that disclosure, but in your mind, were you staying silent because you were going to follow the lead of Judge Porteous to see what he was willing to disclose or would disclose at the hearing?

Mr. AMATO. Yes.

Mr. DUBESTER. Okay. Now, the trial was subsequently held in June or July 1997. Does that sound right to you?

Mr. AMATO. It seems like it lasted 2 months, 3 months.

Mr. DUBESTER. Okay.

Mr. AMATO. I don't know if it was '97 or—I just don't recall.

Mr. DUBESTER. Okay. Fair enough. After the trial, did you continue to take Judge Porteous to lunch on a regular basis?

Mr. AMATO. Judge Porteous and I have been eating lunch together for—since we have known each other, yes.

Mr. DUBESTER. Okay. And some of them, for lack of a better phrase, involved you eating well at Ruth's Chris Steak House, the Beef Connection, Andrea's, Emeril's, and so forth, correct?

Mr. AMATO. Yes, we had a nice—we had a good time.

Mr. DUBESTER. By the way, it was a non-jury trial that was held in the *Liljeberg* case. Is that right?

Mr. AMATO. Correct.

Mr. DUBESTER. And the gap—the point in time I am talking about is after trial and before Judge Porteous rendered his verdict. So I am talking about roughly summer of 1997 to April of 2000, and that is the period that you have just testified that, as part of your whole life, you took him to restaurants that we have just mentioned, correct?

Mr. AMATO. Right.

Mr. DUBESTER. And, oh, by the way, you have taken him to restaurants hundreds of times in your life, fair enough?

Mr. AMATO. Yes.

Mr. DUBESTER. And how many times has he paid?

Mr. AMATO. I know he is—I know I have gone to lunch where I didn't pay, but I do recall him buying lunch at least on one occasion.

Mr. DUBESTER. Okay. Now, at some point—and it has been identified at least by another witness as being in 1999—do you recall being asked to make a contribution to Judge Porteous's son's externship, some sort of educational activity in Washington, D.C.?

Mr. AMATO. Yes.

Mr. DUBESTER. What do you recall about that?

Mr. AMATO. I recall that some sort of—and I don't know the information got to me, but that one of his children were coming to Washington to extern, I think, for Senator Breaux, and they were looking for contributions to defray the cost.

Mr. DUBESTER. And did you give a couple hundred dollars, do you think?

Mr. AMATO. Yes. Yes, I did.

Mr. DUBESTER. Would that have—would that request have come from Judge Porteous or from—or his secretary, Rhonda, if you recall?

Mr. AMATO. Not from Judge Porteous. I don't know who it came from. Not from Rhonda, but——

Mr. DUBESTER. Okay. Now, on June 29th of 1999, did you go on a fishing trip?

Mr. AMATO. Yes.

Mr. DUBESTER. And you reviewed your calendar in connection with your deposition, and you recall that your calendar reflects that fishing trip to have been on the day I just mentioned, correct?

Mr. AMATO. Yes, I am pretty sure that is the date, yes.

Mr. DUBESTER. Okay. And describe the fishing trip and describe what happened on that trip.

Mr. AMATO. It was a weekday, and a friend of mine has a fairly large boat, and we were going to Caminada Pass, which is the pass at Grand Isle, and at certain times of the year, the fish run between the Gulf of Mexico and the marsh. And the fish just at night, they bubble up. They come to the surface, and it is a free-for-all.

So we went fishing that night. Judge Porteous was drinking. We were standing on the front of the boat, the two of us, and he was—I don't know how to put it. He was really upset. He was—had a few drinks. He said, "My son's wedding was more than I anticipated. The girl's family can't afford it. I invited too many guests." Would I lend him, give him, provide him, however you want to call it, something, like $2,500, to pay for part of the wedding or the after-rehearsal party of something?

And I felt compelled, based upon, one, his condition and our friendship that—that is what I would do.

Mr. DUBESTER. And did—and did you do that?

Mr. AMATO. Yes.

Mr. DUBESTER. Basically, he was saying he couldn't meet his financial condition and he was coming to you.

Mr. AMATO. Well, I wouldn't imagine he would come to me unless he couldn't meet—if he could meet his financial obligations, he wouldn't have come to me.

Mr. DUBESTER. Was that a surprise, that event?

Mr. AMATO. The first time he ever asked me for money, the last time he ever asked me for money, the last time we ever—the only time we ever discussed money, and that is the reason I was able to remember it.

Mr. DUBESTER. Okay.

Mr. AMATO. Because never was our relationship one where we talked about, "Give me this, and I will do that."

Mr. DUBESTER. Did you, in fact—what—sorry, what, if anything, did you do as a result of that conversation?

Mr. AMATO. At some point within the next few days, a week, you know, I got him $2,000 or $2,500. I don't recall how—did I pick—did I pick him up and go to lunch and we—I gave him the money? Or Rhonda came, Rhonda Danos, his secretary came and picked it up? I just don't know.

Mr. DUBESTER. And was that half your money and half Creely's money?

Mr. AMATO. I can't tell. I had some cash at my house, and I think I used the cash at my house.

Mr. DUBESTER. Because Creely recalls that—sorry, Bob Creely—Mr. Creely recalls that he paid half of that. That is not inconsistent with your memory either, is it?

Mr. AMATO. If he said he paid half?

Mr. DUBESTER. Yes.

Mr. AMATO. Then he paid half.

Mr. DUBESTER. And just one more—one more question here. In the fall of 1999, do you recall paying for a 5-year party—or a party to celebrate Judge Porteous's 5 years on the bench?

Mr. AMATO. Yes, I do.

Mr. DUBESTER. Roughly how much was that?

Mr. AMATO. I think it was $1,700.

Mr. DUBESTER. And where was that, if you recall?

Mr. AMATO. French Quarter in French Quarter Restaurant and Bar on Decatur, right across from the Morning Call.

Mr. DUBESTER. That concludes my questions. Thank you, Mr. Amato.

Mr. AMATO. Thank you, Mr. Dubester.

Mr. SCHIFF. Mr. Amato, I am going to ask you a few questions, and then my colleagues are, and then Mr. Westling and counsel for Judge Porteous will have a chance to ask you a few questions.

I wanted to pick off—pick up where my colleague left off. You started to say when you were asked for cash—or asked for money by Judge Porteous on this fishing trip that you felt compelled to give it to him. And you said, number one, he was in need and he was my friend.

Mr. AMATO. Right.

Mr. SCHIFF. Was there a number two, Mr. Amato? Was there another reason you felt compelled to give him money?

Mr. AMATO. I felt sorry for him. I really did. You know, it is tough to see somebody, you know, almost to the point of tears, you know, to do something for his children, which I suspected was the reason for the emotional outlay he had.

Mr. SCHIFF. What affect would it have had on your relationship with Judge Porteous if you had said no, if you had said, "You are presiding over a case that is under submission, and I can't give you cash"? What would have been the impact on your relationship?

Mr. AMATO. Probably none. It would remain the same.

Mr. SCHIFF. Did you have any concern about the fact that you had litigation pending in his courtroom?

Mr. AMATO. I do now. At the time, I didn't give it much thought.

Mr. SCHIFF. When the recusal motion was brought, Judge Porteous made a number of statements in court I would like to ask you about. At one point during the hearing on a motion to recuse, he said, "The first time I ran, 1984, I think is the only time when they gave me money." Was that a truthful statement?

Mr. AMATO. I don't recall the statement, but I don't know the context. I think the context might have been—that was when the first time he ran and the first time he collected money for campaign contributions. I—that is the best I can do.

Mr. SCHIFF. If Judge Porteous represented at the hearing that the only time he had gotten money from you or Mr. Levenson was in 1984, would that have been a truthful statement?

Mr. AMATO. In 1994?

Mr. SCHIFF. If, during the recusal hearing——

Mr. AMATO. Oh, okay. I am sorry.

Mr. SCHIFF.—Judge—if Judge Porteous represented at the recusal hearing that the only time he had gotten money from you or Mr. Levenson was in 1984, would that have been a truthful statement?

Mr. AMATO. No, that wouldn't have been true.

Mr. SCHIFF. Now, if it came up in the context of a discussion of whether he had received campaign contributions, would it have been misleading for him to say that he had not gotten money, except in 1984, and not disclose the fact he had been getting personal cash for years?

Mr. AMATO. Yes.

Mr. SCHIFF. During the latter part of the recusal hearing, Judge Porteous said, "You haven't offended me, but don't misstate." He is saying this to Mr. Mole, representing the other party, "But don't misstate—don't come up with a document that clearly shows well in excess of $6,700 with some innuendo, that that means that they

gave that money to me. If you would have checked your homework, you would have found that that was a Justice for All program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers."

In light of the fact that he had been receiving thousands of dollars from you, wasn't that a misleading statement?

Mr. AMATO. Probably, because I—again, Mr. Schiff, I don't know if he was referring to the Justice for All collection or something different.

Mr. SCHIFF. Well, if the judge was taking issue with the opposing counsel for suggesting that you had given him money that, in fact, went for a different program, at the same time had, in fact, received thousands of dollars from you, wouldn't it be misleading to the court not to reveal that?

Mr. AMATO. Yes.

Mr. SCHIFF. And wouldn't it be misleading to the court to take issue with counsel for not doing their homework, when the court did not disclose that they had received thousands of dollars from you?

Mr. AMATO. Yes.

Mr. SCHIFF. The judge also said during that hearing, "I have always taken the position that if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off." Given the fact that he did not notify counsel and did not give them the opportunity to ask him to get off, wasn't that a misleading statement by the judge?

Mr. AMATO. Yes.

Mr. SCHIFF. Mr. Amato, are you aware of any other attorneys other than yourself and Mr. Creely who gave cash or other things of value to Judge Porteous?

Mr. AMATO. Not firsthand, no.

Mr. SCHIFF. Have you had other attorneys tell you that they—either they were asked for cash or they know of other parties who gave money to the judge?

Mr. AMATO. No.

Mr. SCHIFF. In discussing the curatorships, a couple times you made reference—you said the judge would ask for some of that money, referring to the curatorship money. Was there ever any doubt in your mind that what the judge was asking for, once he started the curators, sending curators to your office, was part of the money for the curatorships back to him?

Mr. AMATO. Yes.

Mr. SCHIFF. Yes there was a doubt or—my question is, was there ever any doubt in your mind that what he was asking for during the period he was sending you curatorships was part of the money he was sending you for the curatorships?

Mr. AMATO. No, no doubt.

Mr. SCHIFF. And I think, when my colleague asked you about how often or when you gave money directly to Judge Porteous, you said you couldn't recall how often or when. Without asking you the specific dates or even number of times, do you recall that on several occasions you, in fact, gave cash to Judge Porteous?

Mr. AMATO. Yes.

Mr. SCHIFF. And the amounts of cash that you would have given would have been anywhere from maybe less than $100 to several hundred dollars?

Mr. AMATO. Probably in the range of $500 to $1,500.

Mr. SCHIFF. And then the only time you would have given him more than that was after the fishing trip?

Mr. AMATO. Right. Yes, sir. I am sorry.

Mr. SCHIFF. Has Judge Porteous ever been to your house?

Mr. AMATO. Judge Porteous ever been to my house?

Mr. SCHIFF. Yes.

Mr. AMATO. I think he has picked me up at my house. I don't think he has been in my house. He has been to my country house.

Mr. SCHIFF. So he has been to your country house?

Mr. AMATO. Yes.

Mr. SCHIFF. And how often has he been to your country house?

Mr. AMATO. A couple of times.

Mr. SCHIFF. And how often would you say he picked you up at your other residence?

Mr. AMATO. Probably a couple of times.

Mr. SCHIFF. And on what occasions would he have picked you up at your primary residence?

Mr. AMATO. When we were going fishing or hunting or something.

Mr. SCHIFF. And when he came to your country residence, did he spend the night at your country residence?

Mr. AMATO. I think he did once.

Mr. SCHIFF. Would those times when he picked you up or spent the night at the country residence, would that have taken place prior to the *Liljeberg* case or during the *Liljeberg* case?

Mr. AMATO. I don't know when he went to the place across the lake. I have had it for almost 20 years, and I don't know, you know, before or after, during. I can't answer that, sir.

Mr. SCHIFF. Is there anything that would help refresh your recollection that we could provide you with, in terms of the dates, so you could determine when he would have come to your house?

Mr. AMATO. No, nothing.

Mr. SCHIFF. You—in terms of the amounts of cash that you and Mr. Creely provided to the judge, you said you thought it was in the neighborhood of 10 to 20 thousand. Is that right?

Mr. AMATO. Yes.

Mr. SCHIFF. And would that have been individually or between the two of you 10 to 20 thousand.

Mr. AMATO. I think it is between the two of us.

Mr. SCHIFF. Now, do you know what—roughly about what percentage of the money that you got from the curatorships that went back to the judge? Was it most of the money, minus expenses? Was it all of the money? Was it only part of the money?

Mr. AMATO. It was part of the money. I think it—I don't know what percentage. I didn't have anything to do with it.

Mr. SCHIFF. If—the records indicated that the amount of the curatorships over time approximated $40,000, would that indicate to you more accurately how much you think you would have given the judge over time between the two of you?

Mr. AMATO. I would think we would give him something less than $20,000.

Mr. SCHIFF. So something less than half of the value of the curatorships?

Mr. AMATO. Yes, because we had to take out expenses and, you know—when you have got a curatorship, you put an ad in the paper, and that costs so much money, and all that was deducted out before we got to a net fee.

Mr. SCHIFF. You mentioned, I think, that you didn't like having to make these payments. You weren't strong enough to say no——

Mr. AMATO. Right.

Mr. SCHIFF [continuing]. And in part because you thought it would break up your partnership with Mr. Creely. Why do you feel it would have broken up the partnership?

Mr. AMATO. Because in order to put an end to it, I would probably have to report my partner to the bar association and the judge to the judiciary commission.

Mr. SCHIFF. Can you explain that to me?

Mr. AMATO. Well, in Louisiana, if you know someone is violating the ethics rules, you are under an obligation to report it. So I would have had to report my partner. So, in turn, we would have had to report the judge.

Mr. SCHIFF. So if you said no, you felt you would have had to have gone public with——

Mr. AMATO. Correct.

Mr. SCHIFF [continuing]. With the nature of the payments?

Mr. AMATO. Uh-huh.

Mr. SCHIFF. Is that a "yes"?

Mr. AMATO. Yes.

Mr. SCHIFF. When you received the curatorships, you reported that as income to the business.

Mr. AMATO. Absolutely.

Mr. SCHIFF. And when you spend money to take out the advertisements, you deducted that as expenses.

Mr. AMATO. Correct.

Mr. SCHIFF. Did you deduct the—or did you deduct as an expense the amount that you gave to the judge?

Mr. AMATO. No, we paid taxes on it.

Mr. SCHIFF. You paid taxes on the curator income, right?

Mr. AMATO. On whatever our—the curator fee would have been, we would have paid taxes on it.

Mr. SCHIFF. But you did not deduct as an expense the amount you had to pay back to the judge?

Mr. AMATO. No.

Mr. SCHIFF. How were you brought into the *Liljeberg* case?

Mr. AMATO. I got a call from Ken Fonte that they had a—that John Liljeberg and Bobby Liljeberg had a case in Federal court, and would I be interested in taking a look at the case to see if I would take over trying the case?

Mr. SCHIFF. And why did Mr. Fonte bring you into the case? What were you bringing to the table?

Mr. AMATO. Well, I was bringing 35 years of experience. I was bringing trying similar cases. Up until my recent health problems,

I was fairly vigorous at practicing law. And I thought I was a good lawyer.

Now, what were their motives? I don't know. But I know that the Liljebergs had a checkered history in Federal court that, no matter what they did, that they couldn't win a case. They couldn't hire a law firm.

Mr. SCHIFF. Did you believe that at least part of the reason the Liljebergs may have wanted to bring you into the case was because your close friendship with the judge was well known?

Mr. AMATO. I am sure that came into the mix. I don't think it was the primary reason. But I think that came into their decision-making process.

Mr. SCHIFF. So having that relationship with the judge was a benefit to you and Mr. Creely, in the sense that it helped bring business like the Liljebergs?

Mr. AMATO. Yes. No question about that. It was——

Mr. SCHIFF. That is all the questions I have.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. AMATO. I am sorry. Excuse me.

Mr. GOODLATTE. That is all right. Mr. Amato, Mr. Creely testified that these payments were often made by each of you equally. Is that your recollection?

Mr. AMATO. Yes, sir.

Mr. GOODLATTE. And why was that? You say that you received these conservatorships, you made payments—you received payments for them, you deducted the expenses, you paid this separately as a cash item, you didn't write checks to the judge, you gave him cash, but you didn't consider that a part of the business arrangement. Why was that?

Mr. AMATO. Well, if he would have taken the money, all of the fee off the curators, he would have had to pay taxes at the end of the year, when it got to be, you know, you drew $60,000, and I drew $40,000——

Mr. GOODLATTE. No, I am talking about your payments to Judge Porteous. Why did you—the payments that you made, why didn't you include those as a part of your business expenses?

Mr. AMATO. We didn't.

Mr. GOODLATTE. I know. Why not?

Mr. AMATO. I couldn't answer that.

Mr. GOODLATTE. Wasn't it because, as you indicated earlier, that is a violation of Louisiana law to be paying the judge?

Mr. AMATO. Yes, that is probably correct.

Mr. GOODLATTE. And why would you have to wait until your partnership with Mr. Creely broke up before you would report that violation of Louisiana law regarding your and Mr. Creely's relationship with the judge?

Mr. AMATO. We didn't. We didn't report it.

Mr. GOODLATTE. I know you didn't report it, but you said you didn't want—you were worried that, if you didn't make the payments, you would have to break up your partnership. And if you broke up your partnership, you would have to report that relationship and those payments with the judge to some authorities, I presume. Why would you have to wait until your partnership broke up

to do that? Why wouldn't you simply do that because it is a violation of the law in the arrangement that you were in?

Mr. AMATO. Because if it—whenever I would have done it, it would have broken up the partnership.

Mr. GOODLATTE. Well, now we are getting some circular reasoning here. If it were wrong to have made the payments and you would have to report it if your partnership broke up, why wouldn't it be wrong to make the payments and the right thing to do to report it while the partnership's ongoing?

Mr. AMATO. Because it is a relationship I had with Bob Creely that, by reporting it to the bar association, it would have broken the partnership.

Mr. GOODLATTE. So you knew that it was the wrong thing to make those payments to the judge at the time the payments were being made?

Mr. AMATO. Yes.

Mr. GOODLATTE. Now, when you were hired for the *Liljeberg* case, what type of a legal practice did you have back then?

Mr. AMATO. Well, there has been a lot of supposition as to what kind of legal practice I had. I started off——

Mr. GOODLATTE. Let me help you out a little bit. Mr. Creely said that, while he had handled some complex litigation similar to the *Liljeberg* case, you hadn't.

Mr. AMATO. Well, Mr. Creely was mistaken. He misspoke, because I had handled a number of cases, including Omnitech—sorry, *Dr. X v. Clorox*. I handled *Bergeron v. International Marine*. I handled *Call Center v. Acadian Marine*. I handled the *American Tugs v. Hypernia Bank*. I have handled a number of cases. I handled foreign companies. I handled foreign banks.

Mr. GOODLATTE. Now, let me—you said earlier that, during the 2 years that you were working on the *Liljeberg* case, you didn't take any other cases. Is that what you continue to maintain?

Mr. AMATO. I didn't devote any time to acquiring business, because we were working on the *Liljeberg* case.

Mr. GOODLATTE. Well, and you had the *Liljeberg* case on an 8 percent contingent fee——

Mr. AMATO. Right.

Mr. GOODLATTE [continuing]. For which you never recovered any fee. Is that correct?

Mr. AMATO. That is correct.

Mr. GOODLATTE. Because the case was reversed on appeal.

Mr. AMATO. Correct.

Mr. GOODLATTE. How did you live for those 2 years if you weren't taking any other business?

Mr. AMATO. Well, in a business, when you do contingency work, the cases I would be settling, let's say, next week, but cases that have been in my office for 2 or 3 years, and I also had other people in the office working on cases. And I had a partner who was generating an income at the same time.

I mean, at one point in there, we were six or seven lawyers, so, you know, I was going to work every day working on the cases I had, and I was working on *Liljeberg*, but I wasn't, you know, spending a lot of time in acquiring new business during that time. I am not saying I didn't get any cases, but, you know, the acquisi-

tion of business slowed down because of the time I spent on the *Liljeberg* case.

Mr. GOODLATTE. Now, while the *Liljeberg* case was pending and Judge Porteous on the Federal bench was hearing the case, did Judge Porteous ever use any court employees, such as his secretary, to either pick up money from you or request money from you for private purposes?

Mr. AMATO. Rhonda called us on a couple of occasions for things like the——

Mr. GOODLATTE. This is Rhonda Danos, who is his secretary?

Mr. AMATO [continuing]. For the American Cancer Society, Brother Martin's High School, I don't know. I am sure there was other charities that she was involved in and that the judge was involved in. We were always buying tickets for something or another.

Mr. GOODLATTE. Did you write checks for those or did you pay cash for those?

Mr. AMATO. Checks.

Mr. GOODLATTE. You wrote checks?

Mr. AMATO. Obviously.

Mr. GOODLATTE. Because those would have been charitable contributions for which you could take a deduction. Is that not correct? What about cash?

Mr. AMATO. I don't know if she ever did or not. I really don't.

Mr. GOODLATTE. Mr. Creely testified that he provided $1,000 in cash and you provided $1,000 in cash, which was put in an envelope, which Ms. Danos picked up from you.

Mr. AMATO. I don't recall it, but I am—I can't tell you that that didn't happen.

Mr. GOODLATTE. But you don't know for sure?

Mr. AMATO. I don't know for sure.

Mr. GOODLATTE. Were you—did Judge Porteous ever mention to you that gambling debts were why he needed his money, not his son's wedding or other things like that?

Mr. AMATO. No, he never did mention that he had the gambling problem to me.

Mr. GOODLATTE. Did you ever go gambling with him?

Mr. AMATO. Twice.

Mr. GOODLATTE. Can you tell us about those occasions? Did——

Mr. AMATO. I went to Las Vegas in the early 1980's with a number of other lawyers on a junket, and he was on the junket, and he—I saw him play blackjack. And if I am not mistaken, one day in the afternoon, we were to meet at Harrah's in New Orleans, and I don't know if we met or I saw him at the table or what, but that is the extent of it. I never spent any time gambling with Judge Porteous.

Mr. GOODLATTE. I think that is all the questions I have, Mr. Chairman.

Mr. AMATO. Thank you, sir.

Mr. SCHIFF. I thank the gentleman.

Mr. Cohen from Tennessee?

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Amato, you have had a pretty good career as a lawyer, have you not?

Mr. AMATO. I was very proud of my career, sir.

Mr. COHEN. And successful, as well?

Mr. AMATO. I worked very hard, yes.

Mr. COHEN. Right. Where would you estimate, before this case came up in 1997, I guess—when did you get assigned or appointed to this *Liljeberg* case? Was that in 1997?

Mr. AMATO. I don't know the year. It has been so long.

Mr. COHEN. Well, let's give an estimate of 1995-1996. What do you think your typical income was in a year like that?

Mr. AMATO. I really can't tell you, because my income varies year to year.

Mr. COHEN. Yes, I know, but approximately. Were you making six figures?

Mr. AMATO. Yes.

Mr. COHEN. Making $500,000?

Mr. AMATO. No.

Mr. COHEN. Give me in the ballpark, on the typical year.

Mr. AMATO. A hundred and fifty, two.

Mr. COHEN. Hundred and fifty. And in the 2 years that you had this—worked on this case, you didn't take any new business. You basically sacrificed what could have been work that would have developed into, give or take, $300,000, if you amortized over your career. You didn't take any new business. Is that—that is what your testimony——

Mr. AMATO. I did take new business. I did not solicit a lot of new business, because I was busy on the Liljebergs.

Mr. COHEN. Earlier—but first, you said you didn't take any. You spent the whole 2 years working on this case. So that was not accurate.

Mr. AMATO. That is what it seemed like I did for 2 years, was work on the case.

Mr. COHEN. Okay. You didn't take much new business. Most—basically, you worked on the case?

Mr. AMATO. That is a much fairer statement.

Mr. COHEN. And you were totally on a contingency fee?

Mr. AMATO. Correct.

Mr. COHEN. You must have been pretty positive you were going to win this case, to sacrifice the equivalent of $300,000?

Mr. AMATO. When I took that case, I was convinced that the facts were in my favor, the law was in our favor, that the damages were there——

Mr. COHEN. Yes, and what else was in your favor?

Mr. AMATO. That the judge was not unfriendly to us.

Mr. COHEN. Not unfriendly?

Mr. AMATO. Not unfriendly. And——

Mr. COHEN. So you had a pretty good expectancy you were going to win and you were going to collect $500,000 to $1 million?

Mr. AMATO. I have never taken a case without the expectation of winning it. If I would have thought I wouldn't be able to win it no matter who the judge would have been, I wouldn't have taken the case at all.

Mr. COHEN. All right. I practiced some law, but I haven't done a whole lot of trial work.

Mr. AMATO. Yes.

Mr. COHEN. In my knowledge, mostly contingency cases are plaintiffs work. How often does a defendant work on a contingency?

Mr. AMATO. My client wasn't a defendant.

Mr. COHEN. He wasn't?

Mr. AMATO. No, he was a plaintiff.

Mr. COHEN. He was the plaintiff. Okay. Okay. I was given some false information, incorrect information. So he was—he had a plaintiff's case, and you just kind of worked on that and hoped you would collect.

Did you have any idea what the—when the judge came to you and was complaining he didn't have any money to pay for his son's bachelor party or wedding or whatever it was, did you have any idea what a judge's salary was?

Mr. AMATO. I knew it was in the hundreds—hundred and something thousand dollar range.

Mr. COHEN. Right. And that comes to more than a couple of thousand dollars a month. So what you gave him was—I mean, a week. I mean, so what you gave him was a week's salary at—on the low end. Did you ask him if he was having a problem, why he couldn't afford a week's salary?

Mr. AMATO. No, just gave it to him.

Mr. COHEN. You have got lots of friends, don't you?

Mr. AMATO. I did, yes.

Mr. COHEN. Yes. And how many of these other friends did you give money to like that?

Mr. AMATO. I couldn't tell you, sir.

Mr. COHEN. Well, tell me two or three of them and how much you gave them.

Mr. AMATO. I have lent money to my clients over——

Mr. COHEN. Lent?

Mr. AMATO. Just lent.

Mr. COHEN. You gave money to the judge.

Mr. AMATO. Yes.

Mr. COHEN. How many people did you give money to?

Mr. AMATO. Couldn't tell you. I couldn't tell you.

Mr. COHEN. Because there weren't any, were there?

Mr. AMATO. There was some, but none to the extent that Judge Porteous.

Mr. COHEN. And was it because you liked Judge Porteous that much more? Was it because you felt so much more sorry for him? Or was it because he was a judge with a $500,000 to $1 million judgment in your future?

Mr. AMATO. Probably a combination of all three.

Mr. COHEN. And if you had to kind of do a weighted verdict, what percentage would you give the judgment you were looking toward?

Mr. AMATO. I would give having the judge being not unfriendly, 10 percent.

Mr. COHEN. Ten percent?

Mr. AMATO. Yes.

Mr. COHEN. And the other 90 percent was you felt sorry for him? I am talking about the idea of why you gave him this money and you didn't give other people money. And you said there were three reasons, and one of them is you felt sorry for him, and one of them,

he was your friend, and the other was he had this case before him which meant a lot to your financial future.

Now, sometimes in damages, you can apportion damages, and you can give a certain percentage on each one that everybody takes a portion percentage—their negligence, in comparative negligence. What comparative part of that factor would you allocate to the judge's being the determiner of your financial fate?

Mr. AMATO. Well, he was——

Mr. COHEN. Seventy percent, eighty percent?

Mr. AMATO. Probably, yes.

Mr. COHEN. I think the facts speak for themselves. This sounds like the—that the situation down there in this case where you have got—what are these things called, these cases you have got, the—where you have got these appointments?

Mr. AMATO. Curatorships.

Mr. COHEN. Curatorships. Is this the judicial deduct box?

Mr. AMATO. I don't think so.

Mr. COHEN. Sounds like it.

Time.

Mr. SCHIFF. The gentleman yields back.

Mr. Sensenbrenner?

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I just have a few questions.

After the trial was concluded and while a decision was pending, did Judge Porteous ever solicit a cash contribution from you?

Mr. AMATO. No.

Mr. SENSENBRENNER. Okay. Were any payments made by you to Judge Porteous between the time the trial was concluded and before the decision was rendered?

Mr. AMATO. None other than the one I discussed of June 1999.

Mr. SENSENBRENNER. Okay. And——

Mr. AMATO. His son's wedding.

Mr. SENSENBRENNER. Okay. So—and this was in the amount of approximately $2,000 for his wedding?

Mr. AMATO. Yes.

Mr. SENSENBRENNER. Were there any other solicitations related to the wedding or a bachelor party during this period?

Mr. AMATO. Not that—not from me. Not—no.

Mr. SENSENBRENNER. Okay. Do you have knowledge of any other solicitations that were made?

Mr. AMATO. No.

Mr. SENSENBRENNER. Okay. Thank you.

Mr. SCHIFF. The gentleman yields back.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

Let me ask this question. You are familiar with this kickback scheme involving the curatorships, correct?

Mr. AMATO. Correct. Yes, sir.

Mr. JOHNSON. And the kickback scheme involved the judge forwarding—unsolicitedly forwarding to your firm the curatorships in return for you paying the judge the monies that your firm received for the—for the curatorships. Is that correct?

Mr. AMATO. Part of the money, yes. Part of the money, yes, sir.

Mr. JOHNSON. Part of it is yes?

Mr. AMATO. Part of—part of the fee, not the whole amount, part of the fee.

Mr. JOHNSON. Okay. But you never solicited these curatorships?

Mr. AMATO. No. I don't think I ever got one from him. I am not sure, but I don't think I even got a curator case from Judge Porteous.

Mr. JOHNSON. So you—you were not a part of the—of the scheme for the curatorships?

Mr. AMATO. I never talked to Judge Porteous about curator cases at all, never once the whole time. I never talked to him about curator cases.

Mr. JOHNSON. Okay. You did talk with your partner, though, about it, Mr. Creely?

Mr. AMATO. Correct. Correct.

Mr. JOHNSON. And that was during the time that—that was during the time that—that this—these curatorships were coming in to the office? Is that correct?

Mr. AMATO. At some point in time, I think that the curatorships were coming in—after they started coming in, Bob came to me and said, "Porteous wants some of the money from the curator cases." That is what I recall.

Mr. JOHNSON. So do you agree that that was a kickback scheme?

Mr. AMATO. I don't know what the legal definition with that would be.

Mr. JOHNSON. Well, just—not a legal definition, but a—just a common knowledge definition. How did that scheme differ from a kickback scheme?

Mr. AMATO. It probably didn't.

Mr. JOHNSON. It probably did not? All righty.

And, listen, I see that you are—came to court today in—with a wheelchair.

Mr. AMATO. Yes, sir.

Mr. JOHNSON. Are you still practicing law right now?

Mr. AMATO. Not very much. I am trying to get to Medicare. I hope you all pay us some health legislation.

Mr. JOHNSON. Well, I like that. I like that. I voted for that myself, as a matter of fact. Bingo.

Mr. AMATO. I must have hit a——

Mr. JOHNSON. Bingo. No further questions. No, I am just kidding. I am just kidding. So is Mr. Creely still your partner?

Mr. AMATO. No, he is not my partner. I don't know what he is—I know he is practicing law, but that is—it is——

Mr. JOHNSON. At any time after Judge Porteous was confirmed as a U.S. district court judge, at any time thereafter, did you provide any cash payments to him?

Mr. AMATO. I am sure I did. I just don't—I—I know we paid for, you know, a couple of things. I know we paid for his son being, you know, a part of the—his son being part of the—an externship, part for his anniversary party. You know, that is all I can recall.

Mr. JOHNSON. Now, this—have you been the subject of a bar complaint regarding your relationship——

Mr. AMATO. It is my appreciation that that is confidential.

Mr. JOHNSON. Well, I am not asking you for the ruling on it, but you have been the subject—is that case—what posture is that case in now?

Mr. AMATO. Not comfortable.

Mr. JOHNSON. Well, I am sure. I am sure not. But is it—has the case already been disposed of?

Mr. AMATO. No.

Mr. JOHNSON. So it is pending?

Mr. AMATO. Yes.

Mr. JOHNSON. When was the complaint filed?

Mr. AMATO. I——

Mr. JOHNSON. The bar complaint.

Mr. AMATO. It has been at least a year.

Mr. JOHNSON. Any—have you filed a responsive pleading?

Mr. AMATO. I am being represented, and I am sure they are doing whatever they need to do.

Mr. JOHNSON. Okay. But—is—are you accused in the bar complaint of a disbarrable offense?

Mr. AMATO. The Louisiana State Bar can disbar you for just about anything.

Mr. JOHNSON. Well, now, let me ask you this question. Did Judge Porteous—I think you said he paid for one lunch.

Mr. AMATO. Yes.

Mr. JOHNSON. How many times did you all go to lunch together and you picked up the tab?

Mr. AMATO. Hundreds.

Mr. JOHNSON. When he picked up the tab, was that only for himself or was that for he and you?

Mr. AMATO. Both of us.

Mr. JOHNSON. And did you—you have had some discussions with Judge Porteous about the *Liljeberg* recusal motion, have you not?

Mr. AMATO. No.

Mr. JOHNSON. You have never discussed that case?

Mr. AMATO. No. I never discussed the recusal motion with him.

Mr. JOHNSON. But you have discussed the case?

Mr. AMATO. I have—I asked him, after the case was tried, when could—you know, how was the judgment coming? And he told me that he didn't have a law clerk who could spend enough time to render a decision. Also, at some point, he told me that you better prove your case, because the fifth circuit will take it away if you don't. And that is—I thought I proved my case, and the fifth circuit took the case away, took the judgment away.

Mr. JOHNSON. Did you take the case—ask for an en banc hearing or oral arguments, anything like that?

Mr. AMATO. I didn't handle the appeals, but I think they went all the way to reach the United States Supreme Court.

Mr. JOHNSON. You—the judge never paid you back any of the money that you gave him, cash money?

Mr. AMATO. No. No, he has never paid me back.

Mr. JOHNSON. So out of the approximately $10,000 that you say you gave Judge Porteous, would about half of that been before he become a Federal court judge?

Mr. AMATO. I think most of it was before he became a Federal judge.

Mr. JOHNSON. But there were—there was some. Approximately how much would you say?

Mr. AMATO. Well, the only thing I can tell you for sure was that the money for his son's wedding.

Mr. JOHNSON. Did you go to Las Vegas with him to gamble?

Mr. AMATO. I did not.

Mr. JOHNSON. Did you have any input in the preparation of the responsive pleadings to the motion to recuse in the *Liljeberg* case?

Mr. AMATO. No, I did not.

Mr. JOHNSON. What was your role during that—that part of the case?

Mr. AMATO. The recusal?

Mr. JOHNSON. Yes. Because you were attorney of record on the case, correct?

Mr. AMATO. Sat in the courtroom and kept my mouth shut.

Mr. JOHNSON. And you were attorney of record, as well?

Mr. AMATO. I was one of the attorneys of record. There was five attorneys of record——

Mr. JOHNSON. But you weren't the lead attorney?

Mr. AMATO [continuing]. And a sixth attorney assistant.

Mr. JOHNSON. This is the case that you were going to take an 8 percent contingent fee out of?

Mr. AMATO. Yes.

Mr. JOHNSON. What kind of case was that, by the way?

Mr. AMATO. It was with Lifemark and Tenet Healthcare stole my client's hospital and tried to put him out of business.

Mr. JOHNSON. All right, so a business tort?

Mr. AMATO. It was a business tort that went on for years and that was very convoluted and very difficult. And——

Mr. JOHNSON. Well, let me ask you this question, sir. Your physical disability that you have that requires you to be in a wheelchair, is that because you—does this condition cause you to be unable to walk?

Mr. AMATO. I can walk a certain distance, but I can't walk more than a block without aid. I do very little walking. I haven't traveled in 10 years on a plane. And I was lucky enough that the hotel rented wheelchairs, because I would have never made here without it.

Mr. JOHNSON. Well, what is the reason for the wheelchair today?

Mr. AMATO. Because I have a degenerative disc disease. I have had—my bottom of my spine is fused. I have cervical stenosis. I have lumbar stenosis. I have neuropathy in my hands and my feet. I have had two aortic aneurysm surgeries in the past year.

Mr. JOHNSON. Okay. I got——

Mr. AMATO. I have cancer.

Mr. JOHNSON. I got the—got the gist of it. You are not in good health at this time?

Mr. AMATO. Well, it depends on what doctor I go to.

Mr. JOHNSON. Well, let me ask you, did you ever provide the judge or facilitate the judge's acquisition or use of any tangible item, be it a car, boat, airplane, any kind of service during the period in question?

Mr. AMATO. He went fishing with us. I don't——

Mr. JOHNSON. Well, did—but did you facilitate his acquisition of a boat?

Mr. AMATO. No, no. No, no.

Mr. JOHNSON. Or house?

Mr. AMATO. No.

Mr. JOHNSON. Or any other tangible item?

Mr. AMATO. No.

Mr. JOHNSON. Did you make any gifts yourself to Judge Porteous's family members or other relatives?

Mr. AMATO. Wedding presents. Wedding presents.

Mr. JOHNSON. Wedding presents for the son?

Mr. AMATO. His children, yes.

Mr. JOHNSON. What was that present, by the way? Or what were the presents?

Mr. AMATO. I think we gave them cash.

Mr. JOHNSON. Gave the son cash?

Mr. AMATO. The son cash for the wedding present.

Mr. JOHNSON. How much was that, you think?

Mr. AMATO. I think it was about $250.

Mr. JOHNSON. Did you—you did make payments to Judge Porteous prior to the Liljeberg trial while you were signed on to the case as an attorney for the plaintiff? Is that correct?

Mr. AMATO. I don't understand the question. I am sorry.

Mr. JOHNSON. After you signed onto the *Liljeberg* case——

Mr. AMATO. Okay.

Mr. JOHNSON [continuing]. Had you—after you signed up for that case, did you give the judge any money?

Mr. AMATO. Other than the money for the son's wedding, I don't think so. I don't recall any.

Mr. JOHNSON. And you gave that money for the son's wedding to the son?

Mr. AMATO. To the judge.

Mr. JOHNSON. To the judge?

Mr. AMATO. Yes.

Mr. JOHNSON. And that was cash money?

Mr. AMATO. Yes.

Mr. JOHNSON. Did he ask you for that?

Mr. AMATO. Yes.

Mr. JOHNSON. He asked you specifically for $250 for his son?

Mr. AMATO. No. No.

Mr. JOHNSON. Well, what did he ask you?

Mr. AMATO. He asked me to help pay for his son's wedding.

Mr. JOHNSON. Was there any suggestion from him how much to pay?

Mr. AMATO. I want to say he told me that he was short $2,500 on—for the wedding, that his portion was $2,500 that he didn't have.

Mr. JOHNSON. And the wedding was in 1999?

Mr. AMATO. Over 10 years ago, 1999.

Mr. JOHNSON. I have no further questions at this time.

Mr. SCHIFF. The gentleman yields back.

Mr. Lungren?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Now, Mr. Amato, looking at the report and recommendation of the Judicial Conference Committee on Judicial Conduct and Disability, their findings—page 22—contains this statement: "Much of the available evidence concerns Judge Porteous's solicitation and receipt of cash payments from a law firm, *Amato v. 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 expenses or repeated payments to him."

"In response, Judge Porteous frequently appointed the court to curatorship proceedings and at Judge Porteous's suggestion, received in return a portion of the fees paid."

Do you have any—do you accept those facts as contained in this statement of facts in the report and recommendation of the Judicial Conference.

Mr. AMATO. I don't have any way to dispute it, no. That apparently is what happened between Judge Porteous and——

Mr. LUNGREN. And your law firm?

Mr. AMATO. Yes.

Mr. LUNGREN. It says further, on page 23, "Judge Porteous and his benefactors used methods of payments that left no paper trail. The gifts described above were always either in cash or direct payments of expenses to vendors. No checks to Judge Porteous were used."

Is that the facts, as far as you are concerned?

Mr. AMATO. I don't know of any vendors that we paid anything to, but we never did give him any checks.

Mr. LUNGREN. Why? Why was it in cash? What was your purpose in making sure that they were cash payments?

Mr. AMATO. I presume that the——

Mr. LUNGREN. No, I don't want a presumption. This is why you did this or you in concert with your partner did this. Why did you give him cash?

Mr. AMATO. Because we made a bad mistake.

Mr. LUNGREN. Well, I mean, I know you made a bad mistake, but why would you give him cash? Why would you not give him a check in accordance with your usual procedure, running your law firm?

Mr. AMATO. I have no further answer I can give, sir. I mean, we just did it that way.

Mr. LUNGREN. Was it part of the deceit?

Mr. AMATO. Yes.

Mr. LUNGREN. All right. Now, interestingly enough, they say further that Judge Porteous's financial disclosure form contains no record of these benefits. Had they been disclosed—that is, the benefits—opposing parties could have sought recusal and, were it denied, could have sought appellate relief. And the controlling authority is a case called *Liljeberg v. Health Services Acquisition Corp.* from 1988. Is that the same client that you had in Liljeberg?

Mr. AMATO. Yes.

Mr. LUNGREN. And in that case, the finding was a vacation of judgment where a district judge failed to disclose he was a trustee of a university that had substantial business dealings with the liti-

gant before his court. Were you aware of that finding or that ruling at the time?

Mr. AMATO. I am aware of that ruling, yes.

Mr. LUNGREN. So a controlling authority on—in terms of recusal not only was known to you, but actually, it involved a case with the—the same person, the same entity that hired you for your work. Is that correct?

Mr. AMATO. Correct.

Mr. LUNGREN. Now, you said earlier about why they hired you. You said that it was for your experience and so forth. And according to the findings of the Judicial Conference Committee on Judicial Conduct and Disability, you were brought in 39 months after the case was originally filed and just 2 months before it was to go to trial before Judge Porteous. Is that correct?

Mr. AMATO. I presume it is. I don't—I don't recall it that way, but I have no reason to doubt that that is——

Mr. LUNGREN. And you still stand on your statement that they were hiring you because of your experience in Federal court?

Mr. AMATO. I think they were hiring me because I had a lot of trial experience. That is one of the reasons, yes.

Mr. LUNGREN. And one of the statements you made was that you would not have taken this case unless you thought you could win, correct?

Mr. AMATO. Correct.

Mr. LUNGREN. You are aware of the appellate court reversal of the decision by Judge Porteous?

Mr. AMATO. I think they were wrong.

Mr. LUNGREN. You think they were wrong?

Mr. AMATO. Yes.

Mr. LUNGREN. So when they said, "The extraordinary duty the district court imposed upon Lifemark, who loaned money to build the hospital and held the mortgage on it to secure its payment, is inexplicable," you find that an erroneous decision by them or erroneous conclusion by them?

Mr. AMATO. Yes.

Mr. LUNGREN. Where they say, "The district court's finding of a conspiracy to wrest control of the hospital and medical office building from Liljeberg and the Liljeberg Enterprises border on the absurd," you disagree with that?

Mr. AMATO. Absolutely.

Mr. LUNGREN. I see.

And where the appellate court says, "The district court in Liljeberg Enterprises offer no statutory or case law support law for this proposition, a conspiracy theory, for the simple reason that it is not the law," you disagree with them on that?

Mr. AMATO. I would have to read more of the decision, but, yes, I think the court of appeals was wrong. I still think the court of appeals was wrong.

Mr. LUNGREN. And where they say, "The idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment, to wit, approximately $7.8 million, to Travelers at any judicial sale, comes close to being nonsensical," you find that wrong?

Mr. AMATO. Yes, because there was other litigation going on between Travelers and Jones Walker and—well, Lifemark was purchased by Tenet. That was going on almost simultaneous with this case, where all that was litigated.

Mr. LUNGREN. And further on, when they talk about Lifemark as a mortgagee, did not have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did. And then further on, they said this is a chimera or "chimera," existing nowhere in Louisiana law, it was apparently constructed out of whole cloth. You disagree with them on that?

Mr. AMATO. Yes, sir.

Mr. LUNGREN. But they did hire you because of your knowledge of the law and your ability in Federal court?

Mr. AMATO. Yes.

Mr. LUNGREN. Your law firm had a number of other—a number of other curatorships besides the ones sent to you by Judge Porteous—by the judge in this case, correct?

Mr. AMATO. I am sure we received other curator cases. I don't——

Mr. LUNGREN. You are not aware whether you did or you didn't?

Mr. AMATO. No, I said I am sure we did receive other curator cases.

Mr. LUNGREN. In any of those cases, did you—are you aware of the judge who sent them to your office requesting payments either in cash or by check?

Mr. AMATO. No.

Mr. LUNGREN. So this is not a usual practice in New Orleans?

Mr. AMATO. No.

Mr. LUNGREN. When, if ever, did your ethnical antennae go up and indicate to you that something was wrong here?

Mr. AMATO. I couldn't tell you when.

Mr. LUNGREN. According to your testimony before the court proceedings with Chief Justice—Judge Jones, Judge Benevides asked you about the—the curatorships, and they asked you how much, and you said it was never an amount that was astonishing. It was always a couple thousand dollars.

Judge Benevides, "A couple thousand dollars sometimes every 6 months and sometimes every 3 or 4 weeks?" "Yeah, but, I mean, it wasn't a constant thing. It wasn't, you know, look, I expect a check every Thursday or Friday or 2 weeks or anything like that."

But it was repetitive, correct?

Mr. AMATO. Yes, sir.

Mr. LUNGREN. And it took place over years?

Mr. AMATO. Yes, sir.

Mr. LUNGREN. And as you say, it was always a couple thousand dollars? That was your testimony under oath before that panel.

Mr. AMATO. I think that is correct, yes.

Mr. LUNGREN. We have had testimony about the draw that you or Mr. Creely made that is we believe $2,000, and Rhonda Danos came to pick it up. You do or do not recall that?

Mr. AMATO. I don't recall that specifically. I really don't, sir.

Mr. LUNGREN. During the pendency of the Federal case, do you recall making payments of cash to the judge?

Mr. AMATO. The only one I recall was for his son's wedding.

Mr. LUNGREN. Was that before, at the time that it was pending, or after the recusal motion?

Mr. AMATO. It was prior to the judgment being rendered, after the recusal motion and the trial.

Mr. LUNGREN. It was following the decision, the recusal motion that you then gave him money in that specific instance?

Mr. AMATO. That is when his son got married, in June 1999, and I think the recusal motion was some years before that.

Mr. LUNGREN. Thank you very much.

Thank you, Chairman.

Mr. SCHIFF. The gentleman yields back.

At this point, Mr. Westling, if you have some questions, you may proceed.

Mr. WESTLING. Thank you, Mr. Chairman.

Mr. Amato, I will try to work through this quickly. I know you have been up here a long time.

First, I think I just want to clarify: Your testimony has been clear that there was only a single time that Judge Porteous ever asked you for cash money, and that was in connection with his son's wedding. Is that correct?

Mr. AMATO. That is correct.

Mr. WESTLING. So when you tell us about your knowledge about money and the curatorships, that was, in fact, something that you did not handle personally. Is that correct?

Mr. AMATO. That is correct.

Mr. WESTLING. That was something Mr. Creely handled?

Mr. AMATO. Yes.

Mr. WESTLING. And so, as a practical matter, you would say that he would recollect those facts better than you. Is that correct?

Mr. AMATO. Yes.

Mr. WESTLING. Okay. Now, moving on to the period of time—Judge Porteous became a Federal judge in 1994, as you are aware. He was confirmed on October 11, 1994. Does that sound about right to you?

Mr. AMATO. I have no way to dispute that.

Mr. WESTLING. And it was some couple of years later that you were actually retained to get involved in the Liljeberg case, correct?

Mr. AMATO. Yes.

Mr. WESTLING. All right. Now, Mr. Amato, you have talked some about your law practice. Were you typically a contingency lawyer?

Mr. AMATO. Yes.

Mr. WESTLING. So you were a person that was engaged in a business of evaluating cases before you got involved in them in an attempt to determine whether you thought you could bring back a judgment. Is that a fair statement?

Mr. AMATO. Correct.

Mr. WESTLING. And so, in this particular case, you made a comment about looking at the facts, looking at the records, and the work that you did in that regard. You also made a comment about a judge who was not unfriendly to you.

Mr. AMATO. Correct.

Mr. WESTLING. And I want, from a plaintiff's lawyer's perspective, what does that mean?

Mr. AMATO. That means a judge who will listen to you and hopefully will rule correctly, as opposed to some, you know, agenda that the judge has that is pro-defendant, pro-plaintiff, pro-whatever.

Mr. WESTLING. And so when you used the term "not unfriendly," you didn't mean it was because it was Tom Porteous. You meant it was because it was a fair judge. Is that correct?

Mr. AMATO. Correct.

Mr. WESTLING. Have you known throughout your career Judge Porteous to do the right thing?

Mr. AMATO. Always.

Mr. WESTLING. Did you feel like your relationship ever made a difference when you were in his court, in terms of the way he would eventually rule?

Mr. AMATO. No.

Mr. WESTLING. Now, you have talked about the recusal motion, and that was, I think, filed in October 1996. Does that sound about right?

Mr. AMATO. Yes.

Mr. WESTLING. You were brought in about a month before that. Does that sound about right?

Mr. AMATO. I don't know when I was brought in.

Mr. WESTLING. Do you also know that Mr. Mole was only in the case about 5 or 6 months before you were brought in?

Mr. AMATO. No, I didn't know that.

Mr. WESTLING. So you have new counsel on both sides of this case and a recusal motion that has been filed. Is that a fair statement?

Mr. AMATO. Yes, that is apparently what happened.

Mr. WESTLING. You were brought in by lawyers who were already working on the case, correct?

Mr. AMATO. Yes.

Mr. WESTLING. And one of those lawyers was a gentleman by the name of Don Richard?

Mr. AMATO. Yes.

Mr. WESTLING. And he remained involved in the case through the trial, correct?

Mr. AMATO. Don was basically lead, and I was second chair, and we did the bulk of the trial work and trial preparation.

Mr. WESTLING. Now, you went through this very lengthy trial, and it was some 2 years later—well, I guess a year later that the case was tried, in 1997. Is that right?

Mr. AMATO. I don't—yes.

Mr. WESTLING. Okay. Now, Mr. Amato, this was a contentious piece of litigation, fair statement?

Mr. AMATO. Absolutely.

Mr. WESTLING. Have you ever seen a fight like this in any other case you have ever handled?

Mr. AMATO. Well, I have been in some pretty good fights, but this was a good fight. I mean, this was—this was, you know, blood and guts, up against the wall, no holds barred, you know, anything that they could do, they did.

Mr. WESTLING. As a practical matter, this case had a lengthy history before you had gotten involved in it. Is that correct?

Mr. AMATO. Yes.

Mr. WESTLING. And it had been a tactic used by both sides, the Liljebergs and by Tenet, to seek to disqualify judges in this case?

Mr. AMATO. I know that it happened on some occasions prior to my entering the case.

Mr. WESTLING. Isn't it fair to say that Judge Porteous made very clear when the case got to him—and if you know this, you do, and if you don't, just tell me—that he was insistent that the case would not delay any longer, but it would get to trial and resolution?

Mr. AMATO. Yes.

Mr. WESTLING. Okay. Now, you have also indicated that your sense of the facts was that the Liljebergs had been victims of Lifemark. Is that fair?

Mr. AMATO. Yes.

Mr. WESTLING. And that, in fact, they had been victims because of a certain amount of dishonesty, thievery, whatever the right term is, by the other side. Is that correct?

Mr. AMATO. Those terms sound like Lifemark and Tenet.

Mr. WESTLING. And so we are dealing here with a major national corporation. Is that correct?

Mr. AMATO. Yes.

Mr. WESTLING. And it was basically Tenet Healthcare. Is that right?

Mr. AMATO. That is correct.

Mr. WESTLING. And they are the same company that entered into a $900 million settlement for their falsehoods with the Federal Government within the last several years?

Mr. AMATO. Yes. And during the pendency of this suit, we filed a qui tam suit—or a qui tam complaint against Tenet for all of the Medicaid fraud that they committed at the hospital. And the U.S. attorney in New Orleans at the time, Eddie Jordan, decided that it wasn't worth pursuing.

Mr. WESTLING. All right. Now, in this particular case, you have indicated that you felt confident that the result that Judge Porteous reached in issuing his more than 100-page opinion was correct. Is that right?

Mr. AMATO. Yes.

Mr. WESTLING. When you went to the fifth circuit—I know you didn't handle the appeal—but lawyers went to the fifth circuit, there were issues that were critical that related to Louisiana law that were before the fifth circuit. Is that correct?

Mr. AMATO. Specifically to Louisiana law.

Mr. WESTLING. And the three judges who sat on that panel are all Texas judges with no experience in Louisiana law. Is that fair?

Mr. AMATO. They were Texas judges. I don't know what Louisiana experience they have.

Mr. WESTLING. Do you know whether they had ever taken or passed the Louisiana state bar examination?

Mr. AMATO. No, I wouldn't know that. I really wouldn't——

Mr. WESTLING. And just so it is clear, for the benefit of those present, Louisiana has a different body of law when it comes to just about everything that relates to civil interaction, in terms of obligations, contract and the like. Is that fair?

Mr. AMATO. To some great extent, yes.

Mr. WESTLING. Mr. Amato, did you ever give Tom Porteous any money because he was a judge?

Mr. AMATO. No.

Mr. WESTLING. You gave it to him because he was your friend. Is that a fair statement?

Mr. AMATO. Correct.

Mr. WESTLING. I have no further questions, Mr. Chairman.

Mr. SCHIFF. Mr. Amato, we have a few follow-up questions for you. Let me pick up where counsel just left off.

You stated in your testimony that there was never a doubt in your mind that, once the curatorships started, the money that the judge was asking for was coming out of the curatorships. Is that right?

Mr. AMATO. Yes.

Mr. SCHIFF. Was that based on conversations you had with Mr. Creely?

Mr. AMATO. Yes.

Mr. SCHIFF. Mr. Creely made it plain in those conversations that the judge was calling and he wanted the money from the curatorships?

Mr. AMATO. Yes.

Mr. SCHIFF. And you remember that distinctly?

Mr. AMATO. We are talking 25 years ago. I mean, how—you know, I knew some discussion took place that—you know, that this was something that we would have to deal with.

Mr. SCHIFF. Were you aware that the judge would call your office periodically to find out how many curatorships he had sent over there recently?

Mr. AMATO. No, I don't recall him calling. I recall Mr. Creely complaining about him calling, but I don't recall him calling.

Mr. SCHIFF. And what were the nature of the complaints that Mr. Creely made?

Mr. AMATO. Calling about the curators. Tom is calling about the curators.

Mr. SCHIFF. And why was he calling about the curators? What was the gist of it?

Mr. AMATO. I guess he needed money.

Mr. SCHIFF. Was there any other purpose for him calling about the curators?

Mr. AMATO. Not that I know of.

Mr. SCHIFF. He didn't get involved personally in finding out whether you took out advertisements on behalf of absent plaintiffs or parties, did he?

Mr. AMATO. I don't know what did. I doubt it.

Mr. SCHIFF. You during the Liljeberg case had an attorney-client relationship with Liljeberg, correct?

Mr. AMATO. Absolutely.

Mr. SCHIFF. And that relationship continues to this day, in the sense that you are not—Liljeberg hasn't waived its right to demand your confidence, correct?

Mr. AMATO. That is correct.

Mr. SCHIFF. And because of the relationship, you would not be in a position to come in to the hearing today and give us private information about weaknesses in Liljeberg's case, would you?

Mr. AMATO. I don't think so. I don't think I could be in the position, and I am not—I don't think I am in a position to violate the attorney-client privilege. And more so, I don't think I am in a position to discuss the Liljeberg case, because I hadn't looked at it.

Mr. SCHIFF. What—and I want to make clear, we are not asking you to do either, but I do want to ask you whether you consider yourself still bound by your relationship with Liljeberg.

Mr. AMATO. Yes.

Mr. SCHIFF. You mentioned in answer to Mr. Cohen's questions that there were several reasons why, when the judge hit you up for money during the fishing trip, that you gave it to him.

Mr. AMATO. Yes.

Mr. SCHIFF. You mentioned it was part friendship. You mentioned it was part feeling sorry for him. And you mentioned it was part that he was a judge presiding over a major case that you had before him, correct?

Mr. AMATO. Yes.

Mr. SCHIFF. And he asked you if you could quantify, well, how much of your motive in giving the money was related to each of those three things, right?

Mr. AMATO. I think we tried to get there, yes.

Mr. SCHIFF. And if I understood you correctly, you said that 70 percent—70 percent to 80 percent of the reason you gave him the money was this was a judge presiding over this case you had, right?

Mr. AMATO. No, I thought it was the other way around. I thought it was 10 percent to 20 percent because it was a judge who was listening to the case as opposed to the friendship I have had with him for—ever since he got out of law school.

Mr. SCHIFF. Well, I am glad, because I want to clarify this. So in your estimation, then, 70 percent to 80 percent was friendship and 10 percent to 20 percent was this is a judge presiding over a very important case to me?

Mr. AMATO. Yes.

Mr. SCHIFF. You also mentioned, I believe in answer to Mr. Johnson's questions, you were asked about, wasn't this just a classic kickback scheme? I think he asked you, but again it was sort of a double negative, and I want to make sure we have it correct. This didn't differ, I think was his question, from a kickback scheme. Let me ask it in the affirmative: This was really a form of a kickback scheme, wasn't it?

Mr. AMATO. I really don't know how to answer that question, because there was never anything done as far as Tom sending curators, but you have got to do this for us on another case or you have got to let Joe Smith out of jail or anything like that. I think that would qualify as a kickback scheme. What this qualifies as, Lord only knows.

Mr. SCHIFF. Mr. Amato, would you consider it a kickback scheme if someone sends you business, a curatorship, with expectation you will kick back some of that money to a person who sent you the case?

Mr. AMATO. It would fit into that definition.

Mr. SCHIFF. So wasn't this a classic kickback arrangement?

Mr. AMATO. Yes.

Mr. SCHIFF. On the fishing trip, you mentioned that the judge—well, actually, let me ask you. I don't know if it was on the fishing trip. You mentioned that, during the pendency of the Liljeberg case, you had a conversation—maybe more than one conversation—with the judge about the Liljeberg case. And you said something very interesting. You said that the judge told you, "You'd better prove your facts, because otherwise the fifth circuit will take it away." Is that what the judge told you?

So the judge didn't tell you, you needed to prove the facts to him. You needed to prove the facts, because otherwise the court of appeals would reverse, and that was his message to you.

Mr. AMATO. No, his message was, you had better have a good case and you had better give me enough evidence that will withstand an appeal. And I thought that we did that.

Mr. SCHIFF. So he was telling you, you had better have enough evidence that I can rule in your favor, otherwise, if I do, I will be reversed?

Mr. AMATO. If I didn't, he would be reversed.

Mr. SCHIFF. That was his——

Mr. AMATO. If I proved—listen, it is not hard to explain, but I thought we over-proved the case. We produced their executives to testify as to how they set up a scheme to defraud my client.

Mr. SCHIFF. Mr. Amato, I want to ask you about your conversations with the judge. I appreciate your feeling about the merits of the case, but I just want to make sure that we have this accurately. What the judge told you was not that you had to prove the case for his benefit, that you needed to show the facts. Otherwise, the fifth circuit would reverse him. Is that the message he gave you?

Mr. AMATO. No. The message he gave me was, you are not getting a gift. You are going to try your case, and you are going to prove your case, and you are going to have to prove it to such an extent that the court of appeals is going to leave it alone.

Mr. SCHIFF. Why would he mention the court of appeals? Why wouldn't he say, "You are going to have to prove it to my satisfaction"?

Mr. AMATO. Because there is a history of the court of appeals that every case that the Liljebergs ever had did something to overturn the decision.

Mr. SCHIFF. And when you asked him how is the judgment coming, this was at a time when it had been under submission for some time?

Mr. AMATO. Yes.

Mr. SCHIFF. Was this on the fishing trip?

Mr. AMATO. No.

Mr. SCHIFF. Was it before or after the fishing trip?

Mr. AMATO. I couldn't tell you. I really couldn't, Mr. Schiff. You know, you are talking stuff that happened 10, 15 years ago. And I—sequentially, I cannot answer. I just don't know.

Mr. SCHIFF. And when the judge told you that you needed to prove the case or the fifth circuit would take it away, was it just the two of you, or were there other people present?

Mr. AMATO. I don't know. I don't know. I don't know who was there.

Mr. SCHIFF. Did you ever disclose to opposing counsel that you had had this ex parte communication about the case with the judge?

Mr. AMATO. I didn't think it was ex parte communication. We didn't discuss the issues. We didn't discuss facts. We didn't discuss witnesses. You know, it is probably like, you know, how are you going to vote on something? You don't have to give a reason. You can just—you know, I am going to vote Democrat this year or Republican this year. But you don't give a reason.

Mr. SCHIFF. I don't think the relationship of an attorney representing a client before a judge is the same as how are you going to vote in an election. You didn't feel you had any obligation to disclose to opposing counsel that you were discussing the pendency of a matter with the judge without any others present?

Mr. AMATO. No, I didn't consider it a discussion of the facts of the case or the merits of the case.

Mr. SCHIFF. When Mr. Lungren asked you about why you had paid in cash rather than wrote a check from the firm to the judge, wasn't this in large part, if not exclusively, because you didn't want a paper trail?

Mr. AMATO. No paper trail.

Mr. SCHIFF. And, finally, you used the word unfriendly.

Mr. AMATO. I am sorry?

Mr. SCHIFF. You used the word unfriendly, that you thought you had a good chance to prevail on the case because the judge was not unfriendly. Similarly, you mentioned that you thought maybe one of the reasons why you were brought into the case was because of the wide knowledge that you had a friendship with the judge. Part of that friendship was providing him with thousands of dollars, wasn't it?

Mr. AMATO. I think Tom and I would have been friends no matter what, but I am sure he appreciated our generosity or our friendship shown that way.

Mr. SCHIFF. I have no further questions.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Amato, to follow up on the question of the Chairman regarding your discussions with Judge Porteous about the Liljeberg case, did you ever have any discussions with him about the potential award in the case?

Mr. AMATO. No, never did.

Mr. GOODLATTE. Well, then how did he come to have a conversation with you in which you talked about having to prove your case, and you characterized his message to you—I am not saying these are his words—but you characterized his message to you as, "You are not getting a gift." How did you come to have a conversation with him where he would send a message to you, "You are not getting a gift. You have to prove your case"?

Mr. AMATO. Let me see if I understand the question. I think that the message he was trying to convey was that you—if you don't prove your case to a preponderance——

Mr. GOODLATTE. I know what his message was. When did it occur? How did it come about? How did you happen to be talking to him?

Mr. AMATO. I don't know if we were at lunch or we were drinking or what. But it came up that, you know, you had better prove your case.

Mr. GOODLATTE. Now, you said, "you had better prove your case or the fifth circuit is going to take it away from you." What do you think he meant by "it"?

Mr. AMATO. The judgment.

Mr. GOODLATTE. You had better prove your case, or the fifth circuit is going to take it away from you. How could he know that in advance? Wasn't he really saying he is going to—he is going to take it away from him, that he was giving you a judgment, but you had better have enough evidence to sustain it or they would take it away?

Mr. AMATO. I truly don't understand, other than the fact that he conveyed to me that——

Mr. GOODLATTE. Well, why wouldn't he say to you—let me characterize it a different way. Why wouldn't he say to you, "You had better prove your case or I am going to rule against you"? "You had better prove your case or I am going to take it away from you"? Why would he say, "You had better prove your case or the fifth circuit is going to take it away from you"?

Mr. AMATO. Probably because of knowing him as long as I have—I have practiced law with him. I tried cases with him. I tried cases against him. I tried cases before him. I know what he expects in a trial, in a case, and I think any good trial lawyer understands that. What a judge expects from a——

Mr. GOODLATTE. That is a good standard for a judge to have for himself. Why would he be setting the standard for the fifth circuit, rather than for himself?

Mr. AMATO. I don't know. I just don't know. I am just conveying what was related to me and——

Mr. GOODLATTE. Now, in response to Judge Porteous's counsel, you said—he asked you, did the judge have a reputation for doing the right thing? And you said, "Always."

Mr. AMATO. Yes.

Mr. GOODLATTE. Is that what you thought when you were worried about breaking up your partnership because you were engaged in a kickback scheme with the judge and he was sending curatorships over and you were getting this work or your partner was getting this work and you were—the two of you—sending money from the law firm to the judge? Was he doing the right thing then?

Mr. AMATO. What I meant by that answer was that the relationship we had with him never, to my knowledge, ever affected how he ruled in any case.

Mr. GOODLATTE. But he nonetheless told you that he wouldn't take it away, but the fifth circuit would take it away if you didn't prove the case?

Mr. AMATO. He must have knew something about the fifth circuit that I didn't.

Mr. GOODLATTE. All right. Yes, and as a judge, he was making the decision about who got the curatorships. Is that not correct?

Mr. AMATO. On the state court, yes.

Mr. GOODLATTE. Right. But, I mean, he is saying that he had a different standard for himself on the state court than he had on the Federal court?

Mr. AMATO. I presume he did.

Mr. GOODLATTE. You are saying he did have a different standard?

Mr. AMATO. I am sorry?

Mr. GOODLATTE. He did have a different standard in the state court than he did in the Federal court?

Mr. AMATO. I hope so.

Mr. GOODLATTE. Well, why would you expect that?

Mr. AMATO. Because I know the man.

Mr. GOODLATTE. But you know that the man took legal proceedings, gave them to your law firm, with the expectation that your law firm would provide him with cold, hard cash that he could use for whatever purposes—it wasn't going to the court. It was going to his own benefit. And that would be what you knew about him before he moved to the Federal court.

Now, on the Federal court, he says you had better prove your case not or I will overturn it or I will rule against you. He said you had better prove your case or the fifth circuit is going to take it away, as if to say, you had better make me look good with the evidence you produce when I rule in your favor, because otherwise you are not going to get very far, because the fifth circuit will take it away from you.

Mr. AMATO. I think what he is telling me was is, you had better make your case look good or not only will I not give you a judgment, but the fifth circuit wouldn't give you one.

Mr. GOODLATTE. Well, the fifth circuit would never get a shot at it unless he gave you a judgment, would it?

Mr. AMATO. Correct.

Mr. GOODLATTE. All right. Now, what was the overall contingent fee arrangement that the fellow who retained you in the Liljeberg case—what was the overall percentage that was going to be recovered if there were a judgment in favor of Liljeberg?

Mr. AMATO. I don't know. I don't know what any other lawyers' percentages were or who was getting what, who was getting paid by the hour, who was getting paid by—all I knew was, you know, was what my fee was going to be.

Mr. GOODLATTE. Your fee was 8 percent?

Mr. AMATO. Right.

Mr. GOODLATTE. And Mr. Levenson was also brought into the case?

Mr. AMATO. He got—and Lenny told me that he was going to get 4 percent.

Mr. GOODLATTE. Now, counsel for Judge Porteous indicated that, when you were brought in, which was in October—I am sorry, September 19th of 1996, both you and Mr. Levenson entered your appearances. At that time, the case had been pending for quite a long time and, in fact, had been assigned to Judge Porteous some 8 months before that, on January 16, 1996. You came in, in September, while the case was set for trial the next month.

And the counsel for Judge Porteous said that Judge Porteous told you that the case wouldn't be delayed. And is that right, that your understanding?

Mr. AMATO. Of this question, yes.

Mr. GOODLATTE. Yes, that he was going to move this case along, that the case had already been pending for 8 months before you came in, it didn't go to trial in point of fact until the following June, another 9 months after it was originally scheduled, and then a decision was not rendered for nearly 3 years after that. So the judge wasn't really moving this case along swiftly at all, was he?

Mr. AMATO. No, doesn't appear to be.

Mr. GOODLATTE. And during that time, he was milking all kinds of benefits from attorneys who were dealing with it, not only the payment—the cash payment that was made by you and your partner, but also a number of other benefits, in terms of trips and dinners and so on, all going on for a period of almost 3 years after he had heard the evidence in the case. So he wasn't trying to move this case along swiftly.

Mr. AMATO. Apparently not.

Mr. GOODLATTE. And in the meantime, at some point, you don't remember when, but at some point, he said, "You had better prove your case or the fifth circuit is going to take it away"?

Mr. AMATO. That was before I tried the case.

Mr. GOODLATTE. Before the case went to trial. But you don't think that he was suggesting to you that you had better give him a good basis for making the decision, as opposed to simply telling you that he was going to try this fairly and honestly, that he had already decided that you were going to win the case, but you had better give him the evidence to make it?

Mr. AMATO. No, I don't think he decided I was going to win the case before I tried the case, and I don't know when he decided whenever he was going to—he was going to rule in the case and into whose favor.

Mr. GOODLATTE. But he took 3 years and quite a bit of payments from you and others to get to that point?

Mr. AMATO. You would have to ask him that question. I don't know.

Mr. GOODLATTE. I hope to have the opportunity.

Mr. AMATO. Thank you, sir.

Mr. GOODLATTE. Thank you, Mr. Amato.

Mr. SCHIFF. The gentleman yields back.

Mr. Johnson?

Mr. JOHNSON. Yes, thank you.

It was—I think you testified earlier today that you took 2 years off to prepare for this case. That was your testimony this morning, correct?

Mr. AMATO. Yes.

Mr. JOHNSON. But then—and this Liljeberg case, did the plaintiffs come to your office first to retain you? Were you the first counsel retained on the case or signed up on the case as attorney?

Mr. AMATO. No, I was not.

Mr. JOHNSON. Who else had been——

Mr. AMATO. I don't know what the order was, but Ken Fonte was their regular attorney. Don Richard, Doug Draper, then myself,

Lenny Levenson, and Hans Liljeberg, the nephew who was a lawyer, helped out.

Mr. JOHNSON. Would you consider this case to have been complex litigation?

Mr. AMATO. Yes. Not complex to the extent that other litigations are because of the number of parties, but there was—the complexity was brought about by the number of medical records and drug paraphernalia and drug dosages and how the dosages were to take place. And, you know, they would hide records, and they would hide all sorts of things. And, you know, that is what made it complex.

Mr. JOHNSON. I see. Was there extensive—would you agree that the pre-trial discovery period produced a lot of discovery in the case? Was it massive discovery?

Mr. AMATO. Yes, there was massive discovery going on prior to this case being tried. And there were other litigations that were being filed in state court and other Federal courts to minimize the effectiveness of the trial team that the Liljebergs had. They fired the key pharmacists at the hospital, which caused all sorts of litigation. You know, the discovery motions that, you know, that they would—we would file for interrogatories and requests for production and documents and for medical charts. And then they would come back and didn't, wouldn't produce it.

Then we would have to go back to the magistrate and try to get what we needed. And then, you know, it just kept going on and on and on, where a good deal of the time was spent preparing for trial.

Mr. JOHNSON. How long did discovery last? And how many depositions were taken?

Mr. AMATO. I couldn't answer that, sir. I really—it has been too long.

Mr. JOHNSON. Were you involved in the discovery process?

Mr. AMATO. Absolutely.

Mr. JOHNSON. And you don't recall whether any depositions were taken during the course of that litigation?

Mr. AMATO. Oh, of course they were taken. I don't know how many. I mean, I just couldn't tell you how many were taken. You know, and——

Mr. JOHNSON. Well, let me ask you this question then. Were there any difficulties in the discovery process that caused any of the parties to have to file a motion to compel?

Mr. AMATO. Absolutely. We had trouble—there was an attorney for Tenet who was in Dallas who we litigated on and on as to taking her deposition and, you know, litigated the attorney-client privilege and what was privilege and what wasn't privileged and on. I mean, it was not, you know, an easy case to put together.

Mr. JOHNSON. What were you doing for that 2 years that were not taking many cases? How were you using that time to prepare for this case?

Mr. AMATO. Well, to start with, they had truckloads of documents. We had the Liljebergs on the building on veterans highway, and we made up a war room, and Don Richard and I would go there almost every day and go through documents and try to have documents match up.

Then we hired people to put it on computers. And then, on the weekends, the other lawyers would get together and discuss what we found and what was going on. There was also a bankruptcy proceeding that was going on at the same time, so it was bankruptcy stuff happening while we are trying to prepare for trial.

And I am sure I mentioned this once before, but the Liljebergs could not hire a large law firm in the city of New Orleans for any law firm, because Tenet Healthcare had conflicted everybody out. Everybody was—every firm in the city of New Orleans was represented by Tenet.

Mr. JOHNSON. Well, let me ask you this question. Did Judge Porteous rule on any of those pre-trial motions to compel discovery or any other pre-trial motions?

Mr. AMATO. I think most of them are handled by the magistrate.

Mr. JOHNSON. Did he issue any orders himself?

Mr. AMATO. The magistrate or the judge?

Mr. JOHNSON. The judge, Judge Porteous.

Mr. AMATO. I am sure he did. I couldn't answer. I don't know enough.

Mr. JOHNSON. Do you recall how the clients came out with respect to those rulings?

Mr. AMATO. We won some and we lost some.

Mr. JOHNSON. And it was all during this time that you were providing cash money to the good judge?

Mr. AMATO. It was after, when his son got married, which was in 1999.

Mr. JOHNSON. You are familiar with the term home cooking?

Mr. AMATO. Been there.

Mr. JOHNSON. Because—I am sorry. Say that again?

Mr. AMATO. I said I have been home cooked.

Mr. JOHNSON. Yes. So what does home cooking mean when you are trying cases? And you have tried a bunch of cases over 35 years.

Mr. AMATO. Well, there are a bunch of places I don't go because the pot is too hot, but——

Mr. JOHNSON. What do you mean?

Mr. AMATO [continuing]. Where the outsider can't apparently get a fair shake, because of the relationship with the judges and the lawyers and the politicians and whatever else that goes into the mix. And it is called home cooking. I mean, I didn't make up the word, but I have been home cooked.

Mr. JOHNSON. Yes, well, I will tell you, do you know of any lawyers that have been—that were on the other side of a case that you handled in front of Judge Porteous who were home cooked?

Mr. AMATO. Mr. Johnson, I have never won a case that the other side didn't think that I home cooked them. Every lawyer who ever lost a case thinks that some shenanigans went on that caused them to lose it, as opposed to out-lawyering them, out-working them, and having a better case.

Mr. JOHNSON. What impact did you think that you would have on Judge Porteous by providing him with financial favors?

Mr. AMATO. I didn't think any. I didn't think any. I didn't think that my helping my friend would in any way affect his decision-making.

Mr. JOHNSON. Well, let me ask you this. If the circumstances were reversed and you were trying a case before Judge Porteous and—wouldn't it—and you did not know Judge Porteous from the man in the moon, he just happened to be the judge on your particular case, would you not have been concerned if you found out that there was such a close relationship between my opposing counsel and the trial judge in my case?

Mr. AMATO. I am concerned every time I walk into the courtroom.

Mr. JOHNSON. Well, you would be concerned about that in particular, would you not?

Mr. AMATO. It would give me some concern, yes.

Mr. JOHNSON. During the motion to recuse, what role did you play in this?

Mr. AMATO. I was in the courtroom. That was it. I didn't prepare the pleadings. I didn't argue the motion. I didn't say a word. I was there.

Mr. JOHNSON. So you were there the whole time the motion was being argued?

Mr. AMATO. I don't know if I was there the whole time. I probably was.

Mr. JOHNSON. Was there an evidentiary hearing on that motion?

Mr. AMATO. No. No—motion.

Mr. JOHNSON. Were there any oral arguments presented prior to Judge Porteous ruling on the motion to recuse?

Mr. AMATO. I am pretty sure, yes.

Mr. JOHNSON. But you did not participate in it?

Mr. AMATO. I did not.

Mr. JOHNSON. Did you ever hear someone during that motion for recusal process make a misstatement about the true relationship that you, Mr. Creely had with Judge Porteous?

Mr. AMATO. I don't recall any statements made at all. I don't know if there were misstatements or not. I just—I am sorry, Mr. Johnson, but, you know, that is 15 years ago and a lot of water under the bridge. I just don't know.

Mr. JOHNSON. This entire episode was revealed to the public when and how?

Mr. AMATO. When the Fifth Circuit Court of Appeals put on the Internet their decision to recommend the removal of Judge Porteous.

Mr. JOHNSON. And when was that?

Mr. AMATO. I don't have the exact date. It was a year, year-and-a-half ago or something.

Mr. JOHNSON. So this was at proceedings by the U.S. attorney down at Eastern District of——

Mr. AMATO. This is after they decided not to indict Judge Porteous. And then the fifth circuit had some sort of hearing and rendered some sort of report based upon grand jury testimony and statements that they had collected or whatever.

Mr. JOHNSON. Did you have occasion to speak with anyone in the U.S. Attorney's Office for the Eastern District or for any other district with—or FBI or other investigators regarding this case prior to the conclusion of it by the U.S. attorney?

Mr. AMATO. Yes.

Mr. JOHNSON. You did discuss?

Mr. AMATO. I was called before the grand jury with immunity, and I testified truthfully, and I was called before the judiciary—fifth circuit judiciary hearing, and I testified truthfully. I met with counsel for the Committee on three occasions, I think, you know, three separate occasions, plus today. And I am here today.

Mr. JOHNSON. This—do you feel like you would call Judge Porteous as a witness in your state bar notice of inquiry? Do you think he would be on your witness list?

Mr. AMATO. I would hope so.

Mr. JOHNSON. Now, you were given immunity. Why were you given immunity? And what kind of immunity were you given?

Mr. AMATO. It was forced immunity.

Mr. JOHNSON. Excuse me?

Mr. AMATO. Forced immunity. And why was I given it? I have got a good lawyer.

Mr. JOHNSON. Did Mr. Creely also—was he represented by your current attorney——

Mr. AMATO. Mr. Capitelli.

Mr. JOHNSON [continuing]. At that time?

Mr. AMATO. Yes.

Mr. JOHNSON. And so both of you all were able to get immunity?

Mr. AMATO. Yes.

Mr. JOHNSON. Does this immunity apply to the filing of a criminal complaint against either one of you for being a party to a crime or a conspiracy?

Mr. AMATO. I presume it does.

Mr. JOHNSON. So at that time, you knew that you were in some legal jeopardy because of the relationship that you had with Judge Porteous?

Mr. AMATO. Yes.

Mr. JOHNSON. You—is that one of the reasons why you tried to cover up the cash payments to him by always doing things in cash?

Mr. AMATO. Well, that all happened before any immunity came about. So I would presume that giving him cash was probably the easiest thing we could do. And, of course, it didn't leave a paper trail.

Mr. JOHNSON. Did Judge Porteous ever pay you back any of the money?

Mr. AMATO. No.

Mr. JOHNSON. Mr. Chairman, I have no further questions at this time.

Mr. SCHIFF. The gentleman yields back.

Mr. Amato, I know it has been a long day. I have two or three final questions, and then we will break. I want to just follow up on what my colleague asked you. If I understood you correctly, you anticipate that at your state bar disciplinary proceeding that you may call Judge Porteous as a witness? Is that correct?

Mr. AMATO. Yes.

Mr. SCHIFF. And so depending on what he says, it may have an impact on whether you can continue to practice law?

Mr. AMATO. I doubt it.

Mr. SCHIFF. You mentioned that you thought that Judge Porteous had a reputation for being fair and always doing the right thing, correct?

Mr. AMATO. Right.

Mr. SCHIFF. He wasn't either fair or doing the right thing during the recusal hearing, was he?

Mr. AMATO. No.

Mr. SCHIFF. The misleading statements that I read to you earlier, that wasn't either fair or the right thing for him to lead the parties to believe that he had no cash relationship with the lawyers in the case, was it?

Mr. AMATO. No.

Mr. SCHIFF. And by failing to inform the opposing party that he had received cash from you over the years, didn't the judge deprive that party of the right to the honest services of the court?

Mr. AMATO. I think you will have to ask Judge Porteous that question. I don't know.

Mr. SCHIFF. Well, I am asking you the question. Don't litigants in a courtroom have the right to the honest services of the judge?

Mr. AMATO. I would hope so, yes.

Mr. SCHIFF. And if they have a legitimate basis to make a motion to recuse or to appeal the denial of a motion to an appellate court, don't they have the right to expect the judge will be truthful in presenting the facts that will be the basis of that motion to recuse?

Mr. AMATO. Yes.

Mr. SCHIFF. And weren't they deprived of that when Judge Porteous failed to inform the parties that he had received cash from lawyers in the case?

Mr. AMATO. Yes.

Mr. SCHIFF. That will conclude your testimony today. This Committee will be in recess until 10 a.m.

[Whereupon, at 5:31 p.m., the Task Force was adjourned.]

TO CONSIDER POSSIBLE IMPEACHMENT OF UNITED STATES DISTRICT JUDGE G. THOMAS PORTEOUS, JR. (PART I)—Continued

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WEDNESDAY, NOVEMBER 18, 2009

HOUSE OF REPRESENTATIVES,
TASK FORCE ON JUDICIAL IMPEACHMENT
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Task Force met, pursuant to notice, at 10:04 a.m., in room 2141, Rayburn House Office Building, the Honorable Adam Schiff (Chairman of the Task Force) presiding.

Present: Representatives Schiff, Conyers, Jackson Lee, Cohen, Johnson, Pierluisi, Goodlatte, Sensenbrenner, Lungren, and Gohmert.

Staff present: Alan Baron, Counsel; Harold Damelin, Counsel; Mark H. Dubester, Consel; Kirsten Konar, Counsel; and Jessica Klein, Staff Assistant.

Mr. SCHIFF. This hearing of the House Judiciary Task Force on Judicial Impeachment will now come to order. Without objection, the Chair will be authorized to declare a recess of the hearing.

Today, we will continue our examination of allegations that Judge Porteous violated the public trust, the law and ethical canons by presiding over the Liljeberg case.

Our third witness on this issue is Joseph Mole, Esquire. Mr. Mole is an attorney with a law practice in the New Orleans area. He is here pursuant to subpoena. He has not been given an immunity order.

I will now swear the witness.

[Witness sworn.]

Thank you. You may be seated.

Task Force counsel—just so you know the procedure today, Mr. Mole, Task Force counsel, Mr. Harry Damelin, is going to be starting by asking you questions. Members of the Task Force will then have a chance to ask you questions, as will counsel for Judge Porteous. Judge Porteous is present with us this afternoon, as is his counsel.

And with that, we will begin with Mr. Damelin.

Mr. DAMELIN. Good morning, sir.

Mr. Mole, you are an attorney, correct?

Okay. And where do you practice?

Okay. And could you just generally describe what type of practice you have, sir?

000440(c)

TESTIMONY OF JOSEPH MOLE, ATTORNEY, NEW ORLEANS, LA

Mr. MOLE. I have practiced 32 years. For most of that time, I have handled large, complex business lawsuits, commercial litigation of all sorts, antitrust, bankruptcy, leases, contracts.

Mr. SCHIFF. Mr. Mole, you may want to move your microphone a little closer.

Mr. MOLE. Closer?

Mr. SCHIFF. You may want to lower that microphone, and you will need to talk very close to it so we can hear you. Thank you.

Mr. DAMELIN. Mr. Mole, did there come a time when you became involved in the case that we will refer to as *Lifemark v. Liljeberg*?

Mr. MOLE. Yes, in March 1996, the company that owned Lifemark became my client during a search for attorneys in New Orleans to take over an existing lawsuit. And I enrolled, I believe, in early April 1996 as counsel.

Mr. DAMELIN. Okay. And for purposes of clarity, is it fair to say that you represented Lifemark against Liljeberg? Is that clear?

Mr. MOLE. That is correct.

Mr. DAMELIN. At the time you became involved in the case, had it already been assigned to Judge Porteous?

Mr. MOLE. Yes, it was with Judge Porteous.

Mr. DAMELIN. And had you ever previously had a case before Judge Porteous either in state or Federal court?

Mr. MOLE. No, I had never had a case with Judge Porteous.

Mr. DAMELIN. Okay. And you say you got involved in the case around March 1996?

Mr. MOLE. I believe the interview with the client was in March. I enrolled as counsel, if memory serves me, on April 5, 2006, in the actual lawsuit, as counsel of record for the two Lifemark companies.

Mr. DAMELIN. And when you got involved in the case, was there a trial date already set?

Mr. MOLE. Again, if memory serves me correct, trial was set for early November of that year, 1996.

Mr. DAMELIN. And when you got involved in the case, were Jake Amato and Leonard Levenson already in the case?

Mr. MOLE. No, they were not. They didn't surface until they made a motion to enroll sometime in September, I believe.

Mr. DAMELIN. Of what year is that?

Mr. MOLE. 1996.

Mr. DAMELIN. And approximately how close to trial was it when they enrolled or entered their notice of appearance?

Mr. MOLE. Well, when I briefed the issue to—with the court, I used the term 6 weeks before trial, so that is what I think it was.

Mr. DAMELIN. At the time they entered their appearance in the case, did you know either of the gentlemen?

Mr. MOLE. I did not.

Mr. DAMELIN. Have you come to find out since the time they entered their appearance what type of fee arrangement that they had in connection with the case? By that, I mean, was it an hourly rate or a contingent fee basis?

Mr. MOLE. Yes, I did find out. Because the Liljeberg companies—one or both of them—involved in the litigation were in Chapter 11

proceedings, Mr. Levenson and Mr. Amato had to make an application to the bankruptcy court to get their fee arrangement approved. I found that in the bankruptcy record, and they had a contingency fee arrangement, and it was their deal. I don't know what their deal between themselves was, but between Mr. Levenson and Mr. Amato's firm, the deal was they got 11 percent of the value of the hospital claim that was part of the litigation.

Mr. DAMELIN. Okay. And when they entered their appearance, Mr. Mole, did that cause you any concern? And if so, why?

Mr. MOLE. Well, as in any case, you know, especially a case as big as that, you investigate every aspect of it. So when two new lawyers signed up 6 weeks before trial, it raised some concerns, and so I did what I would always do, is I did some due diligence into who these guys were. And I made phone calls and talked to people and developed some concerns, yes.

Mr. DAMELIN. Okay, what did you learn in the course of your due diligence?

Mr. MOLE. I learned that—from people who would talk to me, but didn't want to, you know, sign an affidavit or go on the record—that Mr. Levenson and Mr. Amato were very close to Judge Porteous, that Mr. Amato had been his law partner, as had Mr. Creely—Amato and Creely was the firm—and Mr. Levenson was very close to Judge Porteous and had—I think had been to a fifth circuit conference or two as Judge Porteous's guest, that they frequently socialized in—in the way of lunches, hunting trips, and things like that, and that they—I also knew—well, I formed the opinion that there was—there was a high likelihood that the case—it was a bench trial. There was no jury. So it would be entirely a decision by the judge in a case that had been valued as high as $200 million for my client that the case would be handled in the way by the judge that would be favorable to his friends, and that was of deep concern.

Mr. DAMELIN. As a result of your due diligence and the conclusions that you reached, did you then file a motion to recuse Judge Porteous from the case?

Mr. MOLE. Yes, after I did my investigation, such as it was, I, of course, conferred with my client. I dealt with a lawyer in house at Lifemark. And we decided the best course of action was to take a shot at recusal.

Mr. DAMELIN. Okay. Had you ever filed a motion to recuse a Federal judge previously in your years of practice?

Mr. MOLE. I believe that is the only time I have ever done it in any court.

Mr. DAMELIN. And could you explain what the factual underpinning or basis was of the motion that you filed?

Mr. MOLE. Well, usually when you file a motion to recuse, you have to have some evidence that you present to the court—relationship or a fact that you think the judge should consider in disqualifying himself for whatever reason.

I had no cold facts. All I had was my opinion, based upon hearsay from people who didn't want to be public about their opinion, so I signed an affidavit that said pretty much what I told you, Mr. Damelin, that there was an appearance—possible appearance of impropriety. I argued that the judge shouldn't be handling a case

where two of his closest friends, if not his very closest friends, had just signed up 6 weeks before trial, whose facts had been in litigation since 1987 in one court or another, and that I didn't believe they had anything to add, other than their relationship with the judge, and that if the result came out in a certain way, it would create an appearance that things had not been right. And that is what I argued.

Mr. DAMELIN. Mr. Mole?

Mr. MOLE. And filed an affidavit to that effect.

Mr. DAMELIN. Okay, Mr. Mole, let me ask you this. At the time of your motion, in October 1996, were you aware of the fact that other than campaign contributions, Jake Amato and his law partner, Bob Creely, had given Judge Porteous thousands of dollars in cash while he was a state judge?

Mr. MOLE. No, I was not. If I had known that fact, I would have made it—made it—to the court it time.

Mr. DAMELIN. Okay. Would that have been a significant fact that you would have used in your motion to recuse?

Mr. MOLE. Obviously. I think that would have been—that would have made the motion to recuse mandatory to be granted.

Mr. DAMELIN. Now, just a small point, but what if the money that I just mentioned came solely from a Mr. Creely? Would that still have been important to you in connection with the motion to recuse Judge Porteous?

Mr. MOLE. Well, the firm on the pleading was Amato and Creely, so, yes, it would have. It was the firm, not just Mr. Amato. But Mr. Creely didn't participate in the trial, but, yes, it would have been very——

Mr. DAMELIN. Okay. Now, did there come a time that Judge Porteous, in fact, held a hearing with regard to your motion to recuse?

Mr. MOLE. Yes. Yes, we made the motion probably in September, and the hearing was in mid-October.

Mr. DAMELIN. Now, were Mr. Levenson and Mr. Amato present at the hearing with regard to your motion to recuse?

Mr. MOLE. Yes, they were.

Mr. DAMELIN. And at any time, either before, during or after the hearing, were you ever informed that Mr. Amato had previously provided Judge Porteous thousands of dollars when he was a state judge?

Mr. MOLE. No.

Mr. DAMELIN. Would this fact have been important to you, again, in connection with arguing the motion to recuse?

Mr. MOLE. Yes. It would have been pretty significant.

Mr. DAMELIN. Now, at the recusal hearing, Judge Porteous stated, "Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I gone along to lunch with them? The definite answer is yes." Now, were you aware or was it ever disclosed to you that, in fact, for a number of years, both Mr. Amato and Mr. Levenson had regularly been paying for hundreds of expensive lunches for Judge Porteous?

Mr. MOLE. Well, I knew from my—what I called an investigation that they did lunch together frequently. I didn't know the details of that arrangement.

Mr. DAMELIN. Were you aware of the extent of that in any way?

Mr. MOLE. No, only what I heard on the phone from people who were willing to talk to me.

Mr. DAMELIN. Now, did Judge Porteous, in fact, deny your motion to recuse?

Mr. MOLE. He did.

Mr. DAMELIN. Okay. And then the matter proceeded to trial eventually?

Mr. MOLE. The trial setting of November 6th was pushed back, and we began trial in June 1997, tried the case for—over a period of, I believe, 6 weeks.

Mr. DAMELIN. Okay, we will get to that. We will get back to that in a minute. But after Judge Porteous denied your motion to recuse, did you retain an attorney named Don Gardner to become part of the Lifemark team?

Mr. MOLE. Yes, I did.

Mr. DAMELIN. What type of practice did Don Gardner have?

Mr. MOLE. Don seemed to do mostly family law, divorces, and personal injury type cases in Jefferson Parish.

Mr. DAMELIN. Okay. Was that in any way relevant and relative, his experience, to the type of case that you were handling?

Mr. MOLE. No, it was not.

Mr. DAMELIN. Why was Gardner then brought in by Lifemark?

Mr. MOLE. After we lost the motion to recuse, my client and I discussed that—and my client insisted that we try to find a lawyer who, like Mr. Amato and Mr. Levenson, was a friend with the judge and knew him very well. They were concerned that they would do everything they can to achieve a level playing field.

I resisted doing that. I am not happy with the fact that we did it. But my client insisted, and so we did it.

Mr. DAMELIN. And so was Gardner brought into the case simply because of his relationship with Judge Porteous?

Mr. MOLE. Yes.

Mr. DAMELIN. And at the trial that subsequently proceeded, did he play any role whatsoever?

Mr. MOLE. No, Don was there every day, but he did not take a witness or do any argument.

Mr. DAMELIN. Based on Mr. Gardner's fee arrangement, how much was he paid when he simply entered the case?

Mr. MOLE. He got a retainer of $100,000.

Mr. DAMELIN. Now, when did the case eventually proceed to trial?

Mr. MOLE. We began, I believe, in mid-June. The last day of trial was July 31. But we didn't try it every day in that interim. I believe there were 16 or 17 days of evidence.

Mr. DAMELIN. This was a non-jury trial?

Mr. MOLE. That is correct.

Mr. DAMELIN. Were you the lead trial counsel on the Lifemark side of the case?

Mr. MOLE. I was.

Mr. DAMELIN. Now, during the trial, did Judge Porteous at some point in time get involved in the questioning of your witnesses after they had, in fact, been cross-examined by the Liljeberg attorneys? Did that happen during the trial?

Mr. MOLE. Yes, it did happen. They would occur when we put on a strong or important witness. I or one of my partners would examine him. And I think we did a very good job at trial. And when we do a good job with an important witness, the Liljebergs' lawyers would cross-examine. And typically, to my recollection and my opinion, our witnesses did very well on cross.

Mr. DAMELIN. Did or did not do very well on cross, the Liljeberg lawyers?

Mr. MOLE. I didn't feel they laid a glove on them. But Judge Porteous would question my witnesses. And, as you know, judges are allowed to question witnesses, especially in a bench trial, but I felt that the judge had gone too far in cross-examine and done some damage. So I was determined at some point to object or ask the judge for some relief from what I—the damage I thought he had done, because the judge with the black robe is pretty hard for a witness to resist.

Mr. DAMELIN. Okay. So at some point during the trial, when Judge Porteous was examining witnesses that you had called and examined and Liljeberg had cross-examined, did you, in fact, raise an objection to the judge?

Mr. MOLE. Yes. After he had done that to three or four of my witnesses, there was a particularly important witness named Steve Fouche. He was an intelligent man. He was a pharmacist, but he was relatively unsophisticated as far as the trial went. He did a very good job on direct, survived cross very well, and then the judge went into him with some questions.

When Judge Porteous finished his questions, I stood up and said, "Judge, may I follow up?" And I remember Judge Porteous's response was, "Nobody follows me up." And I said, "Well, then, Judge, with all due respect, I object. I think you have gone too far with these questions." And it is a little bit of a blur after that, but I recall that he got very incensed. And at some point, we had bench books on the bench, that we had given the judge, big, black binders of documents. He would pick up several of them and threw them like a soccer ball toward me in anger. That was on a Thursday afternoon.

Mr. DAMELIN. He physically threw the binders at you?

Mr. MOLE. Well, I mean, I don't think there was any realistic possibility he would get them as far as I was. It was about the same distance as I am from Mr. Schiff. But whether he was throwing at me, I don't know. But it was in my general direction.

Mr. DAMELIN. Okay. And then what happened after he threw the binders?

Mr. MOLE. You know, it is—it is—it was the end of the day. We stopped court. There was no trial on Friday. It was Thursday afternoon. We came back Monday, and the judge ruled on my objection. He had written an opinion, read it into the record—my objection to his questions, but then allowed me to follow up with the witness, and then we went on to the trial. Over the weekend, no one was willing to stand close to me.

Mr. DAMELIN. You have done a lot of trial work over the years. Has anything like that ever happened to you before?

Mr. MOLE. No, I have made judges angry before, but no one has thrown things at me in court.

Mr. DAMELIN. As the trial concluded, Mr. Mole, did you feel that you had clearly proven your case?

Mr. MOLE. Yes, well, lawyers always feel they do a good job, but I felt we had—it was a slam dunk. I think we had—to use another metaphor, pitched a shutout. I thought it was not a close case. It was a difficult case, long, but I think we had done a very good job.

Mr. DAMELIN. Now, the judge had this case under advisement for quite a long period of time. Is that correct?

Mr. MOLE. Yes, I think almost 3 years.

Mr. DAMELIN. Now, let me ask you this. During the time that this case was under advisement, from July 1997 until the judge issued his opinion in April of 2000, did you know that Mr. Amato and Mr. Levenson took Judge Porteous out to lunch on a number of occasions?

Mr. MOLE. No, I had no knowledge of that.

Mr. DAMELIN. Did you know that Mr. Amato and Mr. Levenson contributed money to Judge Porteous to help pay for some type of intern or externship for one of Judge Porteous's sons?

Mr. MOLE. No one told me that.

Mr. DAMELIN. Did you know that Judge Porteous requested money from Amato and that Amato had given him about $2,500 in cash?

Mr. MOLE. No, I didn't know that.

Mr. DAMELIN. Did you know that Amato had paid about $1,500 for a party to celebrate Judge Porteous's fifth year on the bench?

Mr. MOLE. No, I didn't know that.

Mr. DAMELIN. Okay. And with regard to Mr. Levenson, did you know that he had, in fact, traveled to Washington with Judge Porteous at the end of January 1999, that he traveled to Houston with Judge Porteous in April 1999, that he was in Las Vegas with Judge Porteous in October 1999, and that Levenson and Judge Porteous went on hunting trips together, including a hunting trip to a hunting lodge in December 1999? Did you know that?

Mr. MOLE. No. All of those things were the things I—sort of things I feared were happening or would happen, but had—I had no knowledge of.

Mr. DAMELIN. Would any or all of those things had been important to you to know while that case was under advisement?

Mr. MOLE. Certainly.

Mr. DAMELIN. Okay. Now, at the recusal hearing in 1996, Judge Porteous said that he would let you know if anything ever came up which in his mind might be a cause for recusal? That is in the transcript of the recusal hearing. Now, did Judge Porteous, his secretary, his courtroom clerk, or anyone else ever let you know about any of the above-mentioned events that I just pointed out to you?

Mr. MOLE. No. No one ever informed me of those facts.

Mr. DAMELIN. Now, you got Judge Porteous's decision in April of 2000. What was your reaction when you read that decision?

Mr. MOLE. You know, I was not surprised with the outcome. Some aspects of it were unusual in the remedies that Judge Porteous fashioned.

Mr. DAMELIN. When you say you weren't surprised with the outcome, you had previously said you thought you had pitched a shutout, so what do you mean you weren't surprised with the outcome?

Mr. MOLE. I felt we would lose. I felt that the playing field wasn't level. I didn't have any confidence that we would get what I considered a victory, which was to keep the hospital and sever the relationships between the Liljebergs and my clients.

Mr. DAMELIN. So was Judge Porteous's decision, the one he rendered in April, a loss for you and your client?

Mr. MOLE. A very big loss. He had given the hospital—it is a convoluted story, by my clients own the hospital. It is a nice, large hospital in suburban New Orleans that had previously been owned by the Liljebergs. He had ordered the hospital be given back to the Liljebergs, not a remedy that had even been requested, but it was a valuable hospital.

Mr. DAMELIN. Okay. Now, based on the judge's decision and your understanding of the contingent fee arrangement that Amato and Creely had, approximately how much did they stand to make if Judge Porteous's decision was allowed to stand?

Mr. MOLE. Well, based on their fee arrangement of 11 percent, they were to get 11 percent of the value of the hospital claim. At trial, Mr. Amato and Mr. Levenson's expert valued the hospital in a range of between roughly $50 million and $75 million, so their fee would have been 11 percent of that figure. My math is somewhere between $5 million and $8 million.

Mr. DAMELIN. Okay. Now, did you appeal Judge Porteous's decision to the Fifth Circuit Court of Appeals?

Mr. MOLE. We did. The client and I located a firm who had a good relationship with Lifemark, a Texas firm, Haynes and Boone, who did the lion's share of the work on the appeal, but I participated actively in it.

Mr. DAMELIN. Okay. And the fifth circuit eventually reversed that decision, did they not, Judge Porteous's decision?

Mr. MOLE. Yes, Judge Porteous's decision was, I believe, 108 pages, and theirs was 116.

Mr. DAMELIN. Okay. And was that reversal in the fifth circuit—did you view that as a win for you and your clients?

Mr. MOLE. Yes. It was a resounding win.

Mr. DAMELIN. Okay. Now, an issue has been raised in the course of the hearing so far that the panel of fifth circuit judges that ruled that decision—that made that decision were from Texas and they didn't understand or misinterpreted Louisiana law. How would you respond or how do you—how do you respond to that observation?

Mr. MOLE. Gee, the fifth circuit is a highly respected circuit. Louisiana law is not that unusual. I mean, people use the Napoleonic code, lawyers do, to try to intimidate clients into hiring Louisiana lawyers, but it is not that different anymore. We hired, as a lawyer on our side, Louisiana's foremost expert on the real property transactions, Max Nathan, a lawyer who had taught me in law school. We made the arguments that the fifth circuit accepted under Louisiana law. The fifth circuit handles—it is a three-state circuit, so it handles a very high proportion of Louisiana cases every day, so it knows Louisiana law well.

What else? The judge who wrote the opinion, Judge Higginbotham, is perhaps the sharpest and most respected mind on the fifth circuit. I think he is been considered for the Supreme

Court before. He is a little old now, but he is a very good judge. That just doesn't resonate with——

Mr. DAMELIN. So you don't think that that group of three judges on the fifth circuit misunderstood or didn't understand Louisiana law?

Mr. MOLE. And they also hire very talented clerks from all over the country. They get the pick of the crop, so—I am not even sure that is right that all three judges were from Texas, but I am sure Judge Higginbotham, I think, is a Dallas lawyer originally.

Mr. DAMELIN. Okay. In—in all of your years of practice, Mr. Mole, do you ever recall being involved in a case where an appeals court used such harsh language as the fifth circuit did here in reversing a trial judge's decision?

Mr. MOLE. I only have my own experiences, but I have never seen an appeals court use language like the fifth circuit used to describe the opinion. The thing that does resonate with me is the term they used, "made up out of whole cloth." That pretty much matched my view of what had happened in the district court.

Mr. DAMELIN. Okay, Mr. Mole. Thank you. I have no further questions.

Mr. SCHIFF. Thank you.

Mr. Mole, I would like to ask you a number of follow-up questions. First, as a threshold matter, you came in, you were brought in to the *Liljeberg* case in March, and the case at that time was set for November. Is that right?

Mr. MOLE. That is correct.

Mr. SCHIFF. So you were brought in more than half a year before the trial date?

Mr. MOLE. Yes, that was a problem. We had to scurry to assimilate an enormous amount of history. We succeeded in being able to take a lot of depositions, some that had already been—already been taken, so we did a lot of work.

Mr. SCHIFF. There was a suggestion in questioning yesterday that both you and Mr. Amato and Levenson were all new arrivals on the case prior to the trial, but that wouldn't be correct, would it?

Mr. MOLE. Well, I mean, I—the time period is what it is. I got in, in early April, and he got in, in mid-September. So it is—but we did put a lot of lawyers on it, a lot of paralegals, and spent—you know, I have never had just one case at a time, but I pretty much spent all the time I could on that case for whatever the interval is. And we ended up postponing the trial until June, so that worked out.

Mr. SCHIFF. So you were brought in more than 6 months prior to trial? And Mr. Amato was brought in only about 6 weeks from trial?

Mr. MOLE. That is correct.

Mr. SCHIFF. It would be unusual to bring in new lawyers 6 weeks before a complex trial, wouldn't it?

Mr. MOLE. It was. And the existing Liljeberg lawyers had a long history with the case, and they were all specialists in the areas that they were handling, Don Richard and Doug Draper, who handled the bankruptcy and technical issues.

Mr. SCHIFF. I want to ask you about the recusal hearing. Judge Porteous during the hearing stated that "a lawyer who reasonably believes that the judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system. I cite that so everyone understands that I recognize my duty and obligations and that I am fully prepared to listen."

Did the judge indicate to you that he at least understood the law, in terms of what he was required to do on a recusal motion?

Mr. MOLE. Yes.

Mr. SCHIFF. He knew what the appropriate standard was?

Mr. MOLE. Yes, he seemed to understand, and we certainly briefed it thoroughly. It is a very difficult thing to do, to ask a judge to recuse themselves.

Mr. SCHIFF. When he went on to say, "Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes. Have I been going to lunch with all of the members of the bar? The answer is yes."

When the judge made those statements, was he, in your opinion, trying to give the impression that, yes, they were friends, but not unlike every other member of the bar that he had lunch with?

Mr. MOLE. That was my impression.

Mr. SCHIFF. When you pointed out, Mr. Mole—you said, "The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns." The judge responded, "Well, luckily, I didn't have any campaigns, so I am interested to find out how you know that. I never had any campaigns, Counsel. I never had an opponent."

He then goes on to say, "The first time I ran, 1984, I think is the only time when they gave me money." Was it your impression from what the judge was saying that he was making the claim that he had only received money once and that was back in 1984?

Mr. MOLE. In the form of campaign contributions.

Mr. SCHIFF. Now, you were concerned about campaign contributions because that might affect the way he presided over the case, right?

Mr. MOLE. Yes, but I know from experience that campaign contributions are not a reason to ask for a recusal, because in Louisiana, we have elected judges, and the fact that the lawyer has contributed to the judge that he is trying a case to is not grounds for recusal. But in Judge Porteous's case, he was a Federal judge. All I had to work with was the fact that there are public campaign records that told me that Jake Amato and Lenny Levenson had given him some money, so I raised that.

Mr. SCHIFF. Now, all you had to work with was the campaign cash issue, because you were unaware of the fact that Mr. Amato and his partner had given somewhere between $10,000 to $20,000 in personal cash to the judge, right?

Mr. MOLE. Yes. Part of the way I pitched the recusal—and it was a very difficult thing to word, was, "Judge, you disclose to us, because we don't have records, what the relationship is in full. And if you are comfortable with it, then it will work. And if it is—if you

are not, then I have a point that you need to address." And that was—I was hoping he would make disclosure.

Mr. SCHIFF. Now, I take it that, had you known of the relationship where as a state judge, he would send curators to the Amato-Creely law firm, and they would kick back some of the money from those curatorships to the judge, if you had known of that relationship, that would have been much more significant to you than any campaign contribution, in terms of the recusal motion.

Mr. MOLE. That has all kinds of implications. Yes, that would have been a serious concern. I may have had—that that would have been a serious concern, yes.

Mr. SCHIFF. At another point in the hearing, the judge said to you, "You haven't offended me, but don't misstate. Don't come up here with a document that clearly shows well in excess of $6,700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for All program for all judges in Jefferson Parish. But go ahead. I don't dispute that I receive funding from lawyers."

When the judge said that, he was taking issue with your suggestion or characterization that money had gone to him when, in fact, it had gone to all the judges, right?

Mr. MOLE. That is correct. Yes, I remember that.

Mr. SCHIFF. And he was basically saying you hadn't done your homework, right?

Mr. MOLE. That is—yes. But from the campaign records, all I saw was the number and his name. And it hadn't been properly apportioned, but he was correct. It was a mistake, in fact.

Mr. SCHIFF. Given what—what you know now in terms of the relationship between Mr. Amato and the judge, where over a period of time, he had given the judge thousands of dollars, do you consider it misleading that the judge accused you of not doing your homework for suggesting that he had gotten campaign cash, when, in fact, he had received a tremendous amount of personal cash?

Mr. MOLE. I felt he should have disclosed those things. And I think, in context, it was an omission that was material that he should have made and should have told us, yes, what the financial relationship was and had been. I do think it was a misrepresentation.

Mr. SCHIFF. By suggesting that he had never gotten campaign cash and not disclosing the fact that he had gotten a lot of personal cash, do you feel that he misled you?

Mr. MOLE. Absolutely.

Mr. SCHIFF. The court goes on to say, "I have always taken the position that if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off. Did the court give you that opportunity?

Mr. MOLE. No.

Mr. SCHIFF. Do you feel that you were deprived of the right to honest services of the judge?

Mr. MOLE. I think my client was, yes. I think my client was mistreated by the system—or by the judge on that level.

Mr. SCHIFF. Now, you mentioned that your client insisted that you bring in Mr. Gardner.

Mr. MOLE. Yes.

Mr. SCHIFF. And this was a step you were reluctant to take?

Mr. MOLE. That is correct.

Mr. SCHIFF. And the reason you brought Mr. Gardner in was you needed to offset the advantage you felt the other party had in bringing in two friends of the judge?

Mr. MOLE. That is correct. And part of the reason—there are a lot of reasons for it, but that is essentially it. We were trying to achieve a level playing field, to get a source of information, yes.

Mr. SCHIFF. And, Mr. Mole, do you consider that a corruption of the system, too, that both you and the opposing party felt they needed to bring friends of the judge in as counsel?

Mr. MOLE. I am sorry. I didn't hear the first part of your question.

Mr. SCHIFF. Do you feel that—that also is a corruption of the system, where in order to have a level playing field or secure some advantage, that either you or the other party or both have to bring in friends of the judge as counsel on the case?

Mr. MOLE. I do. It was deeply offensive to me as a lawyer that the case depends on something other than the facts and the law.

Mr. SCHIFF. Now, you knew by reputation that Mr. Gardner had a relationship with the judge, was a friend of the judge?

Mr. MOLE. Well, once my client said we needed to get someone else who is a friend of the judge, I began looking around and making phone calls again. And I found Mr. Gardner that way. I interviewed him, and that is basically the selection process.

Mr. SCHIFF. Now, were you aware that Mr. Gardner at some point had also given cash to the judge?

Mr. MOLE. No, I was not.

Mr. SCHIFF. My—our counsel made reference to a trip to Las Vegas during the *Liljeberg* case. Were you aware Mr. Gardner had also gone on that trip?

Mr. MOLE. No. Don told me he was quite close to the judge and they would go to dinners where he would provide wine—you know, and entertain the judge, and participate in social events with him. But I didn't know that he had given him money or the extent of how much money he gave him or what he paid for or what the—what the social arrangements were. Frankly, I didn't want to know.

Mr. SCHIFF. During the course of your research for your client to find another lawyer to bring into the case, did other lawyers in the community ever tell you that they were aware of attorneys giving money to the judge?

Mr. MOLE. No one ever told me that. People were always very careful. Some people wouldn't—frankly, wouldn't talk to me about it. When I told him what my problem was, they would say, "I can't talk to you about that."

Mr. SCHIFF. During the—the time when the *Liljeberg* case was under submission, we heard testimony yesterday that Mr. Amato had a conversation with Judge Porteous, a private conversation, in which the judge said, "You had better prove your case, or the fifth circuit will take it away from you." Were you aware of this conversation?

Mr. MOLE. No, I was not.

Mr. SCHIFF. Do you consider it appropriate for the judge and opposing counsel to have a—to have a private conversation about a case that is under submission?

Mr. MOLE. Absolutely. You know, my first job as a lawyer was clerking for an old Irish Federal judge who would never talk to a lawyer on any level if he had a case with them. I don't think ex parte communications are proper, certainly not about the case itself.

Mr. SCHIFF. I just want to make sure I have heard your original answer correctly. So your view is it is improper to have that kind of ex parte contact?

Mr. MOLE. Absolutely.

Mr. SCHIFF. And how do you—in the context of the *Liljeberg* case, how would you interpret a statement, "You had better prove your facts, because otherwise the fifth circuit will take it away from you"?

Mr. MOLE. I think you are asking me to interpret someone else's thoughts. But with that statement, I would interpret it as the judge was concerned that what he did was supportable by a record so that it wouldn't be reversed on appeal. And, you know, there was a sense in the trial that I was straining to make that impossible, to make a record that couldn't be supported—a ruling for the Liljebergs. So I think there was some sense that it was going to be a difficult thing for the judge to do.

Mr. SCHIFF. Can you explain that, though? You know, what I think is kind of perplexing to us is the idea that the judge has to struggle to reach a decision that the court of appeals can uphold. You said that it—it was—you were straining to demonstrate during the trial facts or bring out facts that would not allow a judgment to be held. Can you explain what you mean by that?

Mr. MOLE. Well, for example, on the hospital claims, the Liljebergs have lost their hospital, and my client had bought it at a foreclosure sale. And they sued my client in a posture as a plaintiff for the value of the hospital. And their expert witness was—I felt we had destroyed him on cross-examination. His opinion as to the value of the hospital was unsupported and foolish.

And that meant the judge, in my opinion, knew that if he gave the $75 million as an award for the loss of the hospital, there was no evidence or even expert opinion to support that. And yet—and when he wrote the opinion, he got around that by simply ordering us to give the hospital back to the Liljebergs, something that is totally unsupportable, but that is—that was my objective, is to make the record so bulletproof there was no way to support any result other than what we thought was appropriate.

Mr. SCHIFF. Now, the remedy of giving the hospital back to the opposing party, was that a remedy that was asked for in the litigation?

Mr. MOLE. That was the most stunning part of the opinion. No, it wasn't even requested by any party that I remember. It was really surprising.

Mr. SCHIFF. And was the first time that you learned of this when the opinion came out?

Mr. MOLE. I remember very well turning to that page and saying, "This is—holy cow. This is really unusual."

Mr. SCHIFF. So during the litigation, opposing counsel and the opposing party were seeking damages, but in the judge's order, the judge awarded the hospital to the other party?

Mr. MOLE. Yes.

Mr. SCHIFF. And at no time in the pleadings or in arguments of counsel did the opposing party actually ask for that remedy?

Mr. MOLE. To my recollection, no. We were so—I was totally stunned and surprised by that particular aspect of the opinion.

Mr. SCHIFF. Did you ever learn beyond your suspicions why Amato and Levenson were brought in?

Mr. MOLE. Only from these proceedings, from the subsequent proceedings. I testified in the fifth circuit in that proceeding with—the fifth circuit's judiciary commission, or whatever the term is, investigated and made a recommendation to this body. And I had the same sort of questions you have asked that suggested these things have happened, but other than that, I have no direct knowledge of them.

And I testified in the grand jury hearings, but I don't believe there is any suggestion there.

Mr. SCHIFF. Just one last question before I turn it over to my fellow colleagues. You mentioned that you weren't surprised by the outcome in the case. What was it about the nature of the trial or the—the judge's conduct of the trial that led you to believe you were going to lose in the end, notwithstanding your feeling about the merits?

Mr. MOLE. You know, after trying a lot of cases, you just get a feeling when it—it is hard to isolate the factors, but there was the reputation that I had learned of before trial.

Mr. SCHIFF. And what reputation are you talking about?

Mr. MOLE. Of the relationship between Judge Porteous and these two lawyers. Judge Porteous came from a state court bench. He had been a state court judge in—in Jefferson Parish, which has a history of corruption. So that confirmed or reinforced my concern about a corrupt result.

The attitude of the lawyers, the flow of the trial, you know, Judge Porteous is a strong personality and a good trial judge, in the sense that he knows the rules of evidence. He is decisive. So I can't say the trial made me feel like he was leaning on me, but nonetheless, I felt just an instinct that, you know, this is—this is—I know where this is going to end up, and my remedy is going to be in the court of appeal.

Mr. SCHIFF. Thank you. That is it for me.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Mole, you—in response to questions from Mr. Damelin and from the Chairman, you indicated you believe that Judge Porteous had a duty to disclose during the hearing on your motion that he recuse himself of the payments that he had received from the attorneys on the other side. And I presume—perhaps you answered this. I presume that as this case drug on for a long period of time after the case was tried and these other payments were received, I pre-

sume you felt that he would have had a duty to have disclosed that to the parties in the case, as well. Is that correct?

Mr. MOLE. Yes. While the case was under submission would have been a particularly sensitive period—things happen that affects the outcome.

Mr. GOODLATTE. Doesn't Judge Porteous's failure to notify the parties after these events—after, in fact, he said he would do so—amount to a fraud on the court?

Mr. MOLE. I have never been a judge, so I don't reach legal conclusions, but my opinion is it was a fraud on my client.

Mr. GOODLATTE. And that that is a—that is in—in fact, a part of a judicial proceeding over which he was the presiding officer that would be, in fact, more than a fraud on your client. It would be a fraud on our judicial system, would it not?

Mr. MOLE. Yes, I would tend to agree with you, yes, but it is not my decision.

Mr. GOODLATTE. What was your reaction when you read Judge Porteous's opinion in the *Liljeberg* case?

Mr. MOLE. You know, I remember where I was when I read it. I was in court to try another case in Jefferson Parish, and somebody brought it over to me, before BlackBerries. I think this was in, what, 2000—yes, 2000. And I remember flipping through it, standing there and saying, "Jeez, he hit us there, he hit us there, he hit us there," so there were a number of claims. It was a very big case. And when I got to the decision on the—on the hospital, my reaction was, "Well, that is good. This is so off-the-wall it is going to be easier to shoot at the whole opinion on appeal. This is so unbelievable as a result, that he would simply take the hospital and give it back to the Liljebergs. I have to look at this, but I don't think there is any support to that."

Mr. GOODLATTE. But did your original concern about his relationship with the attorneys and your motion to have him recuse himself come back to mind, as you read that opinion?

Mr. MOLE. You know, I am—I am a trial lawyer, so I am only result-oriented. At that point, I was focused on, "Okay, let's get on to the appeal." I put all that time in.

Mr. GOODLATTE. Knowing what you know now, which is more than what you knew then, about the relationship between the judge and the attorneys, do you believe that the decision was based solely on a reasonable interpretation of the relevant law? Or do you think it was influenced, at least in part, by his relationship with others?

Mr. MOLE. I think it is the latter. You know, yesterday, I watched in the conference room as Mr. Amato testified. And, you know, I heard all those facts, but hearing Jake say them, it sort of took my breath away.

Mr. GOODLATTE. Were you familiar with the conversation that Mr. Amato testified to yesterday about his conversation with the judge in which he basically said, "You had better make your case, or the fifth circuit will take it away from you"?

Mr. MOLE. You know, that rang true, from based on—on what I saw and believe.

Mr. GOODLATTE. Were you surprised or concerned about the length of time it took the judge to decide this case, almost 3 years

from the time you went into court until he rendered an opinion? Is that common?

Mr. MOLE. No, it was very unusual. It was very hard on my client. But it was always puzzling as to why it was taking so long, because that didn't benefit anyone.

Mr. GOODLATTE. So were there any efforts made to determine—you know, to contact the court and ask the judge, "Why are you taking so long to render an opinion?" Or were you worried that that might have an adverse effect on his decision?

Mr. MOLE. You are always careful about contacting a judge who has got your case in his hands. I called Don Gardner, the lawyer we had hired, and said, "Do you know what is going on? Have you seen the judge?" And his reaction was, "Don't know. He is taking a long time. It is a hard case."

Mr. GOODLATTE. When you retained Mr. Gardner, Mr. Gardner was paid a retainer of $100,000——

Mr. MOLE. That is correct.

Mr. GOODLATTE [continuing]. Was that based against any hourly work or simply based upon him showing up in court and doing what you ask him to do during the court of the trial?

Mr. MOLE. That was a retainer that he was going to keep no matter what.

Mr. GOODLATTE. And did he have any contingency arrangement?

Mr. MOLE. Yes, there was—his fee went up, as the result got better for us, to a maximum of $500,000. And part of my thinking on agreeing to that was, I wanted to make him have an interest in the case, because I wanted to be able to trust him to be interested in the outcome when he became involved. And I was hoping that pressure from both sides, of having friends on both sides would cause the judge to step aside. There was also a payment that Don would get if the judge did recuse himself.

Mr. GOODLATTE. Now, you said that, during the trial, Judge Porteous on several occasions examined or cross-examined your witnesses after you had put them on and after the Liljeberg attorneys had questioned those witnesses.

Mr. MOLE. That is correct.

Mr. GOODLATTE. That is not entirely unusual. Judges do ask questions in cases, don't they?

Mr. MOLE. Absolutely. And he did—he did that to at least one of the Liljeberg witnesses that I recall, laid into him pretty well. He has a strong personality.

Mr. GOODLATTE. I think that is all the questions I have, Mr. Chairman. Thank you.

Mr. SCHIFF. The gentleman yields back.

Ms. Jackson Lee?

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

And, Mr. Mole, thank you for your presence here. Some of the questions I may pose may have already been answered, but let me try to sort of lump them together and pose a series of questions to you.

First, let me ask you this. Did you ever give anything to Judge Porteous, any—anything, a gift?

Mr. MOLE. No, I have never given him anything, never taken him to lunch, never——

Ms. JACKSON LEE. Did you ever—did you ever take him to lunch?

Mr. MOLE. Never.

Ms. JACKSON LEE. Did you ever give him cash?

Mr. MOLE. No.

Ms. JACKSON LEE. Did you ever go hunting with him?

Mr. MOLE. No.

Ms. JACKSON LEE. Would you ever give things of value of the nature that I just asked to a judge, period, or if you had a case before he or she?

Mr. MOLE. No. I have contributed to judges' campaigns, but that is the limit of what I have done with a judge.

Ms. JACKSON LEE. And you had a case before him. Could you just—the case involved what issue? The case that you had before him involved what issue?

Mr. MOLE. Before Judge Porteous?

Ms. JACKSON LEE. Yes.

Mr. MOLE. It was a very old dispute. The Liljebergs are a family in New Orleans. They are originally pharmacists. They obtained a license to build a hospital in New Orleans in the suburbs in the early 1980's, and they didn't have the money or the expertise to build or run it, so they hired Lifemark to build it, to finance it, and then Lifemark leased the hospital from them, and they had a contractual arrangement with Lifemark to run the pharmacy in the hospital for a profit. And then they had a mortgage on the hospital that was held by Lifemark.

And so all those relationships went bad almost immediately. The litigation began in 1987 in state court over pharmacy payments. The Liljebergs got into other financial trouble with other lenders in the 1980's and early 1990's and lost their hospital to Travelers, who had financed their medical office building. So by the time we got to trial, the litigation was over the loss of the hospital, which they blamed on my client.

Ms. JACKSON LEE. Which is Lifemark?

Mr. MOLE. Lifemark. And over how much money Lifemark owed them for running the pharmacy. And the claims there varied between—I think the judgment value of Judge Porteous's judgment was about $15 million. The Liljebergs sought up to $30 million or $40 million.

Ms. JACKSON LEE. So this was a case long in brewing and very important and very complex?

Mr. MOLE. Yes.

Ms. JACKSON LEE. A lot of documentation, a lot of work that would go into it for your preparation?

Mr. MOLE. Absolutely, yes.

Ms. JACKSON LEE. And I understand that, in the course of working on this case, there was a decision to hire Don Gardner. And forgive me if you have answered this, but I just want to try and reinforce the point. How much was Mr. Gardner paid for simply entering into the contract?

Mr. MOLE. One hundred thousand dollars.

Ms. JACKSON LEE. And it was a complicated case. Could you point out to any precise expertise that Mr. Gardner had for this case?

Mr. MOLE. None.

Ms. JACKSON LEE. And did he assist you, did he examine any witnesses?

Mr. MOLE. He did no work at trial. I talked to Don quite a bit. You know, he gave me some insight into Judge Porteous's personality and likes and dislikes that might help us with witnesses and how we pitch certain issues, which was helpful.

Ms. JACKSON LEE. But minimal?

Mr. MOLE. Yes.

Ms. JACKSON LEE. A minimum. Do you think that your clients were influenced—or let me just ask this. Did Mr. Gardner have a relationship with Judge Porteous?

Mr. MOLE. Yes.

Ms. JACKSON LEE. Do you think your clients had any understanding of that? And was there some consideration of that fact?

Mr. MOLE. I would say that is the only reason he was hired.

Ms. JACKSON LEE. Would you think that the value of Mr. Gardner's services—and let me clarify that or qualify that by saying this is not a trying of Mr. Gardner. I am sure that he is a well respected lawyer. But let me try to find out, was the compensation equal to the services rendered?

Mr. MOLE. You know, it was a risk taken by him to get involved, and it was a risk taken by my client to pay him that much money. I don't think the fee was unearned in that sense. I think it was—it was earned. A difficult situation, and I am not—you know, not happy about it.

Ms. JACKSON LEE. Let me try to put it in a different way so that—certainly, counsel can provide a variety of support, but did—did the—the level of work, intensity of work equal to the purpose or for his being retained?

Mr. MOLE. Well, in a sense, Ms. Jackson Lee, Don is a very active lawyer. He is the kind of guy who is in court every day, who has a dozen files in his briefcase, and has lots of people in the middle of divorces who want his constant attention. I will say this for him: He was very diligent in being in court and being available and being supportive. You know, I like him, enjoyed his company, but he had to give all that up, so I don't know how much in fees he lost and how much in clients' goodwill he lost, but it was worth—worth it to my client to pay him that much to give that up.

And so, I mean, the bargain was what they made, and, you know, I wouldn't—I wouldn't say the fee was unearned. I think he—he gave us what we asked for. And——

Ms. JACKSON LEE. But it was a decision of the client and not of yours?

Mr. MOLE. I ultimately went along with the client, but if I hadn't agreed to do it, they would have found another lawyer. I would have lost the case.

Ms. JACKSON LEE. Did Don Gardner ever tell you that he saw Amato's partner, Creely, in Las Vegas with Judge Porteous at his son's bachelor's party?

Mr. MOLE. No, I didn't know about that.

Ms. JACKSON LEE. That doesn't ring a bell?

Mr. MOLE. No, it does not.

Ms. JACKSON LEE. If you had known that, would that have been important to you at the time?

Mr. MOLE. You know, I wanted to know who was paying for it.

Ms. JACKSON LEE. The idea of having a team on the other side of the case that may have had a longstanding relationship, you practices for a number of years—I am sure you have practiced in state and local courts, as Federal courts, rather. How much of a disadvantage and how injurious is that to the justice system to have potentially individuals in the opposition that may have had a financial relationship with the decider?

Mr. MOLE. You know, that is a very difficult and a very big question. You know, as a lawyer, I have practiced law all around the country and in Puerto Rico, tried cases, anyway. And you visit courthouses where you don't know anybody, and you walk in, and everybody else knows everybody else, and you know the judges have—and even in New Orleans, I would go into courthouses where the judges know the lawyers, but they don't know you.

And that is normal. That is human relationships, and you live with that, and I know how to handle that. But if—you know, and judges socialize, and I think they—you know, they socialize with lawyers. It is natural. And it is a good thing.

But if there is a financial relationship, you sort of have to trust the judge to disclose that or to withdraw and—and draw his own boundaries that make the system work.

I can deal with social relationships. You know, I can get to like people or get them to like me or not. And I can trust the system that way. But if it is a financial relationship, I can't work with that. You know, I just need to have the system work the right way.

Ms. JACKSON LEE. Mr. Chairman, this is my last question. But, Mister, you sought a recusal, did you not?

Mr. MOLE. Certainly did.

Ms. JACKSON LEE. And were you successful?

Mr. MOLE. No, we lost.

Ms. JACKSON LEE. And what was the final result of the case in the—in the trial court?

Mr. MOLE. We lost. You know, it was—there were many aspects of the case. We lost every one big.

Ms. JACKSON LEE. And as a—we always have a special affinity for the case we are trying. But as a seasoned lawyer, do you think you had some aspects of your case being meritorious?

Mr. MOLE. You know, I watched Jake yesterday say he thought he won. And every lawyer thinks, you know, they are great. It is the nature of the beast. And my wife has to deal with that.

But I truly think we pitched a shutout, that it was a silly case and we should have won, and it was fueled by something other than, you know, facts and law.

Ms. JACKSON LEE. And you don't think because you were the defense in a plaintiff's oriented court system that it might have been that biased, plaintiff versus defense, big guys versus the little hometown guys?

Mr. MOLE. There may have been some of that. But, you know, I find in commercial litigation you—you find less of that. These are two business interests that were, you know, going at it head to head. And the Liljebergs were a smaller entity, but that may have been part of it.

Ms. JACKSON LEE. So you were in a lopsided situation?

Mr. MOLE. Yes.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. SCHIFF. The gentlewoman yields back.

Mr. Lungren?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Mole, for many—many years, I have introduced legislation to allow peremptory challenge in the Federal system. If there had been a peremptory challenge, you would have had a different judge, wouldn't you?

Mr. MOLE. I certainly would have used it.

Mr. LUNGREN. Since you don't have a peremptory challenge in the Federal system, what is your recourse in a trial where you believe the judge may not give you a fair hearing?

Mr. MOLE. Well, you could make a motion to recuse. And then you—failing that, you make a very good record.

Mr. LUNGREN. Is there—what information that has been revealed through these proceedings and the proceedings in the fifth circuit—what of that information was—were you aware of at the time you made your recusal motion?

Mr. MOLE. Well, all I knew was that Mr. Amato and Mr. Levenson dined frequently with Judge Porteous, didn't know who paid, although I suspected they paid, and that they socialized, hunting trips, entertainment, out-of-town trips frequently. And I knew that they had a history, as Mr. Amato and Mr. Creely did, anyway, a history as law partners with Judge Porteous.

I learned that Mr. Levenson—and I am still not certain about this—that Mr. Levenson had been Judge Porteous's guest at a Fifth Circuit Judicial Conference, at—I believe at which judges are entitled to take along one non-judge guest, a lawyer, typically, I guess.

And that is pretty much the facts I was aware of, but they weren't admissible evidence. It was all people telling me that stuff.

Mr. SCHIFF. Could you—Mr. Lungren—Mr. Mole, could you pull the microphone down and bring it a little closer to you?

Mr. MOLE. Sure.

Mr. SCHIFF. You want to bring it down even more than that.

Mr. LUNGREN. In making your request, your motion for recusal, was that by way of written evidence or—or written documents that you filed with the court, articulating these—these specific concerns?

Mr. MOLE. Yes. Ordinarily, you know, I haven't done it but once, but ordinarily, when you make a motion to recuse, you submit evidence in the form of an affidavit——

Mr. LUNGREN. Right.

Mr. MOLE [continuing]. From a banker or somebody who says, "I have a relationship," or, "I know their cousins," or something. I had none of that, so I submitted my own affidavit saying, "I have heard these things." And that left me feeling a little exposed.

Mr. LUNGREN. You had none of that because neither the judge nor the attorneys on the other side revealed those things to you, correct?

Mr. MOLE. That is certainly true.

Mr. LUNGREN. Was it your understanding there was any obligation on the part of the judge or the other attorneys to reveal that to you and to reveal that to the court for the record?

Mr. MOLE. As I recall, my legal research and reasoning, when we made the motion to recuse, my focus was on the judge. I don't have any understanding and haven't analyzed what the lawyer's responsibility was. I think that is a whole other ball game with the ethics commission of the Louisiana Bar Association. But my effort was to get the judge to disclose. And I thought he should disclose the details of the relationship.

Mr. LUNGREN. As a lawyer before the Federal courts and the Louisiana bar, would you believe you would have a responsibility to articulate facts that would indicated a personal relationship with the judge if a recusal motion were being made in a case in which you represented one of the parties?

Mr. MOLE. Yes, and I agreed with what Jake said yesterday, that if—if he were going to disclose the facts that he has disclosed to this body, he would have had to disclose them to the Louisiana Bar Association, as well.

Mr. LUNGREN. Yesterday, when I questioned Mr. Amato, I asked him about the conclusions of the Fifth Circuit Court of Appeals, in which they characterized Judge Porteous's ruling and various aspects of it as inexplicable, constructed entirely out of whole cloth, nonsensical, absurd, indicating that there was nothing based in law or fact to justify the decision.

Yet under cross-examination, I believe, Mr. Amato suggested that, well, you have to understand, the appellate judges were from Texas, and they don't understand Louisiana law.

I don't practice in Louisiana. I haven't practiced in Louisiana. What would your response be to that?

Mr. MOLE. I smiled when I heard it yesterday, too. I was listening to the monitor. I think it is laughable. I think the fifth circuit is a fine court. I think Judge Higginbotham, who wrote the opinion, is the most respected member of that court. He is known for his intellect.

Mr. LUNGREN. This is Judge Higginbotham that is known by opinions that he writes for the fifth circuit, correct?

Mr. MOLE. Largely on Louisiana law. Louisiana is a very litigious state. It is one of three states only in the fifth circuit, so it is Mississippi, Louisiana and Texas. So a substantial number of the fifth circuit's opinions are about Louisiana issues. And they have their pick of the law clerks from the law schools.

So they—you know, it is a good court. And the fact that they don't know Louisiana law is ludicrous. And Louisiana law is not that weird. We used to be, and we used the Napoleonic code to scare out-of-state clients into hiring us, but it really isn't that different anymore.

Mr. LUNGREN. Well, truth is a defense. So thank you for that.

Do you have an opinion about the possible reason for the delay in the rendering of the opinion? In other words, did that delay disadvantage either side disproportionately?

Mr. MOLE. It did my client, in the sense that it had to—it had to post a bond. I think we posted a bond of approximately—maybe

$40 million, somewhere plus or minus $10 million, a large bond. So that had to be maintained and interest had to be paid.

Also, one of the key aspects of the decision was not monetary. We sued to sever the relationship, the contract with the Liljebergs. They ran the pharmacy in the hospital. They are very difficult people. And it was very difficult to run a hospital with a pharmacy which supplies all the medications who was hostile to my client, because they have to cooperate to treat patients. And the Liljebergs were always reporting the hospital to various state agencies and trying to make trouble and suing us. This is not the only lawsuit that we had with them, so it was a very difficult relationship, and severing that relationship was very important, and that went on for 3 more years than it had to, in my opinion.

Mr. LUNGREN. So delay didn't work in the favor of your client?

Mr. MOLE. It certainly did not.

Mr. LUNGREN. On page 183 of your testimony for the fifth circuit, you make reference to Mr. Gardner telling you something about Jeep leases and Jeep purchases. What was that in reference to?

Mr. MOLE. At one point, Don told me that Judge Porteous's son had gotten a new Jeep and he didn't know where it came from and he wondered about it. And that is about all I remember about that.

Mr. LUNGREN. Okay. So you don't have any further information——

Mr. MOLE. No facts.

Mr. LUNGREN [continuing]. On that. Is that correct?

Mr. MOLE. That is correct.

Mr. LUNGREN. Any attorney in this room who has been in a courtroom understands the uncertainty when you go before any judge, even a judge you may know well. But going into an environment where a judge has a personal relationship with the attorneys on the other side, where there are actual payments of funds made by those attorneys to that judge, where in the past there are legal proceedings directed to those attorneys by the judge and which result in some financial benefit to those attorneys, and is the source of the funds that they pay the judge for his personal expenses, if you have that information going in, if you would have had that information going in, what would you advise your clients about the prospects of getting a fair trial?

Mr. MOLE. We would say it is extremely doubtful that we will get a fair trial and that, if those facts were exposed to the light of day, that if the judge refused to recuse himself, we certainly had an almost certain chance of getting that reversed by a court of appeal, if the facts were fully known.

Mr. LUNGREN. During the conduct of the trial itself, did you feel you were getting a fair shot?

Mr. MOLE. Yes, I think Judge Porteous conducted the trial in a way that objectively had the feel of a balanced experience. I mean, I didn't—he didn't refuse me the opportunity to put on my evidence. He didn't refuse to sustain my objections when I made them. Some he did, some he didn't, like any judge.

But, you know, just the overall impression I had, knowing everything I knew, and synthesizing that information, my opinion was we were—we were trying it for the—for the court of appeals. We were making a record to survive his judgment.

Mr. LUNGREN. And when you—when you actually had an opportunity to review his opinion in the case, with respect to the findings of fact and findings of law and the conclusions he rendered, what was your observation then?

Mr. MOLE. Well, like I said, I mean, my main—my principal reaction was, "This is good for my client, because it is so one-sided and so unsupportable that it will raise eyebrows and we should be able to get it reversed." And in some of the claims where I didn't feel we had as strong a case as others, I think our case increased in value.

Mr. LUNGREN. But you weren't banking on a Fifth Circuit Court of Appeals that couldn't understand the intricacies of Louisiana law, were you?

Mr. MOLE. No. I had every confidence they would understand that.

Mr. LUNGREN. Didn't you want a Fifth Circuit Court of Appeals that did, in fact, understand the laws and the proper application of the laws in the case?

Mr. MOLE. Absolutely. If you look at our briefs to the fifth circuit, we took that argument on the hospital and put it up front, because it was so unsupportable and so clear what the result should be under Louisiana law. And we went back to French commentators and translated them and sent them to the court. So we layered that brief with all the Louisiana law we had. It wasn't something that concerned us. Those are—those are bright judges, and it is a bright court.

Mr. LUNGREN. You didn't make appeal to Texas law, I take it?

Mr. MOLE. No. I have been in Texas.

Mr. LUNGREN. Thank you very much.

Mr. SCHIFF. The gentleman yields back.

Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chair.

How long have you practiced law in the New Orleans area?

Mr. MOLE. Thirty-two years. The first year was as a clerk to a Federal judge.

Mr. COHEN. So you are aware of the general opinions of the members of the bar about the judiciary in the New Orleans area?

Mr. MOLE. Yes.

Mr. COHEN. Do you believe members of the bar are aware of the issues that have arisen concerning Judge Porteous and this hearing?

Mr. MOLE. Well, it is certainly gotten extensive press coverage. Yes, it is—everybody is aware of it.

Mr. COHEN. And do you—how do you believe these issues that have been written in the press, that have been discussed, that have been aired now on C-SPAN, that are out in the public domain, might affect the attitude of the New Orleans bar toward having a—a sitting judge who is in this situation?

Mr. MOLE. You know, I can't speak for other people. I think it is unfortunate; it reflects bad on the legal community in general in Louisiana, in New Orleans. You know, we have had our problems with judges, mostly on the state court. There have been Federal judges who have been convicted of crimes. And it is—and it is comforting to know the system ultimately works. Here we are today.

Mr. COHEN. Is Judge Porteous still hearing cases?

Mr. MOLE. No, he is not.

Mr. COHEN. How long has he stopped?

Mr. MOLE. I believe it has been a little over a year, but I am not certain. I think at that fifth circuit hearing, after that, he was taken out of active cases.

Mr. COHEN. So that was done by the—was that—that wasn't voluntary?

Mr. MOLE. I think he voluntary stopped hearing criminal and other cases involving the government some time ago.

Mr. COHEN. How about civil cases?

Mr. MOLE. Civil cases, I think he gave up—I am not certain, but I believe it was—the fifth circuit took him out of active work about a year ago, maybe longer.

Mr. COHEN. And is there somebody hearing cases in his stead?

Mr. MOLE. It is a big court, so, you know, I don't know if they have been reapportioned to other judges or—I don't believe there is anybody temporarily holding his—his bench.

Mr. COHEN. Do you know if there has been—there is a backlog of cases in New Orleans? Has it been difficult on attorneys to get cases to trial, more difficult than normal?

Mr. MOLE. I don't believe it has. It is a big bench, and there is a lot of post-Hurricane Katrina work still going on. So it is busy, but I don't think it is—you get a pretty good trial date setting in New Orleans.

Mr. COHEN. I yield back the balance of my time, sir.

Mr. SCHIFF. The gentleman yields back.

Mr. Sensenbrenner?

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

How many judges—how many trial court judges—federal district court judges in the Eastern District of Louisiana?

Mr. MOLE. I believe there are 16, and there are a number of senior judges, senior—who are active, so it is probably up to about 20.

Mr. JOHNSON. How did the *Liljeberg* case happen to be assigned to Judge Porteous?

Mr. MOLE. The previous Federal judge who had died, Judge Oakley Jones, and his cases were re-allotted, and Judge Porteous got that case, by random allotment, to my knowledge.

Mr. JOHNSON. Did you keep up with the criminal investigation done of Judge Porteous in connection with the events we are talking about today?

Mr. MOLE. I was interviewed and testified to the grand jury. I was interviewed by the FBI and testified to the grand jury. Other than that, I have read the newspapers, because it was—it was known in the public.

Mr. JOHNSON. Do you have any suspicions about why Judge Porteous was not indicted by the U.S. attorney?

Mr. MOLE. I have no knowledge of how that decision was made one way or the other.

Mr. JOHNSON. Do the judges run on a—on—do they run for re-election as Democrats and Republicans? Or is it a non-political race?

Mr. MOLE. Well, they are all appointed by——

Mr. JOHNSON. Excuse me. I am sorry. Gosh, okay, all right.

Mr. MOLE. So we can tell who appointed them, but that is about as far as their politics go.

Mr. JOHNSON. Okay. I am sorry. I am starting to think back to the state court days.

So your testimony is that you have no suspicions about the failure to indict Judge Porteous by the U.S. attorney?

Mr. MOLE. No. You know, I—having been caught up in this sort of by accident, and I have not tried to learn any more than comes my way through this process.

Mr. JOHNSON. Now, the entry of appearance of Mr. Amato and Mr. Levenson was about 6 weeks before trial. Is that correct?

Mr. MOLE. That is my recollection, yes. I think they made their appearance on September 19. They made their application to be employed on September 16 in the bankruptcy court. And the trial was set for, I believe, November 4 or November 6, whichever was a Monday. So that is the math.

Mr. JOHNSON. And this came as a surprise to you, did it not?

Mr. MOLE. Yes.

Mr. JOHNSON. And let me ask you a question about your—your client. Did your client have to expend more money than it would have had to spend had you not had this strong suspicion of a—that you may get home cooked in Judge Porteous's court?

Mr. MOLE. You know, it is impossible to be certain about, but probably.

Mr. JOHNSON. Well, I mean, without—without the plaintiffs having hired Mr. Amato and Mr. Levenson, would it have been necessary for your client to spend $100,000 retaining Mr. Gardner?

Mr. MOLE. No.

Mr. JOHNSON. Were there—are there any delays during the course of this episode that cost your client money, such as the 3-year delay between the—the time that the evidence was in and the time that there was a decision issued by the judge?

Mr. MOLE. That certainly cost money, but I don't know what would have happened if it had taken another path.

Mr. JOHNSON. Well, I mean——

Mr. MOLE. Certainly, all those things were expensive.

Mr. JOHNSON. Well, let's speak hypothetically. If you had won the case—and you are pretty certain it was a slam dunk—if you had won that case, there would have been no need for your client to—to move into the fifth circuit. Is that correct?

Mr. MOLE. That is correct, but the other side may have appealed.

Mr. JOHNSON. Do you have any idea how much the—the appeal to the 11th Circuit cost your client?

Mr. MOLE. I think, in attorney's fees, it was probably close to $1 million between my firm, which was minor on the appeal, and the Texas firm, which was major in that role.

Mr. JOHNSON. Now, with respect to the recusal motion, I think you have testified that there was a short—or there was a hearing on that particular motion that you filed after giving it a lot of thought.

Mr. MOLE. That is correct.

Mr. JOHNSON. And you had never filed a motion to recuse in, what, then 25 years of practicing law?

Mr. MOLE. And haven't since.

Mr. JOHNSON. And how long did the hearing take on this motion to recuse?

Mr. MOLE. Less than an hour.

Mr. JOHNSON. Okay. And this hearing consisted of you submitting an affidavit to the court with hearsay information.

Mr. MOLE. Yes, my hearsay in a brief with the law and argument.

Mr. JOHNSON. Yes. And——

Mr. MOLE. And an oral argument with the judge and opposing counsel.

Mr. JOHNSON. Mr. Amato was there listening during that proceeding?

Mr. MOLE. I believe he was, yes. I don't believe he spoke. It was principally Mr. Levenson who argued the other side.

Mr. JOHNSON. Are you—could you say that Mr.—would it be fair to say that Mr. Amato did nothing to clear up the nature of the relationship that he had with Judge Porteous?

Mr. MOLE. That would be accurate.

Mr. JOHNSON. And Mr. Lungren asked you this question. I am going to just ask it again. You know, well, strike that. Strike that.

What was the reason why Judge Porteous took so long in issuing a ruling in this case?

Mr. MOLE. You know, I am not certain. What I have heard—and it makes sense—is that he did it himself and he didn't have a law clerk who was consistently available throughout the process to understand everything, who could work on it. And, you know, other than that, I could only speculate.

Mr. JOHNSON. Were there any discovery disputes between the parties during that litigation?

Mr. MOLE. Well, pre-trial, no. You know, there were—before I got in the case, there were significant discovery disputes in the record. By the time I got in, things went pretty smoothly in discovery, because everybody was eager to get to trial, and it worked pretty well.

Mr. JOHNSON. So after the time that Amato and Levenson signed on to the case, did the court have an opportunity or did Judge Porteous have an opportunity to rule on any motions that were filed by either party, plaintiff or the defendant?

Mr. MOLE. Yes, we filed significant pre-trial dispositive motions, which were denied, motion for summary judgment. We filed, as I recall, early on, I filed a motion for leave to amend, to restructure the claims so that I could ask for a jury, because that was one way to avoid part of the problem that we had with the judge to get a jury, but that was denied, as well. It would have been very difficult to get a jury because of the bankruptcy jurisdiction, but I tried that angle, as well.

Mr. JOHNSON. Did the findings of fact and conclusions of law on any of those motions that you filed or—excuse me, that were heard after Amato and Levenson made the first appearance—first appearance in the case, was there any judicial ruling that was appealed to the fifth circuit?

Mr. MOLE. None of those, no. Under the Federal practice, you could only appeal once the case is final. The only thing we took to

the fifth circuit prematurely was the denial of the recusal, and the fifth circuit refused my appeal on that, as well.

Mr. JOHNSON. One minute, Mr. Chairman.

Now, the judge ordering a return of the hospital—and, by the way, before I go into that, let me ask this question. Were you surprised by any of the rulings on your motions that the judge made during the period between trial and the time that Amato and Levenson signed on to the case?

Mr. MOLE. No.

Mr. JOHNSON. You didn't feel that any of those rulings were in any way outlandish or unsupported by sufficient evidence?

Mr. MOLE. No, I had—I don't have a clear recollection of the basis for most of them, although I can guess, and, you know, they are the usual pre-trial motions, and I was surprised by the outcome.

Mr. JOHNSON. Now, the judge ordering the return of the hospital to the Liljebergs, what benefit would accrued to Levenson and Amato, to your knowledge, if that ruling had been upheld on appeal?

Mr. MOLE. Their fee arrangement was they received 11 percent of the recovery on the claim for the loss of the hospital. So that would have been between them and the Liljebergs, but if they got the hospital back, the trick would have been to value the hospital—their own experts had valued it at a range between $50 million and $75 million. So if I were them, I would say, "Mr. Liljeberg, you owe me 11 percent of $75 million." And that is what—that is what I think the fee should have been.

Mr. JOHNSON. Were the conclusions drawn from the testimony of—well, strike that. Were the judges questions of your witness—you talked about the judge cross-examining your witness—it was cross-examination, was it not?

Mr. MOLE. Yes. Well, I mean, he questioned them. I felt it was across the line in the cross-examination, but that was my opinion.

Mr. JOHNSON. Leading questions and——

Mr. MOLE. Yes, suggesting the answers and leaning on the witness strongly.

Mr. JOHNSON. Yes. And how many questions do you—did the judge ask during that time period, during——

Mr. MOLE. You know, probably not more than 15, 20 minutes, but Judge Porteous is a good lawyer, so he got it over with quickly, and he got to the point, so he did a good job of questioning. And that is what I wanted an opportunity to follow up on.

Mr. JOHNSON. Were the—any of the—was any of the testimony that that witness, your witness, gave under cross-examination by Judge Porteous cited by Judge Porteous in his ruling on the disposition of the case?

Mr. MOLE. I don't recall. I don't recall that it was.

Mr. JOHNSON. Were the judge's questions, based on your knowledge and experience, unusually partial to the plaintiff's case?

Mr. MOLE. I felt I had a valid objection that they were at the time. But like I said, he did that to one of the—at least one of the Liljeberg's witnesses, as well, so maybe that is just his style, but I wanted the record—like every good lawyer, you want to—you want to get the last word.

Mr. JOHNSON. Was the issue of the judge cross-examining your witness for 10, 15, 20 minutes, was that a subject of the appeal to the fifth circuit?

Mr. MOLE. No, it was not.

Mr. JOHNSON. Were there any other incidents in the—in the trial, during the trial which might have indicated bias or a corrupt intent on the part of Judge Porteous?

Mr. MOLE. Nothing else stands out, Mr. Johnson.

Mr. JOHNSON. Thank you, sir, and I have no further questions at this time, and I will yield back.

Mr. SCHIFF. The gentleman yields back.

Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

And, again, like Mr. Johnson, I would request a word limit rather than a time limit. It will work better. But thank you.

Mr. Mole, I am curious about a couple of things. But for one, this occurred back around 1997 that you filed a motion to recuse. Are you aware of whether information went out among the local bar in New Orleans about your case and what had occurred in your case?

Mr. MOLE. Yes, I don't know. Certainly, everybody I knew heard me complain about how long it was under submission. The motion to recuse was in October 1996. We tried the case in 1997. I don't think it was that publicly——

Mr. GOHMERT. Do you remember—do you remember about what year you found out that there was money being paid by attorneys for your opponent to the judge that just happened to coincide with, basically, the—based on the number of curatorship cases that were sent to their firm?

Mr. MOLE. I didn't learn of that until the fifth circuit lawyers interviewed me to be a witness in their proceedings, which I believe was about a year-and-a-half ago, maybe 2 years. So I learned that relatively late in the game.

Mr. GOHMERT. I see. So that was not common knowledge then around the bar in New Orleans?

Mr. MOLE. No. I don't think that became common knowledge until the fifth circuit published its—or made public its recommendation that Judge Porteous be impeached.

Mr. GOHMERT. If Judge Porteous were to begin receiving cases submitted again, assigned again by lifting of the suspension by the fifth circuit, other than the firm of Creely, would you know of lawyers around New Orleans who would not be requesting a jury trial on complex cases?

Mr. MOLE. No, I think—you know, I think they would have a problem getting lawyers who were comfortable with him as the only fact-finder.

Mr. GOHMERT. Because one of the concerns I have is that litigants normally are supposed to have a right to either have a trial by jury or a trial by judge. And if one of those two is effectively excluded, then it would seem to be an unfair judicial situation for the people in that district. You understand my point?

Mr. MOLE. Absolutely. And I would certainly ask him not to hear my cases if I went back to Federal court.

Mr. GOHMERT. Or if you had a case assigned back in his court, I know you would look forward to it, but would you go to the court, or would you be requesting a jury in Judge Porteous's court?

Mr. MOLE. I almost always request—I request a jury.

Mr. GOHMERT. I am curious. I know that some terms that are used in the Constitution and in the law have meanings that are relative. One term that is used in the Constitution is good behavior, that the judges both of the supreme and inferior courts shall hold their offices during good behavior. And so I am wondering about—since I have never been a member of the bar in New Orleans. I have been a member of the fifth circuit bar, but not of New Orleans.

I am curious—and never having been before a court lower than the fifth circuit in New Orleans, I am curious, is good behavior considered to be—or include sending curatorship cases to attorney's firms and expecting funds back based on the number of curatorships? Is that considered good behavior in the New Orleans bar, to your knowledge?

Mr. MOLE. Well, that happened, I believe, in the state court bench. But——

Mr. GOHMERT. Well, that is correct. But that, again, was in New Orleans.

Mr. MOLE. You know, I don't—like you said, it is a relative term, and I think it is this body's job to decide.

Mr. GOHMERT. So are you saying that that is a common occurrence? I am wondering, because we had a dissent filed by another Louisiana judge, and just from my experience, it seems like people who engage in the same conduct as someone being charged are often more sympathetic to the one being charged. And so I am just curious how prevalent the practice is and if that is something that is common to your knowledge in the New Orleans bar?

Mr. MOLE. It certainly is not. That would certainly raise eyebrows, and it sounds to me like that something that would be of interest to a prosecuting attorney——

Mr. GOHMERT. Because I——

Mr. MOLE.—U.S. attorney.

Mr. GOHMERT. I am just trying to figure out exactly what the standard is there.

Mr. MOLE. Good behavior.

Mr. GOHMERT. We—this—yes, good behavior. And this—well, the Crime Subcommittee had a hearing in New Orleans a couple years or so ago chaired by Chairman Bobby Scott in which the U.S. attorney said the number one problem in New Orleans before Hurricane Katrina was graft and corruption and the number-one problem in New Orleans after Hurricane Katrina is still graft and corruption. That was his observation.

I was also surprised to find during that testimony—we were at least told in that hearing that it is not uncommon practice for a criminal defense attorney to contact a state judge directly, ex parte, without the prosecutor knowing, and make a case for lowering the bond of a criminal defendant in—in jail. And if the judge is willing to lower the bond to a level that the defendant can make and post and get out of jail, then that judge's court gets a cut of that bond that is made by the criminal defendant.

Somebody like me and others who have been involved in our judicial system in other states were rather shocked by that and shocked to find that apparently that was considered appropriate there in New Orleans. So I am just trying to find the extent to which conduct that apparently is undisputed was considered appropriate behavior, good behavior.

How about throwing books from the bench? You said you have never had them thrown in your direction before. Have you seen them thrown in other lawyers' directions in other cases in New Orleans?

Mr. MOLE. No, sir, I have not. And, you know, I think in Louisiana, we have a reputation for corruption that is unfortunate. And I would disagree that it is our primary problem right now. We have——

Mr. GOHMERT. No, I am just telling you what the testimony was at our hearing.

Mr. MOLE. I just—well, offering my observation, but I think it is certainly bad behavior to take kickbacks from lawyers for assigning them work for the judge——

Mr. GOHMERT. But I don't think it is universally acknowledged that they were kickbacks. Apparently, they just happened to coincide with the number of curatorships that were assigned and be around the $150 initially and then $200 per case. It just happened to coincide directly with the number of curatorships, to my understanding of the evidence before us.

So you—to answer my question, though, you have never seen a judge throw books from the bench before in anybody's direction?

Mr. MOLE. No. I have never experienced that either as a witness or as an object of throwing.

Mr. GOHMERT. Well, and, Mr. Chairman, I am not sure how many cases were assigned after the action was taken against Judge Porteous, but I would request to see if we could get information on how many jury trials compared to bench trials were requested after the time that this information came to light, because I am concerned about the effect on future litigants if the information we take from this hearing were deemed to be good behavior and allowable and Judge Porteous to go back to the bench and resume his caseload. I am wondering if there were already indications that it would have affected litigants' rights to have a bench trial as perceived by the litigants, if the Chair understands my request.

Mr. SCHIFF. I do. And we can try to find out that information.

Mr. GOHMERT. Thank you. And I would yield back.

Mr. SCHIFF. The gentleman yields back.

Mr. Pierluisi?

Mr. PIERLUISI. Good morning, Mr. Mole.

Mr. MOLE. Good morning.

Mr. PIERLUISI. How long have you been practicing in New Orleans?

Mr. MOLE. Thirty-two years.

Mr. PIERLUISI. Have you devoted a substantial amount of your time to trial work?

Mr. MOLE. Yes.

Mr. PIERLUISI. That is the main line of your practice?

Mr. MOLE. I would say my work has been about 95 percent litigation.

Mr. PIERLUISI. And you appear on a regular basis before both state courts and Federal courts?

Mr. MOLE. That is correct.

Mr. PIERLUISI. To your knowledge, what are the—what is the—the entity that imposes the code of ethics in—in Louisiana?

Mr. MOLE. The Louisiana bar.

Mr. PIERLUISI. For lawyers?

Mr. MOLE. On lawyers, it is the Louisiana Bar Association.

Mr. PIERLUISI. How about the——

Mr. MOLE. I think the Supreme Court enforces it.

Mr. PIERLUISI. And the Supreme Court enforces it?

Mr. MOLE. Yes.

Mr. PIERLUISI. And how about the U.S. district court in Louisiana? Does it have its own set of local rules?

Mr. MOLE. No. For some cases, it adopts by reference to Louisiana rules. And in cases in Federal jurisdiction, it adopts the model rules of ethics.

Mr. PIERLUISI. In this particular case that we are concerned about, the *Lifemark-Liljeberg* case, what set of ethics rules were applicable, to your knowledge?

Mr. MOLE. I really haven't looked into that, Mr. Pierluisi. I am sure they are implicated, but I don't know the specific rules. I mean, it is such a general problem.

Mr. PIERLUISI. This was a diversity case?

Mr. MOLE. No. The basic jurisdiction arose under bankruptcy.

Mr. PIERLUISI. I see.

Mr. MOLE. And it may have been diverse citizenship, but that was not the basis for jurisdiction in most of the controversy.

Mr. PIERLUISI. Any ethics rules, other than the Louisiana rules, applying here to your—to the best of your knowledge?

Mr. MOLE. Not to the best of my knowledge. I think it would be Louisiana's rules.

Mr. PIERLUISI. Louisiana's rules, okay. Now, given that you have been practicing so long, is it customary in New Orleans for trial lawyers to go out to lunch or dinner with Federal judges and pay for those meals?

Mr. MOLE. I don't know how frequent it is. I know it does happen. You know, nobody raises any eyebrows at that.

Mr. PIERLUISI. Is it customary for trial lawyers to go out to lunch again or dinner with a Federal judge who is at the time presiding or overseeing a case that those trial lawyers are handling and, on top of it, pay for the bill?

Mr. MOLE. You know, I certainly have never done that. I don't know that it would raise eyebrows. I think every judge sets his own boundaries on those issues. So I really—I am really not competent to give you a general answer on that.

Mr. PIERLUISI. Is it customary—said differently, is it customary in New Orleans for trial lawyers to have ex parte contact with Federal judges while a case is pending?

Mr. MOLE. No, that is forbidden.

Mr. PIERLUISI. Is that the line where you—that you don't cross over?

Mr. MOLE. Absolutely.

Mr. PIERLUISI. Is that the line that most lawyers and trial lawyers in New Orleans avoid crossing?

Mr. MOLE. It is the line you are supposed to avoid crossing in state and Federal court everywhere I have ever practiced.

Mr. PIERLUISI. To your knowledge, is there any ethics rule prohibiting ex parte contact between counsel and a sitting judge or a trial judge?

Mr. MOLE. I know it is forbidden. I don't know the—the rule. Yes, it is forbidden. I don't know—you know, it is like the Ten Commandments. I don't know which—which number it crosses, but it is certainly something you shouldn't do.

Mr. PIERLUISI. Now, you testified earlier that you were uncomfortable about engaging counsel—I believe Gardner—in your case. And you explained that your client was, you know, insisting upon it. Is that a fair way of summarizing what you said to us before?

Mr. MOLE. Yes.

Mr. PIERLUISI. Now, had you done something similar before in any case, meaning bring in a counsel primarily because of his friendship or acquaintance with the trial judge?

Mr. MOLE. Certainly never in Federal court. When I have practiced in courthouses outside of the New Orleans courts, I will hire local counsel who may be local and know everybody. It is just because I—I don't know the court's customs and practices, and I want someone who does.

Mr. PIERLUISI. Is it customary in New Orleans for trial lawyers appearing before the Federal court there to bring in counsel, again, for the primary reason of, you know, having a friend of the judge sitting at counsel's table?

Mr. MOLE. Absolutely not. I think most judges would be offended if you did that, certainly on our Federal bench.

Mr. PIERLUISI. By the way, this case, *Lifemark-Liljeberg*, is over with, and it has been over with now for many years, right?

Mr. MOLE. Yes.

Mr. PIERLUISI. Sitting here today, you have no interest—your client—even your client has no interest in what you are telling us?

Mr. MOLE. That is correct. I have checked with them, and they have——

Mr. PIERLUISI. No financial impact, no——

Mr. MOLE. No, none.

Mr. PIERLUISI. Is it fair for me to say that your interest in appearing here today is simply to cooperate with this Task Force and this proceeding?

Mr. MOLE. That and the subpoena that I got. [Laughter.]

Mr. PIERLUISI. That in and of itself encourages some cooperation. But apart from that, I mean, you have no stake in this.

Mr. MOLE. None.

Mr. PIERLUISI. And your former or existing client, Lifemark, doesn't either.

Mr. MOLE. They don't even own the hospital anymore.

Mr. PIERLUISI. When you learned about the ex parte contacts between your opposing counsel and Judge Porteous, after the case was tried and it was just waiting for his decision, how did you feel about that?

Mr. MOLE. Well, I didn't know about what has been disclosed here until after the case was decided. But when I learned of Judge Porteous'—the extent of his relationship with Jake Amato and Bob Creely and Lenny Levenson, it confirmed my suspicions, yes.

Mr. PIERLUISI. To your knowledge, did Judge Porteous have ex parte contacts with either Amato or Creely or Levenson without Gardner being present?

Mr. MOLE. I don't know. Like I said, I have tried to stay out of learning any more than I already know.

Mr. PIERLUISI. If any such contact happened, what do you feel about it? What do you believe?

Mr. MOLE. I think it would be my duty to disclose it to the appropriate ethical bodies.

Mr. PIERLUISI. I have no further questions. Thank you.

Mr. MOLE. You are welcome.

Mr. SCHIFF. The gentleman yields back.

At this point, Mr. Westling, you have an opportunity to question the witness.

Mr. WESTLING. Thank you, Mr. Chairman.

Mr. Mole, good afternoon, or not quite afternoon, I guess.

Mr. MOLE. We have got 5 minutes left.

Mr. WESTLING. Five minutes left. I will try to use them wisely.

You have testified in two prior occasions relating to this matter. Is that correct?

Mr. MOLE. Under oath, yes.

Mr. WESTLING. One was before the grand jury and the other before the fifth circuit panel, correct?

Mr. MOLE. That is correct.

Mr. WESTLING. And in all of that testimony, you have always indicated that you felt the way that Judge Porteous handled the trial was professional and as a gentleman and was polite, with the one exception of the book incident we have heard about. Is that correct?

Mr. MOLE. That is correct. And even that, I took some pride in being able to get him so angry at me that he threw something at me. That is a—that is a——

Mr. WESTLING. And just to kind of close up on that issue, you have told us that, when you came back the next week, the judge not only ruled in a manner on the record that seemed well thought out, he overruled your objection, but gave you the opportunity to do what you had been asking to do. Is that correct?

Mr. MOLE. That is correct. That is correct.

Mr. WESTLING. And he seemed to have calmed down about the whole situation?

Mr. MOLE. Yes.

Mr. WESTLING. Okay. And I assume it is fair to say, in all the numbers of years you have been in front of Federal judges in the city of New Orleans, that this is not the first time one has lost their temper with you?

Mr. MOLE. No. And even outside of New Orleans.

Mr. WESTLING. And you also talked about Judge Porteous and his questioning of witnesses following on the questions of, in many cases, the cross-examining attorneys for the Liljebergs, correct?

Mr. MOLE. Yes.

Mr. WESTLING. Okay. And he would follow up with his own questions. And at times, you felt that went further than you would have preferred.

Mr. MOLE. That is correct.

Mr. WESTLING. And that is because you thought it was undoing work you thought you had done well. Fair statement?

Mr. MOLE. Work that I and the witness had both done well, yes.

Mr. WESTLING. But in each case, he didn't cause the witness to say anything that wasn't true, did he?

Mr. MOLE. I don't recall the details, but I felt he had pushed the witness to points that were not fair without any follow-up.

Mr. WESTLING. Okay. And so what was appropriate was a follow-up, not exactly what he was doing in questioning?

Mr. MOLE. And that is what got him angry.

Mr. WESTLING. All right. And so as a practical matter, this was not the first, nor will it be the last time that you have had a Federal judge get involved in questioning, particularly during a bench trial?

Mr. MOLE. Certainly not.

Mr. WESTLING. Now, you have talked to us about—just a few more things about the—the conduct of the trial. He made evidentiary rulings, correct?

Mr. MOLE. Absolutely.

Mr. WESTLING. He showed a facility with the rules of evidence that is not typical in a trial judge. Do you think that is a fair statement?

Mr. MOLE. I have said it before: Judge Porteous is a good trial judge. He knows the rules of evidence. He has got a good command of the courtroom. And you want a judge who is decisive and doesn't dither and knows what he is doing when he makes rulings.

Mr. WESTLING. And in this particular case, that kind of a judge was helpful, don't you think?

Mr. MOLE. It makes the trial go smoothly.

Mr. WESTLING. Okay. And so this was generally a smooth trial?

Mr. MOLE. Yes. Tense, but smooth.

Mr. WESTLING. And when you say that, intense, I mean, this was a very longstanding dispute between two parties that were not afraid to litigate. Is that a fair statement?

Mr. MOLE. They were—there was a lot of animosity. It was extremely intense. And a lot of emotion between the parties.

Mr. WESTLING. And, in fact, it had a long history before you were involved.

Mr. MOLE. Litigation began in 1987.

Mr. WESTLING. 1980——

Mr. MOLE. And the contractual relationship began in 1983.

Mr. WESTLING. Okay. So the relationship went back to 1983, the litigation back to 1987.

Mr. MOLE. That is correct.

Mr. WESTLING. And so this is coming to trial, really, after 10 years of fighting.

Mr. MOLE. Yes.

Mr. WESTLING. And Judge Porteous moved it through the trial phase expeditiously?

Mr. MOLE. I would agree with that.

Mr. WESTLING. All right. And you got a trial in a case that had been wanting a trial for quite a while.

Mr. MOLE. It was essential to my client to get through that.

Mr. WESTLING. All right. Now, let's talk a little bit about the lawyers that are in the case when you enter, which I understand was in the early part of 1996, if I have my dates right.

Mr. MOLE. I made my appearance in April.

Mr. WESTLING. Okay. So at the time, Don Richard is the principal lawyer for the Liljebergs?

Mr. MOLE. Don seemed to be the lead lawyer.

Mr. WESTLING. Okay. And he remained involved in the case through the trial, correct?

Mr. MOLE. Yes.

Mr. WESTLING. And he continued to play a substantial role in the trial?

Mr. MOLE. Yes. In fact, Don was engaged until the very end.

Mr. WESTLING. Okay. And Don is a lawyer who at the time was practicing in a small practice.

Mr. MOLE. Yes. Don is—he, at one point, was my partner at a previous firm.

Mr. WESTLING. Okay. He is a good lawyer.

Mr. MOLE. Don is very well respected, represents the Archdiocese of New Orleans, the Baptist Theological Seminary. He seems to have an avenue to God-related work.

Mr. WESTLING. Okay. And so he stayed involved. And what you know at this point is that, at some point, Amato and Mr. Levenson are brought in, and they work with Don on the case.

Mr. MOLE. Yes, and there were other lawyers involved, as well as Don, and—at the time they came in.

Mr. WESTLING. And you all had a team, as well, I assume?

Mr. MOLE. Yes, I brought in two young partners—maybe they were still associates at the time—a couple of paralegals, staff of people that I routinely worked with.

Mr. WESTLING. Okay. And so there is a lot of legal firepower on each side of this case?

Mr. MOLE. Yes.

Mr. WESTLING. A lot of documents, a lot of issues?

Mr. MOLE. Big case, lot of issues.

Mr. WESTLING. Mr. Amato and Mr. Levenson are brought in, but by the time that happens, are you confident you are going to keep that November trial date, or is that questionable?

Mr. MOLE. Well, the November trial date was an attractive thing to my client, to me. But we did ask to get it continued. In fact, the judge, I think, volunteered that, because of the recusal. But we were—Judge Porteous, every time we saw him in status conferences and whatnot, reinforced that he was not prone to move it. He wanted to get the trial over with quickly, which was good.

Mr. WESTLING. But as a practical matter, while they came in late against a trial date, the questionability was, would that be the real trial date. Fair statement?

Mr. MOLE. We were pretty certain of it at the time. The only thing that pushed it back, to my recollection, was the motion to recuse caused Judge Porteous to suspend everything, and so we

could get that over with and get it behind us and I could get to the fifth circuit and back.

Mr. WESTLING. All right.

Mr. MOLE. That—and I think the fact that we got to June was a product of that.

Mr. WESTLING. But as a practical matter, it was set within the year and it went to trial within the year, correct?

Mr. MOLE. That is correct. And we did a lot of things in between.

Mr. WESTLING. Now, you are unsuccessful in getting the fifth circuit to review the recusal issue. And you have some discussions—and I am not looking to go into the discussions with your client—but that leads you to determine that it is appropriate—or it makes sense, may be a better way to put it—to go out and look for another lawyer in the New Orleans community to—I think your words are—level the playing field.

Mr. MOLE. That was something I consulted with my client about. And jointly we decided to go ahead and do that, yes.

Mr. WESTLING. Now, there are other—well, at the time that Judge Porteous is handling this case, he has been on the Federal bench only a few years. Is that right?

Mr. MOLE. I believe he was—took the bench—the Federal bench in 1994.

Mr. WESTLING. All right. And he had come from Jefferson Parish?

Mr. MOLE. Yes, he had been a state court elected judge.

Mr. WESTLING. All right. And as a practical matter, often when you go over to Jefferson Parish, there is some discussion about bringing other lawyers into cases, is there not?

Mr. MOLE. Frequently, yes.

Mr. WESTLING. All right. So when you learned Judge Porteous has the case, you are thinking of him from a state judge perspective. Is that a fair statement? You don't know him as a Federal judge?

Mr. MOLE. I didn't know him as a state court judge, either. I had never had a case with Judge Porteous in state court or Federal court. The fact that he had been on the Jefferson Parish bench was one of the factors that we considered.

Mr. WESTLING. So you go out and you—you look for Mr. Gardner. And by the way, was there a relationship that you had in the past with any one that was involved in judging the case? I think there was a magistrate in this case. Was he a former law partner of yours?

Mr. MOLE. You have got to be speaking about Jay Wilkinson, who was a partner of mine. I don't know that we ever brought any issues to him as a magistrate, but, yes, he had been a partner.

Mr. WESTLING. But he was the magistrate assigned to the case. Is that correct?

Mr. MOLE. I think you are right, but we never—we never—he handled discovery issues. And by the time I got in, those were all behind us.

Mr. WESTLING. Basically resolved?

Mr. MOLE. Yes, I don't think we ever had recourse to Jay in the case. We may have; I just don't recall that.

Mr. WESTLING. But I also think there was a point where, in terms of looking for your lawyer that we have talked about, you had a conversation with Jay's brother?

Mr. MOLE. Tom, yes.

Mr. WESTLING. Okay. And he is involved in politics in Jefferson Parish?

Mr. MOLE. He is the parish attorney for Jefferson Parish, was then.

Mr. WESTLING. Okay. And so was that the way you identified Don Gardner?

Mr. MOLE. Pretty much. Tom recommended him for somebody who knew the judge well.

Mr. WESTLING. And so, despite the fact that you were uncomfortable with this, your client felt that it was best to find someone that had a relationship with the judge?

Mr. MOLE. It is safe to say they felt exposed and naked and they wanted to put on as much protection as possible.

Mr. WESTLING. All right.

Mr. MOLE. And that is why we did it.

Mr. WESTLING. And so you confected an agreement with Mr. Gardner that you testified about where he was going to get a minimum of $100,000, correct?

Mr. MOLE. He got that, yes.

Mr. WESTLING. All right. And that if various things happened, he could get more money?

Mr. MOLE. That is correct.

Mr. WESTLING. And one of those things would have been, had Judge Porteous recused himself, he would have gotten another $100,000. Is that correct?

Mr. MOLE. And then he would have been out of the case.

Mr. WESTLING. All right. But the net effect was, there was a provision in the agreement that said, if Judge Porteous withdraws, you are entitled to additional money?

Mr. MOLE. That is correct.

Mr. WESTLING. Okay. And I think you have testified that the reason for that was just a concern about keeping Mr. Gardner interested in the case. Is that fair?

Mr. MOLE. Correct. And I was hoping that his presence would also cause the judge to feel like there were too many of his friends in the case and he needed to get out.

Mr. WESTLING. Mr. Chairman, I am noticing my light is on. Could I have a few more moments?

Mr. SCHIFF. Yes, of course, Counsel.

Mr. WESTLING. Thank you.

So when you went to Mr. Gardner and hired him, you talked with him about Judge Porteous, I am assuming?

Mr. MOLE. Sure did.

Mr. WESTLING. And what did he tell you about the benefits of hiring him in this case?

Mr. MOLE. Don was very—you have got to know him. He is a character. He is very forthright about—he had a very close relationship. He and the judge shared a taste for wine, and he often gave him bottles of wine and shared them with him and had him over to dinners where they experienced new wines that he had

brought in from California, and that—but he made clear to me, over and over, in hiring me, you are not going to get any results, there is nothing I can do to influence what this judge will do with the law, so, you know, I am happy to help you and I am happy to take your money, but, you know, I will—I will give you any insight I have into how this judge thinks or, you know, what he likes, whether you should shave your moustache off or put on a nurse as opposed to a doctor for a bit of evidence, things like that.

Mr. WESTLING. All right. But as a practical matter, he was adamant that it wouldn't make a difference to Judge Porteous that a friend was in his court. Is that fair?

Mr. MOLE. He said that over and over.

Mr. WESTLING. And so he also was saying that about Jake Amato and Lenny Levenson?

Mr. MOLE. You know, I don't think he was as definite about that. I don't know that I asked him that question. I made it plain to him why we were bringing him in, and he said he thought he could help.

Mr. WESTLING. During the course of the trial, you learned that Mr. Gardner was—during the—it may be a better way to put it—during the course of the case, you knew that Mr. Gardner was continuing to have his friendship with Judge Porteous, correct?

Mr. MOLE. Yes.

Mr. WESTLING. You knew he was continuing to entertain Judge Porteous, correct?

Mr. MOLE. I believe they still socialized. That is what I—that is what I knew.

Mr. WESTLING. And, in fact, you were asked in the grand jury about whether entertaining expenses for Judge Porteous had come in any way from the money that he received as a result of the fee. And I think you indicated that you didn't have any reason to know that one way or another.

Mr. MOLE. I don't recall the testimony, but that is certainly accurate.

Mr. WESTLING. Okay. But it wasn't a situation where you were left in the dark about the fact that Mr. Gardner continued to socialize with his friend?

Mr. MOLE. I knew they still socialized.

Mr. WESTLING. Okay. And I assume you weren't concerned about that?

Mr. MOLE. No. No, I had no concerns about that.

Mr. WESTLING. Okay.

Is it fair to say that the Liljebergs had—well, they had raised this issue—the issues in this case well before Judge Porteous was involved in the fifth circuit. Are you aware of that?

Mr. MOLE. I am sorry. Would you repeat that, Mr. Westling?

Mr. WESTLING. Sure. It wasn't well said, so I will be happy to.

Mr. MOLE. Sure.

Mr. WESTLING. The Liljebergs had litigated appellate issues in this case before your involvement and before it was assigned to Judge Porteous. Is that correct?

Mr. MOLE. Yes, they had had state law—state court and certainly fifth circuit appeals that I was aware of.

Mr. WESTLING. And do you recall there being language in the fifth circuit opinion in this case that referenced older decisions by the fifth circuit?

Mr. MOLE. Yes, there was one fifth circuit opinion that we cited over and over that indicated that the fifth circuit had a low opinion of the Liljebergs' lawyer—previous lawyer's tactics.

Mr. WESTLING. Okay. And so that resurfaced in the opinion here?

Mr. MOLE. Yes.

Mr. WESTLING. Okay. Now, in terms of the evidence in this case, is it—I know you have said it is a slam-dunk, but, I mean, you are a trial lawyer and I am a trial lawyer. I mean, we don't have that many slam-dunks, do we?

Mr. MOLE. Yes.

Mr. WESTLING. We all like to think we have one, but whether we do, I guess, remains in the result. Fair statement?

Mr. MOLE. Right.

Mr. WESTLING. Okay. There was a number of items of evidence in this case that came in during the trial that went to one side or the other. This was not a one-sided set of evidence. Fair statement?

Mr. MOLE. You know, it was a huge case. And I don't recall all the evidence, but certainly both sides put on a thorough case of their evidence.

Mr. WESTLING. And Judge Porteous wrote about an 108-page opinion?

Mr. MOLE. Yes.

Mr. WESTLING. And in doing that, he made findings of fact, and he supported those in many cases with citations to the record or to evidence, correct?

Mr. MOLE. I certainly would agree with that.

Mr. WESTLING. And you didn't look at it and say, "Gee, I think the evidence is wrong." What you thought, it was that his conclusions were wrong. Fair statement?

Mr. MOLE. Yes. You know, I think—I think he certainly twisted the evidence for the hospital result and for the severance of the contract. I didn't agree with those results, didn't think it was supportable.

Mr. WESTLING. All right. One moment.

I have no further questions, Mr. Chairman.

Mr. SCHIFF. Thank you, Counsel.

We just have a few more questions and then we are going to have votes shortly. And hopefully, we will be able to release you.

You mentioned a couple things I want to follow up on. One was that you just wanted to survive the judgment, I think was the expression that you used. Does that indicate that you had the feeling all along during the trial that the judge was going to rule the other way?

Mr. MOLE. Yes, I did.

Mr. SCHIFF. So notwithstanding the fact that at least the atmospherics of the way the judge conducted the trial gave the appearance of a fair trial, you strongly believed he was ultimately going to rule against you?

Mr. MOLE. Yes. I mean, if I could analogize it to a boxing match where you put on your best fight and then the referees decided the

other guy won by decision, that is—that is what I—that is where I felt we were headed.

Mr. SCHIFF. Now, in your experience as a litigator, are you familiar with judges' efforts to make sure that their record is upheld on appeal?

Mr. MOLE. I am not sure what you are referring to.

Mr. SCHIFF. Well, in other words, if a judge wants their—their decision to be upheld on appeal, they will conduct the trial in a way that will create a suitable record for appeal, won't they?

Mr. MOLE. Sure.

Mr. SCHIFF. So if this judge wanted to find for a certain party, it would be in his interest to conduct the trial in a way that would appear to the appellate court to be fair?

Mr. MOLE. I would assume he would want that, yes.

Mr. SCHIFF. You mentioned that, you know, as a trial judge, Judge Porteous knew what he was doing and knew the rules of evidence. And that was manifest, too, in his handling of the recusal hearing. He understood what the legal standards were and the arguments you were making, correct?

Mr. MOLE. Yes. And I think, in retrospect, in the recusal, he was just flat-out dishonest with us. But at trial, you know, it was just a trial.

Mr. SCHIFF. Now, you mentioned you—you appealed. You sought a writ of mandamus on the denial of the recusal motion?

Mr. MOLE. Yes, I took an immediate supervisory writ.

Mr. SCHIFF. And in that motion to the court of appeals, you presented whatever record you had that supported the recusal motion, correct?

Mr. MOLE. Yes, the motion was about that thick, and the only evidence I had was my own affidavit, which was obviously not enough to get the fifth circuit to do what it seldom does.

Mr. SCHIFF. And is it a fair statement to say that because Judge Porteous did not disclose what he had a duty to disclose during the recusal hearing that the record you sent to the court of appeals was an incomplete record?

Mr. MOLE. There was no hard evidence.

Mr. SCHIFF. And as a result of that, the court of appeals was deprived of the information it needed to make an appropriate judgment on the recusal motion. Is that right?

Mr. MOLE. That is certainly my opinion.

Mr. SCHIFF. Do you have any question about whether the court of appeals would have reversed the recusal denial had they known of the payments that were received by the judge from lawyers in the case?

Mr. MOLE. You know, I can't presume to speak for the fifth circuit. They are pretty good at what they do. But I can't imagine they would have denied the appeal under those circumstances.

Mr. SCHIFF. So because of the failure of the judge to disclose what he had a duty to disclose in the district court, you were deprived of the services of the court of appeals?

Mr. MOLE. Absolutely. You know, if I had been able to tell the fifth circuit that the judge had a relationship with at least one of the lawyers whereby he received money in return for referrals of curatorships, that he was bought hundreds of lunches, expensive

lunches, that he traveled at their expense, and that he received cash from them when he asked, I don't have any doubt they would have—you know, we would have got what we asked for.

Mr. SCHIFF. Do you have any doubt as to whether if you had been able to disclose to the court of appeals that he had solicited $2,500 in cash from one of the attorneys and received it while the case was under submission, do you have any question about whether the court of appeals would have taken that case away from him?

Mr. MOLE. No, I don't have any doubt about that. It is just the sort of thing I feared.

Mr. SCHIFF. You mentioned——

Mr. COHEN. Could you speak into the microphone? We couldn't hear that.

Mr. MOLE. I said that is just the sort of fact that I feared existed but didn't know about.

Mr. SCHIFF. You said something interesting, that in terms of the package from Mr. Gardner, it was $100,000 upfront. There was another $100,000 if the recusal motion was granted. Is that right?

Mr. MOLE. Well, it was well after the recusal was decided. It was——

Mr. SCHIFF. Well, no, but——

Mr. MOLE.—$100,000 if the judge steps—recused himself for any reason thereafter.

Mr. SCHIFF. Okay. I think you said—and I want to make sure I understood this correctly—that if the judge recused himself, then Gardner was out of the case.

Mr. MOLE. Correct.

Mr. SCHIFF. By that, did you mean that, if the judge took himself off the case, that Gardner's participation in the case after that would not be necessary and he would no longer be part of the legal team on the case?

Mr. MOLE. That is correct.

Mr. SCHIFF. So Gardner was brought in because of his relationship with the judge and, if the judge changed and you got a new judge, there was no need to have Gardner on the case anymore.

Mr. MOLE. I certainly didn't want him to continue to be involved.

Mr. SCHIFF. To your knowledge, was there any reason why Amato and Levenson were brought into the case unrelated to their relationship with the judge?

Mr. MOLE. You know, by my due diligence, what I learned of them leads me to conclude that there was no other reason. They had no expertise or experience that made them suitable for that case. And certainly, what they did during the course of the case didn't change that opinion.

Mr. SCHIFF. Had they not been brought in and the recusal—necessitating the recusal motion, is it possible the trial would have gone on the scheduled date in November?

Mr. MOLE. Yes, I think it is—you know, you would have to ask Judge Porteous what his calendar was like back then, but I think it was more likely than not we were going to go to trial on November 6th absent the recusal. I think that—that rocked the boat substantially.

Mr. SCHIFF. I have no further questions.

Mr. Goodlatte?

Mr. GOODLATTE. Mr. Chairman, I think we have concluded our questions for this witness. And I don't think we have any further on this side.

Mr. SCHIFF. Yes, Mr. Johnson?

Mr. JOHNSON. All right. Thank you, Mr. Chairman.

Under examination from Judge Westling, you talked about you knew that there was an ongoing social relationship between Judge Porteous and the—the attorney, Levenson and Amato, or Levenson or Amato. You knew that there was some socialization going on between them, correct?

Mr. MOLE. Absolutely.

Mr. JOHNSON. But you didn't know what the extent of the social relationship was at that time?

Mr. MOLE. No. I didn't know certainly what I know now.

Mr. JOHNSON. And you did not know that during the pendency of the judge's decision you—that Judge Porteous was receiving cash from the—one of the attorneys or the attorneys for the plaintiff?

Mr. MOLE. No, I think if that fact had been known, the alarms would have gone off all over.

Mr. JOHNSON. Now, Judge Porteous did a good job handling the motion for recusal, in your opinion?

Mr. MOLE. I don't know what you mean by "good." I think he reached the wrong result for improper reasons, which is all that mattered.

Mr. JOHNSON. Well, let me ask the question this way. Did it appear that Judge Porteous, in your legal opinion, knew the rules of judicial recusal?

Mr. MOLE. I think he understood what was required of him, yes, but the sense I had of standing in front of him and asking him to step down, implying that he was compromised, was that he was looking at me to find out how much I knew, and that if I didn't know enough, he certainly wasn't going to grant my motion. That was the feeling I had when it was—when he banged the gavel down.

Mr. JOHNSON. Thank you, sir.

Mr. SCHIFF. Gentleman yields back.

I want to thank the witness and Members for their participation. Without objection, the record will remain open for 5 legislative days for Members to submit any additional materials. Again, I want to thank everyone for their time and patience.

This hearing of the Impeachment Task Force is adjourned.

[Whereupon, at 12:18 p.m., the Task Force was adjourned.]

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[redacted]

Our first witness is Special Agent DeWayne Horner of the FBI. Agent Horner, if you could come sit at the table.

Agent Horner works out of the FBI's New Orleans office, where he is assigned to that office's Public Corruption Squad. He worked on the investigation of Judge Porteous and is testifying today as a fact witness.

I will now swear the witness. Agent Horner, if you could rise and raise your right hand.

[Witness sworn.]

Mr. SCHIFF. Task Force counsel Kirsten Konar will now question the witness.

TESTIMONY OF DeWAYNE HORNER, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION, NEW ORLEANS, LA

Ms. KONAR. Agent Horner, good morning.

Mr. HORNER. Good morning.

Ms. KONAR. Where are you employed?

Mr. HORNER. I am a special agent with the Federal Bureau of Investigation assigned to the New Orleans Division.

Ms. KONAR. How long have you worked for the FBI?

Mr. HORNER. Approximately 14 years.

Ms. KONAR. And what division do you work in?

Mr. HORNER. I am currently assigned to a Public Corruption Squad in New Orleans.

Ms. KONAR. Were you one of the FBI case agents assigned to the Department of Justice's investigation of Judge Porteous?

Mr. HORNER. I was. The Judge Porteous investigation was kind of carved out of a larger investigation, but I was the agent who handled the Porteous investigation.

Ms. KONAR. What was your role in that investigation?

Mr. HORNER. I was the lead agent.

Ms. KONAR. Are you familiar with the documents and evidence which were obtained as a part of that investigation?

Mr. HORNER. I am.

Ms. KONAR. Did the FBI's investigation include an analysis of Judge Porteous's financial records?

Mr. HORNER. It did.

Ms. KONAR. More specifically, did the FBI analyze Judge Porteous's credit card debts and bank account withdrawals related to gambling for the 5 years preceding his 2001 bankruptcy filing?

Mr. HORNER. Yes. We had a financial analyst that did a lot of financial analysis on the financial records.

Ms. KONAR. I would like to direct your attention to Exhibits 327 and 328. Do you recognize these documents?

Mr. HORNER. Yes.

Ms. KONAR. What are these documents?

Mr. HORNER. 327 is a schedule prepared by our financial analyst which reflects checks written to either casinos or anything associated with gambling, and also cash withdrawals at casinos.

Ms. KONAR. Turning to the last page of Exhibit 327, what is the total dollar amount that Judge Porteous either wrote in checks or withdrew in cash at casinos between January 1997 and May of 2000?

Mr. HORNER. It is at least $27,739.

Ms. KONAR. Turning to the last page of Exhibit 328, what is the total dollar amount charged to Judge Porteous's credit cards related to gambling between July 1995 and July of 2000?

Mr. HORNER. The total is $66,051.05.

Ms. KONAR. Do you know whether these charts list all of Judge Porteous's credit card debts and bank account withdrawals for this time period related to gambling?

Mr. HORNER. No, it doesn't include everything. There is probably some additional credit card charges that were not included in this time period, and there may be some additional withdrawals out of his bank account that were not included.

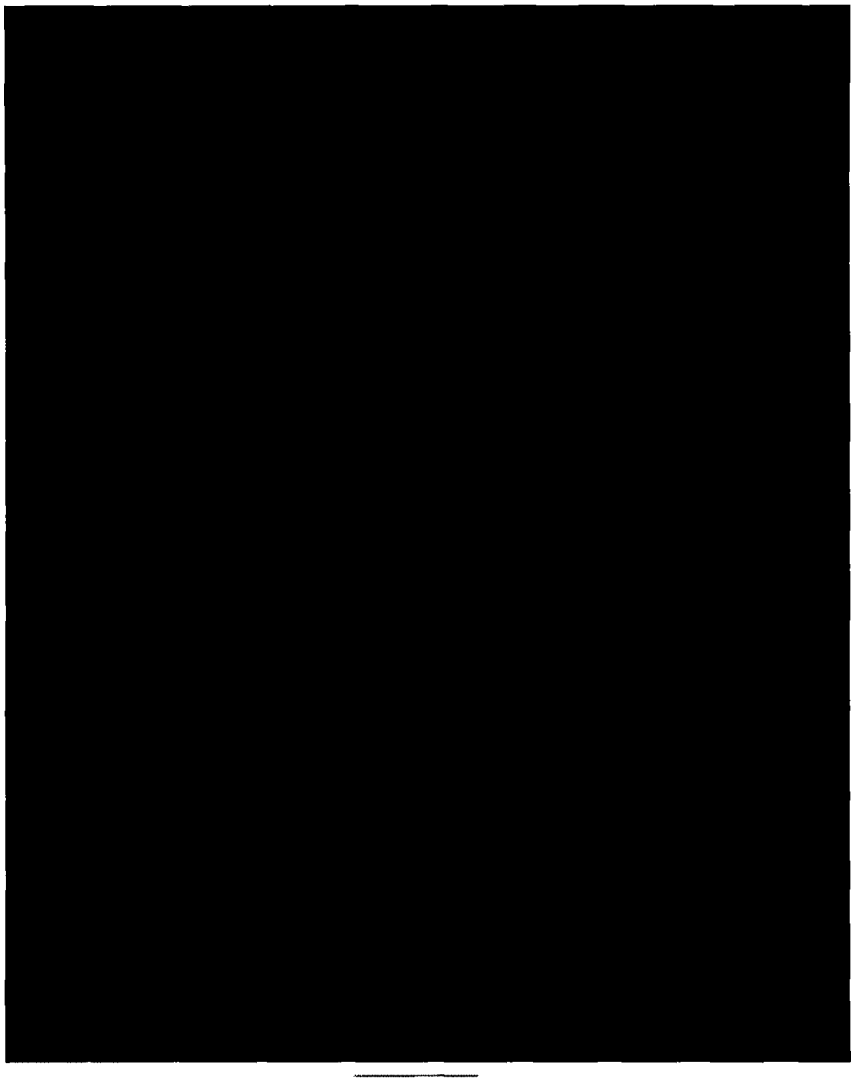
Ms. KONAR. Mr. Chairman, at this time I move to have Exhibits 327 and 328 made a part of the official record of these proceedings.

Mr. SCHIFF. Without objection.

[The information referred to follows:]

[redacted]

[redacted]



Mr. KONAR. In addition to the financial analysis conducted by the FBI, did the FBI also review Judge Porteous's casino records?

Mr. HORNER. We did.

Ms. KONAR. Was that review one of your primary areas of responsibility?

Mr. HORNER. Yes. I think I visited every casino on the Gulf Coast.

Ms. KONAR. Would you please describe for the Task Force how you obtained Judge Porteous's casino records?

Mr. HORNER. First we would issue a subpoena to the casino, and then they would call and tell us that they had the records. I would usually drive over there and get them, or sometimes they would mail them. After we received the records, we would go over them and look at them and try to analyze them and see what was going on. A lot of times, not all of the time, but a lot of the times, the casinos have a very complicated method to their bookkeeping and recordkeeping, so sometimes we would have to go back to the casinos and have them explain the records or explain the abbreviations that were on the records.

Ms. KONAR. Why did the casinos have specific records for Judge Porteous?

Mr. HORNER. Judge Porteous was an established rated player at these casinos, meaning he had set up an account with the casinos so they could keep track of his gaming winnings and losses, and then in return for that, Judge Porteous would receive comps from the casino, which are shows, rooms, food, booze, things like that.

Ms. KONAR. Did the casino records that you collected and reviewed include listings of all of the markers that were taken out by Judge Porteous?

Mr. HORNER. Yes, they did.

Ms. KONAR. Did the casinos explain to you what a marker was?

Mr. HORNER. Yes, they did.

Ms. KONAR. What did they tell you?

Mr. HORNER. A marker just basically is an extension of credit by the casino to the customer. It allows the customer to draw down on the credit limit, and then what the casino does is it will draw any unpaid sums from the marker from the customer's bank account after some fixed period of time. The fixed period of time can vary by casino. They can have 3-day holds on the markers or 5-day holds or 30-day holds. It just depends.

Ms. KONAR. Did the casinos tell you whether players were required to fill out a credit application before they could obtain markers?

Mr. HORNER. What was that?

Ms. KONAR. Were gamblers required to fill out a credit application before they could take out markers at a casino?

Mr. HORNER. Yes, they were. It is much like probably a credit card application.

Ms. KONAR. Are you aware that Judge Porteous filed for Chapter 13 bankruptcy in March of 2001?

Mr. HORNER. I am.

Ms. KONAR. Directing your attention to Exhibit 125, which is Judge Porteous's initial bankruptcy petition, what is the name that Judge Porteous used on this petition?

Mr. HORNER. Judge Porteous used G.T. Ortous.

Ms. KONAR. Is that a false name?

Mr. HORNER. That is a false name.

Ms. KONAR. What is the address used on this petition?

Mr. HORNER. He used Post Office Box 1723, Harvey, Louisiana 70059.

Ms. KONAR. Now, directing your attention to Exhibit 145, do you recognize this document?

Mr. HORNER. Yes, I do.

Ms. KONAR. What is this document?

Mr. HORNER. That is an application Judge Porteous made for a post office box in New Orleans shortly before he filed for his bankruptcy, specifically 8 days prior to his filing bankruptcy.

Ms. KONAR. As a part of your investigation for the Department of Justice, did you obtain a copy of this document?

Mr. HORNER. Yes, I did.

Ms. KONAR. Are you also aware that Judge Porteous filed his bankruptcy schedules on April 9th, 2001?

Mr. HORNER. I am.

Ms. KONAR. I would like to direct your attention to Judge Porteous's bankruptcy Schedule B. What information is asked for in question 17?

Mr. HORNER. Schedule B is his personal property schedule in the bankruptcy. Question 17 asks for other liquidated debts owing the debtor, including tax refunds, and then it specifically asks for particulars.

Ms. KONAR. What was Judge Porteous's response to question 17?

Mr. HORNER. Judge Porteous responded he had none.

Ms. KONAR. Do you know whether that response was truthful?

Mr. HORNER. That was not truthful.

Ms. KONAR. Why was that not truthful?

Mr. HORNER. Because on March 23rd, he filed his year 2000 tax return asking or requesting a $4,300 refund from the IRS.

Ms. KONAR. Turning your attention to Exhibit 141, is this the 2000 tax return you just referenced?

Mr. HORNER. Yes, it is.

Ms. KONAR. And turning to page 2 of the document, is this the $4,000 tax refund you just referenced?

Mr. HORNER. Yes. Specifically it is $4,143.72.

Ms. KONAR. And March 23rd was just 5 days before Judge Porteous filed his original bankruptcy petition?

Mr. HORNER. That is correct.

Ms. KONAR. I would now like to direct your attention to Exhibit 142. Do you recognize this document?

Mr. HORNER. What is the exhibit number?

Ms. KONAR. 142.

Mr. HORNER. Yes, I do.

Ms. KONAR. What is this document?

Mr. HORNER. This is a copy of Judge Porteous's Bank One statement.

Ms. KONAR. Did you obtain a copy of Judge Porteous's Bank One records as a part of your investigation?

Mr. HORNER. I did.

Ms. KONAR. Does this document contain any information concerning Judge Porteous's tax refund?

Mr. HORNER. Yes. This document shows that Judge Porteous received the $4,100 refund on April 13th of 2001.

Ms. KONAR. And April 13th was just 4 days after Judge Porteous had filed his bankruptcy schedules and stated that he was not owed a tax refund?

Mr. HORNER. That is correct.

Ms. KONAR. Turning your attention to Schedule I of Judge Porteous's bankruptcy schedules, what information is supposed to be disclosed on Schedule I?

Mr. HORNER. Schedule I is his current income he is supposed to provide to the bankruptcy trustee. And Judge Porteous provided his—well, he provided his gross income as $7,531.52, which really is his net income for the period.

Ms. KONAR. Was Judge Porteous's response that his net income was $7,531 in the year 2001 a truthful answer?

Mr. HORNER. No, because he used a pay stub from May of 2000.

Ms. KONAR. I would like to direct your attention back to Exhibit 142, which you just testified was Judge Porteous's Bank One statement. Does this statement contain any information concerning Judge Porteous's 2001 income?

Mr. HORNER. It does. It shows that on April 2nd, which is April 2 of 2001, his Federal salary was deposited into his Bank One checking account, and it shows the government deposited $7,705.51, which is different than what he represented to the bankruptcy court.

Ms. KONAR. So Judge Porteous's 2001 salary was approximately $200 a month greater than what he disclosed on his Schedule I?

Mr. HORNER. That is correct.

Ms. KONAR. Are you aware that Judge Porteous also filed a statement of financial affairs with the bankruptcy court on August 9, 2001?

Mr. HORNER. I am.

Ms. KONAR. Directing your attention to question 3 on the statement of financial affairs, what information does this question ask for?

Mr. HORNER. Specifically question 3 asks for Judge Porteous to list all payments on loans, installments, purchases and any other kind of debt totaling more than $600.

Ms. KONAR. What was Judge Porteous's response to question 3?

Mr. HORNER. Judge Porteous reported normal installments.

Ms. KONAR. What does the term "normal installments" mean?

Mr. HORNER. Normal installments would mean something like your mortgage payments, car payments, credit card payments, something like that.

Ms. KONAR. Do you know whether Judge Porteous's response of normal installments was truthful?

Mr. HORNER. It was not truthful.

Ms. KONAR. What did your investigation reveal regarding Judge Porteous's payments of any debts paid in the past 90 days preceding his bankruptcy?

Mr. HORNER. Say that again?

Ms. KONAR. What did your investigation reveal regarding whether Judge Porteous did, in fact, make any payments within the 90 days preceding his bankruptcy?

Mr. HORNER. He did.

Ms. KONAR. Did Judge Porteous make any payments to the Treasure Chest Casino?

Mr. HORNER. He did.

Ms. KONAR. Directing your attention to Exhibit 302, do you recognize this document?

Mr. HORNER. I do.

Ms. KONAR. What is this document?

Mr. HORNER. This is a part of Judge Porteous's gaming records from the Treasure Chest Casino, which is located in Kenner, Louisiana, and this is a history of some of the markers that he took at the casino.

Ms. KONAR. What does this document show regarding Judge Porteous's activities at the Treasure Chest Casino in March of 2001?

Mr. HORNER. It shows that on March 2, 2001, Judge Porteous took out seven $500 markers, okay? And then on March 3rd of '01—which means the gambling trip probably passed over midnight, so that is why it is repaid on March 3rd. On March 3rd, he repaid four of the markers with chips. And then on March 27th of 2001, he goes back to the casino and pays the remaining markers in cash. He makes a $1,500 cash payment to the casinos.

Ms. KONAR. So on the day before Judge Porteous filed for bankruptcy, he made a $1,500 cash payment to the Treasure Chest Casino?

Mr. HORNER. That is correct. In cash.

Ms. KONAR. Do you consider that payment to be a normal installment?

Mr. HORNER. No.

He also on the 27th, I should add, deposited—he made a $2,000 deposit in his checking account on March 27th, $1,960 of which was cash also.

Ms. KONAR. Do you know the source of that cash?

Mr. HORNER. No.

Ms. KONAR. Directing your attention to question 8 on the statement of financial affairs, what information does this question ask for?

Mr. HORNER. Specifically question 8 asks for any losses from fire, theft, casualty, and then it specifically lists out gaming, within 1 year immediately preceding the bankruptcy application.

Ms. KONAR. What was Judge Porteous's response to question 8?

Mr. HORNER. He stated he had no losses.

Ms. KONAR. Do you know whether that response was truthful?

Mr. HORNER. That was not truthful.

Ms. KONAR. As a part of your investigation, did you analyze all of Judge Porteous's gambling losses for the year immediately preceding his bankruptcy filing?

Mr. HORNER. We did.

Ms. KONAR. I would like to direct your attention to Exhibit 337. Do you recognize this document?

Mr. HORNER. I do.

Ms. KONAR. What is this document?

Mr. HORNER. This is a document that shows our analysis of his gaming activities for the 1 year preceding bankruptcy, and it shows any winnings or any losses that he incurred in that 1-year period.

Ms. KONAR. What does this analysis show regarding Judge Porteous's gambling losses for that year?

Mr. HORNER. Specifically it shows that he had gross gaming losses of $12,895.35, with a net loss of $6,233.20.

Ms. KONAR. Where did you get all the necessary information to determine what Judge Porteous's gambling losses were?

Mr. HORNER. We got them from the casino records.

Ms. KONAR. Do you know whether a confirmation order was entered in Judge Porteous's bankruptcy case?

Mr. HORNER. I do.

Ms. KONAR. Directing your attention to Exhibit 133, which is a copy of the Porteous confirmation order, does this order address whether Judge Porteous was allowed to incur any additional debt?

Mr. HORNER. It does.

Ms. KONAR. What does it say in that regard?

Mr. HORNER. Specifically it says, the debtor shall not incur additional debt during the term of this plan except upon written approval of the trustee.

Ms. KONAR. Did Judge Porteous continue to take out markers at casinos after this confirmation order was entered?

Mr. HORNER. He did.

Ms. KONAR. I would like to direct your attention to the summary chart prepared by Task Force staff which shows all the casino markers taken out by Judge Porteous after the confirmation order was entered up until July of 2002. How many total markers did Judge Porteous take out during this time period?

Mr. HORNER. Judge Porteous took out 42 total markers.

Ms. KONAR. What is the total dollar amount that Judge Porteous borrowed and then repaid in the casino for those 42 markers?

Mr. HORNER. $149,400.

Ms. KONAR. As one example of the gambling trips listed on this chart, did Judge Porteous gamble at the Treasure Chest Casino in August of 2001?

Mr. HORNER. He did.

Ms. KONAR. Directing your attention to Exhibit 313, do you recognize this document?

Mr. HORNER. I do.

Ms. KONAR. What is this document?

Mr. HORNER. This is Judge Porteous's marker history from the Treasure Chest Casino for the time period August of 2001.

Ms. KONAR. All right. What does this exhibit show specifically regarding Judge Porteous's activities at the Treasure Chest Casino in August of 2001?

Mr. HORNER. Specifically it shows that he took out eight $1,000 markers for a total of $8,000 over the time period of August 20-August 21. So, again, the gaming trip probably flipped over midnight. Then he repaid five of the markers in chips on either August 20th or August 21st. He left owing the casino that night with an amount of $3,000. Then he comes back to the casino on September 9th, 2001, and repays two of the markers in cash. And then the last marker he comes back to the casino on September 15th, 2001, with another $1,000 in cash.

Ms. KONAR. Was it a violation of the confirmation order for Judge Porteous to take out these eight markers at the Treasure Chest Casino?

Mr. HORNER. Yes.

Ms. KONAR. Do you know whether Judge Porteous opened up any credit cards after the confirmation order was entered?

Mr. HORNER. He did.

Ms. KONAR. Directing your attention to Exhibit 341-A, do you recognize this document?

Mr. HORNER. I do. It is the Capital One credit card application signed by Judge Porteous.

Ms. KONAR. Was this one of the documents obtained as a part of your investigation?

Mr. HORNER. It was.

Ms. KONAR. What is the date on this credit card application?

Mr. HORNER. August 13th, 2001.

Ms. KONAR. August 13, 2001, was less than 1 month after the confirmation order was entered, correct?

Mr. HORNER. That is correct.

Ms. KONAR. To the best of your knowledge, is that Judge Porteous's signature on the credit card application?

Mr. HORNER. That is his signature.

Ms. KONAR. Directing your attention to Exhibit 341-B, do you recognize these documents?

Mr. HORNER. I do.

Ms. KONAR. What are these documents?

Mr. HORNER. These are the charges on the Capital One credit card that he applied for just previously.

Ms. KONAR. Do these charges show whether Judge Porteous used the Capital One credit card after the confirmation order?

Mr. HORNER. They do.

Ms. KONAR. Was it a violation of the confirmation order for Judge Porteous to open the Capital One credit card and thereafter use the card to incur new debt?

Mr. HORNER. Yes, it was.

Ms. KONAR. Do you know whether Judge Porteous applied for a credit limit increase at any of the casinos where he gambled after the confirmation order was entered?

Mr. HORNER. He did. In July, July 4, 2002, he applied to increase his credit limit at the Grand Casino Gulfport.

Ms. KONAR. Directing your attention to Exhibit 324, do you recognize this document?

Mr. HORNER. I do.

Ms. KONAR. What is it?

Mr. HORNER. This is the credit line change request that Judge Porteous signed on July 4th of 2002.

Ms. KONAR. Is that Judge Porteous's signature?

Mr. HORNER. It is.

Ms. KONAR. Based on your investigation, will a casino ever increase a gambler's credit line without the gambler proactively requesting that credit line increase?

Mr. HORNER. No.

Ms. KONAR. What is the normal procedure at a casino when a gambler requests a credit line increase?

Mr. HORNER. Usually what they will do is ask the customer to fill out some kind of application or some kind of change request, and then what they will do is run either a consumer credit report or what is called a central credit report, which is a credit report specifically used by casinos for gamblers.

Ms. KONAR. How else is a central credit report different from a normal commercial credit report?

Mr. HORNER. Well, the central credit report only reports gaming activity on a particular gambler. So what it does, it keeps track of the gambler's limits, what casinos they have applied credit at, and then it will also show or reflect any negative histories at the casinos, if they failed to pay a marker or bounced a check or something like that.

Ms. KONAR. Is it important to gamblers to keep their central credit reports clean of any blemishes?

Mr. HORNER. Absolutely, because if a gambler gets a negative history on his central credit report, what happens is the other casinos generally cut him off.

Ms. KONAR. Turning back to this Grand Casino Gulfport credit line increase, after Judge Porteous requested this increase, do you know whether he gambled at the casino on that same day?

Mr. HORNER. He did.

Ms. KONAR. Turning your attention to Exhibit 325, do you recognize this document?

Mr. HORNER. This is the marker history from the Grand Casino Gulfport which covers the time period in question.

Ms. KONAR. Does this exhibit show whether Judge Porteous took out markers at the Grand Casino Gulfport in July of 2002?

Mr. HORNER. It does.

Ms. KONAR. What is the total dollar amount in markers Judge Porteous took out?

Mr. HORNER. Twenty-five hundred.

Ms. KONAR. And $2,500 was his newly increased credit limit; is that correct?

Mr. HORNER. That is correct.

Ms. KONAR. So Judge Porteous applied to increase his credit limit at the Grand Casino Gulfport and thereafter utilized his new credit limit to gamble up to that limit?

Mr. HORNER. That is correct. He maxed it out as soon as he got it.

Ms. KONAR. Was that a violation of the confirmation order?

Mr. HORNER. It was.

Ms. KONAR. Did your investigation reveal a pattern where Judge Porteous favored making repayments at casinos over making repayments of other debts?

Mr. HORNER. It did.

Ms. KONAR. What did that pattern show specifically?

Mr. HORNER. Well, specifically it showed that Judge Porteous favored the casinos and a credit card company over his other creditors.

Ms. KONAR. Mr. Chairman, that concludes my questioning.

Mr. SCHIFF. Thank you.

Let me ask you a few questions, Agent Horner.

What would have been the result if Judge Porteous had listed markers on his bankruptcy petition or defaulted on debt to a casino?

Mr. HORNER. Well, if he would have listed the marker on the bankruptcy decision, the marker would have been discharged in bankruptcy, or since this was a 13, the casino would have been

treated like any other creditor and probably got—I think his plan was 39 cents on the dollar. So the casino would have been paid 39 cents on the dollar.

Mr. SCHIFF. And had that happened, would the casinos have continued extending credit to him?

Mr. HORNER. No. If the casino had found out that he had filed for bankruptcy, they would not have extended credit to him anymore.

Mr. SCHIFF. And did the judge indicate any of his casino debt on his bankruptcy petition?

Mr. HORNER. No. None.

Mr. SCHIFF. As a result, did the casinos get paid 100 percent of their debt whereas other creditors got maybe a third of their debt?

Mr. HORNER. That is exactly what happened. Treasure Chest, Grand Casino, Beau Rivage, they were all paid 100 percent, versus his credit cards, Bank of America and stuff, they got 39 cents on the dollar, the same as there was a bank loan that he had that was listed in the bankruptcy which got 39 cents on the dollar.

Mr. SCHIFF. Were the markers always paid either by cashing out chips or by the judge coming in later and giving cash? Or you mentioned the markers gave the casinos the right to tap into the judge's bank account. Did they ever have to use that mechanism, or did the judge always go and pay the marker one way or another?

Mr. HORNER. No. What happened in Judge Porteous's case was the markers were repaid, I think, one of four different ways. Sometimes he would pay with chips. When he was at the casino, he would pay it off with chips. Sometimes he would pay it off with cash. Other times he would write a check to the casino paying it off. And then the fourth way, sometimes his secretary wrote a check to the casino paying off the marker.

Mr. SCHIFF. This was his judicial secretary?

Mr. HORNER. Yes.

Mr. SCHIFF. You were showing some of the charts earlier that would show him gambling for a period of a day and a half; it would go after midnight.

Mr. HORNER. Right.

Mr. SCHIFF. Some of the markers he would pay in chips, and some he would pay a day or so later, and some he would pay a week or two later.

Mr. HORNER. Right.

Mr. SCHIFF. Were those at multiple casinos on the same day, or how is it that some were paid a day later, and some were paid through chips, and some were paid a week later? Were those all debts at the same casino? Were those visiting multiple casinos in the course of a single day?

Mr. HORNER. No, generally it was one casino per trip. If he had a stack of chips in his hand when he was done gambling, I suppose he would just walk to the cage and try to pay off any markers he had outstanding with whatever chips he had left.

Mr. SCHIFF. The multiple debts that appear on some of the exhibits, some of which he paid out right away and some of which he paid out later, those would have been incurred at the same casino during the same day?

Mr. HORNER. Yes.

Mr. SCHIFF. Does that mean he would gamble—he would get chips through a marker.

Mr. HORNER. Right.

Mr. SCHIFF. At, say, the beginning of the evening.

Mr. HORNER. Right.

Mr. SCHIFF. He would gamble and win some, lose some.

Mr. HORNER. Right.

Mr. SCHIFF. Cash in chips.

Mr. HORNER. That is correct.

Mr. SCHIFF. And then later in the evening borrow more chips.

Mr. HORNER. Yes, he did that sometimes, too. He would draw on a marker, gamble for a while; go back, probably lose what he drew down on the marker; go back, draw another marker, either win or lose; go back, either draw another marker or pay off the two previous markers or just pay off one marker if that he is all he had in his pocket at the time. So it just kind of depended upon whether he was winning or losing what would happen.

Mr. SCHIFF. Those multiple transactions were at the same casino, and it just reflected the process of the evening of cashing in and cashing out.

Mr. HORNER. Right. Exactly.

Mr. SCHIFF. But to your knowledge, the casinos never actually had to go and draw the money from his own accounts?

Mr. HORNER. No. They did. Sometimes they did drop the markers.

Mr. SCHIFF. That is called dropping the markers?

Mr. HORNER. Yes. They deposited the marker to his bank account. I guess there is five ways that the markers were paid.

Mr. SCHIFF. So sometimes they took advantage of the process, the link to his bank account, and actually when he didn't within the time period make the payment, they went and they drew the funds out of his account?

Mr. HORNER. That is correct.

Mr. SCHIFF. Now, you did a summary of the amount of checks and cash he had written or paid for gaming expenses from 1997 to 2000 that add up to $27,000, and then the number of credit card debts he incurred from 1995 to 2000, which was $66,000. I want to ask you about those two different periods. For one you looked at the period from 1997 to 2000.

Mr. HORNER. That is correct.

Mr. SCHIFF. And the other, '95 to 2000. Why did you choose two different periods? Do you know what the amount of checks and cash from '95 to 2000 would have been?

Mr. HORNER. I don't know it off the top of my head, but I am sure the financial analyst that prepared the schedules, he would know the numbers or the answer to that question.

Specifically, the two different time periods, those were the time periods that were used in the fifth circuit, I believe, at the fifth circuit hearing. And I don't know why they specified those two time periods. That was the financial analysts working with the fifth circuit people.

Mr. SCHIFF. In your investigation, did you determine when the judge's gambling problem began or how long had it been ongoing?

Mr. HORNER. Well, he had credit at—I think the Treasure Chest was the first casino that he had credit established at, and I'm going from memory here. I think it went back to '95 or '92, something like that. But that is kind of an estimate, because I can't remember exactly how far back the Treasure Chest records went.

Mr. SCHIFF. As far as you recall, the Treasure Chest may be the first casino where he became an established——

Mr. HORNER. Yes. That was his preferred—he liked to go to the Treasure Chest because it was real close to his house.

Mr. SCHIFF. The 149,000 in markers that were taken out, many of which were repaid——

Mr. HORNER. Right.

Mr. SCHIFF. How much was the sort of net loss from those markers? In other words, he goes to a casino; he takes out a mark; at some point, he cashes in chips to pay part of the mark. Was it generally or often the case that he lost and therefore couldn't pay off the mark at that visit and had to pay it off in the days or weeks that followed?

Mr. HORNER. I don't know the exact total, but in reviewing the records—I mean, I'm going to estimate that maybe half the time he lost—half the time he won, half the time he lost. Okay. That is just a rough estimate. But I don't know the total loss, net loss, or the amount of money that he owed casinos when he left. I don't know that number.

Mr. SCHIFF. Now, the 140—was it 149,000?

Mr. HORNER. 149,000.

Mr. SCHIFF. That was during the course of 1 or 2 years while he was in bankruptcy?

Mr. HORNER. That was for the time period after the order was entered through I think 2002, because our gaming records only went up to about 2002. I think he was discharged in July of '04.

Mr. SCHIFF. So that amount and any amounts that he lost subsequent to the filing of the bankruptcy petition, that all postdates that 66,000 and $27,000 figure.

Mr. HORNER. That's correct.

Mr. SCHIFF. At this point, you have to check. You're not aware of how much of the 149,000 was in that loss that subsequently had to be repaid?

Mr. HORNER. Right. I don't know that number.

Mr. SCHIFF. Now, you say half the time he won, half the time he lost. Does that mean that the amounts were the same or that, ultimately, when you looked at a given date like the charge you showed us, he would win and he would lose, but at the end of the day there were usually markers that he did not have the ability to pay off?

Mr. HORNER. Usually—I'm going to say probably—and this is a rough estimate—40 percent of the time he left the casino owing money. But that is really just an estimate by reviewing the records.

Mr. SCHIFF. Do you know, did the credit card application that he filled out during the pendency of the bankruptcy proceeding, did that credit card application ask him whether he had ever filed bankruptcy?

Mr. HORNER. I don't think so, because it was one of those quick applications where you just basically sign it and date it and you

can get the card. And it was one of those low-limit cards. It was a Capital One. I think the balance was—or the credit limit on it was for $200. So I think it was one of those cards that sometimes, if you file bankruptcy, I think you might get the application, maybe. I don't know. But it didn't ask that question, not that I know of.

Mr. SCHIFF. Thank you, Agent.

I now recognize the Ranking Member of the Task Force, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Agent Horner, are there reasons that Judge Porteous or anyone who may gamble frequently would want casinos to track their gambling patterns?

Mr. HORNER. Yes. The main benefit that—well, there is two reasons. One for tax purposes, for wins and losses, because they have to report their winnings and losings. Number two, a gamer or gambler would want their gaming activity rated—they call it rated play—because the casino will then give the customer food and room specials. They will give them free shows if they play enough. They will even give them free transportation to the casino.

There is a term of art that is used, RFB. It is called room, food, beverage. A gambler will try to attain RFB status at the casino where when he walks in—or he or she walks in, you know, everything is paid for, including your room. So that is the main benefit to a gambler.

Mr. GOODLATTE. Do you know if Judge Porteous received such benefits?

Mr. HORNER. He did.

Mr. GOODLATTE. How many casinos did you identify where Judge Porteous was an established or rated player?

Mr. HORNER. Probably about 10.

Mr. GOODLATTE. All in the Gulf Coast region and New Orleans?

Mr. HORNER. Most of them in the Gulf Coast region, but he is also rated at Caesars in Vegas and Caesars in Tahoe.

Mr. GOODLATTE. You indicated that one of the reasons for having that tracked was the convenience in terms of completing your tax return. Have you had the opportunity to examine Judge Porteous's tax returns?

Mr. HORNER. I have.

Mr. GOODLATTE. Did you find anything unusual in those tax returns?

Mr. HORNER. Well, for one, he took a deduction for a gift, I think the first year, like a $4,200 deduction for gifts, but he doesn't put any gifts on the bankruptcy because there is a question on there for gifts given. Okay. Well, he didn't report that in the bankruptcy. But on the tax return, he did take a $4,200 deduction for gifts. If I remember right, I don't think there was any gaming wins or losses reported on his tax return.

Mr. GOODLATTE. Earlier in your testimony you said that you and the FBI analyst had attempted to add up withdrawals at casinos on Judge Porteous's credit cards and bank; and you indicated that you had come up with a chart that depicted the extent of those withdrawals, quote, at a minimum. Why do you think there may be more gambling-related charges and withdrawals?

Mr. HORNER. Because I think what the analyst did was he took kind of a narrow view of gaming withdrawals or gaming charges and only used withdrawals that were taken at the casino. But we know that there is a cash machine located right outside the Treasure Chest casino, 5500 Williams Boulevard, and Judge Porteous would frequently go to that cash machine right before he went to the casino, and I don't think that those transactions are reflected in the chart. So if you add all of those, the cash machines that are located around the casinos, that we could see he was hitting before he was going into the casino, the number is probably going to be bigger.

Mr. GOODLATTE. Do you have any way of calculating what that was based upon looking at his bank records?

Mr. HORNER. We do. But that is something that the financial analyst would calculate. But we do because we have got the bank records and we can see where the cash withdrawals are made and we know which cash machines are located right outside the casinos.

Mr. GOODLATTE. And how do you come to the conclusion that casinos would not extend credit to individuals in bankruptcy? Did you learn that from speaking with officials at the casinos you visited or——

Mr. HORNER. Yeah, I asked them that question.

Mr. GOODLATTE. What did they say to you?

Mr. HORNER. They said absolutely not.

Mr. GOODLATTE. Once they know somebody is in bankruptcy, they cut them off?

Mr. HORNER. Right. They are much—they are just like a bank. A bank is—you know, I shouldn't say because banks do—don't loan money to people, and they did to Judge Porteous. He refinanced a loan. But, you know, casinos generally are not going to extend credit to people who have filed for bankruptcy.

Mr. GOODLATTE. Thank you.

Agent Horner, when you obtained Judge Porteous's tax returns, did you do so under a court order?

Mr. HORNER. Yes.

Mr. GOODLATTE. Thank you very much. Those are all the questions I have.

Mr. SCHIFF. The gentleman yields back.

Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much.

Agent Horner, what do you think would have happened if Judge Porteous had listed an outstanding casino marker on his bankruptcy petition or otherwise defaulted on a debt to a casino?

Mr. HORNER. Well, if he had listed the casino debt on the bankruptcy application, the casino would have been treated like any other creditor. They would have participated in the plan. They would have been paid I think it was 39 cents on the dollar, just like all the other credit card companies were; and then that debt would have been discharged after the time period.

Ms. JACKSON LEE. We can also speculate that that would have been a real red flag on a bankruptcy petition, would it not?

Mr. HORNER. Yes. It would. It would have. It would have given the creditors an opportunity maybe to ask Judge Porteous about

his gaming activity as a method to maybe to try to find some more funds for the bankruptcy estate.

Ms. JACKSON LEE. As an FBI agent dealing with either criminal failures or civil failures—and this is speculation and I understand that—if you were in a courtroom, you might assume that a judge might take note of that as well?

Mr. HORNER. I would assume that, yes.

Ms. JACKSON LEE. Do you have any evidence that Judge Porteous secured funds from individuals—I hate to use the term "loan sharks". That may be dated. Do you have any evidence that he might have tried to get funds from other than credit card sources that seem to be part of your testimony today?

Mr. HORNER. Well, he obtained funds from other lawyers, you know. He had a little situation with some lawyers that, you know, they were paying him some funds for some curatorships. So he was generating funds like that back in the '90's. But as far as during this time period, other than—I don't know that he obtained money from any loan sharks. Or anything like that.

Ms. JACKSON LEE. And help me again. How far back did this gambling evidence suggest that he had been gambling?

Mr. HORNER. I think the records from Treasure Chest went back to the early to mid '90's.

Ms. JACKSON LEE. At the level of the evidence which you reviewed about his gambling habits, would it suggest that he needed to keep a constant flow of money going?

Mr. HORNER. Yes.

Ms. JACKSON LEE. And so he needed to be pretty nimble, pretty astute at trying to move dollars around?

Mr. HORNER. Well, what he did was, by overinflating his expenses in the bankruptcy and underestimating his income, what he was able to do was kind of create a little pot of money during the bankruptcy period which he could then gamble with that money.

Ms. JACKSON LEE. Say that again for me so that I can understand.

Mr. HORNER. What he did was he provided an old pay stub to the bankruptcy trustee which it was a low figure, okay? And so that created money every month for him to gamble, which was outside the bankruptcy estate, outside the purview of the trustee; and then he overinflates his expenses, okay, which then creates another little pot of money that he is able to gamble with or use however he wants to use. But those funds are kept outside the bankruptcy estate.

Ms. JACKSON LEE. In addition, that document is viewed as a Federal document or a document which would make representations to the Federal Government is it not, the bankruptcy petition?

Mr. HORNER. That's correct.

Ms. JACKSON LEE. Are there unique ways that casinos determine creditworthiness of a customer that are different from other typical commercial creditors?

Mr. HORNER. What a casino will do is they will have you fill out the credit application, and then most casinos will run what is called a central credit report, which is a credit report specifically aimed at gamblers and casinos and it tracks gaming activity of the casino's customers. And with the central credit report a casino can

determine whether or not a gambler has a good credit history at the casinos or a bad credit history at casinos.

Ms. JACKSON LEE. So they do so—their inside ball game?

Mr. HORNER. That's right.

Ms. JACKSON LEE. We know you are a gambler, you might be selling your house, but are you good with us?

Mr. HORNER. That's right. And also casinos do—one thing I found out was casinos usually own numerous sister properties is what they call them and they have very good lines of communication between sister properties. So if I went to Harrah's in New Orleans and I bounced a check or something at Harrah's in New Orleans, they are immediately going to put that out to all casinos owned by Jazz Casino Corp., which is the company that owns Harrah's. So they are going to know about it within various casinos.

Ms. JACKSON LEE. It looks like he was focusing around the Gulfport region. Did he travel, though? I didn't see that. Did he make his way to various sites—Michigan, Las Vegas, Atlantic City?

Mr. HORNER. He went to Las Vegas and Tahoe, Lake Tahoe. I never saw anything that he gambled in Atlantic City.

Ms. JACKSON LEE. It sounds like Judge Porteous may have only underestimated his income by a few hundred dollars per month in the 2001 schedules. Is that a fair understanding of the evidence?

Mr. HORNER. I need to find something here. I have some figures that I wrote down here to show you how much difference there was in the paychecks, and I can't put my hands on it.

Okay. Here it is. Well, anyway, the pay stub that he provides is $7,500, approximately. Well, the very next deposit into the Bank One checking account, the first deposit in there after the bankruptcy is filed is, like, $7,700. The next month, it goes up to—I think the next month is $7,700. The next month, it goes up to $7,800; and then the next month after that it jumps to like $8,500, because they are not with holding FICA and all that stuff anymore. So from August through December, the pay that is deposited in his account every month is about $8,500.

Ms. JACKSON LEE. And he only—and what—August and December, what year again?

Mr. HORNER. 2001.

Ms. JACKSON LEE. So you see a decided little cash hedge that he is able to utilize?

Mr. HORNER. Correct. And then he never did report his wife's income either. Which was very small. But still I think we found it averaged, you know, between 2 and $300 a month. But still—and it increased over the term of the bankruptcy. The 3-year period of the bankruptcy her income steadily increased. So that was another little piece of income that he——

Ms. JACKSON LEE. That he dipped into?

Mr. HORNER. That he dipped into.

Ms. JACKSON LEE. Let me just quickly ask these last two questions.

One, is it your testimony today that Judge Porteous committed fraud in his bankruptcy proceedings to conceal the extent of his gambling so he could continue gambling without interference; is that correct?

Mr. HORNER. Yes.

Ms. JACKSON LEE. And then, lastly, I'm still curious about—because when you think of gambling, certainly you can think of great fun and entertainment. But did you have any evidence of his association or having to be involved with unsavory characters—using an old terminology?

Mr. HORNER. No, not that I know of.

Ms. JACKSON LEE. Thank you.

Mr. SCHIFF. The gentlewoman yields back.

Without objection, all the exhibits referenced by Agent Horner or Mr. Baron will be made a part of the record; and now I will recognize Judge Porteous's attorney, Mr. Westling, for 10 minutes to question the witness.

Mr. WESTLING. Thank you, Mr. Chairman.

Special Agent Horner, do you have the casino——

Mr. SCHIFF. Counsel, could you hold off for one quick second?

I'm sorry. I didn't see my colleague. Would you care to question the witness?

Mr. GOHMERT. Thank you, Mr. Chairman, just briefly.

Mr. SCHIFF. Mr. Gohmert is recognized.

Mr. GOHMERT. Thank you.

You have done an extraordinarily good case of just laying out the facts as they were found, and that really makes me appreciate the thoroughness of the job, and it makes our job easier when—as Sergeant Friday used to say, just the facts. But when my friend from Texas asked you about unsavory characters, you had a very long pause there; And so I would like to ask you what it is that was going through your mind. You clearly have a good mind and apparently you were going through some files and checking your directories mentally and I'm wondering what the hesitation was. Is there some people with whom he had contact that gave you cause for concern?

Mr. HORNER. Well, first, the term "unsavory" can mean probably—cover a broad number of people in New Orleans.

Mr. GOHMERT. In New Orleans?

Mr. HORNER. In New Orleans.

Mr. GOHMERT. Really. That's a shock.

Mr. HORNER. So the question really—what I was trying to determine is, in 14 years of public corruption investigations, I mean, there is a lot of people that we have investigated and we have come across and who could maybe fit the term "unsavory". Now, you know, to try to reconcile that with Judge Porteous's relationship with any of these people, okay, I'm sure he has or knows unsavory people in New Orleans. But to define what the relationship is in regards to the question is a difficult one. So——

Mr. GOHMERT. Well—and I understand that. And so that you understand where I'm coming from, our Chairman of our Crime Subcommittee, Bobby Scott, and I were part of a hearing down in New Orleans a couple of years ago in which a U.S. attorney testified a big problem in New Orleans before Hurricane Katrina was graft and corruption, and it remains a big problem in New Orleans. And I understand that is a big problem there.

So let me try to hone in a little more, and I really appreciate my friend from Texas asking the question, because it is important.

This is a Federal judge who has tremendous power and control over people's future, businesses' futures. Are there people who have been investigated for graft or corruption who had personal ties to Judge Porteous?

Mr. HORNER. Yes.

Mr. GOHMERT. And are there people who have been investigated for graft and corruption who may have come before Judge Porteous as a judge who had personal ties to Judge Porteous?

Mr. HORNER. So the question is, if an unsavory or somebody who has been investigated——

Mr. GOHMERT. I'm setting aside unsavory now and trying to get more specific.

So, specifically, you had indicated that there are people who had been investigated for graft and corruption who had personal ties to Judge Porteous.

Mr. HORNER. Right.

Mr. GOHMERT. So I'm taking that the next step to be even more exclusive. Were there people who had been investigated for graft or corruption who had personal ties to Judge Porteous and who came before him as a judge?

Mr. HORNER. Well, we had a case in New Orleans called Wrinkled Robe which was a large public corruption investigation which involved judges, lawyers, the sheriff's office, and bail bondsmen in Gretna, Louisiana; and you're going to hear from two of those—from a couple of people that were involved on the wrong side of Wrinkled Robe in a couple of days.

But Judge Porteous did have a relationship with a bondsman named Louis Marcotte, who was later on investigated for corruption because he corrupted the 24th judicial system. He did have some dealings in front of Judge Porteous when Judge Porteous was on the State bench, okay, not on the Federal bench.

But as far as if you're just asking for the time period of when Judge Porteous was on the Federal bench, I don't know of anybody that would fit that category.

Mr. GOHMERT. And one follow-up to that, if I might. The casinos obviously were extending markers, giving him credit. Do you know of any business that anyone associated with the casinos who extended him markers and credit had before his court?

Mr. HORNER. So the question is whether or not a casino had a matter before him?

Mr. GOHMERT. Or people involved with the casino individually had. Because it may be that the casino did not as the casino, but people involved with the casino who had an interest in the casino, pecuniary interest in the casino and had some business before the court.

Mr. HORNER. I don't know the answer to that question. But—I don't know the answer to that.

Mr. GOHMERT. With the data bank that you have from your obviously very thorough investigation, would it be possible to run a cross-check between litigants before the court during the time he was a Federal judge and people who had a pecuniary interest in the casinos where he was extended credit?

Mr. HORNER. I don't think we could do that because we would have to know the name that we would want to run. We would have

to know if that person also had—is an established player at a casino, and casinos generally don't give us that information unless we issue them a subpoena. So if I had the name of John Smith that appeared as a litigant in front of Judge Porteous, I would have no way of knowing whether or not John Smith has an account at Treasure Chest or Beau Rivage or anything like that.

Mr. GOHMERT. It may be worth following up. But, thank you, Mr. Chairman.

Mr. SCHIFF. I thank the gentleman.

The gentleman yields back. We will now go back to Judge Porteous's attorney, Mr. Westling, for his questions.

Mr. WESTLING. Thank you, Mr. Chairman.

Special Agent Horner, you have testified a bit about the casino credit process. I just want to make sure I understand some things about that. You've indicated that there is a credit report that is generated inside, I would put it, the casino system, players credited at various facilities that is often used in determining whether to extend a marker; is that correct?

Mr. HORNER. It is not really a credit system inside the casino system. It is a company separate and apart from the casinos that the casinos will subscribe to the service, the central credit service; and the central credit then provides information back to the casinos. So, you know, I don't think it is a part of the casinos. They just provide information to casinos.

Mr. WESTLING. But, in essence, it is a database of information that relates to casino credit as compared to other credit?

Mr. HORNER. That's correct. And it does have some banking information on there, also. Like, it will show high and low limits of the customer's bank accounts and things like that.

Mr. WESTLING. All right. Do they also typically run credit reports?

Mr. HORNER. Sometimes they do.

Mr. WESTLING. And, obviously, had they run a credit report in this case, the bankruptcy would have showed up, would it have not?

Mr. HORNER. Yeah, it would have shown up.

Mr. WESTLING. So to the extent the bankruptcy is out there, it is a public record like a tax lien or anything else. It is going to show up on a credit report, and it is available in the normal sources that a casino would check to determine creditworthiness. Is that a fair statement?

Mr. HORNER. Well—but the problem you have with Judge Porteous's bankruptcy is that he has got his Social Security number listed, and then he has also got the fake name, and then he has also got the real name. So when the credit report is issued and the bankruptcy shows up under—it is going to show up under his Social Security number, but it also going to show up under—as G. T. Orteous. So somebody reading the credit report doesn't know if the Social Security number is wrong or if the name is wrong. So it is hard to determine what is correct on the consumer credit report.

Mr. WESTLING. But as a practical matter, a credit report typically lists a number of names anyone has ever been associated with?

Mr. HORNER. It does.

Mr. WESTLING. So this isn't exactly a puzzle for people who are day in and day out granting credit, is it?

Mr. HORNER. No. Well—I mean, it would show up, but there would be a question as to whether or not—what the correct information is.

Mr. WESTLING. But as a practical matter, the information would be there. They would just have to decide what value it had?

Mr. HORNER. Right. That's correct.

Mr. WESTLING. Okay. Do you have the—there is a chart that was used earlier, Judge Porteous's casino markers post confirmation. Do you have that in front of you?

Mr. HORNER. I do. What is the exhibit number?

Mr. WESTLING. I don't think it has an exhibit number. I think it was projected on the screen. This was the chart that has the total of $149,000——

Mr. HORNER. Right.

Mr. WESTLING [continuing]. And 42 markers.

Mr. HORNER. Okay. I have it.

Mr. WESTLING. Do you have that in front of you?

Mr. HORNER. I do.

Mr. WESTLING. Okay. So I just want to quickly walk through the chart so that we can get a sense of what is happening here.

On July 18, 2001 there is one marker at the Treasure Chest, which is then repaid in that same visit; is that correct? The first entry on the chart.

Mr. HORNER. I don't have that page.

I have got it right here. Okay.

Mr. WESTLING. Okay. So we are looking at—I think it is the first page—yeah, there we go. The July 18, 2001, visit. And there is a repayment of that marker on the same casino visit on the 19th.

Mr. HORNER. That's correct.

Mr. WESTLING. Okay. And then going down to the 23rd again, repaid on the same visit, correct?

Mr. HORNER. That's correct.

Mr. WESTLING. All right. Now, on the 20th of August and the 21st, we see that some amount, 5,000, is repaid in the same visit, but there is a total of 3,000 that remains owing when he leaves the casino and is subsequently repaid on the 9th and 15th of September, correct?

Mr. HORNER. Right.

Mr. WESTLING. So we know that on one occasion there is 3,000 left owing that is not liquidated the same day.

Mr. HORNER. Right.

Mr. WESTLING. Now, going down to the 28th of September, there are two at Harrah's, $2,000 and again repaid in the same visit.

Mr. HORNER. Right.

Mr. WESTLING. All right. Next page. We are looking at October 13th of '01, two markers for 1,000, again repaid the same visit.

Mr. HORNER. That's correct.

Mr. WESTLING. October 17th and 18th, there is a total of nine markers for $5,900—1,500 repaid on that visit, 44 he leaves the casino still owing, correct?

Mr. HORNER. That's correct.

Mr. WESTLING. All right. He repays that on November 9th, it looks like, of '01.

Mr. HORNER. Right.

Mr. WESTLING. Next entry again, on the 31st and 1st, 31st of October, 1st of November, total of 3,000 repaid in the same visit?

Mr. HORNER. That's correct.

Mr. WESTLING. All right. On 11/27, two markers again repaid the same visit.

Mr. HORNER. That's correct.

Mr. WESTLING. 12/11, two markers again repaid the same visit. On the 20th of December of '01, one marker repaid subsequently. So that is another thousand he leaves the casino still owing.

Mr. HORNER. Right.

Mr. WESTLING. 2/12 of '02, a $1,000 again repaid the same visit, correct?

Mr. HORNER. That's correct.

Mr. WESTLING. April 1st, 2,500 repaid the same visit, correct?

Mr. HORNER. That's correct.

Mr. WESTLING. All right. And then on May 26th, one marker, $1,000 repaid the same visit.

Mr. HORNER. That's correct.

Mr. WESTLING. All right. Now, on 7/4 and 5 of '02, there were three markers, totaling $2,500. 1,200 is repaid that day, and he leaves the casino owing 1,300.

Mr. HORNER. Right.

Mr. WESTLING. All right. So if I have got my notes right, there is one debt he leaves owing of 3,000, one of 4,400, one of 1,000, and one of 1,300. So of $149,000, 400 in markers total, only 9,700 were not repaid on the same date they were taken out; is that correct?

Mr. HORNER. That's correct.

Mr. WESTLING. All right. Thank you.

I want to direct your attention briefly to—I think it is Exhibit 341, which are the credit card statements that relate to the Capital One card that was taken out—I think it was in August of '01.

Mr. HORNER. Right.

Mr. WESTLING. Do you have that in front of you?

Mr. HORNER. I do.

Mr. WESTLING. Have you reviewed the charges on these statements?

Mr. HORNER. Only a couple of them.

Mr. WESTLING. Okay. In general—and, again, we can go through them, but is it fair so say that these represent pretty standard meals, clothing, Breaux Mart, which is a grocery store in New Orleans, but kind of day-in-and-day-out living expenses? I mean, these are not repeating the pattern of regular gambling-type debt; is that correct?

You can take your time.

Mr. HORNER. Just give me a couple of seconds here.

Yeah, it looks like it is a lot of restaurants, shopping, things like that.

Mr. WESTLING. All right. Thank you.

Agent Horner, you have testified about the bankruptcy petitions in this case and the dates they were filed; and I guess there were actually two of them, if I understand all of this correctly. The first

that was—had the name Orteous and then there was an amended filing, correct?

Mr. HORNER. That's correct.

Mr. WESTLING. And do you know whether or not they were signed by Judge Porteous and his wife on the dates that they are dated or not?

Mr. HORNER. So your question is whether or not he actually signed the voluntary petition on March 28, 2001, as it is reflected on the form?

Mr. WESTLING. Right. In other words, to the extent it bears that date, do you know if it was signed on that date?

Mr. HORNER. I do not know if it was actually signed on that date. I mean, he represents that it is, so——

Mr. WESTLING. I understand. That is the date on the document.

Mr. HORNER. Right.

Mr. WESTLING. But you don't know one way or the other wether he signed it and it was subsequently dated?

Mr. HORNER. Right.

Mr. WESTLING. I mean, if you look at the dates—just so we can talk about it—they are clearly all put on there by the same individual, are they not?

Mr. HORNER. I don't know who put them on.

Mr. WESTLING. Now, I want to go back to one final exhibit, and then I will move on, and I think it is the exhibit that shows your analysis of gambling losses and winnings. Do you have that? I will probably have a number for you in just a second, but I'm looking. Yeah, it is 337.

Mr. HORNER. Okay.

Mr. WESTLING. And so for the period of 3/28/2000 to 3/28/2001, your analysis—and this is based on your investigation; is that correct?

Mr. HORNER. That's correct.

Mr. WESTLING. All right—indicated that there was approximately $6,000 in gambling losses on a net basis?

Mr. HORNER. Yeah, that's correct.

Mr. WESTLING. Okay. So in about a year, he had about a $6,000 loss?

Mr. HORNER. That's correct.

Mr. WESTLING. All right. And then the other thing is you were asked some questions about tax returns. There is no requirement of reporting gambling losses on your tax returns, is there?

Mr. HORNER. Well, as it—I mean, you can deduct losses against winnings.

Mr. WESTLING. But to the extent you have more losses than winnings, it is a nondeductible event, correct?

Mr. HORNER. That's correct.

Mr. WESTLING. So there would be no basis to report it?

Mr. HORNER. Right.

Mr. WESTLING. I have no further questions, Mr. Chairman.

Mr. SCHIFF. Thank you.

Agent Horner, I just have a few follow-up questions I want to ask you. On the chart of casino markers, one of the dates was September 28th. I don't know if you have that in front of you. It was at Harrah's. There were two markers in the amount of 2,000.

Mr. HORNER. Right.

Mr. SCHIFF. Now, it shows a repayment date which I think counsel may have assumed was the same date, but that is a month later, right?

Mr. HORNER. Right, it is a month later.

Mr. SCHIFF. Now, is the total of the two markers 2,000, or is it one marker each for 2,000?

Mr. HORNER. It is two $1,000 markers.

Mr. SCHIFF. So that the amount not repaid would have been 11,000 for that period, instead of 9,000?

Mr. HORNER. Right, because he repaid it a month later.

Mr. SCHIFF. Do you know, Agent Horner, whether on the dates where the markers showed they were repaid, whether they were always repaid with chips or whether they were repaid with cash or with check or credit card?

Mr. HORNER. It shows on the gaming records how it was repaid—chips, cash, checks or if they had to drop the marker.

Mr. SCHIFF. And do you know in terms of the markers that are listed on this chart whether they were all paid with chips or whether some were paid in cash, check, or credit card?

Mr. HORNER. It varied. Chips, cash, checks, for the purposes of this chart.

Mr. SCHIFF. So then we can't tell from this chart what his losses were. His losses may exceed the 11,000 if he paid off the loss the same day by a check or credit card?

Mr. HORNER. That's right. So really what the chart reflects is—or the losses that you can deduce from this chart would be, when he walks out of the casino, money owing the casino when he left.

Mr. SCHIFF. Well——

Mr. HORNER. But as he is gambling, he could be losing, okay, and then he may repay some of it, lose, repay—I mean, it just kind of—you would have to kind of really look at the records if you could even determine down to that level.

Mr. SCHIFF. It is more complicated than that, isn't it? Because the fact that he walked out of the casino having paid off the marker doesn't mean that he walked out without losses. It may mean that he lost and paid in the casino with a check the remaining balance, right?

Mr. HORNER. That's correct.

Mr. SCHIFF. So if in the course of this period in 2001 and part of 2002 he had 149,000 in markers and left the casino with 11,000 not repaid, we would know at a minimum the losses were 11,000, but they may have been substantially greater?

Mr. HORNER. They could have been more, because you don't know—I guess you don't know the source of the funds that he repaid the markers with, the ones he repaid while he was at the casino.

Mr. SCHIFF. Now I'm just doing some rough math. But 11,000 out of 149,000, if it were 10 percent, it would be basically 15,000. So we are talking about 8 percent of the total amount of markers he ended up losing, assuming——

Mr. HORNER. That would be money owed walking out of the casino, would be 8 percent.

Mr. SCHIFF. Now, during the period from 1995 to 2000 and 1997 to 2000, during that 3- to 5-year period you were able to total up, looking at cash, checks, and credit cards, gambling debts of around 100,000, right?

Mr. HORNER. Right. When you add the two figures together, it would be not necessarily debt but just money spent on gambling.

Mr. SCHIFF. Money spent on gambling.

Mr. HORNER. Right.

Mr. SCHIFF. So in that 3- to 5-year period you have about 100,000 in money spent on gambling. Assuming that it was an entire 5-year period, this would be a conservative figure, that would represent about 20,000 a year in gambling expenses?

Mr. HORNER. So the question would be, did he spend—he spent about 20,000 a year gambling?

Mr. SCHIFF. Well, my question is, conservatively, from the period of '95 to 2000, if there were 100,000 that he was paying through cash, check, or credit card for gaming, does that indicate on average about a $20,000-a-year expenditure on gambling during that period?

Mr. HORNER. It would. But the one element it doesn't take into consideration is he had a large amount of cash that we could never really trace the source of. So if he used some of that cash to gamble with, you know, we wouldn't know. So of what we can tell, the $20,000 figure would probably be fairly accurate. That's a problem you have with a gambler is you have got cash a lot of times that——

Mr. SCHIFF. Okay. That concludes the questions I have.

Would anyone else like to—Mr. Gohmert.

Mr. GOHMERT. Okay. Thank you. Yeah, some follow-up.

First of all, following up the Chairman's questions, you mentioned that he may have had cash. You couldn't account for the source; is that correct?

Mr. HORNER. That's correct.

Mr. GOHMERT. So you don't know whether it may have been attorneys that were providing money for his son's college or something like that that ended up being used for gambling, correct?

Mr. HORNER. That's correct. Or could have just been gaming winnings that he had in his pocket and he just deposited them.

Mr. GOHMERT. We have heard testimony about cash being obtained for the judge or on the judge's behalf from attorney friends who were just trying to help him out. Have you checked to see if there is any time linkage between the acquisition of cash from attorneys who appeared before Judge Porteous and gambling that occurred at these casinos?

Mr. HORNER. We did. We tried to do that. And we could not reach a conclusion.

Mr. GOHMERT. So it is inconclusive whether that cash would have been used. Did you follow up like we had heard testimony about requests for cash because the child's tuition was coming due? Have you done any follow up to see if tuition was actually following—coming up due following that request for cash?

Mr. HORNER. Well, we didn't on the child's tuition because sometimes it is a little sensitive if you issue a subpoena to a school regarding a child. So we didn't do that, okay?

Mr. GOHMERT. Well, but you can pretty well figure out when tuition is due. You have a general knowledge that colleges usually like to have their tuition paid before they will allow you to attend class. I know, with my kids, we haven't been able to get them to allow them to go to class until their tuition has been paid. They may let them go a week or two, but eventually they get real sticky about that.

Mr. HORNER. And, you know, the financial analyst may have looked to see if there were checks written to the schools or things like that. I guess I don't know the answer to that. But I know that we did try to trace a lot of the cash to see how it was being spent, and it was very difficult.

Mr. GOHMERT. One of the things it seemed from the testimony—and you may be able to indicate more specifically—but it seemed like the testimony of witnesses was, on one occasion we were asked for cash because the tuition was coming due, but they couldn't be specific on which occasion that was. Is that the kind of problem you ran into in trying to trace the cash?

Mr. HORNER. That's one of them. And the situation I'm referring to, another problem is that it was old, dated material. It was outside the statute of limitations.

Mr. GOHMERT. Okay. And I did want to follow up on a question asked by Attorney Westling. It was a good question about if the judge applied for a marker at a casino for credit or made application for a credit card, well, they could get his credit report and see that there had been a bankruptcy filed; and I thought that was a good question. But I wanted to do a follow-up to that. And it should be easy to discern this just from looking at the dates, the different things, the data that you have compiled. But since we have you here and you're the one that compiled the data, I will just ask you, it would be a lot easier to research. Was there an application for credit either at a casino or for a credit card that came after the judge filed bankruptcy under a false name but before the time that he corrected that name?

Mr. HORNER. That would be between March 28, 2001, and April 9, 2001, that time period?

Mr. GOHMERT. Yes.

Mr. HORNER. I don't believe that he applied for any credit cards or any new casino credit during that 10-day time period.

Mr. GOHMERT. You don't believe?

Mr. HORNER. No. I know he applied for credit at Harrah's during the pendency of the bankruptcy, but that was outside your window—your question.

Mr. GOHMERT. Once the name was corrected at the bankruptcy pleadings, did you see—did that effect a change in a credit report or did it remain under the original name filed under which the bankruptcy was filed?

Mr. HORNER. My recollection is that, when it was first filed, the credit reports——

Mr. GOHMERT. They would pick that up, right?

Mr. HORNER. They didn't pick it up until it was after April 9th, and it may have just been a function of——

Mr. GOHMERT. Yeah, it just takes time.

Mr. HORNER. To get a bankruptcy on a credit report. But it did eventually show up on the credit report.

Mr. GOHMERT. Under the fictitious name or under his actual name?

Mr. HORNER. Well, it just shows up under his credit report. He will see—you will see the bankruptcy. They just list the bankruptcy listed.

Mr. GOHMERT. Okay.

Mr. HORNER. And then it will list all of the names that he has used or the names that are associated with the Social Security number.

Mr. GOHMERT. Okay. So, by using the fictitious name, did that, do you think, delay the time that it appeared in his credit report?

Mr. HORNER. You know, that—I don't know. I guess——

Mr. GOHMERT. I see my time has run out, but I would ask that, if you find answers to the questions that I have asked, if you could submit that in writing after the hearing, we would appreciate it very much. Thank you.

Thank you, Mr. Chairman.

Mr. SCHIFF. The gentleman yields back.

Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you, Agent, for your testimony and for your diligence.

Help me out again and tell me how long in your review did Judge Porteous have a gambling—participate in gambling activities?

Mr. HORNER. Well, that I can establish through the records, I would say from the early to mid '90's.

Ms. JACKSON LEE. Early to mid '90's?

Mr. HORNER. That's what the records would establish. Now he may have been gambling before that as an unrated or unestablished player, but I wouldn't know that.

Ms. JACKSON LEE. And, again, in your review of documents and your experience, in what you reviewed was it participation in gambling or did you sense a gambling habit?

Mr. HORNER. You know, he gambled a lot, okay? He gambled a lot. It would be hard for me to determine whether it is a habit or a problem, but he did gamble a lot.

Ms. JACKSON LEE. In the review of records and his gambling a lot, did he leave debts that ultimately came back to be paid, but did he have, I guess you call it a running debt, and you have to pay it—when he left after each time or was all his debts paid up or did he come back and pay debts?

Mr. HORNER. Sometimes he would leave owing the casino money, and then he would come back and pay the casino. Or sometimes, if he didn't come back and pay, that's when the casino deposits the marker to the bank account.

Ms. JACKSON LEE. And then they get it automatically?

Mr. HORNER. Right, they get the money automatically.

Ms. JACKSON LEE. He was nominated for the bench in I guess 1994. Was he gambling then?

Mr. HORNER. Was he what?

Ms. JACKSON LEE. Was he gambling then?

Mr. HORNER. In '94?

Ms. JACKSON LEE. Yes.

Mr. HORNER. I would have to check the records. Specifically '94, I would have to check.

Ms. JACKSON LEE. Is there any records here for you to check or——

Mr. HORNER. No. I don't have all of the gaming records here, but I could check to see how far back they go.

Ms. JACKSON LEE. All right. I would appreciate if I could get that answer. Because I would like to ask you a question in particular regarding the judicial application or the application that one has to file. And it is a Federal form. Did you review his application that is called form 86—SF-86?

Mr. HORNER. I did, but it has been a while since I looked at it.

Ms. JACKSON LEE. I'll hold it up for you to see. There's fine print, but I'm going to read the language to you. And that is why I would like to have this question answered.

He has to see it this way, please. Thank you.

The language on—I think it is—it looks like it is 10(s): Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President if publicly known? And, if so, please provide full details.

So that would have been—in 1994, that question would have been asked.

Mr. HORNER. Right.

Ms. JACKSON LEE. And the question would be, from an FBI agent's perspective, would the gambling question be a relevant question in a question like that?

Mr. HORNER. Well, it would be relevant in the sense that if it is creating a financial burden, okay, because financial hardships by judges or anybody in public service could be used as a source of blackmail. And I know those are issues—when I was hired, they wanted to know what my financial condition was before they hired me. Just because if I'm in a bad financial way or bad financial situation, you know, I may be open for a bribe or blackmail or to do something, you know, that you shouldn't do.

Ms. JACKSON LEE. And in the review of the documents that you had going forward, because your memory doesn't serve you at this point as to what time frame, was the gambling habits of Judge Porteous a burden a financial burden?

Mr. HORNER. Yes, they were. It was a major factor in his bankruptcy.

Ms. JACKSON LEE. And you did testify today that—I think I asked the question—that you testified that you believed Judge Porteous committed fraud in his bankruptcy proceedings to conceal the extent of his gambling. And you testified so that he could continue gambling without interference. Was that correct?

Mr. HORNER. That's correct.

Ms. JACKSON LEE. So, therefore, anyone that would engage in that activity certainly was burdened by—seemingly burdened by those debts or burdened by those activities?

Mr. HORNER. That's correct.

Ms. JACKSON LEE. And I just want the—Mr. Chairman, I would like to ensure that the witness is able to give us records that would

reflect the start, to his knowledge or his documentation, of Judge Porteous's gambling; and I want the record to reflect that this form that we believe is signed by Judge Porteous—and are you able to detect as to whether or not that is his signature?

Mr. HORNER. That looks like his signature.

Ms. JACKSON LEE. We will just have that reflected, and I will try to affirm the documents, and I'm not sure whether I can ask unanimous consent for this document to be placed in the record.

Mr. SCHIFF. Without objection.

Ms. JACKSON LEE. And I just want the record to reflect—and I will read it again; and this document is dated April 27, 1994. There is a portion or a supplement to Standard Form 86—I'm again saying S as in Sam—SF-86. But but I will read it again.

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

And the answer that is reflected here is a no, and this is a duplicate, and I will ask that this document be submitted in the record.

Mr. SCHIFF. Without objection.

[The information referred to follows:]

[redacted]

[redacted]

Ms. JACKSON LEE. I thank you, and I yield back.

Mr. SCHIFF. I thank the gentlewoman for her questions, and I think the point you raised is one that applies with equal force to the issues we discussed in our last hearing, and whether those were required to be disclosed.

Agent Horner, that will conclude your testimony.

[redacted]

[redacted] Our second witness this afternoon is Claude Lightfoot, Esquire. Mr. Lightfoot is an attorney with a law practice in the New Orleans area. He is here pursuant to a subpoena.

I will now swear the witness.

[Witness sworn.]

Mr. SCHIFF. Ms. Konar, you may now question the witness.

TESTIMONY OF CLAUDE LIGHTFOOT, ATTORNEY, NEW ORLEANS, LA

Ms. KONAR. Good afternoon, Mr. Lightfoot. Where are you employed?

Mr. LIGHTFOOT. With my own firm, sole practioner in New Orleans.

Mr. SCHIFF. Mr. Lightfoot, you need to pull the microphone close to you and make sure you have it turned on. If you hit the button at the base.

Mr. LIGHTFOOT. How about now?

Mr. SCHIFF. Perfect. And I would even pull it closer to you.

Mr. LIGHTFOOT. I am a sole practioner and attorney in New Orleans.

Ms. KONAR. What type of law do you practice?

Mr. LIGHTFOOT. Bankruptcy only since about 1990.

Ms. KONAR. In the summer of 2000, were you retained by Judge Porteous?

Mr. LIGHTFOOT. I was.

Ms. KONAR. Why did he retain you?

Mr. LIGHTFOOT. To seek to achieve a workout of his financial problems and ultimately to consider bankruptcy, if necessary.

Ms. KONAR. What is a workout?

Mr. LIGHTFOOT. Well, I analyzed the assets and the debts that he had and came up with a plan to offer at least partial payment in settlement of the claims to his credit card debt.

Ms. KONAR. And is a workout something that would take place in lieu of a bankruptcy?

Mr. LIGHTFOOT. That would have been in lieu of a bankruptcy. That was the effort.

Ms. KONAR. Had you ever met Judge Porteous at the time he retained you? Had you met him prior to the time?

Mr. LIGHTFOOT. No, I didn't.

Ms. KONAR. Did you know who he was?

Mr. LIGHTFOOT. I knew who he was because some years before, I had a bankruptcy appeal which had been allotted to his court, but the appellant—I was the appellee, representing the appellee—dismissed the appeal, so it never went through and I never did meet Judge Porteous.

Ms. KONAR. But at a minimum, you did know that he was a Federal judge?

Mr. LIGHTFOOT. I knew that, yes, ma'am.

Ms. KONAR. Did you take any steps in the summer of 2000 to collect information from Judge Porteous?

Mr. LIGHTFOOT. I did.

Ms. KONAR. What did you do?

Mr. LIGHTFOOT. I presented him with my usual packet of worksheets that mimic the ultimate bankruptcy schedules to obtain all the information about his debts and his assets.

Ms. KONAR. Could you give us a little more specific information about the types of questions that appeared on your work sheets?

Mr. LIGHTFOOT. Well, every single question that appears in the petition, the schedules and the statements and the Chapter 13 plan, the things that ultimately go into a bankruptcy or, for that matter, in a Chapter 7 bankruptcy, I have covered in my worksheets; just explain more simply, lots more room to write, asking the prospective clients to list out all of their debts, list all of their assets. The form is more comprehensive than anyone would have, but it contains everything that would ultimately be contained in a bankruptcy filing.

Ms. KONAR. Did the fact that you were trying to work out Judge Porteous's debts in the summer of 2000 as opposed to preparing for a bankruptcy filing in any way effect or change your process for how thorough you were in collecting his information?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did you specifically explain to Judge Porteous that he needed to disclose all of his assets and all of his debts to you?

Mr. LIGHTFOOT. Yes, I did.

Ms. KONAR. Did Judge Porteous fill out the worksheets that you gave to him?

Mr. LIGHTFOOT. Yes, he did.

Ms. KONAR. Did he disclose on those worksheets that he had any debts owed to casinos?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous otherwise inform you in the summer 2000 that he had debts owed to casinos at that time?

Mr. LIGHTFOOT. No.

Ms. KONAR. If in fact Judge Porteous had owed debts to casinos at that time, should he have disclosed them to you?

Mr. LIGHTFOOT. I would have expected them to be listed and provided to me, and I would have listed them as creditors.

Ms. KONAR. Is that why it would have been important for you to know about the debts, because they should have been listed as creditors?

Mr. LIGHTFOOT. They are obligations to pay, so they would be a debt, like any other debt.

Ms. KONAR. Did you give Judge Porteous any legal advice in the summer of 2000 regarding whether he should or should not continue to incur new debt?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. What was that advice?

Mr. LIGHTFOOT. Not to make any more debt.

Ms. KONAR. Is that advice you give to all of your bankruptcy clients?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. Why do you give that advice to all of your clients?

Mr. LIGHTFOOT. Well, by the time someone is in a financial distress sufficient to be consulting about a bankruptcy, it is not good faith for such a person to continue making debt. So I always admonish them not to do it anymore, not to make any more credit card charges, et cetera.

Ms. KONAR. Was the workout that you attempted on behalf of Judge Porteous ultimately successful?

Mr. LIGHTFOOT. No.

Ms. KONAR. Was a decision made in approximately February or March of 2001 to file for a bankruptcy?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. At that time, in approximately February or March of 2001, did you request that Judge Porteous provide you with any updated information since he had originally filled out the worksheets in the summer of 2000?

Mr. LIGHTFOOT. Well, he had a practice of providing me with updated credit card statements. Every so often I would get another collection and I would adjust the balances, because the accrual of interest was making them get larger. And there was a process of reviewing a couple of drafts of the final schedules and plan that were filed to make sure that everything was accurate.

Ms. KONAR. Did Judge Porteous tell you in early 2001 that at that time he had any debts owed to casinos?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous tell you more specifically that on February 27th of 2001 he gambled at the Grand Casino Gulfport, he took out $2,000 in markers and that he left the casino that day still owing $2,000?

Mr. LIGHTFOOT. No. I never knew that he gambled at all or had any gambling debts.

Ms. KONAR. Did he ever tell you that he owed $2,000 to the Grand Casino Gulfport on March 28th, which was the day that he filed the bankruptcy petition?

Mr. LIGHTFOOT. No.

Ms. KONAR. Should Judge Porteous have told you about those sorts of gambling debts?

Mr. LIGHTFOOT. Yes, so I could list them.

Ms. KONAR. During Judge Porteous's fifth circuit testimony, he was asked about the definition of a marker and he agreed that the following definition was accurate: "A marker is a form of credit extended by a gambling establishment, such as a casino, that enables the customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution. Should the customer not repay his or her debt to the casino, the marker authorizes the casino to present it to the financial institution or bank for negotiation and to draw upon the customer's bank accounts any unpaid balance after a fixed period of time."

Do you agree with that definition of a marker?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. I would like to direct your attention to Exhibit 125. Do you recognize this document?

Mr. LIGHTFOOT. Yes. This is the original voluntary petition in Chapter 13.

Ms. KONAR. Did you prepare this?

Mr. LIGHTFOOT. I did.

Ms. KONAR. Did you discuss the preparation of this document with Judge Porteous?

Mr. LIGHTFOOT. I did.

Ms. KONAR. Did Judge Porteous personally review this document before it was filed with the bankruptcy court?

Mr. LIGHTFOOT. He did.

Ms. KONAR. Turning to page 2 of the document, did Judge Porteous sign this document under penalty of perjury?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. And what was the date the original petition was filed?

Mr. LIGHTFOOT. March 28th, 2001.

Ms. KONAR. What was the name used on the original petition?

Mr. LIGHTFOOT. G.T. Ortous.

Ms. KONAR. Is that a false name?

Mr. LIGHTFOOT. It is.

Ms. KONAR. Why was the original bankruptcy petition filed with a false name?

Mr. LIGHTFOOT. I had hoped that I could avoid him the embarrassment—or have him avoid the embarrassment of a big story in the newspaper. At that time, these filings were listed in the newspaper once a week. And I knew that it would be corrected very quickly before any notice would go out to creditors. And that was a mistake, and it was my suggestion, and I am sorry that I made that suggestion.

Ms. KONAR. After you made the suggestion to Judge Porteous that he file under a false name in the original petition, did he object to your suggestion?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did he ever say to you, no, I refuse to file a document with a false name?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous definitely know when he signed his bankruptcy petition under penalty of perjury that it did contain a false name?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. Mr. Lightfoot, approximately how many bankruptcies have you worked on throughout the course of your career as a bankruptcy attorney?

Mr. LIGHTFOOT. Many thousands.

Ms. KONAR. And in any other case other than Judge Porteous, have you ever advised or counseled one of your clients to file a bankruptcy petition using a false name?

Mr. LIGHTFOOT. No, I haven't.

Ms. KONAR. What was so special about Judge Porteous that on this one occasion you gave him this advice?

Mr. LIGHTFOOT. I felt sorry for him. I did not know him. I respected him as a judge. And out of compassion I tried to save him some embarrassment. It was a very misguided effort.

Ms. KONAR. Looking again at Exhibit 124, it also lists a P.O. Box address instead of a street address. Did Judge Porteous have a

P.O. Box address in the summer of 2000 at the time he retained you?

Mr. LIGHTFOOT. I don't think so.

Ms. KONAR. Whose idea was it to use a P.O. Box address on the bankruptcy petition?

Mr. LIGHTFOOT. It was part of the same effort, just to obscure for the paper discovering that he had filed. It, of course, backfired because it came out anyway.

Ms. KONAR. So just to clarify, did you give the idea to him to use the P.O. Box?

Mr. LIGHTFOOT. Correct.

Ms. KONAR. And after you gave him the idea of using the P.O. Box, did Judge Porteous then himself affirmatively go out and open the P.O. Box?

Mr. LIGHTFOOT. I don't know how it came about, but I was provided with a P.O. Box.

Ms. KONAR. So you didn't open a P.O. Box for him?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did you ever amend Judge Porteous's bankruptcy petition to correct the false name?

Mr. LIGHTFOOT. I did.

Ms. KONAR. Directing your attention to Exhibit 126, do you recognize this document?

Mr. LIGHTFOOT. Yes, this is the amended voluntary petition.

Ms. KONAR. Did you prepare this document?

Mr. LIGHTFOOT. I did.

Ms. KONAR. What are the differences between the amended voluntary petition and the original petition?

Mr. LIGHTFOOT. The name and the address are correct.

Ms. KONAR. Did Judge Porteous personally review the amended bankruptcy petition before it was filed?

Mr. LIGHTFOOT. He did.

Ms. KONAR. Turning to page 2 of the amended bankruptcy petition, did Judge Porteous sign this document under penalty of perjury?

Mr. LIGHTFOOT. Yes, he did.

Ms. KONAR. When was the amended petition filed?

Mr. LIGHTFOOT. April 9th, 2001.

Ms. KONAR. Did you file any other documents on April 9th of 2001?

Mr. LIGHTFOOT. I filed the Chapter 13 schedules and statements and Chapter 13 plan the same day.

Ms. KONAR. Drawing your attention to Exhibit 127, do you recognize these documents?

Mr. LIGHTFOOT. I do.

Ms. KONAR. What are these documents?

Mr. LIGHTFOOT. These are the schedules and the plan.

Ms. KONAR. As you said, you prepared these documents yourself?

Mr. LIGHTFOOT. I did.

Ms. KONAR. How did you obtain all the necessary information to fill out Judge Porteous's bankruptcy schedules and his statement of financial affairs?

Mr. LIGHTFOOT. From the worksheets that I had had him fill out long before, and then we reviewed them at least a couple of times, a couple of drafts of these schedules thereafter.

Ms. KONAR. So did you rely entirely on Judge Porteous to provide you with all the necessary information to complete these documents?

Mr. LIGHTFOOT. I did.

Ms. KONAR. Did you specifically review both the completed summary of the bankruptcy schedules, the schedules themselves, and the statement of financial affairs with Judge Porteous prior to the time that they were filed with the courts?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. How extensive was that review process?

Mr. LIGHTFOOT. Well, I would sit down, and I believe with his wife at one time as well, and we went through them to see that everything was accurate and there were no changes, just going page by page, pointing out what was there.

Ms. KONAR. Did you review these documents on more than one occasion before they were ultimately filed?

Mr. LIGHTFOOT. At least twice.

Ms. KONAR. Did Judge Porteous sign his bankruptcy schedules under penalty of perjury?

Mr. LIGHTFOOT. He did.

Ms. KONAR. Did Judge Porteous also sign his statement of financial affairs under penalty of perjury?

Mr. LIGHTFOOT. He did.

Ms. KONAR. Turning your attention to question 17 on bankruptcy schedule B, what does this question ask for?

Mr. LIGHTFOOT. This asks for a listing of the other liquidated debts owing to the debtor, including tax refunds.

Ms. KONAR. What is the answer given?

Mr. LIGHTFOOT. None.

Ms. KONAR. Did Judge Porteous ever tell you that on March 23rd of 2001, he filed his tax return for the year 2000 and he requested a $4,143 tax refund?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous ever tell you that on April 13th, 2001, which was just 4 days after his bankruptcy schedules were filed, that he received that $4,143 tax refund into his bank account?

Mr. LIGHTFOOT. No.

Ms. KONAR. Is the information concerning this tax refund that we have just discussed something that Judge Porteous should have disclosed to you?

Mr. LIGHTFOOT. I would expect a positive answer to that. Relative to the term "liquidated," if you filed a tax return, you know exactly what you are entitled to. So if earlier in the year, let's say you are October of 2000, you can't have filed your 2000 return yet, the year is not even over, you don't file it until the following year. So if a tax return has been filed and there is a liquidated amount and it is owed, and you know that it is owed, then it should be in that answer.

Ms. KONAR. What would you have done if you had found out prior to filing Judge Porteous's bankruptcy schedules that he had

filed his year 2000 tax refund and that he had claimed a $4,000 tax refund?

Mr. LIGHTFOOT. I would have amended this schedule to list it, had it been absent, and probably informed the trustee, particularly if the meeting of creditors hadn't been held yet. I would have mentioned it.

Ms. KONAR. Turning your attention to bankruptcy schedule I, what is this schedule?

Mr. LIGHTFOOT. This reflects his net income monthly.

Ms. KONAR. What is the dollar amount listed on schedule I for Judge Porteous's income?

Mr. LIGHTFOOT. $7,531.52.

Ms. KONAR. Did you fill out schedule I for Judge Porteous?

Mr. LIGHTFOOT. I put the amount that was off the tax—I mean the check stub, which is attached.

Ms. KONAR. And just to clarify, Judge Porteous provided you with the check stub dated May 31st of 2000, is that correct?

Mr. LIGHTFOOT. This was probably the same stub that I got with the worksheets when I started preparing the analysis to make the workout offer.

Ms. KONAR. At any later point in time, did Judge Porteous provide you an updated check stub?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous ever tell you that in 2001, his net judicial salary increased to $7,705 per month?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous ever tell you that the dollar amount listed on schedule I for his net worth was somewhat low?

Mr. LIGHTFOOT. No.

Ms. KONAR. Would it have been important for you to know that Judge Porteous's salary in 2001 was actually higher than the amount listed on schedule I?

Mr. LIGHTFOOT. I would have wanted to know exactly the correct amount for the time of filing. Afterwards, frankly, I didn't even think that it might change. I just thought it was a fixed salary, so I really wouldn't have thought to inquire after that point. In a Chapter 13 case, unless the trustee would have asked for some periodic report on income changes, I really wouldn't have thought of it.

Ms. KONAR. But at the time you filed, would you have wanted to know that his net income was not actually $7,500, but at that particular date it was $7,700?

Mr. LIGHTFOOT. I would. I would have wanted it absolutely accurate at the time of the filing.

Ms. KONAR. Now turning your attention to Judge Porteous's statement of financial affairs, what does question 3 on the statement of financial affairs ask for?

Mr. LIGHTFOOT. It asks for any payments that aggregate more than $600 to any creditor within the 90 days prior to the filing of the bankruptcy case.

Ms. KONAR. And what is the response given to question 3?

Mr. LIGHTFOOT. "Normal installments," is what I put.

Ms. KONAR. Why did you put "normal installments?"

Mr. LIGHTFOOT. Well, because so far as I knew, the judge had not been paying any of his credit card creditors, which was the bulk of this case, and that he had been paying his lease car payments and his two home mortgages. So "normal installments" was intended to cover the normal installments on his two leased cars and his two home mortgages.

Ms. KONAR. Did Judge Porteous ever tell you that he gambled at the Treasure Chest Casino on March 2nd, 2001; that he left the casino that day owing $1,500; and that he repaid that $1,500 in cash on the day before his original bankruptcy petition was filed?

Mr. LIGHTFOOT. No.

Ms. KONAR. Should Judge Porteous have told you about that?

Mr. LIGHTFOOT. Yes, that would have been the answer to this—that would have been included in an answer to this question.

Ms. KONAR. So you would have listed the payment to Treasure Chest in response to question 3 if you had known about it?

Mr. LIGHTFOOT. I would.

Ms. KONAR. Turning your attention to question 8 on the statement of financial affairs, what does this question ask for?

Mr. LIGHTFOOT. This asks for the listing of any losses from fire, theft, casualty or gambling within 1 year before the filing of the case.

Ms. KONAR. What is the response to question 8?

Mr. LIGHTFOOT. None.

Ms. KONAR. Did you check "none" in response to question 8?

Mr. LIGHTFOOT. Did I check it?

Ms. KONAR. Yes.

Mr. LIGHTFOOT. Unless I put something there, it automatically checks it. But I was not aware of any gambling losses, gambling debts or any gambling.

Ms. KONAR. So just to clarify, did Judge Porteous ever disclose to you that he had $6,000 in net gambling losses for the year preceding his bankruptcy filing?

Mr. LIGHTFOOT. No.

Ms. KONAR. Would it have been important for you to know that Judge Porteous actually had over $6,000 in gambling losses during that year?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. What would you have done if Judge Porteous had told you that?

Mr. LIGHTFOOT. Well, the first thing I would have thought of is how much gambling debts are there, because I didn't know about any gambling debts. So if there had been gambling losses that were told to me, last year there were gambling losses of such-and-such, then my immediate—besides listing that, my immediate concern would be, well, are there any gambling debts that you haven't told me about?

Ms. KONAR. If at any point during your representation of Judge Porteous he had ever told you that he had gambling debts, would that have caused you to ask him any other questions about his financial condition?

Mr. LIGHTFOOT. Well, I would want to know a lot more about the gambling debts.

Ms. KONAR. What specifically would you have asked him about the gambling debts?

Mr. LIGHTFOOT. What would I have asked?

Ms. KONAR. Yes.

Mr. LIGHTFOOT. I would want to know the name, the address, the account number, the amount due to everyone owed, because they are all creditors. I would want to know if there were incurred—if I found out in the middle of the case, then I would want to know if any of them were extant before the bankruptcy was filed. All kinds of things whenever I confront gambling that I would review with a client.

Ms. KONAR. Was there a bankruptcy creditors meeting held in Judge Porteous's case on May 9 of 2001?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. Who presided over that meeting?

Mr. LIGHTFOOT. The Chapter 13 trustee.

Ms. KONAR. What is the purpose of a bankruptcy creditors meeting?

Mr. LIGHTFOOT. Well, it is to examine the debtor under oath regarding the petition and the schedules that have been filed. It affords—and creditors are invited to attend and ask questions if they want. They rarely do, but they are invited. And it is for, in the case of a Chapter 13, for the trustee to make sure he has no additional requirements and to put him in the position where he is now thoroughly familiar with the plan and can make a recommendation as to whether or not the plan can be confirmed at a later confirmation hearing in the court.

Ms. KONAR. Was Judge Porteous examined under oath at his creditors meeting?

Mr. LIGHTFOOT. He was.

Ms. KONAR. Did the trustee give any instructions to Judge Porteous about incurring debt?

Mr. LIGHTFOOT. He gives a general instruction that no new debts are to be created without the court's authority.

Ms. KONAR. Was Judge Porteous given any materials at the meeting?

Mr. LIGHTFOOT. The trustee either—well, he mails them out to the debtors along with the notice of the hearing, but also has a stack of them to hand out at the meeting of creditors, a brochure that explains all of these things, sort of like frequently asked questions brochure.

Ms. KONAR. Directing your attention to Exhibit 148, do you recognize this document?

Mr. LIGHTFOOT. This is his brochure.

Ms. KONAR. Specifically when you say "his," who are you referring to?

Mr. LIGHTFOOT. I am sorry?

Ms. KONAR. When you say "his brochure," who are you referring to?

Mr. LIGHTFOOT. The trustee's brochure, that he mails and provides.

Ms. KONAR. Does paragraph 6 of this pamphlet discuss incurring new debts?

Mr. LIGHTFOOT. It says you may not borrow or buy anything on credit while in Chapter 13 without permission from the bankruptcy court.

Ms. KONAR. So Judge Porteous was both told by the bankruptcy trustee that he couldn't incur new debt, and he was given a pamphlet which also told him in writing he should not be incurring new debt, correct?

Mr. LIGHTFOOT. True.

Ms. KONAR. Did Judge Porteous ever tell you that during the month after he attended the creditors meeting and received that instruction not to incur new debt, that in fact he went on three different gambling trips and that he took out a total of $2,000 in markers?

Mr. LIGHTFOOT. No.

Ms. KONAR. Who was the bankruptcy judge who presided over Judge Porteous's case?

Mr. LIGHTFOOT. Judge Greendyke.

Ms. KONAR. Did Judge Greendyke issue a confirmation order in Judge Porteous's case?

Mr. LIGHTFOOT. He did.

Ms. KONAR. Directing your attention to Exhibit 133, do you recognize this document?

Mr. LIGHTFOOT. This is the order confirming the plan signed by Judge Greendyke.

Ms. KONAR. What does paragraph 4 of this order say regarding incurring new debt?

Mr. LIGHTFOOT. The debtor shall not incur additional debt during the term of this plan except upon written approval of the trustee.

Ms. KONAR. Was Judge Porteous aware that this order was docketed in July of 2001?

Mr. LIGHTFOOT. He was. It would have been sent to him, and I believe I sent him a copy as well.

Ms. KONAR. So he definitely received a copy of this order?

Mr. LIGHTFOOT. So far as I know.

Ms. KONAR. Did Judge Porteous understand that he was not allowed to incur new debt unless he received the written permission from the bankruptcy trustee?

Mr. LIGHTFOOT. I think so.

Ms. KONAR. Why do you think he understood that?

Mr. LIGHTFOOT. Because there was an occasion that arose sometime later when the car leases came—expired and the vehicles that he had for he and his wife had to be turned in. So he had to get new vehicles, which meant incurring a new debt. And he talked to me about that, and I went immediately back to the confirmation order, because this is a little different than the way we did it in the Eastern District of Louisiana. We would normally file a motion with the court and lay it out to the judge. Of course, we are always looking to make sure the payment on the new vehicle is about the same as the old vehicle so it would be neutral to the budget, so the plan could be funded at the same level. And in Judge Greendyke's district, they let the trustee oversee that.

So I had to—I found it in the confirmation order, I called the trustee and I said look, do you want me to file a motion anyway, as our normal practice is, or what do you want me to do, because

the confirmation order is a little different. He said no, get me the information and send it to me. And then he wrote a letter, the trustee that is, wrote a letter back approving the new car leases to replace the expired car leases.

Ms. KONAR. Directing your attention to Exhibit 339, do you recognize this document?

Mr. LIGHTFOOT. Yes. This is a letter from the trustee to me. And until reviewing with the staff here for this hearing, I really had forgotten of my own memory that there was also a refinance on one of the home mortgages. But this is a letter from the trustee, and I am sure I did follow the same procedure and sent the information about what was—what the debt was to be incurred, how much, and the details, the terms, and the trustee wrote me back approving the entry into that refinance.

Ms. KONAR. I know your memory is a little hazier with regard to the home refinance, but the only reason you would have contacted the bankruptcy trustee to ask about refinancing Judge Porteous's home would have been because Judge Porteous had first called you and said, I need to refinance my home; how do I get permission?

Mr. LIGHTFOOT. Oh, yes. Sure.

Ms. KONAR. Now turning to Exhibit 340, do you recognize this document?

Mr. LIGHTFOOT. This is the same sort of letter from the trustee approving the application to him for authority for those new car leases.

Ms. KONAR. So because Judge Porteous asked for permission to obtain two new car leases and to refinance his home, is that why you believe he understood the confirmation order that he was supposed to seek permission before incurring new debt?

Mr. LIGHTFOOT. Yes.

Ms. KONAR. Did Judge Porteous ever tell you that he nevertheless continued to incur new debt after the confirmation order was signed?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous ever tell you that within the first year after the confirmation order was signed, he took out 42 markers over the course of 14 gambling trips?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous ever tell you that he applied for a new Capital One credit card after the confirmation order was entered and he thereafter proceeded to use that card on a regular basis while in bankruptcy?

Mr. LIGHTFOOT. No.

Ms. KONAR. Did Judge Porteous ever tell you that he applied to increase his credit limits at a casino after the confirmation order was entered and that he thereafter proceeded to gamble at that casino and to take out markers at his new increased credit rate?

Mr. LIGHTFOOT. No, I never knew anything about any gambling at any time.

Ms. KONAR. If you learned that Judge Porteous had indeed taken those actions, would you have considered those actions to be a violation of the confirmation order?

Mr. LIGHTFOOT. They clearly would have been.

Ms. KONAR. Mr. Chairman, I have no further questions.

Mr. SCHIFF. Thank you, Ms. Konar.

Let me ask you a few questions, and then I will turn to my colleagues for their questions. You mentioned that you did not know Judge Porteous before he retained you as his bankruptcy lawyer, is that right?

Mr. LIGHTFOOT. That is correct.

Mr. SCHIFF. Do you know how he came to choose you as his counsel?

Mr. LIGHTFOOT. I don't know. He just called me. And I imagine he checked around. I did many many and still do many, many cases of that type.

Mr. SCHIFF. As a Federal District Judge, Judge Porteous would handle appeals from bankruptcy cases? I think you mentioned you had an appeal at one point, at least for a time, before Judge Porteous?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. So he would have been familiar with bankruptcy law through handling appeals from bankruptcy court cases?

Mr. LIGHTFOOT. I don't know how many he ever had, and I never know—that is a hard question. Some of the district judges really have a background in bankruptcy, but they all get occasional appeals and then learn about bankruptcy. But it is the first level of appeal from bankruptcy to the District Court, and then from there to the fifth circuit.

Mr. SCHIFF. How big is the bankruptcy bar in the area where you practice? Do you know all the other bankruptcy lawyers?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. Do you know whether any of the other bankruptcy lawyers had a relationship with Judge Porteous? In other words, whether any of them were friends of Judge Porteous or had a relationship with him?

Mr. LIGHTFOOT. No.

Mr. SCHIFF. Do you know whether you were chosen by Judge Porteous for the reason that you did not know about his gambling problem or other spending issues?

Mr. LIGHTFOOT. I don't know that. I have zero interest in gambling, so I don't ever talk with anybody about gambling or hear about gambling from anybody. No, I was not aware of anybody who was a gambling buddy of his, for example, or anything like that.

Mr. SCHIFF. But you don't know whether you were picked by Judge Porteous precisely because you were unaware of his gambling problem?

Mr. LIGHTFOOT. I don't know that. No.

Mr. SCHIFF. What would be the significance—there has been testimony that Judge Porteous paid off some of his gambling debts or markers prior to the filing of the bankruptcy. What would be the significance of his doing that?

Mr. LIGHTFOOT. Here is how that works. If there is a payment during the preference period, the 90-day period, which exceeds the $600, and it truly is a preference—not all payments that exceed $600 are preferential. They might just be ordinary course-of-business payments, like your house notes, according to the contract. But when you have an unusual series of payments or payment that

exceeds these preference thresholds, in the answer to that question, in a Chapter 7 case it allows the Chapter 7 trustee to recover those funds as having been preferentially paid, bringing them back into the bankruptcy estate for distribution to all the creditors equitably.

In a Chapter 13, the 13 trustee will consider that any—he will inquire maybe a little bit about them to make sure they are really preferential. But any payments like that would be considered as having been recovered in a hypothetical Chapter 7. So the trustee would then look to, well, how much is this debtor paying to the creditors under this plan and does it equal how much they could have received from the hypothetical Chapter 7 if this preference were recovered.

Mr. SCHIFF. Well, this was Chapter 13, right?

Mr. LIGHTFOOT. So in the 13 it goes toward the extent and the sufficiency of the plan.

Mr. SCHIFF. Well, what would the effect have been if the bankruptcy court in this case had known that Judge Porteous had taken out markers and paid them off just preceding the filing of the bankruptcy and that the casinos were paid 100 percent of their markers?

Mr. LIGHTFOOT. Well, if you had a sort of a pattern of behavior like that, I suppose a creditor interested enough to do something might oppose confirmation and feel that the plan was proposed with lacking good faith. That is one possibility—or the trustee.

Mr. SCHIFF. Would there have been any opportunity as in a Chapter 7 to go after some of the payments made at the casino because they got basically 100 percent of their debts paid within 90 days, whereas in the bankruptcy the creditors after only got a portion?

Mr. LIGHTFOOT. It really goes to how much you are required to pay to the remaining creditors. That is where that comparison is. Because in the Chapter 13, the 13 trustee is not a litigator and a liquidator. He is more of an administrator of the funds that come in under the plan. But if a trustee identified preferential payments, then they would want to make sure that an equal amount of money was being paid, just as though that money had been recovered in a Chapter 7. But it would be paid through the plan, as opposed to obtained back from the preferential payees.

Mr. SCHIFF. What would the effect have been if Judge Porteous had listed the casinos as creditors on his bankruptcy filing?

Mr. LIGHTFOOT. Well, when I have confronted—I have had some cases involving gambling, people who had markers, and, of course, they are a civil liability. It is a debt like any other debt in that sense. So it has to be listed. I would have listed and do list anybody who has a casino-type debt.

But these markers have another feature that always brings me to more conversations with these clients that have that problem, that these markers are akin to checks, and if that check is negotiated and it comes back NSF, you may have a criminal issue with the issuance of a bad check. So it gives me the opportunity to have that discussion about markers.

Mr. SCHIFF. But had these markers been listed, had these casinos been listed on his bankruptcy petition, would that mean that at the end of the day, depending on the bankruptcy plan that the

trustee and court arrive on, that the casinos would have gotten less than 100 percent of their money back?

Mr. LIGHTFOOT. They would have gotten whatever—probably if there were more debt coming in than there was in this particular case, then everybody would have gotten a little less than they are getting now because the pool would have enlarged. But the casinos would have received only through the plan what everyone else got.

Mr. SCHIFF. And do you remember what everyone got, the creditors got in this plan?

Mr. LIGHTFOOT. Well, the percentage changed, as it does. The creditors are all issued a bar date, a deadline, to file claims to which they attach their invoice or whatever is the proof of their debt. And it is not unusual to see through their own negligence that some creditors do not file claims timely; and those late claims, if they file them late, they are disallowed. And usually there are some in every case that just don't file a claim at all. So eventually when the bar date has come and gone, the trustee is able then to recalculate, well, this stream of money that is proposed can now go further.

It can pay a higher percentage, because all of the scheduled creditors didn't end up filing claims. And that is what happened in this case, as it does in many of them. So the percentage went up. I can tell you the original percentage was to be—well, actually, you know, there was an amended plan that ultimately was confirmed. I was watching the testimony before, 39 percent may have been correct initially, based on the scheduled creditors. But after all the claims came in, it went up considerably, another 15-20 points in terms of what the money actually paid with some creditors not participating.

Mr. SCHIFF. When you say the amount went up, as the proceeding goes on and more creditors come forward, does that mean the amount per creditor actually goes down?

Mr. LIGHTFOOT. No, it is a question of—I listed all the creditors that I had totaling a certain dollar amount. And then there is a later bar date, and I project the plan based on that, and I say that this payment per month for this many months will pay X percent of that debt.

When the claims process is over and they are given 90 days after the creditors meeting to file a claim, when all those claims are in, if you had—I think in this case there was as much as $75,000 worth of creditors that did not file claims, and so the money that I had originally proposed went a lot farther. It paid a much higher percentage.

Mr. SCHIFF. Why would those creditors not file claims?

Mr. LIGHTFOOT. They just don't. I don't know why. They get notices, they get blank claim forms, they get notice of the deadline, and they just don't always file their claims.

Mr. SCHIFF. Now, you mentioned that the list of those filings for bankruptcy is published in the paper, right?

Mr. LIGHTFOOT. At that time, the paper would pick up the names and addresses of the debtors and publish them in the paper once a week.

Mr. SCHIFF. Now, was this, in part, as a way of letting creditors out in the community know who was filing for bankruptcy? Is that part of the reason for the public notification?

Mr. LIGHTFOOT. No. There is no requirement for any kind of public notice in that sense, publication notice. All of the—and in this case, after the corrected petition and schedules and plan were filed, that is when the very first notice went out. So the only notice that ever went out to these creditors was—and presumably to anybody who was looking for the official proof of the filing, went out under the correct address and the correct name.

Mr. SCHIFF. But the newspaper, you said, published the names of those filing bankruptcy?

Mr. LIGHTFOOT. They do and they did.

Mr. SCHIFF. They had to have a reason for doing that. What was the reason for publishing that?

Mr. LIGHTFOOT. I don't know. Public information. They put the DWI's in the same area on another day of the week. And now in New Orleans, they are not publishing any of that anymore.

Mr. SCHIFF. Wouldn't the purpose have been to let people know that maybe creditors of the person filing the petition, that someone is filing a petition and if they need to make a claim, that this is happening?

Mr. LIGHTFOOT. That could happen. I just don't know—I don't know if that is the motivation for publishing it.

Mr. SCHIFF. You attempted initially to do a workout, but that was unsuccessful. Why was the workout unsuccessful?

Mr. LIGHTFOOT. I couldn't get any response, Mr. Chairman. I prepared the bankruptcy almost such as you see it, because I had to, to find out what the creditors could have expected to get in a Chapter 7 case.

Mr. SCHIFF. When you say you couldn't get a response, you couldn't get a response from whom?

Mr. LIGHTFOOT. From all of—I wrote to every single creditor, with the exception of Regents Bank, which was a small personal loan that he felt he could handle on his own, and I proposed that he go to the bank, borrow money against what small amount of equity he had in his house, to pay them all on a percentage basis. I showed them with a detailed analysis all the creditors that there were, I gave them an appraisal of the house, I gave them an analysis of what would have resulted in a Chapter 7 case to them from all of the judge's assets. And I said this is how much we can pay, but we have to pay everybody the same. There will only be a limited pot of money.

Mr. SCHIFF. So when you say it didn't work out, none of the creditors took you up on the proposed workout?

Mr. LIGHTFOOT. I sent big thick packages to all of them on several occasions. Every couple of weeks or so I would call, which was very frustrating, because you are using the 800 number that comes on the invoice to try to get contact, and I just could never get to anyone with any authority to do anything.

Mr. SCHIFF. Now, part of the reason that you go through the workout sheets and the workout exercise with your client is to determine what you can approach creditors with, what kind of an

offer you can make; but it is also to determine what your client has the capacity to pay back, right?

Mr. LIGHTFOOT. Well, I normally don't try to do these workouts. Every time I have tried it, it has been an exercise in futility and frustration.

Mr. SCHIFF. But part of the reason you go through the exercise with your client is you want to know what his spending is, what his income is——

Mr. LIGHTFOOT. You mean the worksheets. No, I had to have the complete worksheets to even analyze the information to prepare the workout offer.

Mr. SCHIFF. And it would have been important for you in knowing whether your client could actually live up to a workout what his income and spending habits were, isn't that right?

Mr. LIGHTFOOT. True.

Mr. SCHIFF. And you were unaware that in approximately the 5-year period prior to retaining you, that he had spent around $100,000 on gambling?

Mr. LIGHTFOOT. Yes, sir. I didn't know a thing about that.

Mr. SCHIFF. Had you known about that, that would have, I take it, influenced your conclusion about whether he could meet a workout plan?

Mr. LIGHTFOOT. Absolutely.

Mr. SCHIFF. Is there a duty in a bankruptcy case to update the bankruptcy petition as circumstances change—we touched on this a little bit—in terms of whether your income changes? There is a duty to have an accurate listing of what your income is when you file your petition, right?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. If your income were to change substantially during the course of the bankruptcy case, isn't there a duty to update the court on changes?

Mr. LIGHTFOOT. I have not seen anything in the bankruptcy code on that, but I have seen it come up on occasion in a particular case, particularly where the trustee may feel that the income is sporadic or it goes up and it goes down; a commissioned salesperson, someone who is underemployed, that used to make more and is looking for new employment. In those cases, the trustee will recommend to the court that there be typically a 6-month report on income so that that can be monitored.

Mr. SCHIFF. If you have a client, though, that gets a new job during the pendency of a bankruptcy case where they are making twice the income, isn't there some obligation to let the court and creditors know that their income is now much greater?

Mr. LIGHTFOOT. There really isn't. And I may not know about it. When I learn there is a problem is when the clients don't pay their plan payments. When good things happen, they don't come and tell me.

Mr. SCHIFF. Now, when you and Judge Porteous sat down and made the decision to file a bankruptcy, did the judge express concern about it becoming public and the public becoming aware he was filing bankruptcy?

Mr. LIGHTFOOT. I expressed it, and he expressed it too.

Mr. SCHIFF. What did he tell you about it?

Mr. LIGHTFOOT. He was clearly despondent over having to have to resort to the bankruptcy, and I had told him about my negative experience with these workouts with credit card—if you have your local bank and a lawyer to deal with, you can really approach settlement much more effectively. But when you have these large institutional creditors, it is just very hard to get through to anybody. I was not—I went—I really made every effort to try to accomplish it, but it just didn't work. I think that he had hoped that it would work.

Mr. SCHIFF. Did the judge express concern when the workout wasn't successful that the public would become aware that he was filing for bankruptcy?

Mr. LIGHTFOOT. No, he didn't—I mean, he was just I think embarrassed to have to file bankruptcy. Of course, part of that I guess is that people will know.

Mr. SCHIFF. Tell us about the conversation you had with the judge where the decision was made to file under a false name. How did that conversation begin and how did it proceed?

Mr. LIGHTFOOT. Well, I explained the process by which the paper, the newspaper would come and get the names and would publish them, and also the process by which we would correct the false name and make sure that all creditors got the correct information so that none would be prejudiced, and hopefully that would save him the embarrassment of a big appearance in the paper.

Mr. SCHIFF. But how did this conversation come up? Did he express a concern about it becoming public? Did you raise the issue?

Mr. LIGHTFOOT. I raised the issue, and I wish I hadn't, but I did.

Mr. SCHIFF. And what made you feel that he would be ashamed of having the bankruptcy published in the paper?

Mr. LIGHTFOOT. Well, because he was a judge. I mean, I hadn't had a client like that before in Chapter 13. My clients are just regular working folks. And I knew that it would be very embarrassing, and I was compassionate about that.

Mr. SCHIFF. Now, you said that ultimately filing under the false name was unsuccessful and you used a phrase I found striking, "because it came out anyway." What did you mean by that? How did it come out anyway?

Mr. LIGHTFOOT. Well, in terms of the—there was later when—I don't know how I could not have thought that gossip would have, you know, spread like wildfire, but, of course, it wasn't just a listing of a name along with many, many other names in a column, which would have happened normally, but there was an article in the paper about the judge filing for bankruptcy, et cetera, that was a much more—larger article than the normal reporting of all the people who filed that week.

Mr. SCHIFF. So when you filed the petition under the Ortous name, there was nonetheless in that paper an article about Judge Porteous? They had identified him?

Mr. LIGHTFOOT. Not right away, but it came out later.

Mr. SCHIFF. Did it come out prior to your filing the petition with the corrected name?

Mr. LIGHTFOOT. No.

Mr. SCHIFF. And during the period between filing with the false name and correcting the petition, did you get any information that

there were rumors going around or other information about the judge filing for bankruptcy?

Mr. LIGHTFOOT. No.

Mr. SCHIFF. When you had made the decision to file the petition in the false name, did you also discuss at that time at what point you would correct the name?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. And tell me how that conversation went?

Mr. LIGHTFOOT. Well, immediately, as soon as it went in the paper, it had to be corrected, and I needed to correct it so that the notices would all go to the creditors with the proper name so that they could identify the accounts and file their claims. And the only notice that ever went out, went out with the proper name and address.

Mr. SCHIFF. Well, tell me about the conversation. You still haven't relayed the conversation you had with the judge. As best you can, tell us the conversation where you proposed the false name filing and what the procedure would be, and tell us what the judge's reaction was and how the meeting resolved?

Mr. LIGHTFOOT. Well, I explained how the notices, you know, just the the logistics of—until you file the schedules and the plan——

Mr. SCHIFF. If I could back up for just 1 second, was this at the same meeting where the decision was made to file a bankruptcy petition?

Mr. LIGHTFOOT. Yes.

Mr. SCHIFF. So you had a meeting with Judge Porteous. You said the workout isn't working. You discussed whether to file and you made the decision that you needed to file.

Mr. LIGHTFOOT. All of that didn't happen in one meeting. The workout not working really came to a head because finally, not because of my efforts to talk to the credit card companies, but finally two of the credit card companies had assigned the debts to local collection lawyers to collect, and they had written demand letters or made a phone call. So initially I thought well, this is great. I have got someone to talk to now. And I sent the very same package to them that I had sent to their clients. And I said, I don't know if you were provided this—of course they hadn't been—but this is what I was proposing. Would you review it with your client and tell me?

Of course, it was only two out of, you know, several—lots more. The workout would have needed to have at least the majority of them to really work. But one didn't get back to me, one of the lawyers, and the other lawyer said the client said no.

Mr. SCHIFF. So you made the decision with your client to file a bankruptcy petition. Tell me how the conversation began and the full nature of the conversation you had about filing under a false name?

Mr. LIGHTFOOT. That was after the workout had failed, and we knew that, then the only alternative was the bankruptcy. And I had this idea about trying to save him the embarrassment of the splash in the paper, and I explained it to him and I explained——

Mr. SCHIFF. Well, if you would, rather than telling us in general terms what took place with the conversation, tell us what the conversation was. You raised with Judge Porteous——

Mr. LIGHTFOOT. I said, you know, they publish these things in the paper, and if your name were incorrect and you had a P.O. Box, maybe the paper wouldn't know that it is you. And then as soon as it is published in the paper, we can make the correction immediately, make sure that all the creditors get the proper notice and the case goes forward as normal, and hopefully that will avoid you with the embarrassment of a big article in the newspaper.

Mr. SCHIFF. And what was Judge Porteous's reaction to your suggestion?

Mr. LIGHTFOOT. I asked if he wanted that or not.

Mr. SCHIFF. Did you explain to your client what the legal risks were of filing a petition in a false name?

Mr. LIGHTFOOT. I didn't really cover that.

Mr. SCHIFF. And what was the judge's reaction?

Mr. LIGHTFOOT. He was—well, he agreed to do it.

Mr. SCHIFF. And what did he say?

Mr. LIGHTFOOT. He said—well, I don't remember him saying anything other than let's do it.

Mr. SCHIFF. And how did you preface the conversation? Did you tell him you had an idea about—once you made the decision to file the bankruptcy petition, hey, I have an idea about how to spare you some public embarrassment? How did you raise the——

Mr. LIGHTFOOT. That was exactly how I put it. I said, there is going to be a publication in the paper, and I imagine it will result in embarrassment for you. And that was the genesis of it.

Mr. SCHIFF. Can you tell us anything more that Judge Porteous said in the conversation?

Mr. LIGHTFOOT. He didn't really say anything about it other than to agree to do it.

Mr. SCHIFF. And the plan that you had was you file in the false name. Were you the one who suggested setting up the phony address as well?

Mr. LIGHTFOOT. Yes. Because without—the address and the name were the things published in the newspaper, in the long list of those who had filed.

Mr. SCHIFF. And at no time you advised your client of the risk of making a false statement and signing under penalty of perjury?

Mr. LIGHTFOOT. It was a mistake. I rue the day that I thought of that. But that's the way it was.

Mr. SCHIFF. And your plan was to file a subsequent petition, an amended petition in the correct name within a certain period of time?

Mr. LIGHTFOOT. As soon as it was in the paper, you know, the effort was to correct it immediately. There was no intent to ever have a false impression to a creditor or anyone who should have been paid in that case. In fact, they all got the correct notices with the correct name. No notices ever went out on the first petition. They only went out on the amended petition.

Mr. SCHIFF. I take it the newspaper didn't publish the names of those filing an amended petition. Is that how you intended to avoid publication?

Mr. LIGHTFOOT. Right. Correct. Yes.

Mr. SCHIFF. So any creditors that may have relied on the newspaper to learn about people filing bankruptcies, they would never have gotten notice?

Mr. LIGHTFOOT. If that is the only way that a creditor could tell, then I guess they would have found out from the later articles that appeared in the paper, but they wouldn't have found out from that incorrect name in the very first listing.

Mr. SCHIFF. But if you had been successful and Judge Porteous was able to keep his name out of the paper altogether, creditors who rely on the paper to find out would never have found out?

Mr. LIGHTFOOT. Well, other than there were many other articles about him being in bankruptcy.

Mr. SCHIFF. Yes. But your intention was to keep him out of the newspaper, right?

Mr. LIGHTFOOT. That's true. The only creditors that I knew of got an official notice with the right name because it was corrected before the notices went out.

Mr. SCHIFF. My question, Mr. Lightfoot, is——

Mr. LIGHTFOOT. If anybody had relied on the newspaper, they might not have picked it up.

Mr. SCHIFF. So if you were successful in keeping his name out of the paper by filing originally under a false name, any creditors that relied on the newspaper to learn about bankruptcies would not have found out about his bankruptcy?

Mr. LIGHTFOOT. That's true.

Mr. SCHIFF. I just have a few more questions.

You mentioned in discussion about the tax refund, that that would have been required to be disclosed when it was a liquidated asset.

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. When Judge Porteous filed the bankruptcy petition, he had filed for the tax refund, correct?

Mr. LIGHTFOOT. I don't know anything about when he filed his return other than being here and listening. I didn't know anything about that.

Mr. SCHIFF. Well, let me ask you this. The bankruptcy form requires what to be disclosed in terms of a tax refund, whether they are expecting a tax refund?

Mr. LIGHTFOOT. The way I interpret the liquidated amount means you have to have prepared a return so that you know what the amount is.

Mr. SCHIFF. Does the bankruptcy petition refer to a liquidated amount?

Mr. LIGHTFOOT. Yes, sir. All liquidated debts owing to the debtor, including tax refunds.

Mr. SCHIFF. And if someone has applied for a tax refund prior to the filing, a week before the filing, would that be considered sufficiently liquidated to be reported?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. Now, you had Judge Porteous review the petition before you filed it to make sure it was all accurate?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. So even though you were operating on a dated paycheck receipt, Judge Porteous would have known that the salary that you had written in was in fact an inaccurate salary?

Mr. LIGHTFOOT. I certainly didn't know, but he would have known.

Mr. SCHIFF. And he told you everything that you had filled out was accurate?

Mr. LIGHTFOOT. I didn't really know it changed much. I figured it was probably the same. So I didn't think to ask about it, but I wasn't corrected.

Mr. SCHIFF. You mentioned you have other clients that have had gambling problems over the years that you have worked on bankruptcy cases with; is that right?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. Where they have had debts to casinos, have you listed those debts in the bankruptcy petitions?

Mr. LIGHTFOOT. I have.

Mr. SCHIFF. During the meeting with the trustee in which Judge Porteous was present and was under oath, does a trustee generally ask the bankruptcy petitioner whether everything in their bankruptcy petition is correct and accurate to the best of their ability?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. And in this case in fact did the trustee ask if everything in here is true and correct and the judge answered yes?

Mr. LIGHTFOOT. Yes, sir.

Mr. SCHIFF. So if Judge Porteous were aware that the income level was inaccurate in the petition, that gambling debts were not listed, that the tax refund was not included when he answered that everything in the petition was accurate, that would have been a false statement under oath to the bankruptcy trustee?

Mr. LIGHTFOOT. With everything that I have seen, it would be, yes.

Mr. SCHIFF. At one point the trustee asks whether he had listed all of his assets, and he answered yes. In light of what you have seen, is that a false statement as well?

Mr. LIGHTFOOT. Yes.

Mr. SCHIFF. The court order prohibited the incursion of additional debt during the bankruptcy. For someone who takes out additional debt in the form of markers or other debt, is that a violation of a court order?

Mr. LIGHTFOOT. Of the confirmation order in this case it was.

Mr. SCHIFF. I have no further questions.

Now I will recognize the Ranking Member, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Lightfoot, following up on the question by the Chairman, how well did you know Judge Porteous before you were retained to help him with this problem?

Mr. LIGHTFOOT. I didn't know him at all.

Mr. GOODLATTE. Had you ever met him before?

Mr. LIGHTFOOT. I don't think I had ever met him.

Mr. GOODLATTE. Do you know of him by reputation or anything?

Mr. LIGHTFOOT. No, sir.

Mr. GOODLATTE. After he retained you to handle the workout, there was quite a lot of time before you finally got around to filing

a Chapter 13 bankruptcy. Is that—about 9 months or something in that range? How many occasions did you have to converse with him during that time, either in person or over the telephone?

Mr. LIGHTFOOT. I would say periodically or maybe like every 3 weeks or a month. He would be anxious to know was I getting anywhere with the workout.

Of course, initially, I was engaged in getting the worksheets back, getting a fresh opinion of value on his house so that I could complete the workout proposal and figure out what creditors could expect to receive. And after that it was just a periodic delivery of new statements from the credit card companies so that I could be aware of the changes in the amounts that were owed.

Mr. GOODLATTE. Did Judge Porteous ever express hope that his circumstances would change, that he would not be required to continue this workout effort or that he would not ultimately wind up in bankruptcy?

Mr. LIGHTFOOT. I think he hoped that the workout would be successful.

Mr. GOODLATTE. But did he ever indicate that he might have a change of financial circumstances himself that would do that?

Mr. LIGHTFOOT. No.

Mr. GOODLATTE. What was your fee arrangement with him?

Mr. LIGHTFOOT. I told him that I would charge him—we had a controlled fee in our district and still do for Chapter 13s. At that time, it was a thousand dollars. So I told him for the efforts that I had made in the workout that I was going to charge him an extra $750. So when I filed the case, I asked for a fee of $1,750.

Mr. GOODLATTE. Did he pay any of that up front?

Mr. LIGHTFOOT. He paid just the filing fee, and the fee got paid through the plan.

Mr. GOODLATTE. And so the entire 1,750 was approved?

Mr. LIGHTFOOT. It was. The trustee objected to it initially because it was more than what we normally charged, but Judge Greendyke felt that was a fair fee, and it was approved.

Mr. GOODLATTE. And were you paid all of that fee?

Mr. LIGHTFOOT. As he paid the trustee, the trustee paid me and I was paid.

Mr. GOODLATTE. And the Chapter 13 was completed?

Mr. LIGHTFOOT. It was.

Mr. GOODLATTE. During the time that you were representing him, did you ever have any of these meetings over a meal? Did you meet him for lunch or dinner?

Mr. LIGHTFOOT. No, but usually I would go to his office because I was—my office was in another part of the city at that time and I was in court most days, which was downtown and in the downtown area and the bankruptcy court was in the same building. So it was easier for me to go meet with him in his office.

Mr. GOODLATTE. Bankruptcy court was in the same building as his office?

Mr. LIGHTFOOT. Correct.

Mr. GOODLATTE. All right. During your grand jury testimony, you refused to answer certain questions about your conversations with Judge Porteous based on the attorney/client privilege.

Mr. LIGHTFOOT. Yes, sir.

Mr. GOODLATTE. Why did you do that?

Mr. LIGHTFOOT. The judge had a lawyer and I would have to come out when a question was asked that might get into privileged material and the judge claimed through his lawyer the privilege and I had to go back in and say that I was directed not to answer.

Mr. GOODLATTE. And ultimately the court ruled that the attorney/client privilege that Judge Porteous was attempting to raise did not protect these conversations. And what was the reason for that?

Mr. LIGHTFOOT. Crime fraud exception and then I was free to answer all the questions.

Mr. GOODLATTE. As a result of the fact that you could not exercise that privilege and he could not exercise it through you based upon the fact that there were criminal allegations made regarding his conversations and regarding the filing of the petition and his failure to put certain things in those petitions, is that the crime fraud exception?

Mr. LIGHTFOOT. The court ruled there was a crime fraud exception. I don't think I really was aware of what on Judge Porteous's side anybody was investigating at that time. But I just knew that I didn't—I was now free to answer any questions.

Mr. GOODLATTE. And that—okay. And they did not tell you the reason for their——

Mr. LIGHTFOOT. Did they tell me——

Mr. GOODLATTE. Did they explain the crime fraud exception to you?

Mr. LIGHTFOOT. Well, I knew what it was, that there was something about what we may or may not have talked about, because I hadn't even testified yet, that could lead to the crime fraud exception and the court was satisfied that it should be applied and it was.

Mr. GOODLATTE. And it was your understanding that that exception meant that there was either allegations or more related to the activities of Judge Porteous related to his bankruptcy filing that were of a fraudulent or criminal nature?

Mr. LIGHTFOOT. Yes, sir.

Mr. GOODLATTE. Other than going to his office for his convenience and meeting with him, how else did the fact that Judge Porteous was a Federal judge impact the way that you dealt with him?

Mr. LIGHTFOOT. Well, one thing that I was clear to do early on when I provided the worksheet, I explained the worksheets and said, now, let me show you these. I want to show you how to fill them out. And I went to his home and sat down when he and his wife and explained them.

Because many times, for example, in the budget how much is spent for your monthly living expenses, maybe the wife took care of that. I really didn't know him, so I didn't know. And I wanted to make sure that I sat them down and explained how to proceed toward filling out these worksheets equally and as thoroughly as I would any other client that would be in my office, notwithstanding the fact that he was a judge, lawyer, whatnot.

Mr. GOODLATTE. In fact, more thoroughly, because he was a judge and because you probably don't make house calls for most of your clients?

Mr. LIGHTFOOT. Well, I didn't know how much he knew about bankruptcy. All I knew was that I wanted to be as thorough as——

Mr. GOODLATTE. But you don't know how much most of your clients know about bankruptcy.

Mr. LIGHTFOOT. That's true.

Mr. GOODLATTE. It doesn't entail your visiting them in their homes to clarify that, in most instances.

Mr. LIGHTFOOT. No. Well, he lived near where my office was, and that particular time it was just more convenient for me to go there. And he suggested it, and I said that was fine.

Mr. GOODLATTE. If after the confirmation order had been issued and Judge Porteous had asked you whether he could take out casino markers, what would you have told him?

Mr. LIGHTFOOT. No.

Mr. GOODLATTE. Why would you have so instructed him?

Mr. LIGHTFOOT. Because first we had to have court authority, which as it turned out under Judge Greendyke's order was trustee authority and the kinds of debts that you're allowed to incur during a bankruptcy are those that are necessary and essential. And obviously making a marker at a casino is not essential.

Mr. GOODLATTE. And is there any question in your mind that a marker is a form of indebtedness?

Mr. LIGHTFOOT. No doubt at all.

Mr. GOODLATTE. And if you had known that Judge Porteous gambled at all, what would that have triggered other than in terms of other questions for inquiries by you of him?

Mr. LIGHTFOOT. I would want to know where are the gambling debts. They must be listed. You can't gamble anymore. You can't incur debt to gamble. Those admonitions. Have we listed all of the debts or do you have——

And then I would get into the area of the markers. Because the markers, although they are a civil liability to pay, as you were explaining, they also could—if the marker is put through as a check and it bounces and then you have a bad check, which is a more serious problem.

Mr. GOODLATTE. Tell me what sorts of questions you would have asked him and what advice you would have given him if he told you he was a frequent gambler?

Mr. LIGHTFOOT. Well, I would have told him exactly what—do you have any gambling debts that you haven't told me about? If so, I need the name, address, account number, balance due. Are you doing it now? Because your budget will not work if you gamble. You have no authority to make any debts to gamble.

Mr. GOODLATTE. And during the entire period of the workout, some 9 months, and during the time that you were filing the Chapter 13 in the initial proceedings in the Chapter 13 and you had conversations with him every few weeks, did he ever at any time indicate to you that he gambled at at least 10 different casinos on the Gulf Coast and also in Nevada?

Mr. LIGHTFOOT. No, sir. In fact, my understanding was there was no debt being made. Because that is what I told him. I said, I can

understand that we have this workout pending, but you shouldn't make any more debt. You're just going to get yourself into a deeper hole. You have got all the debt you need now. Don't make any more debt. Don't use any credit cards.

Mr. GOODLATTE. Did he show any interest in making more debt?

Mr. LIGHTFOOT. He said fine.

Mr. GOODLATTE. He said fine.

Mr. LIGHTFOOT. It was good advice. He said, fine, I won't make any more debt. And I said—at a certain point he was still continuing to make minimum payments that weren't keeping up with the interest, and I was getting no response at all. And I said, well, you know, we are at a point now where it doesn't look like it is working and maybe what we need to do next is, in addition to not making any new debt, stop paying them. Maybe we can get their attention. Because, ultimately, it will lead to bankruptcy through which they will get paid whatever they are going to get.

But my understanding is no debts were being made.

Mr. GOODLATTE. And Judge Porteous totally hid all of his gambling activities from you?

Mr. LIGHTFOOT. Excuse me?

Mr. GOODLATTE. I said, Judge Porteous totally hid all of his gambling activities?

Mr. LIGHTFOOT. Oh, yeah.

Mr. GOODLATTE. You didn't even know he gambled; is that correct?

Mr. LIGHTFOOT. Oh, I don't gamble.

Mr. GOODLATTE. No. I said, you didn't even know he gambled.

Mr. LIGHTFOOT. I didn't know he gambled and—whatsoever.

Mr. GOODLATTE. Were you intimidated by Judge Porteous?

Mr. LIGHTFOOT. No.

Mr. GOODLATTE. What was your reaction to Judge Porteous and his gambling when you found out afterwards that he had—not gambled, that he had perpetrated a fraud upon the bankruptcy court and, in fact, had used you to help perpetrate that fraud?

Mr. LIGHTFOOT. Well, I don't feel so good about it. I feel a little betrayed. Because had I known I would have said a lot of things to him in the hope to prevent him from doing that. But it didn't happen because I didn't know.

Mr. GOODLATTE. Thank you.

Thank you, Mr. Chairman.

Mr. SCHIFF. The gentleman yields back.

Mr. Gohmert.

Mr. GOHMERT. Thank you.

I appreciate your testimony, and I'm a little fuzzy on my recollection of bankruptcy rules. But what is the length of time before you file bankruptcy that any transfer of assets may be brought back into the bankruptcy determined later?

Mr. LIGHTFOOT. At the time of this case, it was 1 year.

Mr. GOHMERT. It was 1 year?

Mr. LIGHTFOOT. Yes, sir.

Mr. GOHMERT. Okay. And you had mentioned that you had had some bankruptcy appeals that obviously went to a district court. You had never heard of Judge Porteous before he came to you, though?

Mr. LIGHTFOOT. I knew he was a judge, but I never met him.

Mr. GOHMERT. Okay. All right.

Mr. LIGHTFOOT. I had this one appeal that was allotted to his court many years before, maybe even 10 years before, and I was prepared to write a brief. I was the prevailing party in the bankruptcy court. So the appellant was going to file a brief, and then the appellant dismissed their appeal. So it never went anywhere. So I never did meet Judge Porteous.

Mr. GOHMERT. Okay. So you did know he was a judge. So that has got to be a pretty sincere form of flattery for a Federal district judge to come in and seek your services legally, correct?

Mr. LIGHTFOOT. Well, I had never had a client like that before.

Mr. GOHMERT. I know. But that has got to be very helpful?

Mr. LIGHTFOOT. Well, I guess he must have called around and checked me out and thought I was a good choice, and I felt good about that.

Mr. GOHMERT. Yeah, sure, it is flattering. And normally down the road it ends up being good business. People know, oh, this is the guy that helped the Federal judge, right? I mean, you had mentioned word gets around.

Mr. LIGHTFOOT. My typical clients aren't interested in that. I have just working-class people for the most part.

Mr. GOHMERT. Well, I have represented working-class people myself; and I find that if they hear that one lawyer was used by a Federal judge, or by any judge, it makes a very big impression. So it is good——

But I'm wondering about, in the bankruptcy court, we have had the questions about, you know, his being asked the normal questions, put under oath and swearing to do things by the trustee. Did you see that he got any special treatment where maybe he wasn't sworn in at any of those or did they treat him like a normal court participate?

Mr. LIGHTFOOT. No, everything went usual. It is not a lengthy process. But I don't believe it was any different than any other case.

Mr. GOHMERT. Okay. So they didn't cut him any slack or just because he was a judge not swear him in or anything like that?

Mr. LIGHTFOOT. Oh, no. He was sworn.

Mr. GOHMERT. Well, I just wanted to tie those up.

Thank you, Mr. Chairman.

Mr. SCHIFF. The gentleman yields back.

Mr. Westling.

Mr. WESTLING. Mr. Chairman, we have no questions for this witness.

Mr. SCHIFF. All right. Well, I thank you for your testimony.

[redacted]

Mr. SCHIFF. We will now call up our final witness of the day. Our final witness is the Honorable Duncan Keir, Chief Judge of the United States Bankruptcy Court for the District of Maryland.

Judge Keir has served as a bankruptcy judge since November, 1993. He is a distinguished academic, has had a distinguished academic legal career as well. He is the author of a chapter of Collier on Bankruptcy, a respected treatise on bankruptcy law.

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He has served as an adjunct faculty member of the University of Maryland School of Law and is a Fellow of the American College of Bankruptcy. From 1999 through 2002, Judge Keir served as Circuit Governor for the Fourth Circuit on the Board of the National Conference of Bankruptcy Judges.

I will now swear the witness.

Judge Keir, if you wouldn't mind rising and raising your right hand.

[Witness sworn.]

Judge KEIR. I do.

Mr. SCHIFF. Thank you. You may be seated.

And at the outset, Judge, I want to thank you for your willingness to come and testify today. You're not a participant witness here and under no duty or compulsion, but we are very appreciative of your time.

Judge KEIR. You're very welcome. I'm glad to be here if I can be of assistance.

Mr. SCHIFF. Thank you, Judge. And I will turn over to a Task Force counsel Harry Damelin to begin the questioning.

TESTIMONY OF THE HONORABLE DUNCAN KEIR, CHIEF JUDGE, UNITED STATES BANKRUPTCY COURT, DISTRICT OF MARYLAND

Mr. DAMELIN. Good afternoon, Judge. And could you please tell us first, in addition to being present here this morning to hear all of the testimony that has been brought forth today, what materials have you reviewed in preparation for your testimony before the Task Force?

Judge KEIR. I have reviewed carefully, first of all, the docket which lists all of the documents filed in the bankruptcy case of Judge Porteous and his wife. I have reviewed the petition that was filed that initiated the case, the amended petition that was subsequently filed, the schedules that were filed under penalty of perjury, as well as a statement of financial affairs similarly sworn, the Chapter 13 plan that was proposed, the confirmation order that was entered, portions of the recorded prior testimony, the 341 meeting of Judge Porteous, portions of prior testimony before the fifth circuit of various witnesses, an outline of financial transactions surrounding the time frame of the filing of the bankruptcy case and thereafter during the duration of the case, and including prior testimony, I might add, of both the trustee, who is the Chapter 13 trustee in the case, and Mr. Lightfoot, who has just testified. I also saw the letter of referral from the United States Attorney's Office to the fifth circuit of the matter.

Mr. DAMELIN. Thank you.

Could you please start off by briefly describing for the Task Force what a Chapter 13 bankruptcy is?

Judge KEIR. Chapter 13 bankruptcy is sometimes referred to as a wage earner's plan. That is a little bit perhaps too narrow. It is only available to individuals who have receipt of a regular monthly income. Income can be unemployment. It doesn't really have to be only wages.

It is in lieu of, if you will, a liquidation in bankruptcy and the means by which the debtor has to provide to the trustee and then

the trustee distribute to unsecured creditors at least as much in value as they would have received had it been a liquidating Chapter 7 bankruptcy. In exchange for that opportunity, the debtor gets to keep property that otherwise would have been surrendered to the trustee for sale and liquidation and payout.

The plan can be of a duration no more than 60 months.

Mr. DAMELIN. In connection with a bankruptcy filing, is it important that a debtor be candid with the court in his or her filings?

Judge KEIR. It is absolutely essential to the operation of the case and the integrity of the system and the bankruptcy laws.

The United States Supreme Court in 1934 in a somewhat famous case referred to as *Local Loan Company v. Hunt* said something which has been often repeated in other courts in numerous opinions since then; and that was that Congress provided the relief in bankruptcy for the honest, but unfortunate, individual. And honest is an essential component because the debtor reveals in his or her schedules all of their debts, all of their assets, their present income and expenses, and their financial history through a series of questions called the Statement of Financial Affairs.

All of this information is sworn to under penalty of perjury. So they are taking a court oath as to all of this, and this provides the essential information that both the creditors and the trustee can then use to decide whether further investigation by way of the examination or take action filing particular action before the bankruptcy court. They investigate the liabilities by asking questions of other witnesses or seeking bank records, for example. All of this activity would follow on based upon what the debtor has revealed. It has to be complete or there is no trail for the creditors and the trustee to follow.

Mr. DAMELIN. What is the significance of the fact that Judge Porteous filed his initial bankruptcy petition under a false name and with a P.O. Box instead of his residential address?

Judge KEIR. Well, Mr. Lightfoot has just testified that the intent was to keep secret the fact that Judge Porteous had filed a bankruptcy case from the general public and that it wouldn't be published in the local newspapers. That in itself violates—first of all, it violates by perjury the oath contained in the petition itself which states that everything in the petition is true and correct under penalty of perjury. And in six different places on the original petition, the false name is put down. In no place is the true name put down.

Secondly, it is true that most of the creditors are likely to get the information about the existence of the case through the notice that the clerk's office sends out. In my district, that clerk's office notice would have gone out more quickly than it did in this particular case; and they would have gotten a notice that said Mr. Ortous filed, rather than Gabriel Thomas Porteous and his wife filed.

But, in addition, it is not uncommon that a person that maybe the debtor forgot or believes they were owed having an interest in the proceeding will find out about it from the newspaper and not be in the schedule and therefore the notice—the fact that it was corrected before the notice went out would not solve that problem. It kept back from the general public who had filed a bankruptcy case.

The other thing it did is, for a time, it falsified the official record of the United States court.

All of the courts have mechanisms they have improved over the years with electronics whereby parties in interest can contact the court by telephone, calling in to a voice system, now through a system called PACER, and find out if a particular individual has filed a bankruptcy case. You go to buy a used car, there are some other transactions, this is something they may do as a part of determining whether or not they are going to make you the loan or deal with you in some way that incurs credit. And they would have been told there is no Gabriel Porteous that has filed this case. And, of course, they wouldn't have asked about G. T. Ortous because it didn't exist. So it falsified the record until it was corrected.

Mr. DAMELIN. Now, the evidence has shown that the decision to file the original bankruptcy petition under a false name was Mr. Lightfoot's idea, according to his testimony, and not that of Judge Porteous. Do you believe that Judge Porteous can claim advice of counsel as an excuse for filing under a false name?

Judge KEIR. No. The petition is signed under oath by the debtor and not—it is signed but not under oath by debtor's counsel. The testimony, the swearing is that of the debtor. And here it may be that Judge Porteous got the idea from Mr. Lightfoot of putting down a false statement as to his identity and then swearing to it. But he knew it was false. That is very clear from the record. He agreed to going along with it, and indeed he then entered into making the oath under penalty of perjury, that it was true and correct. So advice of counsel is not a defense at all.

Mr. DAMELIN. Okay. Now, even though Judge Porteous filed his initial bankruptcy petition under a false name, this, again according to the testimony, was corrected several weeks later and Judge Porteous's listed creditors received their notices with the correct name. Thus, was there really any damage done here?

Judge KEIR. In terms of some finite amount of dollars, I don't think anyone here can tell. I certainly could not tell. I cannot tell whether anybody would have checked to see whether or not a bankruptcy was filed by Gabriel Porteous and done some——

And I did note, however, in the record that, on April 7th and 8th, Judge Porteous borrowed by markers $2,000 from a casino. The correction of the name did not occur until April the 9th. I have no way of knowing whether that casino did or did not check to see whether this party that wanted these markers was in bankruptcy. If they did, they would not have discovered it because the record was falsified. So I don't know whether there was any measurable damage, because I can't tell enough facts.

But if your question is would this somehow exonerate no-harm, no-foul kind of thing—if one goes 110 miles an hour the wrong way down a one-way street but by good fortune doesn't hit anybody, they are not exonerated from their intentional misconduct for certain.

Here in the United States, we strive to be a Nation of laws. We all know that there is not enough police officers, there is not enough courts and judges, so forth, to enforce laws if the public just decides that they can do whatever they want, ignoring laws, and

so long as you can't measure the particular damage of the violation, there is no violation at all. That would be chaos.

I suggest to you, particularly where this particular person knew the requirements of law, that this idea that you can't demonstrate with particularity a particular creditor or creditors for a particular amount that were harmed somehow makes it not meaningful.

Mr. DAMELIN. And what is the significance of Judge Porteous's failure to disclose his tax refund from the year 2000 on his bankruptcy schedules or on his statement of financial affairs?

Judge KEIR. Well, let me first address an answer to a similar question that Mr. Lightfoot gave.

There was a question raised about what is a liquidated or not liquidated tax refund. I would point out that both have to be revealed. Question 17 about which the particular prior question to the prior witness was asked requires you to list on Schedule B of the schedules—this is the Schedule of Assets—a liquidated tax refund. That is including liquidated tax refunds. Liquidated, by the way, the legal meaning, of course, is that the amount is certain. It doesn't mean you have collected it. It means the amount is determinable to a certainty.

The pain and suffering that the jury has not yet evaluated in a verdict is unliquidated. A tax refund that has been determined or at least initially determined by the tax return is a liquidated amount. That is what Question 17 required him to put down.

But I would note that Question 20 follows on and says, okay, put down your unliquidated amounts that may be owed to you, including tax refunds. So if you didn't know because you hadn't yet filed your return but you had finished your tax year in 2000, if you had an unliquidated amount, you had to divulge that as well, your best estimate.

Nothing was put down. Either question, of course.

Now, the effect in Chapter 13 is twofold. As I said, in Chapter 13, one of the two measures of how much the debtor has to pay into a plan in order to be eligible for the plan to be confirmed is to deliver the same value or greater than would have been delivered in a hypothetical Chapter 7 liquidation. An asset of $4,100 would increase that amount. Because, in a Chapter 7, that tax refund would have gone to the Chapter 7 trustee for distribution to creditors. So if you hide $4,100 of your assets, you're reducing the amount that the trustee is going to calculate in making a recommendation to the court as to how high the plan payment has to be.

The second thing is, of course, a tax refund is effectively cash to put into your account. You can spend it. If you spend it and then your case for some reason was converted to Chapter 7, it is not going to be available to creditors. It is gone. So, often, at least in my district, the trustee will take the position and if not agreed will file a motion asking for a court order that the refund be paid into the trustee upon receipt and, as in effect, part of the payment required into the plan.

On occasion, a debtor may work out and the trustee may recommend that some portion be retained for some finite necessary living expense that the refund is needed for. But, by hiding it, he both falsified the amount that the plan was going to have to pay

and took away from the trustee the opportunity to obtain the funds to make sure creditors got those funds.

Mr. DAMELIN. Thank you.

Isn't it true in your years of experience that debtors often make mistakes and have inadvertent omissions in their bankruptcy filings?

Judge KEIR. Yes. The keyword you have used is the same word that many opinions that have been written by appellate courts have used: "inadvertent". Mistakes happen. I couldn't tell you today, sitting here, the exact dollar figure for the payoff on my mortgage; and I don't know that anybody in this room is likely to carry that around in their hip pocket. So If the debtor were a few dollars off when they put down what do you owe to your first loan company that has your mortgage, it would be an inadvertent error.

I have seen a doctor's bill left off among many other doctor bills that were listed, things of that nature, where an inadvertent minor or at least isolated omission has occurred, an estimate was off. But the case law has also made it clear that a repetitive and pattern of false statements is not inadvertent. It is intentional. It is fraud.

Mr. DAMELIN. Is that what you see here in this case?

Judge KEIR. Very much so. There is a pervasive pattern, first of all, of not listing all of the debts, which says a couple of things.

First, there is a credit card—I think it is Fleet—that was not listed. Fleet probably didn't receive notice of the bankruptcy because, therefore, they wouldn't be on the address list to whom the notice went. That means they wouldn't have cut off the credit that they probably would have cut off immediately post bankruptcy. They get a notice there is a bankruptcy case for their borrower on the credit card, they generally—my experience has been—shut that card off right away.

Similarly, with a casino who doesn't get notice and therefore—it has already been testified—would have stopped allowing markers.

In addition, in the Statement of Financial Affairs, question 3, he did not list any of these last-minute payments.

Not only does that bear into this idea of recovering back for the estate, but it hides the fact that he did it.

If the trustee had inquired further by making either an informal inquiry or formal inquiry to the casinos and so forth that these last-minute payments paid off, they would have known immediately, hey, this guy has filed a bankruptcy case. So they didn't know that because no one makes that inquiry to them because they are not listed on question 3's answer. He didn't put anything down there other than ordinary installments.

So you have both sides of not listing debt, not listing assets, and not listing the essential pre-petition financial transactions the Statement of Financial Affairs requires.

As to not listing the pre-petition payments, the Chapter 13 trustee under the Bankruptcy Code has the authority, the standing to sue and recover preferences that occurred within 90 days of the filing of the bankruptcy case which allowed a particular creditor to get a greater return dollar for dollar than unsecured creditors generally in the case. You can reach back a year if the creditor that has been preferred is an insider, whichever the time frame.

It is true—and I think this is the reason for Mr. Lightwood's testimony—Chapter 13 trustees do not often avail themselves of that in a formal sense, by filing an adversary proceeding, which is a Federal lawsuit with a funny name that they use in a bankruptcy practice. Instead, what they do is they say, well, we are going to assume we would have recovered that in Chapter 7.

So add that amount to this calculation the plan has to return to creditors. If the debtor can come up with the money somehow, fine. That's what the creditor is entitled to. But they can and on fairly rare occasion do actually launch these adversary proceedings to recover back from the preferred creditor all of the money, and then the creditor has to wait and get their aliquot share from distributions under the plan.

So a bit of a long answer about inadvertent mistakes. But the bottom line is there is this pattern of not revealing essential information in a number of places: the petition, the Statement of Financial Affairs, and the schedules.

Mr. DAMELIN. Okay. Now, are you familiar with the confirmation order entered in July of 2001 by Bankruptcy Judge Greendyke?

Judge KEIR. I have read it.

Mr. DAMELIN. Now, despite Judge Greendyke's order, the evidence has established that Judge Porteous continued to take out markers at casinos. He applied to increase his credit limit at one casino, and he opened a new low-limit credit card, all without the approval of the bankruptcy trustee or of Judge Greendyke. Do you consider these actions by Judge Porteous to be a violation of the bankruptcy order?

Judge KEIR. They most certainly are a flagrant violation.

The order is direct and straightforward in this regard. It orders that the debtor—in this case, debtors plural, Judge Porteous and his wife—not incur any new credit during the bankruptcy case. The order was neither appealed according to the record that I reviewed nor was any motion filed for relief from that order in any way. It simply was disobeyed. Repeatedly Judge Porteous went out and incurred additional credit after the order was entered without asking or gaining any permission from the trustee or the court.

Mr. DAMELIN. So we have heard evidence that even though these numerous violations that we have discussed by Judge Porteous were violations of the order, he nevertheless satisfied his bankruptcy repayment plan. Thus, are these violations really just a no-harm, no-foul situation?

Judge KEIR. Well, I have already spoken about this concept of a no-harm, no-foul defense or exoneration. There is no such doctrine. There cannot be. Because the whole system demands and depends upon the honesty of the honest but unfortunate person who seeks relief.

I would also, because I just neglected to say it, would like to add to my answer to the previous question; and that is another thing occurred to me listening to the testimony this morning. In obtaining credit post order in the bankruptcy without authority and then allowing these casinos to recover back either by a check or particularly by putting the marker into the account, the situation resulted in a violation of Federal law.

Title 11, Section 362(a), is the automatic stay in bankruptcy. When a bankruptcy is filed, on the instant it is filed, there is this automatic stay that arises by statute. Congress has put it down. The court does not do it. And it is very, very strong.

One of the things it stops is collection by a creditor from assets of the bankruptcy estate. It stops many other things, but that is the one I want to focus on.

A creditor who becomes a creditor after the petition is filed is nonetheless stayed from attempting to collect from assets of the estate. In Chapter 13, the bankruptcy estate by statute specifically includes not only the property rights owned by the debtor on the date that the debtor filed the case but all after-acquired property including, and it puts it down with specificity, all earnings.

So whatever money was in the checking account when the markers were deposited—I believe that was the agent's term for negotiating the marker—were undoubtedly assets of the bankruptcy estate. They were used to pay a creditor and by the action of the creditor in violation of the stay.

If the creditor didn't know about the bankruptcy, they inadvertently violated the statute. But that is another damage done to the intent that the creditors under the plan are intended to have the best opportunity to be paid through a successful reorganization without other creditors reaching in and grabbing 100 cents on the dollar for themselves.

The creditor has to go to the bankruptcy court and file a motion for relief from stay and convince the court there is some just reason why that creditor should be allowed to proceed. That didn't happen. They simply deposed the markers and took the money because of the failure to learn of the bankruptcy through Judge Porteous's violation of the court's order.

Mr. DAMELIN. Okay. Now, as you look at this case, is it of special significance that the debtor here who engaged in this conduct was in fact a Federal judge?

Judge KEIR. Well, certainly there is only one statute and one book about 2½ inches thick of the Federal Rules of Bankruptcy Procedure that applies, no matter whether the debtors or debtor is a Federal judge or someone totally unassociated with any government position. So there is no difference in the behavior that the judge was required to do.

There is significance, though, on two levels. One, section 152 of title 18, which is the criminal statute, makes it a crime to intentionally falsify a material misstatement and also to intentionally falsely fail to—or falsely hide assets. So intent.

Here I think the fact that the debtor was a Federal judge makes it rather clear that he knew what the oath penalty of perjury meant. And when he was signing the petition under penalty of perjury, signing the schedules under a declaration they were true and correct under penalty of perjury, signing a Statement of Financial Affairs under the same declaration, he knew he was giving a oath, he knew what the oath required, he knew that the violation of the oath was fraud and a crime. That knowledge comes with what he did in effect his position, and I think that goes to intent.

The second thing is I think it brings disrepute upon the judiciary. Again, the public needs confidence in its leaders, whether they

are elected or whether they sit on the bench. Here you have got someone who appears to have falsely participated in a number of ways in this bankruptcy case and, although not held technically to a higher standard by statute, it certainly is behavior which, because he is a Federal judge, I would take more seriously.

Mr. DAMELIN. Okay. You have been a bankruptcy judge for approximately 19 years; is that correct?

Judge KEIR. Let us see. Who is counting? Sixteen.

Mr. DAMELIN. Sixteen. Okay. My math error.

If you had been the judge with your experience overseeing the Porteous bankruptcy and the facts established by the evidence today came to your attention, what actions, if any, would you have taken?

Judge KEIR. Well, a number of things would have occurred, fairly clearly.

First, the case would not have led to the discharge of the debtor. If the information had been known to the court at the time that confirmation of the plan was being considered, confirmation would have been denied.

It is a requirement under section 1325 that the plan be proposed in good faith. The plan, based upon falsehoods like this, is not proposed in good faith and the confirmation would have been denied right at that point.

If the case had converted to a seven, undoubtedly under Section 727 the discharge also would have been denied. Perhaps the case would have been dismissed with prejudice against refiling.

It is likely that the United States Trustee's Office would have been filing motions asking for these remedies and the court I think would have granted them if this is the evidence the court had to consider without really much question in my mind.

Finally I would have been compelled under title 18, section 3057, to refer this matter to the United States Attorney for investigation for prosecution of bankruptcy crimes. That section requires a Federal judge to make that referral where they see a reasonable basis that a crime may have been committed.

And there is no question in my mind that this would have risen well beyond that level where that report would have been made. I mean, there was this pattern of the wrong name, false name in the petition under oath, creditors not all put down, and they were selectively not put down. The ones—the credit card that they wanted to use post petition omitted. Certain casinos to keep the relationship going with casinos omitted. That is on the schedules.

The tax refund, for example, not listed as an asset keeps some liquidity that they could use—or Judge Porteous could use, not on the schedule.

Do not reveal the last-minute payments that paid off certain casinos and so forth so that they wouldn't be listed as creditors because on the instant of the filing they were owed zero, but then the trustee would not notify them either because they were not listed on the Statement of Financial Affairs. Another document, false statement under oath.

All of this and the violation of the court's order when put together would have been such a pervasive pattern of misconduct that the referral would have been made.

Mr. DAMELIN. Okay. Thank you, Judge Keir.

Mr. Chairman, I have no further questions.

Mr. SCHIFF. I thank the gentleman.

Judge, let me ask you a few follow-up questions, if I could.

The practice of the newspaper in this area to publish the names of those filing bankruptcy, have other courts in other parts of the country also—or other newspapers and judicial communities published the names of those filing for bankruptcy?

Judge KEIR. I have certainly seen it in my district, although it seems to be changing. Newspapers seem to be getting lighter and lighter in terms of print copy.

But it varies. A lot of jurisdictions do it. I think this is a bit of supposition on my part. I haven't done a study. But I believe it is probably more prevalent in areas where—that are less in the megaurban centers, where what is going on in the Federal courthouse may be a little bit more a part of the news than in some other places.

But it is not unusual that newspapers will pick this up on a daily basis and print it or some it of do it by week, the filings of the week. I have seen columns that are headed like that.

In Baltimore, for example, which is where I sit, there is a newspaper, the Daily Record, that contains various columns from various courts that are located within the city listing cases filed that week in the various courts.

Mr. SCHIFF. These are often listed in legal newspapers, right?

Judge KEIR. Legal and in papers of general circulation.

The Daily Record, which is becoming more and more a paper of general circulation, lists it, but I have seen it in years past in papers of general circulation as well.

I don't think the Baltimore Sun paper does it anymore, but they used to, I believe.

Mr. SCHIFF. Is part of the purpose that the legal newspapers and some of the papers of general circulation would publish a list of those filing bankruptcy so that people that had an interest—that either credit agencies or others that might want to see who is filing would know that an asset they had was jeopardized in a bankruptcy?

Judge KEIR. I think very clearly—this practice I believe goes back quite a ways, when there was less availability of information on an electronic basis and when it was probably the easiest and maybe even principal way one could ascertain what was going on, who had filed bankruptcy in your community. But it was offered to the public very clearly I think so that the public could use the information.

And obviously the public had some interest in it or the paper would not have bothered to put it in the print. I know I have picked up numerous times something about someone filing that I would have not known about if I hadn't been reading the paper. Even after I have been on the bench, sometimes I will see a filing in—that I was unaware of that may have some tangential effect on a case that I have.

Mr. SCHIFF. In a case like this, for example, the casinos would not have been notified of the bankruptcy because they were not

listed as creditors. However, someone from the casinos may have seen a public notice of bankruptcy.

Judge KEIR. That's correct. I don't know whether they had a practice of having someone delegated to review those columns or not, but they certainly could have. That is why it is there.

Mr. SCHIFF. Well—and let me ask you, too, assuming the casino credit system works like many others, if somebody is borrowing money and paying it back in a timely way, you wouldn't necessarily run a new credit check on them, would you?

Judge KEIR. I would not think so, no.

Usually credit checks are run often by attorneys preparing to file bankruptcy cases to see whether there is something out there that their client inadvertently left off or whether there is some other information. But most of the time it is run by companies who are looking to extend additional credit, new credit, or renew credit.

Mr. SCHIFF. So if you're a casino and you have someone who has filled out a credit application and has a pre-existing credit relationship with you and you are not notified of a bankruptcy because you're not listed as a creditor and it doesn't appear in the newspaper, you wouldn't have any reason to run a credit check on them if they are making their payments.

Judge KEIR. I would not think you would have any such reason to run a credit check.

Mr. SCHIFF. I want to ask you one of the questions I asked Mr. Lightfoot to see if you had any different take on it. And that is, under what circumstances do you have a duty to update the bankruptcy court? When you have a change of income or have maybe new liabilities, are there any circumstances where you are required to update the court?

Judge KEIR. Certainly in my district there are. I know that all of the judges in my district hold to this idea, and I think it is the correct one: The schedules generally reflect assets and liabilities on the date of the petition. Schedule A is real property, B is personal property, for example, just skipping down a few, schedule F is unsecured debts. But schedule I and schedule J list income and expenses as opposed to assets and liabilities. In a Chapter 13, we require that a material change in schedule I or J during the life of the case requires an amended schedule. The debtor gets promoted and now has a significantly higher income than they had 2 years ago, and they are in a 5-year plan and have 3 years left to go, now their disposable income is significantly greater.

The second financial component tested in the level that the plan has to pay, in addition to the equivalence of Chapter 7, is that the debtor has to pay all the debtor's disposable income. Now it is called "projected disposable income." That change was in 2005. So, if the debtor's disposable income has increased greatly, the trustee, specifically under section 1329, is authorized to come in and seek to modify the plan to require—get a court order to require that the plan now go to a higher level because it no longer is a plan that is receiving all of the disposable income of the debtor.

The vehicle that the debtor is supposed to report that event to is an updated schedule I and an updated schedule J, where these changes have occurred. And counsel routinely seem to advise their clients of that. I see that.

Mr. SCHIFF. In this case we have heard evidence that the judge filled out an application that listed his income as $7,500 a month, when in fact it was $7,700. Do you consider that a material false statement if the judge was aware he was in fact——

Judge KEIR. Well, I don't think that is the limit of the false statement there. I was listening to the testimony, and first of all, the schedule I is not filled in correctly, without regard to the numbers. The top line on schedule I is supposed to be your gross monthly income from wages, not your net. You are then required on the following lines to list what is taken out of your paycheck before you get your take-home pay. That gets your net. The net was put at the top, and therefore you didn't see on that schedule what was taken out.

We already know there was a tax refund of $4,100, which means there was an over-withholding going on. Not only was it an asset that should have come in, as we already talked, but in effect it affects the calculation of what is disposable income. If you claim no dependents, no deductions, and have them take out extra money, you can lower that take-home pay. All you are doing is putting it in your own savings account, if you are allowed to do that. Therefore, your monthly payment is also going to be less under this plan calculation. And that information is not there. It is just this number.

In addition, I heard the testimony that take-home pay, as it was put down, went up significantly just several months after the filing, and since, as I have already stated, that should have been updated; I don't think the measure is the $200. So I want to be careful in answering your question.

Do I think the $200 itself is material? In amount, the word, first of all, "material" under section 152, courts have determined is in effect the same as "relevant." It is not measured by dollars. It is measured by whether it bears on the financial affairs of the debtor, the rights of the bankruptcy estate and the process of bankruptcy itself. So any error is material in its relevancy.

Significant? I think by itself a $200 error is on the borderline. It would have to—it always arises in a court case in the context of other facts. Is it the $200 there, but the debtor is probably underestimating his or her expenses a little bit, and you can see that because they didn't put anything down for home repairs, for example. A common situation.

The $200 might be readily—you look at that and you say, it is going to be absorbed in legitimate expenses. They made an error that is not really going to be—was not intentional and it is not going to change the math. But if it is intentional, then it is material, because it is a false statement.

Mr. SCHIFF. You mentioned that the form is filled out incorrectly; $7,500 a month is listed as gross income when in fact it is net income, is that right?

Judge KEIR. Yes. I have the schedule, a copy of it right here in front of me.

Mr. SCHIFF. Is it also listed as net income later?

Judge KEIR. Yes. What it does is it says $7,531.52 on the top line under current monthly gross wages. Then there is nothing taken

out until it hits the total net monthly take-home pay, which is the same figure. So it is readily apparent there is missing data here.

Now, I can't tell whether the pay stub was attached as an exhibit when it was filed with the bankruptcy court or not, so it may be that it was attached. I don't know.

But the lines are provided. The lines that are blank, that have zero, say payroll taxes and Social Security, zero. Insurance, zero. Union dues, zero. Other, specify, blank line, zero. Subtotal payroll deductions, zero. That is the information on the form that was filed.

Mr. SCHIFF. The trustee during the hearing asked the judge, "According to the United States of America, you take home about $7,500 a month, is that right?" And he answers, "um-hum," which I assume is an affirmative answer.

Was that a false statement if his income was $7,700 a month and he was aware of it?

Judge KEIR. It was a false statement at the time that he made it, because what I have heard of the testimony, his

take-home income was higher.

Mr. SCHIFF. The effect of not fully disclosing the full extent of your income, of not disclosing the tax return refund you are going to get, do I understand it correctly that the impact of that is that you actually have more income that you are not obligated to provide to creditors, but you still get the discharge of your debts at the end of the process? So you still get the benefit of the bankruptcy, but you actually get to keep more of your assets than if the court and creditors were aware of the full extent of your income?

Judge KEIR. In a Chapter 13, I think I would phrase it, you actually get to pay less to your creditors and get your discharge anyway. Less than the Bankruptcy Code, which Congress enacted, required you to pay.

Mr. SCHIFF. I take it, Judge, that the filing of a bankruptcy for many people, not solely for Federal judges, is somewhat of an embarrassing event for people. Is that a fair statement?

Judge KEIR. I think that is a fair statement, yes.

Mr. SCHIFF. So that a great many people, whether they are in the lofty position of a Federal judge or any other position in life, might not like to see their name in the paper as having to file bankruptcy.

Judge KEIR. That is very true.

Mr. SCHIFF. Of course, if everyone filed bankruptcy petitions in false names to avoid public disclosure, there would be serious problems with the system, wouldn't there?

Judge KEIR. That is absolutely true.

Mr. SCHIFF. Is there any significance in terms of whether the court would consider it a mark or a debt, the speed with which the marker is paid off? In other words, some of these markers were paid off on the same day, some were paid off a week later, some were paid off a month later. If the judge has a successful day at the table and either wins money and doesn't report it so the creditors don't know about it, or breaks even and gets to pay off the marker before he leaves the casino, is that any less of an incurred debt while it existed?

Judge KEIR. No. The debt is incurred when the marker is taken. That is when the debt arises. You owe the money. And it is the incurrence of debt that was prohibited by the order. It was not qualified by saying "unless you pay it off within the same day," or any other words, such as if you pay it off in the same session or something. It is the incurrence of debt. And, of course, when the marker was taken out, there is no way that Judge Porteous knew he was going to be able to or not going to be able to pay it from a particular source or at a particular time. It was gambling. There is a chance. So the only real event in terms of his disobedience of the order was the obtaining of the marker.

There is a doctrine under section 363(b) which applies to debtors under section 1303 of the Code that permits a debtor to use assets in the ordinary course of business, which has been interpreted judicially as to a living, breathing individual. In Chapter 13, it would mean the ordinary course of living. But that doesn't really bear on this question of incurring a debt for an unusual reason, gambling. It is not necessary for your living expenses.

But more importantly, a direct order saying you are prohibited from incurring credit, you went out and incurred credit; the fact you paid it back that day, there is no exception to that order for ordinary course of any kind by timing or otherwise. So I don't think it has any legal significance at all.

Mr. SCHIFF. Last couple of questions. You were talking about the automatic stay. Is that only implicated when someone who is in bankruptcy and takes out a marker actually doesn't pay it back and the casino uses the marker to go into their bank account; or would it also be implicated where the debtor writes a check to the casino or otherwise pays it back?

Judge KEIR. Well, that is a somewhat complex question. I will take it in pieces, if I may.

The automatic stay prohibits any act by a creditor who holds a pre-petition debt against the debtor's assets, the estate and so forth. As to a post-petition debt, it stays the collection from the bankruptcy estate, which, as I said in a Chapter 13 includes after-acquired property and earnings. But it is an action by creditor. Where the creditor deposits the marker, they are taking the action.

Mr. SCHIFF. Meaning where they have to go and draw the money from the account?

Judge KEIR. I am borrowing the word from the testimony of the agent, but when they go to the bank and cash the marker out of the account, the creditor is collecting. That is a violation of the automatic stay. When the debtor hands them the check or hands them the chips, I think it is questionable that that is a creditor action. But it is still a violation of the Bankruptcy Code, it is just a different section.

It is a violation of that section 363(b) that I spoke of a moment ago. It is a violation by the debtor, because the debtor is now using an asset of the estate, out of the ordinary course of business, without court authority. You have to file a motion and get a court order.

As soon as Judge Porteous obtained the chips or had the money in the bank account to write the check upon, those funds were assets of the bankruptcy estate and his legal authority to use them

was limited under 363(b) and 1303 to use for ordinary course. And he was using them for a different purpose.

So I would believe that where he gave them the check or cashed the chips out against the marker, that the creditor didn't violate the stay in those occurrences; the debtor violated section 363(b) as well as, of course, the markers themselves violating the court order. So most of the violations were by Judge Porteous, except where the markers were cashed by the casino.

Mr. SCHIFF. The last question. In the case where there is a confirmation order, is that an order of the trustee or is that, through the trustee, an order of the court?

Judge KEIR. That is an order of the court. It is entered on the docket. The docket reflects it is entered. It is signed by the judge. The process in a nutshell is the case is filed, the trustee, who is usually a standing trustee in a Chapter 13, conducts the first meeting of creditors, which lawyers routinely refer to as a 341 meeting because that is the section of the Code that requires it.

The judge cannot by law attend that meeting. It is held in a meeting room somewhere, chaired by the trustee, who asks questions under oath to begin the process of gathering information. The plan is filed by the debtor as a proposed plan. The trustee reviews it, may have some problems with it, does some investigation. Oftentimes he will go back to the attorney for the debtor and suggest some changes that would obviate the objections the trustee may bring.

If it is not resolved, the trustee will file a formal objection. If that is not resolved, there is a hearing. At that point the hearing is in front of the court. It is the confirmation hearing.

At the confirmation hearing the judge listens to the evidence from both sides, hears the oral argument, makes a ruling, just as in any other court case, and enters an order confirming the plan, if that is what the ruling is.

Here Judge Greendyke entered an order confirming the plan, which order contained various provisions, one of which is the provision not to incur any credit.

Mr. SCHIFF. So——

Judge KEIR. The final order, by the way, is reviewable on appeal.

Mr. SCHIFF. The court orders that the debtor not incur new debt, the debtor then goes on and incurs new debt, that is a violation of court order. What does the judge have the power to do when it finds that a debtor has violated an order? Does the court have the power to hold a debtor in contempt?

Judge KEIR. Yes. The court could hold the debtor in contempt. It depends on the nature of the violation. But the court could hold the debtor in contempt. The court could vacate its order of confirmation. The court could convert the case to a case under Chapter 7 and make it into liquidation, dismiss the case outright, and just in effect throw the debtor out of the bankruptcy case without a discharge. And, of course, in addition to any of those, the court, if it thought it was a criminal violation, should report it under Title 18, as I previously discussed.

Mr. SCHIFF. Thank you. That concludes my questions. I now recognize my colleague, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. To follow up on that last question, it is Judge Keir?

Judge KEIR. Keir, yes.

Mr. GOODLATTE. You indicated that presented with evidence of a bankruptcy filer who filed under a fictitious name, using an inappropriate address, leaving out his spouse, and then who went on to incur debt in violation of the bankruptcy order and failed to list debts that were not inadvertent in their omission, that you would indeed refer such a case to the United States Attorney?

Judge KEIR. That is correct. And I have done so in various cases when it was necessary.

Mr. GOODLATTE. In evaluating the conduct at issue, is there particular significance in your mind that Judge Porteous was a Federal judge who actually presides over bankruptcy-related disputes?

Judge KEIR. Yes. The significance, as I stated, is he clearly knew what his responsibilities were when he testified under oath signing these documents, he testified at the section 341 meeting orally that they were accurate and fully divulged his financial affairs. He knew what the testimony was, he knew what the responsibility requirements of penalty of perjury means. I would have had to say, and I would say, that therefore he would be found clearly to have the requisite knowledge that the violation was intentional and not inadvertent.

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

Mr. GOODLATTE. To put it another way, in fact in the way of the next question I was going to ask you, in your mind, is there any way that Judge Porteous could sit as a judge in a bankruptcy case?

Judge KEIR. Well, clearly that would not be up to me. I would think that counsel would have a good basis to ask for recusal if he in fact was doing so in a bankruptcy case.

Mr. GOODLATTE. We know that from previous hearings on Judge Porteous and previous cases, that Judge Porteous doesn't necessarily voluntarily recuse himself in matters. So what kind of complications would that cause if a judge didn't disclose that he had participated in all of this, and, notwithstanding that, went ahead and heard a case; and then it was later revealed that he had heard a case involving complaints of creditors in bankruptcy regarding a debtor, and went ahead and heard the case without having disclosed his own violations of the bankruptcy laws?

Judge KEIR. You are asking me what would the effect be on the case that was heard, and the answer is the losing party would have an appeal point that would be almost irrefutable because it was not a fair and impartial judge.

Mr. GOODLATTE. What would you say in your mind about the ability of Judge Porteous to sit as a judge in any case whatsoever, of any kind, where he must evaluate the honesty of a party that is in front of him?

Judge KEIR. Well, again, clearly that is not something that would come within my jurisdiction. But in many kinds of cases, criminal cases, civil cases, including but not limited to bankruptcy, what the trial judge in part must do is judge on the evidence, the candor, and the creditworthiness of the testimony that is being heard and determine, often, whether if there are inaccuracies, these are intentional or inadvertent.

Is this fraud or was it not fraud? That is a question frequently that comes up, of course, in my court. Debt incurred by fraud is not dischargeable if the creditor can prove that it was incurred by fraud. Intent is one element of fraud.

I can think of a myriad of cases in which this issue of honesty is an essential part of the decision, and it would certainly be troubling to me if the party who was to judge honesty himself was and had been shown not to respect honesty and not to obey the law in that regard.

Mr. GOODLATTE. Thank you. Thank you, Judge Keir. I appreciate your answering our questions.

Mr. SCHIFF. The gentleman yields back. Mr. Westling.

Mr. WESTLING. Mr. Chairman, we have no questions.

Mr. SCHIFF. I want to thank you, Judge Keir, for your time today and your expertise. It is greatly appreciated. I want to thank all the witnesses for their testimony today.

Without objection, the record will remain open for 5 legislative days for the submission of any additional materials.

We will now adjourn our hearing until our next hearing on Thursday at 10:30 a.m. Again, I thank everyone for their time and patience. This hearing of the Impeachment Task Force is adjourned.

[Whereupon, at 3:40 p.m., the Task Force was adjourned.]

TESTIMONY OF LOUIS MARCOTTE, NEW ORLEANS, LA

Mr. DUBESTER. Mr. Marcotte, please introduce yourself to the Members of the Committee.

Mr. LOUIS MARCOTTE. I am Louis Marcotte.

Mr. DUBESTER. Okay, there you go. And where were you born, Mr. Marcotte?

Mr. LOUIS MARCOTTE. I was born on the west bank of Louisiana.

Mr. DUBESTER. Did you spend your entire life in the New Orleans area?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And what is your education?

Mr. LOUIS MARCOTTE. I graduated from West Jeff High School.

Mr. DUBESTER. Okay. In the late 1980's, did you enter the bail bonds business?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. DUBESTER. In the late 1980's, did you enter the bail bonds business?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. Where was that?

Mr. LOUIS MARCOTTE. That was on Derbigny Street in Gretna, Louisiana.

Mr. DUBESTER. And what was the name of your company?

Mr. LOUIS MARCOTTE. Bail Bonds Unlimited.

Mr. DUBESTER. And what was your role in the company?

Mr. LOUIS MARCOTTE. I was the president of that company for 25 years.

Mr. DUBESTER. Okay. And do you know the woman who is sitting at the other end of the table?

Mr. LOUIS MARCOTTE. Yes, that is my sister, Lori Marcotte, vice president of that company.

Mr. DUBESTER. Okay. And what role did you have, what role did she have?

Mr. LOUIS MARCOTTE. Lori did a lot of retail in the bail office, in sales, and she also handled a lot of the accounting.

Mr. DUBESTER. Okay. Did she know what was going on? Was she with you when you were doing things in the course of the business?

Mr. LOUIS MARCOTTE. Yes, she was. She was my partner.

Mr. DUBESTER. Okay. I want you to take at least 1 minute up front to describe the bail bonds business to the Members of the Committee and—or the Members of the Task Force. You can, sort of, start anywhere. And then I will fill in gaps if you leave any of them out.

So just explain the bail bonds business and how your company made money.

Mr. LOUIS MARCOTTE. A bail bondsman is no more than a State Farm agent. We are licensed through the Commission of Insurance. We carry a property and casualty license. And the insurance company supplies us with policies that we can post at the jail so we can get defendants out. It is not real money; it is just a policy. If the defendant doesn't show up in court, then the courts cash the policy.

Mr. DUBESTER. Okay. And how did your company—and I am going to use the present tense—how do you make money in the bail bonds business?

Mr. LOUIS MARCOTTE. The families would come in and bring us—if the bond was $10,000, the families would come in and bring us a thousand dollars of the $10,000. We would bring the policy over to the jail, and then we would earn the thousand dollars for posting a $10,000 policy at the jail.

Mr. DUBESTER. Okay. Would you walk the Members through the process of how a bond amount would be actually set by a judicial officer in Gretna, Louisiana?

Mr. LOUIS MARCOTTE. Well, they had a magistrate who would set the bonds twice a day. And what we would do is we would shop bonds and try to get the bond set before the magistrates set the bond, if it wasn't a favorable magistrate.

Mr. DUBESTER. Okay. Did you have an interest in the amount that the bond was set at?

Mr. LOUIS MARCOTTE. Yes, I did. The more money the people had, the higher the bond, the more money we made.

Mr. DUBESTER. Okay. And typically, what percentage of the bond—or what was the premium that you would make compared to what the bond amount was?

Mr. LOUIS MARCOTTE. Ten percent of the premium.

Mr. DUBESTER. Okay. So how would you find out how much an individual could pay as part of a premium?

Mr. LOUIS MARCOTTE. We would screen the family or the defendant to find out how much money they had. At some point, we would run credit reports to see if they had available credit on their credit cards. And that is how we would determine what we would get the bond set at.

Mr. DUBESTER. How did you get this information from the defendant who was arrested or from the family?

Mr. LOUIS MARCOTTE. Well, when the family would come in, they would sign an agreement. Whenever you take a credit agreement on someone, you have the right to run their credit report.

Mr. DUBESTER. Did you interview the prisoners at the jail, too?

Mr. LOUIS MARCOTTE. Yes, we did. The jail supplied a media board with all the names of everyone who was incarcerated. We would take a list of the people on the media board, and then we would request to see the defendant. After we saw the defendant, if he didn't have money on him, we would get the family's number and then we would call the family and say, "Hey, come on down. Your son is in jail. Would you like to get him out?"

Mr. DUBESTER. Okay. So, if you could determine, let's say, that a defendant who had been arrested could come up with $3,000, what would be your request, or what would be your ideal bond that would be set by a magistrate?

Mr. LOUIS MARCOTTE. A $30,000 bond.

Mr. DUBESTER. Suppose he could come up with $8,000, how much would you want the bond to be set at?

Mr. LOUIS MARCOTTE. I am sorry, I didn't hear you.

Mr. DUBESTER. I just said $8,000, what would you want it to be set at?

Mr. LOUIS MARCOTTE. I would want the bond to bet set at—if he had $8,000?

Mr. DUBESTER. Yes.

Mr. LOUIS MARCOTTE. I wanted the bond to be set at $80,000.

Mr. DUBESTER. So you want to just maximize——

Mr. LOUIS MARCOTTE. I just want to maximize the profits of Bail Bonds Unlimited.

Mr. DUBESTER. Okay. There you go. Now, you indicated there is a magistrate which is typically assigned to setting bonds, is that correct?

Mr. LOUIS MARCOTTE. That is correct.

Mr. DUBESTER. But then you used the phrase, you would "shop the bond around." What do you mean by that?

Mr. LOUIS MARCOTTE. Well, we would get there early in the morning, you know, 5 o'clock. And if we found out the family had money to get the defendant out, if the magistrate wasn't favorable, we would start calling the judges at home, you know, real early before the magistrate got there. And then, if we couldn't get in touch with them, we would go shopping in the courthouse before the magistrate set the bond.

Mr. DUBESTER. Was there a particular judge who, in the course of your business at Bail Bonds Unlimited, that you started to go to more than any other judge on the District Court in the 24th JDC?

Mr. LOUIS MARCOTTE. Yes, that was Judge Porteous.

Mr. DUBESTER. Okay. And over time, did you increasingly go to Judge Porteous to set bonds?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. DUBESTER. Over time, did you increasingly go to Judge Porteous?

Mr. LOUIS MARCOTTE. Oh, yes, I did.

Mr. DUBESTER. Okay. What I am going to do is I am going to return a little bit to what Judge Porteous did for you in terms of setting bonds, but I want to go through how you developed a relationship with Judge Porteous. So that is what my next set of questions are going to involve.

Mr. LOUIS MARCOTTE. Okay.

Mr. DUBESTER. How is it that you went about establishing a relationship with Judge Porteous?

Mr. LOUIS MARCOTTE. Well, I met Judge Porteous through another bail agent. At some point, that bail agent faded out, and then we became close with Judge Porteous after he faded out.

Mr. DUBESTER. Okay. And what steps did you take to encourage a close relationship between yourself and Judge Porteous?

Mr. LOUIS MARCOTTE. Well, what we did, we started, the word would be, "grooming" Rhonda, his secretary, and getting close with her first, and then pushing her to facilitate a relationship between her, my sister and I and the Judge.

Mr. DUBESTER. What did you do to get close to the Judge in terms of providing him anything of value?

Mr. LOUIS MARCOTTE. Well, we started taking him to lunch. That is how it started. First, we started taking Rhonda to lunch, and then we had Rhonda start inviting him to lunch. And then that is how we became—that is how we started getting very close with him.

Mr. DUBESTER. And I want to talk a little bit about these lunches. Can you just give a sense of the frequency of the lunches?

Mr. LOUIS MARCOTTE. I guess they were around once a week and sometimes twice a week.

Mr. DUBESTER. Can you describe the restaurants?

Mr. LOUIS MARCOTTE. The Beef Connection, Ruth's Chris, a place named Romairs, you know, restaurants near the courthouse. Sometimes we would cross the river, depending on how much time we had.

Mr. DUBESTER. I think the Members might be familiar here with Ruth's Chris as a steakhouse. Are these other restaurants comparable to Ruth's Chris in the cost and the fare that they serve?

Mr. LOUIS MARCOTTE. Yes. The Beef Connection was pretty close to the same cost.

Mr. DUBESTER. And was it just you and Judge Porteous at these lunches?

Mr. LOUIS MARCOTTE. No, it would be Rhonda, and it would be some of my staff, and it also would be other judges at some times.

Mr. DUBESTER. And can you give a sense of what the bills for these meals amounted to?

Mr. LOUIS MARCOTTE. They would run anywhere from $200 to $400 or $500.

Mr. DUBESTER. And that is back in 1994 dollars. The meals would be more expensive today, correct?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. DUBESTER. That was back in 1993, 1992. That was more than 15 years ago, right?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. Okay. Now, did you call him for lunch, or did he call you for lunch?

Mr. LOUIS MARCOTTE. It started out with me calling him for lunch. And then, as we got closer and developed a relationship, he would call and then I would call.

Mr. DUBESTER. Did you ever let him bring friends that he chose?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. Let's just say——

Mr. LOUIS MARCOTTE. He could have brought anyone he wanted. I wouldn't have had a problem with it.

Mr. DUBESTER. Let's just say it is—I am going to say twice a month, to use a very conservative estimate, or let's just say three times a month for 3 years, so 100 lunches. Of the 100 lunches that you went to with Judge Porteous at the restaurants and at the rates that you described, how many of those did Judge Porteous pay for?

Mr. LOUIS MARCOTTE. He didn't pay for any.

Mr. DUBESTER. Now, is there anything else that you did in terms of providing things of value to Judge Porteous?

Mr. LOUIS MARCOTTE. Yes. I brought shrimp to his house. I fixed his fence after the storm blew it down. I fixed his cars. I fixed his son's cars. I hired his son, at some point, to do some contract work——

Mr. DUBESTER. Let me talk about——

Mr. LOUIS MARCOTTE [continuing]. As a court runner.

Mr. DUBESTER. Let me talk about the cars for a second. What do you remember doing relative to Judge Porteous's cars and his family's cars?

Mr. LOUIS MARCOTTE. Well, we did mechanical work on them.

Mr. DUBESTER. How did the car repairs start, and what did they consist of over time?

Mr. LOUIS MARCOTTE. Well, I am not sure of the exact time they started, but I am sure that it lasted, you know, 3, 4, 5 years.

Mr. DUBESTER. And the very first times that you did anything for Judge Porteous's cars, what did that consist of?

Mr. LOUIS MARCOTTE. The first time? The first times I started fixing his cars?

Mr. DUBESTER. Yes.

Mr. LOUIS MARCOTTE. You know, first, I started washing it. And then, you know, after I would wash it, I would add a little gas to it. And then it escalated from there, you know. Then the mechanical work started, the tires, the radios in the cars, and then his son's cars, and transmissions and stuff like that.

Mr. DUBESTER. You mentioned tires. Did you buy tires for Judge Porteous's cars?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And how many cars was that?

Mr. LOUIS MARCOTTE. It was three or four cars.

Mr. DUBESTER. Do you remember what Judge Porteous's specific personal car was?

Mr. LOUIS MARCOTTE. It was a blue Cougar.

Mr. DUBESTER. Okay. What about car radios. Did you do that in one car or more than one car?

Mr. LOUIS MARCOTTE. I am sorry? It is not that I don't understand the question. I can't hear at some points.

Mr. DUBESTER. I understand the acoustics here. The car radio, was that in one car or more than one car?

Mr. LOUIS MARCOTTE. I believe it was just one car.

Mr. DUBESTER. And you remember other repairs to the engines and the transmission and so forth, is that correct?

Mr. LOUIS MARCOTTE. Yes, I do.

Mr. DUBESTER. And who from your staff handled the repairs or took care of Judge Porteous's car?

Mr. LOUIS MARCOTTE. Well, I never did want to leave my office, so I always would send Skeeter or my brother-in-law Jeff. And I am sure a few times I went, but, you know, mainly those two runners that worked in my office.

Mr. DUBESTER. And is "Skeeter" the same person as Aubrey Wallace?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. And did you always volunteer to Judge Porteous, or did he make requests of you? In other words, how did you know that there was a car repair to be done?

Mr. LOUIS MARCOTTE. Well, sometimes we would be at lunch and he would say, "Well, you know, my car is not running well," and I would say, "Okay, Judge, I will take care of that." And there was also requests from him, you know, asking me to do it. So it worked both ways.

Mr. DUBESTER. What do you remember about the fence repair?

Mr. LOUIS MARCOTTE. Another time we were at lunch and he mentioned, "Well, look, my fence blew over in the storm." And I said, "Well, you know, I got two guys that will take care of it for you. No problem."

Mr. DUBESTER. Those two were also——

Mr. LOUIS MARCOTTE. Aubrey Wallace and Jeff Duhon.

Mr. DUBESTER. Did they go and do that, to your knowledge?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. DUBESTER. Did they do that?

Mr. LOUIS MARCOTTE. Yes, they did.

Mr. DUBESTER. And at some time, did you ever take Judge Porteous anywhere?

Mr. LOUIS MARCOTTE. Well, I took him to lunch, and we also went to Las Vegas, I believe twice.

Mr. DUBESTER. Okay. And do you remember a trip to Las Vegas that you described as including some attorneys?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And why did you include attorneys with you when you took Judge Porteous to Las Vegas?

Mr. LOUIS MARCOTTE. Because in a community, for whatever reason, the bail bondsman, it just doesn't look good with a bail bondsman hanging out with judges. So what I did is I brought some attorneys in to make it look good.

Mr. DUBESTER. Okay. And is it your testimony that you think there might have been a second trip to Las Vegas, as well?

Mr. LOUIS MARCOTTE. Yes. Yes, sir.

Mr. DUBESTER. And is there something that you remember as to why there might have been a second trip?

Mr. LOUIS MARCOTTE. Because I remember we were standing by a slot machine, and his wife was asking him for some change to put—some dollars to put back in, coins, you know, to put back into the slot machine.

Mr. DUBESTER. And it is your recollection—and you are not sure if that was the one trip that I first asked you about which included the lawyers—we will call it that trip—or whether or not there were two trips, is that correct?

Mr. LOUIS MARCOTTE. I am almost positive it was two trips. Now, you have to remember, the bail bond convention is always in Las Vegas every year. So, I was in the bail bond business 25 years; I have been to the convention 25 times. So, you know, I remember him being there twice, you know. I just don't—it was just a lot of conventions.

Mr. DUBESTER. And on at least one trip, but maybe both trips, did you pay for Judge Porteous to go to Las Vegas?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And on one trip in particular, the first trip I have asked you about, do you recall how it was that the actual mechanics of funding Judge Porteous's trip was paid for by you?

Mr. LOUIS MARCOTTE. Not all by me. Some of the lawyers pitched in, and we came up with cash. And I believe my sister gave Rhonda the money to disguise the payment, and then she wrote a check to the airlines and everything and paid for the trip.

Mr. DUBESTER. Okay. But, in other words, you paid Rhonda in cash through your sister?

Mr. LOUIS MARCOTTE. Right.

Mr. DUBESTER. Okay. And on the one or two trips, do you remember paying for Judge Porteous's food and drink and entertainment on those trips, as well?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And do you remember whether or not—what did Judge Porteous do when he was in Las Vegas?

Mr. LOUIS MARCOTTE. He gambled the whole time he was there.

Mr. DUBESTER. Okay. I am going to now turn to——

Mr. LOUIS MARCOTTE. See, I didn't gamble, so he never hung with me. He just hung out by the table the whole time.

Mr. DUBESTER. I am going to ask you now some of the things that Judge Porteous did for you during this period of time.

The real question, Mr. Marcotte, is, why did you do all of these things for Judge Porteous? What value were you getting by virtue of the fact that you were providing him this stream of value?

Mr. LOUIS MARCOTTE. I wanted service, I wanted access, and I wanted to make money.

Mr. DUBESTER. And how was the fact that Judge Porteous was willing to set bonds at your request, how did that help you maximize profits?

Mr. LOUIS MARCOTTE. Because if you set bonds higher than what the defendant can make, then I would have to take credit. If you set the bond at exactly what I need, then I could maximize the profits of my company.

Mr. DUBESTER. As a general matter, was he receptive to your request as to the exact amount that you wanted the bonds to be set at?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. The term "split bonds" has been used. Just briefly describe what is meant by a split bond and the significance of the practice of splitting bonds for your company.

Mr. LOUIS MARCOTTE. What we would do with a split bond—just say the bond is $100,000. The defendant only had $3,000. Well, the judges liked setting high bonds, because if it came out in the newspaper that, you know, something happened and the guy did some-

thing wrong, then it would look like he got out on a high bond. But theoretically speaking, he got out on a 30, not a 100.

Mr. DUBESTER. In other words, the $100,000 bond would be split into two pieces, right?

Mr. LOUIS MARCOTTE. Two pieces: 70 personal surety, which most of the time the personal surety wasn't worth anything, and the only portion of the bond that was worth something was the commercial part of the bond that was executed by the bail agent and backed by the insurance company.

Mr. DUBESTER. Okay. And were there some judges who would refuse to split bonds?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. DUBESTER. Some judges wouldn't split bonds, right?

Mr. LOUIS MARCOTTE. Yes, there was.

Mr. DUBESTER. Did Judge Porteous—what was Judge Porteous's willingness or practice in splitting bonds?

Mr. LOUIS MARCOTTE. He was ready, willing, and able to do it for us.

Mr. DUBESTER. Okay. And was that helpful to you, in terms of you being able to maximize your profits?

Mr. LOUIS MARCOTTE. Yes, it was.

Mr. DUBESTER. In addition to setting bonds, did you ever make a request of Judge Porteous relative to Jeff Duhon?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. What do you remember about that?

Mr. LOUIS MARCOTTE. Well, Jeff worked in the bail office. To become a bail bondsman and take premiums and negotiate bonds, you have to have a license with the commissioner of insurance. I had him in my office for a short period of time, and then they changed the law and you had to be a licensed agent to work inside of a bail agency. So, at that point, I needed to get him licensed.

So I went to Porteous. I said, "Judge, this is my brother-in-law. Would you expunge his license so he could become a bail agent?"

Mr. DUBESTER. You said "expunge his license." You mean he had a felony conviction, did he not?

Mr. LOUIS MARCOTTE. Set aside the conviction.

Mr. DUBESTER. And so you went to Judge Porteous?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. DUBESTER. And did he do that?

Mr. LOUIS MARCOTTE. Yes, he did.

Mr. DUBESTER. Was there anything unique or particularly unusual about Judge Porteous setting aside your brother-in-law Jeff's felony conviction?

Mr. LOUIS MARCOTTE. Well, that case was allotted to another judge, meaning the judge who sentenced him in that case was a different judge than Porteous. So what Porteous did was he took the conviction out of another section and brought it in his section and then expunged the record.

Mr. DUBESTER. Okay. I want to talk to you about the time period surrounding Judge Porteous's background check. Do you recall being interviewed by the FBI at that time?

Mr. LOUIS MARCOTTE. Yes, I have. I was interviewed by the FBI.

Mr. DUBESTER. Okay. And when you were being interviewed by the FBI, what was your goal in that interview?

Mr. LOUIS MARCOTTE. To lie to the FBI agents so I could protect Porteous and make sure he got where he wanted to go.

Mr. DUBESTER. And why was it that you were willing to tell the FBI information which would help Judge Porteous?

Mr. LOUIS MARCOTTE. Because I know he really wanted to be a Federal judge and, you know, I wanted to see him get confirmed.

Mr. DUBESTER. Okay. And had he been good to you over the years?

Mr. LOUIS MARCOTTE. He was really good to me.

Mr. DUBESTER. Okay.

Now, I want to show you a couple things that the FBI write-up of your interview quotes you as saying. If the FBI write-up reflects that you told the FBI that, to your knowledge, Judge Porteous had no financial problems, would that have been true?

Mr. LOUIS MARCOTTE. Well, if you would have looked at his surroundings and the way that he was living his life, you know, he was gambling, he was drinking, and if you looked at the cars, you could see that he had three or four cars for his self and his kids and his family, and they were really in poor condition.

Mr. DUBESTER. They were in poor condition?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. DUBESTER. So did you have a sense of what Judge Porteous's actual financial condition was?

Mr. LOUIS MARCOTTE. Well, just by looking at it from the outside, he never did sit there and say, "Hey, look, you know, I am negative $2,000 in my checking account." But by looking at the surroundings and the problems with the drinking and the cars and asking people for repairs and stuff like that, you know, one would think that, hey, this guy is struggling. And by looking at the cars, you could see that he was struggling.

Mr. DUBESTER. Okay. And when you say one would know or one would think, in fact, did you have your own personal opinion as to what his financial situation was?

Mr. LOUIS MARCOTTE. I knew he was struggling, because his cars were in deplorable condition.

Mr. DUBESTER. Okay. And I think the FBI write-up quotes you as saying that the candidate, meaning Judge Porteous, will have a beer or two at lunch but you have never seen him drunk. Was that a true statement?

Mr. LOUIS MARCOTTE. No, I lied to those FBI agents. Again, I really wanted to protect him, you know.

Mr. DUBESTER. Well, why wasn't that a true statement? Putting aside your own motivation at this point, just explain why that wasn't a true statement.

Mr. LOUIS MARCOTTE. Because I was at lunch with him, and, you know, he would have five, six, you know, Absolut and tonic or water. I am not exactly sure what the drink was, but it was vodka.

Mr. DUBESTER. Okay. And then on the third thing that the report says is that you were not aware of anything in the candidate's background that might be the basis of influence, pressure, coercion, or compromise or that would impact negatively on the candidate's character, reputation, judgment, or discretion.

Was that a true statement, Mr. Marcotte?

Mr. LOUIS MARCOTTE. No, I was lying again. I really wanted to protect him.

Mr. DUBESTER. Okay. And why was that not a true statement?

Mr. LOUIS MARCOTTE. Because of all of his actions with the gambling, the drinking——

Mr. DUBESTER. Well, let me ask you very specifically, were you aware of your own relationship with Judge Porteous at the time you made——

Mr. LOUIS MARCOTTE. Yes. And my relationship was, you know, it was——

Mr. DUBESTER. Just answer the question. Were you aware of your own relationship with him?

Mr. LOUIS MARCOTTE. Yes, I was.

Mr. DUBESTER. And, in fact, did that relationship consist of you having given him things as a State judge?

Mr. LOUIS MARCOTTE. Yes, it did.

Mr. DUBESTER. Did you actually, in your own mind, feel you had leverage over Judge Porteous based on your knowledge of the fact that he had taken things from you while he was a State judge?

Mr. LOUIS MARCOTTE. Yes, I did, because I believed—well, I didn't believe—I asked him for things, and he asked me for things.

Mr. DUBESTER. Okay. And what did you personally know about your own relationship with him which gave you a sense that you personally had leverage or influence over Judge Porteous?

Mr. LOUIS MARCOTTE. By his wants and his needs and by my wants and my needs.

Mr. DUBESTER. Okay. At the time you gave this interview in August of '94, did you feel that you had had basically a secret understanding or a secret relationship with Judge Porteous?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And in the most general sense, was that relationship one that you were giving him things and he was taking favorable actions toward you?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. DUBESTER. When you made these statements to the FBI, in your mind, was that just another act that you were taking as part of your secret relationship with Judge Porteous?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. And do you know how the FBI got your name as a reference?

Mr. LOUIS MARCOTTE. I believe Judge Porteous told them to come interview me. I don't know if they asked who to go interview. I don't know how that worked. But they did come to see me, and then I knew that he sent them to me.

Mr. DUBESTER. Okay. Did you think that Judge Porteous had an understanding that you were going to make statements which were going to protect him?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. And do you think Judge Porteous would have ever given the FBI your name if he believed you would tell the FBI that he had gambling problems, drinking problems, financial problems, and had taken things of value from you?

Mr. LOUIS MARCOTTE. No, he would never tell them that, and neither would I.

Mr. DUBESTER. Did Judge Porteous ever do or say anything to indicate to you he was concerned what you might tell the FBI?

Mr. LOUIS MARCOTTE. No. He just said that the FBI is going to be coming to interview you.

Mr. DUBESTER. And did you tell Judge Porteous what the FBI interview consisted of after they interviewed you?

Mr. LOUIS MARCOTTE. Yes, I told him everything that they asked about.

Mr. DUBESTER. When you spoke to the FBI, were you saying what you believed Judge Porteous would have wanted you to say?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. At the time Judge Porteous was leaving the Federal bench, did you make any requests of Judge Porteous relative to your employee Aubrey Wallace, who you previously mentioned?

Mr. LOUIS MARCOTTE. Yes. I wanted him—Aubrey worked for me a long time, and he was the guy who fixed the cars—I paid to fix the cars. But he was a runner. He put the gas in, he put the tires on and everything. And Aubrey was another guy in my organization that was in there without a license. And the law had changed, just like I said before, and I really wanted him to get licensed. The only way he could get licensed is if they set aside Aubrey's conviction.

Mr. DUBESTER. Okay. And did you approach Judge Porteous to ask him to do that?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And what was Judge Porteous's response when you made that request of him?

Mr. LOUIS MARCOTTE. He waffled a little bit because he wasn't confirmed at the time, but he told me—I saw him a few times, I pushed him and said, you know, "Judge, you know, I really need to get this done." He said, "After my confirmation, I will do it."

Mr. DUBESTER. And, in fact, did he do it?

Mr. LOUIS MARCOTTE. Yes, he did.

Mr. DUBESTER. And, in your mind, do you have an opinion as to why Judge Porteous set aside Wallace's conviction?

Mr. LOUIS MARCOTTE. Because all of the stuff that I have done for him in the past.

Mr. DUBESTER. Was there any question in your mind that he set aside the conviction as a favor to you?

Mr. LOUIS MARCOTTE. Yes, he did it for me.

Mr. DUBESTER. Okay. And also at about the time Judge Porteous was leaving for the Federal bench, did you make any request of him relative to him setting bonds?

Mr. LOUIS MARCOTTE. Yes. I figured he was on his way out and let's open the floodgates and let me try to make as much money as I can before he left.

Mr. DUBESTER. And did Judge Porteous do that?

Mr. LOUIS MARCOTTE. He did.

Mr. DUBESTER. And I am not going to show you the bond forms, but you have reviewed some bond forms in preparation for your testimony today. And, in fact, were there bond forms that he signed that you saw which reflect his signing bonds for you on his way out?

Mr. LOUIS MARCOTTE. Yes, they do.

Mr. DUBESTER. Okay. Did Judge Porteous ultimately take the Federal bench in October 1994?

Mr. LOUIS MARCOTTE. Yes, he did.

Mr. DUBESTER. And when he was a Federal judge, did you continue a relationship with him?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And could he set bonds for you anymore?

Mr. LOUIS MARCOTTE. No, he couldn't set bonds.

Mr. DUBESTER. Why did you want to continue a relationship with him?

Mr. LOUIS MARCOTTE. Because, number one, he was a Federal judge. Right there, that brings strength to the table whenever he sits down with me.

Mr. DUBESTER. And——

Mr. LOUIS MARCOTTE. It would make people respect me because, you know, I am sitting with a Federal judge.

Mr. DUBESTER. And you are a bail bondsman with a high school education, frankly, is that right?

Mr. LOUIS MARCOTTE. Yes, sir.

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

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. DUBESTER. And were there people who you deliberately wanted to have Judge Porteous at the table with when you had a lunch or a meeting with?

Mr. LOUIS MARCOTTE. Yes, I wanted to try to get as many people to the table with Porteous when I was there, because, again, he brought strength to the table. And I also wanted him to groom the people that I was at the table with. I wanted those guys to do bonds, as well.

Mr. DUBESTER. Okay. And did you feel that Judge Porteous was particularly influential because he came from the 24th JDC and was now a Federal judge?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. And plus, what was Judge Porteous's reputation at the 24th JDC?

Mr. LOUIS MARCOTTE. Yes, he brought strength when he at was the 24th, and he brought strength to the table when he was a Federal judge. So, I mean——

Mr. DUBESTER. Now, I want to ask you in particular about whether or not you made any request of Judge Porteous relative to Judge Bodenheimer after Judge Bodenheimer was elected.

Mr. LOUIS MARCOTTE. Yes. I wanted—again, you know, any judge that I got to the table—and I always say "get to the table" because it was always a luncheon, and I always thought a luncheon was the best time to, you know, develop a relationship——

Mr. DUBESTER. Listen to the question. Did you make a request of Judge Porteous relative to Judge Bodenheimer?

Mr. LOUIS MARCOTTE. Yes. I asked Porteous to start grooming him.

Mr. DUBESTER. Okay. Well, in other words, I just want to be clear here. It wasn't as though you would just have a random lunch and bring Judge Porteous. Did you make a request specifically of

Judge Porteous, in any way, shape, or form, to help you with Judge Bodenheimer?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. DUBESTER. What do you remember asking? Use your vocabulary. Pretend you are saying—just say what it is that you said to Judge Porteous.

Mr. LOUIS MARCOTTE. Judge, tell this guy I am a good guy. Tell him that commercial bonds is the best thing for the criminal justice system and that—ask him would he take—ask him would he take your spot when—because you left now and I needed somebody to step in to Porteous's shoes so I can get the same things done that I got done when Porteous was there.

Mr. DUBESTER. Do you know whether or not Judge Porteous spoke to Judge Bodenheimer?

Mr. LOUIS MARCOTTE. Yes, he did.

Mr. DUBESTER. And after he spoke to Judge Bodenheimer, did your relationship with Judge Bodenheimer change as a result?

Mr. LOUIS MARCOTTE. Yes, it did. Bodenheimer became the Porteous of the 24th District Court.

Mr. DUBESTER. And, in 2002, was there a newly elected judge, Joan Benge?

Mr. LOUIS MARCOTTE. Yes, there was.

Mr. DUBESTER. And did you try to get to know Judge Benge better?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And was there a lunch at Emeril's restaurant in New Orleans that you caused to take place which included Judge Benge and others?

Mr. LOUIS MARCOTTE. Yes, there was.

Mr. DUBESTER. And did you try to get any judges to that lunch for the same purpose that you just described?

Mr. LOUIS MARCOTTE. Yes. The judges that I got to that lunch—I tried to get—I wanted Porteous to groom them as well so they would be accessible to me in the 24th.

Mr. DUBESTER. Just asking, did you want to get judges to that lunch?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And what judges did you ask go to that lunch?

Mr. LOUIS MARCOTTE. I asked Judge Benge and Bodenheimer and Judge Benge's secretary.

Mr. DUBESTER. Did you want to get Judge Porteous to that lunch?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. And why did you want Judge Porteous? He was a Federal judge then. He hadn't been on the State court bench in 8 years. Why was it good to have Judge Porteous?

Mr. LOUIS MARCOTTE. Because if the other judges saw me with a Federal judge, they would feel comfortable about my request as far as bonds.

Mr. DUBESTER. Now, you have seen a brief video of that lunch, is that correct?

Mr. LOUIS MARCOTTE. Yes, I have.

Mr. DUBESTER. I just want to—at that point I take it you did not know that you were under an FBI surveillance?

Mr. LOUIS MARCOTTE. No, I did not.

Mr. DUBESTER. I want to show you about a 30-second video. And from looking at it, I just want you to state nothing more than the following: Just tell the Members of the panel who is coming out of the restaurant as you see them appear on the screen.

Mr. LOUIS MARCOTTE. There is Judge Porteous. That is Sadie—that is Judge Benge's secretary. There is Bodenheimer. Me. And that is Judge Benge.

Mr. DUBESTER. And does that video fairly depict the fact, the exiting of the group from the restaurant on the day that you had Judge Porteous come?

Mr. LOUIS MARCOTTE. To that lunch?

Mr. DUBESTER. Yes.

And was it important to you to get Judge Porteous there when you were trying to get to know Judge Benge better?

Mr. LOUIS MARCOTTE. It was important to get Judge Porteous at any lunch, especially after—while he was on the 24th judicial bench and, really, more important to get him there after he was a Federal judge.

Mr. DUBESTER. By the way, at any point in time whatsoever, did you ever hear Judge Porteous warning any other State judge anything along the lines: Stay away from Louis Marcotte. He will give you things, he will compromise you, and he will pressure you, and you will lose your independence. Stay away from Louis Marcotte. He is corrupt.

Did Judge Porteous ever tell anybody that?

Mr. LOUIS MARCOTTE. Not that I know of.

Mr. DUBESTER. Instead, he vouched for you. Is that correct?

Mr. LOUIS MARCOTTE. He vouched for me.

Mr. DUBESTER. In 2004, did you plead guilty?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And did you fully cooperate?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. DUBESTER. And were you sentenced to prison?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. DUBESTER. And how much time did you serve?

Mr. LOUIS MARCOTTE. I got—I was sentenced to 37 months. I spent 18 months because I got the drug program.

Mr. DUBESTER. And you are aware that both Bodenheimer and another judge, Alan Green, were also convicted of corruption offenses relating to their taking things from you. Is that correct?

Mr. LOUIS MARCOTTE. Yes, they did.

Mr. DUBESTER. And as well as some sheriffs' deputies. Is that correct?

Mr. LOUIS MARCOTTE. Yes.

Mr. DUBESTER. And of all the judges who you gave things to, which one judge above all the judges was the most important to you in the growth of your business?

Mr. LOUIS MARCOTTE. Three years, Judge Porteous was.

Mr. DUBESTER. Okay. And what judge was the most influential with the other judges?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. DUBESTER. Which judge was the single most influential judge?

Mr. LOUIS MARCOTTE. Judge Porteous.

Mr. DUBESTER. And when you were giving things to Judge Porteous, did you know it was wrong?

Mr. LOUIS MARCOTTE. When I was giving things to him?

Mr. DUBESTER. Did you know it was wrong?

Mr. LOUIS MARCOTTE. Yes, I knew it was wrong.

Mr. DUBESTER. Did Judge Porteous ever show the slightest hesitation in accepting things from you?

Mr. LOUIS MARCOTTE. No, he did not.

Mr. DUBESTER. Okay.

TESTIMONY OF LORI MARCOTTE, NEW ORLEANS, LA

Mr. DUBESTER. Ms. Marcotte, thank you for waiting so patiently; and, as I think I indicated to you yesterday, I only have some loose ends and gaps that I think you have knowledge of and this will not be lengthy. We appreciate that you came all the way from New Orleans as a witness, and I wanted to cover just a few brief matters with you.

As to Rhonda Danos, did you form a relationship with Rhonda?

Ms. LORI MARCOTTE. Yes. Yes, I did.

Mr. DUBESTER. And did you ever take—did you ever go to Las Vegas with Rhonda?

Ms. LORI MARCOTTE. Yes, I did.

Mr. DUBESTER. How many times do you think you took Rhonda Danos to Las Vegas?

Ms. LORI MARCOTTE. Four or five times.

Mr. DUBESTER. And were some of those times when Judge Porteous was a State judge and sometimes a Federal judge?

Ms. LORI MARCOTTE. That is correct.

Mr. DUBESTER. Do you remember any of the hotels you stayed at?

Ms. LORI MARCOTTE. I'm sorry. I couldn't hear you.

Mr. DUBESTER. Do you remember any of the hotels?

Ms. LORI MARCOTTE. The Luxor Hotel. The Mirage Hotel. The Golden Nugget. We had a dinner at a bunch of places, too, and the convention and a few places.

Mr. DUBESTER. Did you ever provide her other entertainment?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. Can you give some examples of that?

Ms. LORI MARCOTTE. We saw Siegfried & Roy, the Blue Man. Whatever shows were in Las Vegas every night.

Mr. DUBESTER. Did you ever take her to the Rolling Stones, pay for Rolling Stones ticket?

Ms. LORI MARCOTTE. Yes. That was in New Orleans.

Mr. DUBESTER. And the very first time that you took Rhonda Danos to Las Vegas, did you know her well?

Ms. LORI MARCOTTE. Not really.

Mr. DUBESTER. Okay. Well, how did it come about that you took Judge Porteous's secretary, a woman who you did not know very well, to Las Vegas? How did that occur?

Ms. LORI MARCOTTE. Well, we would go to Judge Porteous's office to get bonds set or split, and I started speaking to her at the desk

and asked her to come to Las Vegas. We were having a bail bond convention, and we asked her to come along.

Mr. DUBESTER. Was it important to you to have a good relationship with Rhonda Danos?

Ms. LORI MARCOTTE. Of course.

Mr. DUBESTER. Why was that?

Ms. LORI MARCOTTE. Because she is the secretary of the judge, and she has access to him. And she does things to set bonds like call the jail, to call the bond in once it is set or split. To have access to the judge.

Mr. DUBESTER. Did you ever explicitly thank her or link anything that you gave her with the fact that she had been so good to you?

Ms. LORI MARCOTTE. Yes, all the time.

Mr. DUBESTER. And did Judge Porteous know you were giving her things, too?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. To your recollection, did Louis go with Judge Porteous to Las Vegas once or twice?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. Which was it, once or twice, to your recollection?

Ms. LORI MARCOTTE. I remember twice. But one time is kind of vague, but one time is very clear.

Mr. DUBESTER. And do you remember—you heard Louis testify that you gave cash back from at least one Las Vegas trip to Rhonda. Do you recall him testifying to that a few minutes ago?

Ms. LORI MARCOTTE. Yes, I do.

Mr. DUBESTER. And what do you remember about giving cash to Rhonda?

Ms. LORI MARCOTTE. I remember standing in her office, with another attorney, handing her the money.

Mr. DUBESTER. I want to ask about one other. I have asked your brother about meeting with Judge Benge and meeting with—and Judge Bodenheimer. I want to ask you a question about another judge who you all met with when Judge Porteous was a State judge. Did you ever try to form a relationship with a Justice of the Peace Kerner from Lafitte?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. Tell the Members about what that consisted of.

Ms. LORI MARCOTTE. Well, we were trying to get other judges, as many judges as we could, to set bonds. And we understood about the Justice of the Peace's ability to set bonds, and we started to get other Justices of the Peace to set bonds. And we wanted Judge Kerner on, Justice of the Peace, to set bonds for us, too. Judge Porteous's secretary is from Lafitte, and that is where Judge Kerner is the Justice of the Peace, in Lafitte.

Mr. DUBESTER. So did you go to lunch and try to——

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER [continuing]. Work your magic on Judge—Justice of the Peace Kerner?

Ms. LORI MARCOTTE. Yes. We had Rhonda set up a lunch and had Judge Porteous attend. And we went to the Beef Connection and we showed up. My brother had the law book in his hand, and

we had instructed Judge Porteous to explain about the power of the Justice of the Peace being able to set bonds. And he did.

Mr. DUBESTER. Okay. And ultimately was Justice of the Peace Kerner very receptive to your attempts to have him set bonds for you?

Ms. LORI MARCOTTE. No, he was not.

Mr. DUBESTER. And just to set the stage, let me get this right. You are going to lunch with this person you have never met, and Judge Porteous is there, and you go to lunch and your brother Louis takes out a law book and starts talking to Justice of the Peace Kerner. Is that what happened?

Ms. LORI MARCOTTE. Pretty much. Yeah.

Mr. DUBESTER. And Judge Porteous made that happen, correct?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. And ultimately it didn't take, though, did it?

Ms. LORI MARCOTTE. No.

Mr. DUBESTER. Okay. And I want to—I have asked your brother about Judge Bodenheimer. I want to ask about another judge who pleaded guilty, Judge Green. Do you recall Judge Porteous having any role in your and your brother's ability to form a relationship with Judge Green?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. And what do you remember about that?

Ms. LORI MARCOTTE. I remember setting up a lunch with some other judges and some attorneys and Judge Porteous and Rhonda, and we had—they had invited or we had invited Judge Green who was newly elected. And, I mean, it is pretty clear because that was really the first lunch where Judge Porteous had explained the concept of splitting bonds. That was kind of like the stage for everything else that would happen.

Mr. DUBESTER. And you remember specifically Judge Porteous being present at a lunch?

Ms. LORI MARCOTTE. Yes.

Mr. DUBESTER. And helping you form a relationship with Judge Green?

Ms. LORI MARCOTTE. Yes. That lunch is very vivid.

Mr. DUBESTER. Okay.

That is all I have of these two witnesses. I appreciate the Chairman's indulgence of the time that I have taken.

Mr. SCHIFF. Thank you, counsel.

We are going to break. We have a series of votes coming up, and this will also give you a chance to grab some lunch. Why don't we resume—it is almost noon. Why don't we resume at 1. So we will be in recess until 1.

[Recess.]

Mr. SCHIFF. This hearing of the Task Force will now come to order.

Mr. Marcotte, Ms. Marcotte, I am going to ask a few questions and then invite my colleagues to do so. If at any time you can't hear me, because I know these mics kind of come in and out, stop me and let me know. I want to just follow up on one of my colleague's questions earlier, just to clarify.

Ms. Marcotte, the lunch with Justice of the Peace Kerner, was that at a time when Judge Porteous was on the State court or on the Federal bench?

Ms. LORI MARCOTTE. That was the Federal bench.

Mr. SCHIFF. Thank you.

Mr. Baron in his introduction earlier this morning talked about an extraordinary number of bail applications that were brought to Judge Porteous right before he left the State bench. And I think—I can't remember what the phrase was that was used, but, Mr. Marcotte, was there an effort made to sort of get them all in while he was still on the bench, on the State bench, and prior to his leaving for the Federal bench?

Mr. LOUIS MARCOTTE. Well, we wanted to try to make as much money as we could while he was on his way out. You know. Am I answering the question, or am I not hearing correct?

Mr. SCHIFF. No, you are hearing. Did you for that reason bring as many bail applications to him in those last couple of months as you possibly could?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. SCHIFF. And would you say that you brought more bail applications in those last 2 months than in prior months? Or was it just you wanted to make sure that everything you could possibly bring, brought to him?

Mr. LOUIS MARCOTTE. Well, I wanted to make sure that I could make every nickel before he left in those months.

Now, prior to that, you know, there was a ton of bail applications as well, but my words were "Well, let's wear him out."

Mr. SCHIFF. And who did you use those words with in discussion?

Mr. LOUIS MARCOTTE. Everyone who saw him on bonds, including me, my sister, and other people that worked in my office at the time.

Mr. SCHIFF. So meaning you wanted to wear him out by bringing as much as you possibly could do and get them done, make as much as you could before he left for the Federal bench?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. Did he ever raise any objection with your calling him on the weekends or in the evenings or early in the morning before the Magistrate showed up?

Mr. LOUIS MARCOTTE. I am sure at times he was tired of us calling him and aggravated, but he still did them.

Mr. SCHIFF. You talked in your earlier testimony about the judge setting aside convictions of two of your employees, one of whom was also your brother-in-law. Correct?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. And these are folks that not only worked for you but that were involved in doing favors for the judge?

Mr. LOUIS MARCOTTE. Yes, sir. Both of them. Only in a running capacity. I was the one that done for the judge in the financial capacity. Those guys were just runners for me.

Mr. SCHIFF. So when the judge would say he had a car that needed a repair or a fence that needed a repair, he would tell you that. You would then ask either Mr. Wallace or Mr. Duhon, was it?

Mr. LOUIS MARCOTTE. Yes, sir. That is what I did.

Mr. SCHIFF. And they would go and they would do the task for the judge?

Mr. LOUIS MARCOTTE. Yes, sir. And I am sure, you know, being around Judge Porteous, they became—you know, they weren't with him at lunch like me all of the times. I have taken them sometimes with me, but they developed a relationship on their own with him by, you know, picking up the keys and bringing them back and fixing the cars and—you know. But it wasn't the relationship that I had with him.

Mr. SCHIFF. But just so that we are clear, Judge Porteous knew both of these men, also?

Mr. LOUIS MARCOTTE. Yes, sir, he did.

Mr. SCHIFF. Knew them because they would pick up keys when he needed cars fixed. So he was aware that both of these people that he later set aside convictions for had been doing favors for him through you?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. And Mr. Wallace was the one who fixed the fence?

Mr. LOUIS MARCOTTE. Mr. Wallace and Mr. Duhon.

Mr. SCHIFF. And Judge Porteous was aware that those two people were involved in fixing his fence?

Mr. LOUIS MARCOTTE. Yes, sir, they were—he was.

Mr. SCHIFF. During the court proceedings, if you know, when the convictions were set aside for those two employees, do you know whether Judge Porteous ever disclosed to the prosecutors or any of the other court personnel that the people he was setting aside convictions for had done him personal favors or given him gifts or gratuities of that nature?

Mr. LOUIS MARCOTTE. I don't know that. I don't know if he told prosecutors of any kind that that is what he—you know, they were doing favors. That is why he wanted to do it. I mean, he is a smart guy. I don't think he would disclose that to prosecutors.

Mr. SCHIFF. Were you present at either of the court proceedings where the convictions were set aside?

Mr. LOUIS MARCOTTE. No, I was not. Now, I don't know if the court—I don't know if they were set aside in the courtroom or in the chambers. I don't know that.

Mr. SCHIFF. You mentioned that, with respect to Mr. Wallace, that Judge Porteous expressed a reservation about setting aside the conviction until his confirmation took place. Can you tell us a little bit about that conversation? You said you had to press him. Did he tell you why he was concerned it would affect his confirmation?

Mr. LOUIS MARCOTTE. Because if anyone—if the newspaper grabbed hold of it, then he would be worried that it would interfere with him being—his confirmation.

Mr. SCHIFF. So he was aware that this was something that——

Mr. LOUIS MARCOTTE. Probably wasn't kosher.

Mr. SCHIFF. And, for that reason, the Senate might not confirm him if he knew that he was setting aside a conviction as a favor to you?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. Can you tell us a little bit about the conversations you had with him where he indicated that he was concerned with

confirmation if they found out about this or if the newspapers made it public?

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

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

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

Mr. SCHIFF. You testified earlier about fixing his cars, transmission, air conditioning, radios, his son's cars. There were three cars, I guess, involved? His car, his wife's car, and his son's car?

Mr. LOUIS MARCOTTE. There may have been a fourth car, because it might have been his wife, his car, and he had two sons. I think maybe they both had cars. But I could be wrong. It was either two or three cars—or four.

Mr. SCHIFF. Can you give us an estimate over the years—and I know it is difficult to be precise, but how much you think you——

Mr. LOUIS MARCOTTE. I would think somewhere maybe $1,000 on the cars every 2 months or every month and a half.

Mr. SCHIFF. So you would spend about $1,000 every couple of months for various——

Mr. LOUIS MARCOTTE. Between 1 or 2 months. Yeah.

Mr. REGAN. Let him finish his question.

Mr. LOUIS MARCOTTE. I'm sorry, sir. Yeah.

Mr. SCHIFF. That is okay.

So you would do various repairs on various cars of the Porteouses.

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. And how many years would that take place?

Mr. LOUIS MARCOTTE. That took place I guess maybe, you know, 4 or 5 years.

Mr. SCHIFF. So just in terms of ballpark, would it be fair to say that over that period of time you probably spent in excess of 10 or maybe $20,000 on automotive repairs for Judge Porteous?

Mr. LOUIS MARCOTTE. I don't know if it was 20, but maybe, you know , probably 10. You know, again, I am just guessing. It has been a long time. But I know it is in between, you know, 8 and 15, you know? Something like that.

Mr. SCHIFF. And you would have lunch with the judge about how often?

Mr. LOUIS MARCOTTE. Probably once or twice a week.

Mr. SCHIFF. And on an average lunch, what would the total bill be?

Mr. LOUIS MARCOTTE. Between 2 and $300. You know, and it would—if I had a lot of people with us, then it could go a lot higher. You know, if I was bringing other judges to the table, if I was bringing more of my employees to the table; or if it was just me, him, and two lawyers or something, it would be less. So I would say anywhere between 2 and 400.

Mr. SCHIFF. And in terms of what you were spending on the judge at one of these lunches between what he had for lunch at one of the steakhouses, and I think you testified that he would have five vodka drinks, what would his part of the tab generally cost?

Mr. LOUIS MARCOTTE. His tab alone?

Mr. SCHIFF. Yeah.

Mr. LOUIS MARCOTTE. Out of the five or six people that were at the table at the time?

Mr. SCHIFF. Yes.

Mr. LOUIS MARCOTTE. I would say 60, 70 bucks, 80 bucks.

Mr. SCHIFF. And that would be a couple times a week?

Mr. LOUIS MARCOTTE. That would be a couple times a week.

Mr. SCHIFF. And, over the years, then you would spend literally thousands of dollars paying for meals for Judge Porteous?

Mr. LOUIS MARCOTTE. Yes. And there was other circumstances where he brought his friends, you know, that maybe couldn't benefit me. But they were his friends, you know.

Mr. SCHIFF. In discussing the payment for the trip to Las Vegas, I think you used the term that to disguise the payment for the trip that you took various steps to deliver cash and to pay directly for plane reservations and that type of thing. Whose idea was it to make sure that the payment for the trip was disguised? How did that come about? In other words, why was that done, rather than just giving him a check?

Mr. LOUIS MARCOTTE. I think it was my idea, and I think it was also Porteous's idea to get Rhonda to—you know, he wanted to disguise it through Rhonda, and so did I.

Mr. SCHIFF. And can you tell us what he said to you that indicated to you that he wanted this disguised as well?

Mr. LOUIS MARCOTTE. Well, he said it to Rhonda, and then Rhonda said it to us, you know: The judge really don't want you all to pay directly. You all are going to pay me, and then I am going to write the checks.

Mr. SCHIFF. And did she explain why the judge didn't want you to pay directly? Or was that pretty obvious?

Mr. LOUIS MARCOTTE. Because, again, it wouldn't look good if a judge was going to Las Vegas with a bail bondsman.

Mr. SCHIFF. You mentioned with respect to Mr. Duhon that it was a different judge that had sentenced him.

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. And in the ordinary course of events, if you were going to seek to set aside a conviction, you would go to the judge in whose department or courtroom the person was convicted. Is that right?

Mr. LOUIS MARCOTTE. Right. The protocol is, if a case is allotted to one judge and that judge sentences that person, that should be the only judge that could expunge his record or set aside the conviction. And in this case, Judge Porteous set aside Duhon's conviction in his section when it was in E.V. Richards's section of court.

Mr. SCHIFF. E.V. Richards is another judge?

Mr. LOUIS MARCOTTE. Yes.

Mr. SCHIFF. Did you first try to go to E.V. Richards, or did you——

Mr. LOUIS MARCOTTE. I believe I asked Judge Porteous to go to E.V. Richards.

Did he go? I don't know. Did he tell me he went? Yes.

So, you know, I don't think I would have any disbeliefs that, you know, if he told me that he went to him. But I really don't know if he went to him because I wasn't present when he supposedly asked E.V. Richards: Will you expunge Jeff Duhon's record?

Mr. SCHIFF. But you didn't go to E.V. Richards yourself?

Mr. LOUIS MARCOTTE. No, sir, I did not.

Mr. SCHIFF. So you didn't try to go to that judge first. You went directly to Judge Porteous?

Mr. LOUIS MARCOTTE. Right. Bonds were one thing, you know, that was acceptable in the courthouse for a bondsman to go to a judge and ask him to set a bond at that time. But to go ask, you know, for me to play lawyer and ask E.V. Richards to set aside a conviction with a motion that a lawyer would draw up would be totally, you know, inappropriate.

Mr. SCHIFF. And you didn't have the kind of relationship with E.V. Richards where you could go directly to that judge the way you could with Judge Porteous?

Mr. LOUIS MARCOTTE. No, I did not.

Mr. SCHIFF. You testified earlier about reservations that Judge Porteous had about setting aside Wallace's conviction before the confirmation. When you went to him about the Duhon conviction, did he express any reservations about doing it?

Mr. LOUIS MARCOTTE. Duhon's conviction? He said that it would be very hard to do Duhon's conviction because it is not in my section. Wallace's would be easier because the case is in my section.

Now, Wallace—he wasn't the sentencing judge for Wallace. Whoever Porteous's predecessor was before Porteous was the one who gave Wallace the time, but the case would still follow the same division.

Mr. SCHIFF. And tell us what the conversation that you had with him about Duhon. Did he express to you: What you are asking me isn't going to be easy because that is not in my department?

Mr. LOUIS MARCOTTE. I am sorry. I couldn't hear.

Mr. SCHIFF. If you could tell us about the conversation you had with Judge Porteous when you asked him to set aside the Duhon conviction. Did he tell you that what you were asking was going to be difficult because the case was before a different department?

Mr. LOUIS MARCOTTE. Yes, he did. He said: I have to get E.V. Richards to agree to it and have him do it. And then me, a guy who doesn't take no for an answer, I kept pushing him to go to Richards. And he did it. Richards wouldn't do it, so Porteous wound up doing it for me even though he didn't have the authority to do it.

Mr. SCHIFF. And when you were pushing him to do this for you, what arguments did you use? Did you ever make reference to: "Hey, judge, look at all the things I have done for you. Can't you do this for me? Did you ever bring up with him——"

Mr. LOUIS MARCOTTE. No, I didn't bring any of that up. But I kept saying: "Judge, I really need to get him licensed in my office or I am going to have to fire him." Because the Commission's new rules are now, to accept premium inside of any insurance agency or negotiate any kind of bonds, you have to be licensed with the

Commission of Insurance; and Jeff wasn't licensed. So I was operating illegally with Jeff in my office negotiating bonds and taking premiums because he was a convicted felon without a license. And that could cause me problems with the Commission of Insurance, and I could be shut down.

Mr. SCHIFF. And so at some point the judge said, all right, he would do it?

Mr. LOUIS MARCOTTE. And at some point the judge said: "Okay, I'll do it."

Mr. SCHIFF. And was the conviction in that case set aside by the other judge at the request of Judge Porteous, or did the case get transferred to Judge Porteous so that he could set it aside?

Mr. LOUIS MARCOTTE. Well, there was no transferring the case. He took the record, brought it into his division, and then he expunged it.

Now, was the D.A. present when he did that? I don't know. All I saw was the paper that it was expunged. And if I can vaguely remember, I believe I had one of my lawyers staying in for that expungement, one lawyer that I was sending criminal work to.

Mr. SCHIFF. You mentioned that you were aware of Judge Porteous's financial circumstances. At the time, or really at any time, did the judge ever ask you for cash rather than help with a car, help with something else? Did he ever ask you for money?

Mr. LOUIS MARCOTTE. He never did ask me for cash, ever.

Mr. SCHIFF. Did you ever give him cash?

Mr. LOUIS MARCOTTE. No, sir.

Mr. SCHIFF. Other than——

Mr. LOUIS MARCOTTE. The only thing I ever gave him was gifts that—gifts that had value that—you know, it was a gift that was worth cash, but it wasn't money that I put in his hand ever.

Mr. SCHIFF. And what kind of gifts that had the value of cash are you referring to?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. SCHIFF. You said you gave him gifts that had the value of cash but not cash itself.

Mr. LOUIS MARCOTTE. Like the repairs on his car, the money I spent on his tires, the shrimp that I gave him, the radio that I put in his car, the fixing of his automobiles. And the closest I ever gave cash to him was the money that I gave to Rhonda to deposit for the trip. But I have never gave him cash to do a bond.

Mr. SCHIFF. You mentioned you were aware——

Mr. LOUIS MARCOTTE. Only gifts.

Mr. SCHIFF [continuing]. That he was a gambler. When did you become aware of him being a gambler?

Mr. LOUIS MARCOTTE. Well, even before I was really close with him, I knew he went to the casinos and stuff like that. And then as time progressed I heard about him going to the casinos more and more and more, and then—you know, maybe we was at lunch quite a few times, and he would say: Well, after I leave here I'm going to a casino. And when we was in Las Vegas, you know, he wouldn't leave the table, you know. He gambled from the—I mean, there was times that I bought tickets for shows for us to go to and he wouldn't leave the table to go to the shows. He just kept gambling.

Mr. SCHIFF. And by "the tables," you mean poker tables or craps tables?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. SCHIFF. I want to ask you a little bit more about your conversation with Judge Porteous around the time of the FBI interviewing you regarding Judge Porteous's confirmation. You say you think that the judge was the one who referred the FBI to talk with you. Is that based on something the FBI said when they came to see you, or why do you think that they got your name from him?

Mr. LOUIS MARCOTTE. You know, I really don't remember. Either Porteous told me that they were coming to see me, or the FBI knew on their own that I was close with him and they saw me and other lawyers who that they already knew that was close with him through other people they may have questioned. But I am really not exactly sure, but I think I am almost 100 percent sure Porteous told me: "The FBI is coming to see you."

Mr. SCHIFF. And how soon after the FBI interviewed you did you talk to Judge Porteous about what they asked you and what you said?

Mr. LOUIS MARCOTTE. Right away. You know, maybe the next day we went to lunch and I told him: This is what these guys said, this is what they asked, and this is what I told them.

Mr. SCHIFF. Did he ask you at this lunch the next day or so, you know, what happened during the FBI interview, or what did you say? Do you remember whether you brought it up or he brought it up?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. SCHIFF. When you had your first interview with Judge Porteous after the FBI interview, did he ask you what took place, or did you volunteer it? Who brought up the subject?

Mr. LOUIS MARCOTTE. He asked me. I mean, it all happened within a couple of minutes. Hey—I said, judge, the FBI. And he said, what did they say? You know. And I told him everything that they said.

Mr. SCHIFF. So you told him about the questions they had asked you about his gambling, about his financial situation, about anything that might bear adversely on his confirmation? You told him about those questions you were asked by the FBI?

Mr. LOUIS MARCOTTE. Yes.

Mr. SCHIFF. And you told him basically that——

Mr. LOUIS MARCOTTE. "Judge, I gave you the clean bill of health with them."

Mr. SCHIFF. And was it clear in your conversation with him that you did not tell the FBI anything about the gifts and car repairs and fence repairs and other things you had done for the judge?

Mr. LOUIS MARCOTTE. No. I didn't tell them that, because I knew it would hurt him, and I was trying to protect him because he was really good to me.

Mr. SCHIFF. What I am asking, though, is was it clear from your conversation with Judge Porteous? Did you make it clear with Judge Porteous that you didn't tell the FBI any——

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. SCHIFF [continuing]. Of these things with your relationship with him that would have harmed his confirmation?

Mr. LOUIS MARCOTTE. Actually, no, because they didn't ask those questions about, you know, his car repairs and shrimp or anything. I just told him what they asked about.

Mr. SCHIFF. Let me ask you—while we look for that, let me ask just a couple more questions.

At the meeting that took place, I guess the lunch meeting with Judge Porteous and with Judge Bodenheimer where you hoped that the judge would sort of bring him in to have the same kind of relationship with you——

Mr. LOUIS MARCOTTE. In other words, I wanted the judge—you know, number one, Bodenheimer really respected Porteous. And I wanted Porteous to groom him so, you know, I would have a predecessor to Porteous after he was gone and I would have someone who would do the bonds for me, you know, like Porteous done them.

Mr. SCHIFF. And did you tell Judge Porteous that you wanted him to help groom Judge Bodenheimer? Did you use that term with him?

Mr. LOUIS MARCOTTE. Yes, sir, I did.

Mr. SCHIFF. And did Judge Porteous tell you whether he was willing to do that?

Mr. LOUIS MARCOTTE. He would always say: "I'll talk to him."

Mr. SCHIFF. During the lunch you had with the two judges, Porteous and Bodenheimer, did Judge Porteous or you ever indicate the benefit to Judge Bodenheimer by being available to you in terms of setting bonds, splitting bonds, or any of those things? Did either of you ever convey to Judge Bodenheimer what he could expect from it by way of lunches or car repairs or anything else?

Mr. LOUIS MARCOTTE. We never discussed that. He would just discuss, you know, how good it would be for the criminal justice system if he did these bonds.

Mr. SCHIFF. But in terms of that meeting, you didn't have any conversation about the personal benefit that Judge Bodenheimer could——

Mr. LOUIS MARCOTTE. Well, I think he would—I am sorry. I think he would say that you'll never have to buy lunch again.

Mr. SCHIFF. I am going to reserve that last question until we find the exhibit I was looking for; and at this point let me turn it over to my colleague, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Marcotte, how old are you?

Mr. LOUIS MARCOTTE. I am 48.

Mr. GOODLATTE. So at the time you got into the bail bonds business you were in your late 20's?

Mr. LOUIS MARCOTTE. Probably 18.

Mr. GOODLATTE. Oh, 18?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. GOODLATTE. So in the early '80's?

Mr. LOUIS MARCOTTE. 1970—to be exact, 1978.

Mr. GOODLATTE. So this arrangement you had with Judge Porteous, was that the first judge where you had this kind of arrangement? Or did you have that going on before that, too?

Mr. LOUIS MARCOTTE. No, sir, I didn't. See, there was a time that the criminal justice system implemented taxes on every bond

that was written. So in the old days if I had a hundred thousand dollar bond and I wrote for my insurance company, the premium to the—I had a contract with my insurance company that I was 100 percent liable for every bond that I wrote. Okay? The day I don't pay that bond, the insurance company cuts me off. Okay?

Well, my premium—if you take 100 percent—if you take 90 percent of the insurance premium, then you have all of the risk on the bond. So if you only—if this insurance company only takes 10 percent of the 10 percent—which——

Okay, let me explain. If the bond was a thousand, I would get 900 and the insurance company would get 100. Okay. In the old days, I didn't need judges. I didn't need lawyers. I didn't need any of that. If the bond was set at $100,000 and the people had $2,000 or $3,000, I paid $1,000 to my insurance company and I still made $3,000. I set the people up on a balance. If it is a good bond, whether they paid me or not, I still made money.

So what happened, as time progressed, they started putting in fees at the jail. So the fees got almost all the way—they started at 2 percent of the bond, then 2½, then 3, then 4, so that now the fees are almost 40 percent at the jail. So at some point I needed the judges, because by the time I paid the insurance company, put a half a percent on the side for my reserve account, and to have a 40 percent tax, all of a sudden my bond costs was 50 percent.

Mr. GOODLATTE. And were these fees that were charged at the jail legitimate fees?

Mr. LOUIS MARCOTTE. They were fees that went to the IDB, the Sheriff, the Indigent Defendant Board, and the District Attorney's Office.

Mr. GOODLATTE. These were taxes, essentially.

Mr. LOUIS MARCOTTE. It was a tax.

Mr. GOODLATTE. They were a statutory, lawful requirement. They weren't fees you had to pay in order to accomplish anything.

Mr. LOUIS MARCOTTE. They were statutory laws that were implemented by the State.

Mr. GOODLATTE. But, originally, if you just had to pay effectively 1 percent of a $100,000 bond to the insurance company, even if you didn't get the full $10,000, you were still making money?

Mr. LOUIS MARCOTTE. I was still making money, as long as I was writing good bonds. And I set them up with the balance. So once that 50 percent tax came in, now I have got a $100,000 bond and I need six grand that has to go to the insurance company and to the courts.

Mr. GOODLATTE. Was Judge Porteous the first judge who was receptive to your suggestions about how to set the bond levels?

Mr. LOUIS MARCOTTE. Well, the taxes came in a little bit before Porteous. And what I have done at that point—you see, my sister and I, you know, we grew up really poor in our life. We didn't have connections with, you know, lawyers when we got in the bail bond business. So—we didn't have connections with judges, period. So what we would do to get the bonds reduced, if we had a $5,000 bond and the people had $500, we would give a lawyer $150 to go see the judge and get the bond reduced. So the lawyers would go and get the bonds reduced, and we were paying them a fee out of our premium to do that. And then as time progressed, you know,

we started going to lunches with the lawyers that were getting the bonds reduced, and then we started—and the judges were there, too. So—and then we started developing our own relationship with the judges.

Now, in the real old days, you know, I am talking about 25 years ago when I went to work for a guy who was a bail bondsman, for 30 years before I got there, he was close with a couple of judges, and I used to be able to call him to set and reduce the bonds. But after I left him, he was in business for a couple years and none of the judges wanted to fool with me, so I had to get all the lawyers to get the bonds reduced.

But what happened with me was going on with this other guy. I mean, he is the one who trained me, you know? And he is the one who was getting the bonds reduced with the judges, and he is splitting bonds and all of that stuff. And then after I left him, then I needed lawyers to do it. And then, after that, I started getting them done with the lawyers at that point, and that is when Porteous came in.

Mr. GOODLATTE. Did you do any bail bonding in Federal court?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. GOODLATTE. And how did that work?

Mr. LOUIS MARCOTTE. We didn't get a lot of Federal bonds because, you know, they had cash deposits that they had to pay and there was a lot of personal surety there. But we would get maybe three or four a month.

Mr. GOODLATTE. And did that continue after Judge Porteous went on the Federal bench?

Mr. LOUIS MARCOTTE. No, it didn't, because—you know, I vaguely remember asking Porteous could he talk to the Magistrate Louie Moore to set more commercial bonds in the Federal system. Now, again, you know, he said that he would do it. But did he actually do it and just came back and danced with me and said he did? Or—I think he may have told me—well, you know, at some point, after I kept asking him, I think he said Louie Moore backed up and he wasn't receptive to doing the commercial bonds.

Mr. GOODLATTE. So when Judge Porteous got nominated to the Federal bench, what was your reaction to that?

Mr. LOUIS MARCOTTE. I know my sales are going to drop to nothing. That was my reaction to myself. I didn't express that reaction to anyone else.

Mr. GOODLATTE. And after he got on the Federal bench, did you continue to have any relationship with him?

Mr. LOUIS MARCOTTE. Yes, I did. Not—you know, not like I had, because, you know, he was—I still viewed him as a friend, but, you know, I needed to start working on other people in the criminal justice system that I could make money with.

Mr. GOODLATTE. That is why you asked him to intercede with Judge Bodenheimer and other judges?

Mr. LOUIS MARCOTTE. Yes, to groom these other people so that other people could step in where he left off.

Mr. GOODLATTE. The interview with the FBI that Chairman Schiff asked you about, when did that take place?

Mr. LOUIS MARCOTTE. I think right—I don't know dates, you know. I think right before the interview with the FBI, before he was confirmed?

Mr. GOODLATTE. Were you interviewed by the FBI before he was confirmed?

Mr. LOUIS MARCOTTE. Yes, there were two interviews, and—there was two interviews.

Mr. GOODLATTE. One was in August 1994?

Mr. LOUIS MARCOTTE. Of course I don't remember the exact dates, but, yes. And then the other one was—I don't remember the dates, sir.

Mr. GOODLATTE. But both were in relationship to his——

Mr. LOUIS MARCOTTE. Confirmation.

Mr. GOODLATTE. Confirmation.

What about later on when they were investigating this whole matter? And we are talking years later. Did they interview you with regard to Judge Porteous at that time?

Mr. LOUIS MARCOTTE. What matter?

Mr. GOODLATTE. The investigation, the Wrinkled Robe investigation.

Mr. LOUIS MARCOTTE. Did they interview me?

Mr. GOODLATTE. Yes, regarding Judge Porteous.

Mr. LOUIS MARCOTTE. Yes. Years—I mean, they raided my office in 2002, and I didn't start cooperating with them until 2004. At that point—no. Well, I know the U.S. Attorneys Office didn't, because they couldn't interview me because Porteous— his situation on the Federal bench, the U.S. Attorney Washington had to do it. Now, the FBI agents were able to interview me, but the U.S. Attorneys Office had to recuse themselves.

Mr. GOODLATTE. Now, going back to the interviews you had with the FBI in 1994, around August, 1994, and then you subsequently met with Judge Porteous and you told him about your conversations with the FBI. Is that correct?

Mr. LOUIS MARCOTTE. In 2004?

Mr. GOODLATTE. In 1994.

Mr. LOUIS MARCOTTE. In 1994? No, I didn't meet with Porteous in 1994. I met with his lawyer, Cyle Schonekas.

Mr. GOODLATTE. Now, when you were interviewed by the FBI with regard to his background information leading up to his confirmation as a U.S. district court judge——

Mr. LOUIS MARCOTTE. In 2004, or when?

Mr. GOODLATTE. Of 1994. August 1994.

Mr. LOUIS MARCOTTE. Okay.

Mr. GOODLATTE. You met with the FBI, and then I think you just testified to the Chairman that you then subsequently had lunch with Judge Porteous. Is that correct?

Mr. LOUIS MARCOTTE. In 1994? Yes. Yes, I did. And I told him what I said, you know, that—everything that they asked me.

Mr. GOODLATTE. And you told the FBI inaccurate, misleading, and false information regarding the relationship you had with the judge, or you omitted information?

Mr. LOUIS MARCOTTE. Like I stated, I lied to them.

Mr. GOODLATTE. And did Judge Porteous understand during your conversation with him that you had lied to the FBI for him?

Mr. LOUIS MARCOTTE. I didn't actually say "I lied for you, Judge." I just told him everything that he—everything that they asked me. So, you know, if you could read it, all the questions: If he wasn't an alcoholic and all of that. He had to figure out in his own head that I was lying for him.

Mr. GOODLATTE. Do you think he was capable of doing that?

Mr. LOUIS MARCOTTE. Absolutely.

Mr. GOODLATTE. Mr. Marcotte, did Judge Porteous ask you for car repairs or other things of value while you were in his court chambers discussing bail bonds at any time?

Mr. LOUIS MARCOTTE. I think, you know—again, I don't remember exactly, but there could have been times after he done the bonds. He would say: "Hey, by the way, Timmy's car's broke. Could you go have Skeeter go pick it up?"

And they also called a lot. You know, Rhonda would call and say, "Hey, look, one of the cars are broken. Can you get it?"

And then after that, you know, once we started fixing the cars, then I would start calling in the bonds. I would open the gates a little more, you know, when I was doing something.

Mr. GOODLATTE. Did Judge Porteous have any conversations with you directly about the timing of Aubrey Wallace's expungement.

Mr. LOUIS MARCOTTE. Did he have what?

Mr. GOODLATTE. Did he have any conversations with you regarding the timing of Aubrey Wallace's expungement?

Mr. LOUIS MARCOTTE. I mean, not with dates. But after he was confirmed, he would do it. So, I mean, was it a couple of months? I don't know the dates. But was it a couple of months or a month after, he did it, you know.

Mr. GOODLATTE. But, I mean, did he discuss with you when he would do it, the timing of it?

Mr. LOUIS MARCOTTE. Just, "I will do it after I am confirmed."

Mr. GOODLATTE. And did Judge Porteous say he wanted to wait until the last days of his State court term to expunge Wallace's record because he believed that timing was beneficial in relation to his Senate confirmation?

Mr. LOUIS MARCOTTE. Yes, he did.

Mr. GOODLATTE. And I think you have already answered this question regarding Jeffrey Duhon. The reason you approached Judge Porteous to set aside the burglary conviction of Mr. Duhon was that you had a better relationship with Judge Porteous than you did with the judge who actually handed down the sentence.

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. GOODLATTE. Okay. Thank you.

Chairman, thank you.

Mr. SCHIFF. Thank you.

The gentleman yields back.

Mr. Marcotte, I have the exhibit that I was looking for earlier. I just want to ask you a couple of quick questions about it before I turn to Ms. Jackson Lee. These were questions that the FBI asked you about during the pre-confirmation period. The FBI interview says, "He advised," meaning Mr. Marcotte, "that the candidate will have a beer or two at lunch, but he has never seen him drunk."

Does that refresh your recollection as to whether you would have told Judge Porteous, "They asked me about your drinking"?

Mr. LOUIS MARCOTTE. Yes.

Mr. SCHIFF. And would you have told Judge Porteous that you told them that you had seen him have a drink?

Mr. LOUIS MARCOTTE. I said I saw him have a few beers or two.

Mr. SCHIFF. But you made it clear to him you didn't tell them the full extent of his drinking?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. SCHIFF. But you would have made it clear to Judge Porteous you didn't tell the FBI the full extent of his drinking?

Mr. LOUIS MARCOTTE. Yes. Yes.

Mr. SCHIFF. It also says, "He has no knowledge of the candidate's financial situation." Did you tell Judge Porteous that they had asked about his financial situation?

Mr. LOUIS MARCOTTE. Right, and I would have told them I don't know anything about his financial situation at that time.

Mr. SCHIFF. It also says, "He is not aware of anything in the candidate's background that might be the basis of attempted influence, pressure, coercion, or compromise or that would impact negatively on the candidate's character, reputation, judgment, or discretion."

Did you tell Judge Porteous that they had asked you that question?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. SCHIFF. And did you tell him that you told the FBI you weren't aware of anything in his background that might be the basis of attempted influence, pressure, coercion, or compromise or that would impact negatively on his character, reputation, judgment, or discretion?

Mr. LOUIS MARCOTTE. Yes, I did.

Mr. SCHIFF. So Judge Porteous was aware, prior to his confirmation, that you had been asked about anything in his background of this nature and that you had told them there was nothing you were aware of?

Mr. LOUIS MARCOTTE. Yes.

Mr. SCHIFF. So, going into his confirmation, Judge Porteous was aware that the FBI was not given the information it would need to evaluate his character, reputation, judgment, and discretion?

Mr. LOUIS MARCOTTE. Yes. I gave them the wrong information.

Mr. SCHIFF. You gave them the wrong information.

At this point, let me turn to my colleague, Ms. Jackson Lee.

Ms. Jackson Lee, we have 5 minutes 30 seconds before the vote on the conference report. We are going to have to come back briefly after votes. Would you like to start your questions now?

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Mr. Marcotte, how many years have you known Judge Porteous, please?

Mr. LOUIS MARCOTTE. Well, he was on the bench before I knew him personally. I mean, I knew that he was on the bench.

Ms. JACKSON LEE. Right. But just give me the years that you knew him.

Mr. LOUIS MARCOTTE. I would say I probably—I knew he was—I would just say 20 years.

Ms. JACKSON LEE. Twenty years.

Ms. Marcotte, how many years did you know Judge Porteous?

Ms. LORI MARCOTTE. I would say from 1989 until——

Ms. JACKSON LEE. About 20 years. Let me ask, are these proceedings that we have, are they on the front page of your local newspapers in New Orleans? Are they being written up in the newspaper?

Mr. LOUIS MARCOTTE. Yes, it has.

Ms. JACKSON LEE. Is your bail bond company still in business?

Mr. LOUIS MARCOTTE. My bail bond company?

Ms. JACKSON LEE. Yes.

Mr. LOUIS MARCOTTE. It is still in business, but I don't own it. The government let me—I sold it.

Ms. JACKSON LEE. Okay. You sold it to someone?

Mr. LOUIS MARCOTTE. Yes, ma'am.

Ms. JACKSON LEE. Okay. So you are out of the bail bonds business?

Mr. LOUIS MARCOTTE. Yes, ma'am.

Ms. JACKSON LEE. And you are doing what right now?

Mr. LOUIS MARCOTTE. Right now I have an Italian clothing store.

Ms. JACKSON LEE. Okay. In 1994, did you both know Judge Porteous?

Mr. LOUIS MARCOTTE. Yes, I did.

Ms. JACKSON LEE. There was a question that was asked on a judicial form that said, "Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment by you or to the President if publicly known?" I would say to you that this was a document signed by Judge Porteous during the confirmation.

Do you know anything that would have needed to be said? The answer that was given by Judge Porteous—and we have already documented this—was, no, that there was nothing that would embarrass the President.

Did you think in 1994, did you have any dealings with him that might have embarrassed the President if it was known that he was nominating a person of this type?

Mr. LOUIS MARCOTTE. Yes.

Ms. JACKSON LEE. And do you believe the relationship that you had with Judge Porteous over the years was an appropriate one or inappropriate one?

Mr. LOUIS MARCOTTE. It was an inappropriate relationship.

Ms. JACKSON LEE. And Ms. Marcotte?

Ms. LORI MARCOTTE. Yes, ma'am, the same.

Ms. JACKSON LEE. I have no further questions. Thank you.

Mr. SCHIFF. I thank the gentlewoman.

The gentlewoman yields back.

At this point, we will recess. We have three votes, which will probably take about a half an hour, so we will resume at 2:30. And I expect to be fairly brief when we come back.

Oh, it is only two votes. Okay, only two votes, so we will resume right after votes, which may be in about 20 minutes. We will resume in 20 minutes.

[Recess.]

Mr. SCHIFF. The Task Force will now recommence.

Mr. Marcotte, do I understand there is something in your testimony from today you would like to clarify?

Mr. REGAN. Mr. Chairman, Martin Regan.

Mr. SCHIFF. Counsel, could you grab the microphone?

Mr. REGAN. During the recess, having spoken with my client, he did want to clarify one thing.

There were questions regarding the amounts he spent on repairs for automobiles. He indicated certain numbers. He can't be certain of those numbers, though he knows it was several thousand dollars over the time in question, because he was not directly paying it. His company was paying it, and he didn't personally handle the checks.

But he approved the repairs, the radio, the tires, painting an automobile, and things of this sort. But he cannot be exact today on the amounts that were paid. And not $1,000 a week, but maybe $1,000 a month over a period of time. And the months differed based on the work that was being done. And he may have something to add to that, but we wanted to clarify that.

Mr. SCHIFF. All right. Thank you, Counsel.

Mr. Marcotte?

Mr. LOUIS MARCOTTE. I don't know if I said it, did I say $1,000 a week?

Mr. SCHIFF. I believe—yeah, we can take a look—I believe you said a thousand every couple months.

Mr. LOUIS MARCOTTE. I think that is what I said. And it is hard for me to quantify the amount, because, again, if I wasn't there and they called in to get the car repaired, I mean, my accounting department would just cut the check, and Aubrey or Jeff would go get it, and I wouldn't even see it.

You know, I mean, at one point, we probably signed 300 to 500 checks a week. You know, I mean, I had 300 employees. I had a payroll clerk. I mean, there was a lot of checks that came in and out of there.

So I just wanted to clarify the amount, you know. It is hard for me to really quantify the amount. But I think if I said, you know, $1,000 a month, that would probably be between $1,000 a month or $1,000 every 6 weeks, I think that would be probably a good estimate, but I don't know if it is exact.

Mr. SCHIFF. Thank you, Mr. Marcotte. And I think you said earlier that you thought, over the period of 3 or 4 years, that would probably have been in excess of $10,000, maybe not in excess of $20,000, but you thought it would be in excess of $10,000 for all of the vehicles. Is that still your best sense?

Mr. LOUIS MARCOTTE. I would think that would be a good number. Between $7,500 and $12,000, something like that.

Mr. SCHIFF. Thank you, Mr. Marcotte.

I am now going to recognize Mr. Lungren of California.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Marcotte, I would just like to get some things clear in my own mind. I practiced law in California, and I am trying to figure out how your bail bond operation worked compared to what I was used to in California.

When you talked about the bonds that you would attempt to get—I understand, from your standpoint, to make more money, the

higher the bond that the person could pay, the higher the amount that you were able to get. But in the courts that we are talking about, was there a—or in the jails—was there a schedule of recommended bail for particular offenses?

Mr. LOUIS MARCOTTE. See, Judge, in—I mean, I am sorry. In California, they have a bond schedule—because I am familiar with all the States because I have done bail in all of them. In California, they have a bond schedule for each charge. Well, in Louisiana, they only have a bond schedule on misdemeanor charges. So anything that is a felony has to be set by a judge.

A misdemeanor bond, there is a schedule of bonds at the jail. So the jailer just looks at what the charge is and marks in the scheduled amount that has been approved by the Second Parish judge for that scheduled bond.

Mr. LUNGREN. So when you were informed that you had a person who wanted to utilize your services who was charged with a felony, you would either go to the magistrate, is that correct, or try and shop to a favorable judge?

Mr. LOUIS MARCOTTE. If there was a favorable magistrate, I would go to that person. If they were unfavorable and I knew that I couldn't get what I wanted, I went to someone who would give me what I wanted.

Mr. LUNGREN. When you say "magistrate," in the system there, is the magistrate not a regular judge?

Mr. LOUIS MARCOTTE. A magistrate—what a magistrate does is set bonds for everyone who is arrested the night before.

Mr. LUNGREN. Okay. So it is not a rotating thing for the judges that normally sit, that they would sit as a magistrate in these things?

Mr. LOUIS MARCOTTE. Well, sometimes the 24th Judicial Courts, the magistrates would rotate every week. But, at some point, they got away from that, and they came up with a magistrate that would sit all of the time.

Mr. LUNGREN. Okay. So you would make a determination as to whether it was a, quote/unquote, "favorable magistrate," and if it were not, you would on occasion attempt to shop judges, that is, to find a favorable judge, is that correct?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. LUNGREN. And, in this process, where was the defense attorney in this sort of thing? Were you consulting with a defense attorney? Were you able to talk to the magistrate without the defense attorney being present? What?

Mr. LOUIS MARCOTTE. Defense attornies—see, the bail agent always has—not always, but most of the time, 80 percent of the time, has first crack at a defendant, because as soon as they hit the jail, they start calling the bail agents. And the bail agents are open 24 hours a day. So the families, to try to get them out of jail, would walk into the bail agency. We take in collect calls from the jail, and we are talking to everyone in the cells and getting the family's numbers and calling them up.

So the bail agent really had first access to the defendant. And as soon as we found out that they had money, then we would start shopping judges to set the bond. And we try to find out how much

money the defendant had and get the bond set to the amount of money that they had.

Mr. LUNGREN. And in the conversation you would have had in contacting the judge, that would be without an attorney?

Mr. LOUIS MARCOTTE. Without an attorney. The bail agent could request a bond amount from the judge.

Mr. LUNGREN. And if there were a subsequent hearing on bail, could there be a subsequent hearing on bail?

Mr. LOUIS MARCOTTE. Like a motion to reduce the bond?

Mr. LUNGREN. Yes.

Mr. LOUIS MARCOTTE. Yes, they would have motions to reduce the bonds. But most of the time we didn't need them.

Mr. LUNGREN. What would occur if, in fact, the defendant did not show up for his appearance?

Mr. LOUIS MARCOTTE. They would forfeit the bond, and then we would have to hunt them.

Mr. LUNGREN. And you hunt them down and you bring them back. Would your bond be returned to you? Would your bond be——

Mr. LOUIS MARCOTTE. What would happen is the—once the defendant is found, the courts would exonerate the bond, and then the liability would be taken off the books of the insurance company.

Mr. LUNGREN. So, in essence, the bond would be returned?

Mr. LOUIS MARCOTTE. Not returned. The bond automatically becomes a permanent part of the record. But you could get a cancellation from the clerk's office in the mortgage office. Because, once a bond is forfeited, they record a judgment in the mortgage office. So what you would do is get a copy of the cancellation and then go cancel it in the mortgage office.

Mr. LUNGREN. Okay. What you have described with respect to splitting of the bond, was that, to your knowledge, begun by Judge Porteous?

Mr. LOUIS MARCOTTE. It actually started way before Porteous, but it never went to the degree that it was when Porteous was there.

Mr. LUNGREN. Would you explain what you mean by that?

Mr. LOUIS MARCOTTE. Excuse me?

Mr. LUNGREN. Would you explain what you mean by that?

Mr. LOUIS MARCOTTE. Well, in the old days—and I am talking about before Porteous was a judge—they only arrested two or three or four people a day in Jefferson Parish. Well, at the end of my career in the bail bond business, they were arresting 300 people a day. So, I mean, you know, we had to get the bond split to make a lot of money in that business.

Mr. LUNGREN. So when you say "we" had to, that means——

Mr. LOUIS MARCOTTE. Bail Bonds Unlimited and Louis Marcotte.

Mr. LUNGREN. So you had to rely on the judges doing that sort of thing so that you could keep your livelihood, is that right?

Mr. LOUIS MARCOTTE. Yes, sir.

Mr. LUNGREN. Did you have any specific conversations with Judge Porteous about that?

Mr. LOUIS MARCOTTE. Well, in times I would tell him, "Look, we are doing really bad this week, Judge. We need these bonds done."

Mr. LUNGREN. And what response would you get from him?

Mr. LOUIS MARCOTTE. He would do the bonds.

Mr. LUNGREN. When you say "do the bonds"——

Mr. LOUIS MARCOTTE. He would, you know—he was doing the bonds anyway. But if I told him something like that, he would step it up a few notches.

Mr. LUNGREN. I think that is all I have. Thank you.

Mr. SCHIFF. I thank the gentleman.

I just have a couple final questions.

Mr. Marcotte, you have discussed today times when the judge, in one way or another, acknowledged the wrongfulness of what you were engaged in, in the sense of not wanting to do certain acts prior to his confirmation, for example.

Can you give us any other instances where, through what the judge said or did, it was clear to you that he knew that the relationship he had with you was not above board?

Mr. LOUIS MARCOTTE. By being on call—well, by being my go-to guy.

Mr. SCHIFF. Can you describe that a little more?

Mr. LOUIS MARCOTTE. Well, whenever I needed to get something done, he was my go-to guy.

Mr. SCHIFF. Did he ever tell you, you know, words to the effect of, "Hey, if this became public, this could become a real problem for me"?

Mr. LOUIS MARCOTTE. If our relationship became public?

Mr. SCHIFF. Well, if your relationship became public or if something you were asking him to do became public. Did he ever indicate to you that any part of your relationship needed to be kept confidential?

Mr. LOUIS MARCOTTE. No, he didn't. I guess everyone in the criminal justice system knew that he was my go-to guy. It wasn't no secret.

Mr. SCHIFF. Ms. Marcotte——

Mr. LOUIS MARCOTTE. I mean, when you are doing 5, 10, 15 bonds a day, you know, for Louis Marcotte, there is a lot of jealousy around with other lawyers and other bondsmen. And, you know, people seeing you making all the money, and, you know, it wasn't no secret. And he wasn't trying to hide it, and I wasn't trying to hide it. And I think maybe we both thought maybe we were above the law.

Mr. SCHIFF. And would the only exception to that be when the FBI came to talk to you about Judge Porteous?

Mr. LOUIS MARCOTTE. I am sorry?

Mr. SCHIFF. Was an exception to that rule when the FBI came to talk with you? You said we didn't try to hide it. When the FBI came to talk with you, though, you did try to hide it, am I right?

Mr. LOUIS MARCOTTE. I did hide it. I lied to them, you know, to protect him.

Mr. SCHIFF. Ms. Marcotte, let me ask you the same question. Either through your conversations with Ms. Danos, the judge's secretary, or lunches that you may have been in attendance at, were there any times in which Judge Porteous made comments or through his behavior demonstrated that he knew the wrongfulness of the kind of relationship he had with you and your brother?

Ms. LORI MARCOTTE. I remember one time in particular when we went to see him in Federal court about a family that was competing against us and we had some noncompete agreements against them, and they were in front of a judge we knew he was close with, and we asked him to call and rule in our favor.

Also, on another one, when he was on the 24th judicial bench, we asked him to call another judge to do that, too. And I think that is not something you do every day.

Mr. SCHIFF. And, in both these cases where you called to ask him to use his influence with another judge to rule in your favor, was he on the State court at this time or were either of these occasions when he was a Federal judge?

Ms. LORI MARCOTTE. Twice on the State court and once on the Federal court.

Mr. SCHIFF. And can you describe those three situations for us?

Ms. LORI MARCOTTE. We wanted to lock in all the business around that area. That is why we took the judge to lunch, to get the bonds done that we needed to get done. We also bought up some property around the area, too, not to let people get in. When we hired people, they signed noncompetition agreements, so if they left they couldn't open their own bail bond company, because we let them in on our secrets.

So one gentleman left and started writing bail bonds, and we filed a temporary restraining order against him to stop competing, and it went to a judge that Judge Porteous knew. Louis and I went to talk to him and asked him to make a telephone call to rule in our favor.

Mr. SCHIFF. At this time, in this first instance, was Judge Porteous on the State bench?

Ms. LORI MARCOTTE. The State bench, yes.

Mr. SCHIFF. Did he tell you whether he would call the other judge?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. And did he tell you afterwards that he had spoken with the other judge?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. And did that other judge rule in your favor?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. And what did Judge Porteous tell you that he told the other judge?

Ms. LORI MARCOTTE. He said he asked him to rule in our favor, that we were good people and this person was just someone that was, you know, starting trouble for us. Pretty much like something our lawyer would say to a judge.

Mr. SCHIFF. And tell us what the circumstances were in the two other cases.

Ms. LORI MARCOTTE. The Federal case, there was a crew of people, a family we had hired, a mother, a father and, like, three or four brothers, and they were really head of our recovery department, like our little police department that was the collection agency, the bounty hunters. And they left, and all of them started to compete. And this was a big problem, because now it wasn't just one little-bitty person, this was a big thing.

So we went to see Judge Porteous in his office and asked him to call this judge and talk, because we were really losing control of our business, at this point. And for this to happen would have been—and, ultimately, it did happen, and we really did lose control of our business. So we lost that case.

Mr. SCHIFF. And, in that particular case, again, you filed a no-compete action in State court?

Ms. LORI MARCOTTE. Yes, that is correct.

Mr. SCHIFF. And you went to Judge Porteous, now sitting on the Federal bench, and asked him to intervene with this State court judge?

Ms. LORI MARCOTTE. Yes. I remember this well because this was big. It was six or seven people. It was the family and then a couple of their people. It was our whole recovery force that left, that we had worked for to build up all these years, taken away in one scoop pretty much.

Mr. SCHIFF. And what judge was this case assigned to?

Ms. LORI MARCOTTE. Originally, we had talked to Judge Porteous about Greg Guidry, who was once a Federal prosecutor. And because Judge Porteous was in Federal court, we thought he would be close with him. But I think ultimately it ended up in another judge's section.

Mr. SCHIFF. But it wasn't assigned to the same judge as the first no-compete case was?

Ms. LORI MARCOTTE. No. That was separate.

Mr. SCHIFF. And when you went to Judge Porteous, now Federal Judge Porteous, to ask him to talk to the judges presiding over this second case, what did Judge Porteous tell you?

Ms. LORI MARCOTTE. He said he would do it. And something was faxed, I think. Our administrative assistant faxed something to him, or something was faxed. And I think, at one point, the FBI had a confirmation on a fax.

But our administrative assistant faxed Rhonda, Judge Porteous's secretary, or the other way around, to get some of the information there. Or he sent something to the judge's office. I really don't know exactly how that happened.

Mr. SCHIFF. And did you have a follow-up conversation with Judge Porteous to determine whether Judge Porteous had, in fact, spoken to this other judge?

Ms. LORI MARCOTTE. Not myself personally, no.

Mr. SCHIFF. And do you know who did? Did someone else have a conversation with him?

Ms. LORI MARCOTTE. I think that—I don't know if Louis remembers, but a telephone call was made, and he said he talked to him. Now, whether he did or not, I don't know. But he said he would entertain it when we were in his office.

Mr. SCHIFF. I am sorry, he said what?

Ms. LORI MARCOTTE. He said he would entertain it when we were in—when we went to see him, he said okay. And then after some things were faxed, he said he had asked and that it would be okay, that he had talked to him. But I don't know for sure if he did talk to him.

Mr. SCHIFF. But Judge Porteous conveyed to you—maybe not to you directly, but to your brother or to someone else at your bail

bond firm—that, in fact, he had communicated with the other judge and it would be okay?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. Mr. Marcotte, were you the one that the judge communicated that to? Did he tell you that he had spoken to this other judge and that it would be okay?

Mr. LOUIS MARCOTTE. I don't remember a whole lot about that. But what I do remember, my lawyer that was representing me to defend me on the noncompete against the Dennis family went into the judge's office. And the clerk in the judge's office had said, "Look, this looks real good in you all's favor." And then about a day later he came back and said, "Look, he denied it." But I know Bridget had faxed the document to Judge Porteous's office.

Now, did Beck speak with someone, the attorney that was representing me, did he speak to anyone about it? I am not exactly sure, but it is possible that he may have spoken to Rhonda.

Mr. SCHIFF. So, at some point, you faxed to Judge Porteous's chambers——

Mr. LOUIS MARCOTTE. Not me personally, but my administrative assistant.

Mr. SCHIFF. Your administrative assistant faxed Judge Porteous some information about the no-compete case that you had.

Mr. LOUIS MARCOTTE. And I think maybe my attorney underlined—and I could be wrong—the reasons why it should be set aside and then faxed it to Porteous, and Porteous faxed it to the other judge. You know, I mean, it has been a long time, so——

Mr. SCHIFF. And these underlying points were, like, talking points for the judge to use in his conversation with the other judge?

Mr. LOUIS MARCOTTE. This would be the points that we would give Porteous to hang his hat on to the judge he was going to request to deny the noncompete.

Mr. SCHIFF. And, at some point after sending those documents, you got word back, although you are not clear on how it was communicated to you, from Judge Porteous that he had contacted the other judge and it looked like things would be all right?

Mr. LOUIS MARCOTTE. It looked like things were going to be all right. But then, a couple days later, my attorney, who was representing me in the noncompete, said, "God, it looked so good, like we were going to win," and then at the end he denied it.

Mr. SCHIFF. Did you ever speak to Judge Porteous afterwards and say, you know, "What happened?"

Mr. LOUIS MARCOTTE. No. At that point, I went to war with my competitors in the lobby of the jail.

Mr. SCHIFF. And, Ms. Marcotte, do you remember any follow-up conversation after the judge that Judge Porteous communicated with turned your case down?

Ms. LORI MARCOTTE. No——

Mr. SCHIFF. Do you recall any follow-up?

Ms. LORI MARCOTTE. No, I do not. There was none.

Mr. SCHIFF. And I think you mentioned there was a third time when the judge intervened with another judge on your behalf.

Ms. LORI MARCOTTE. I can't remember the defendant's name—I mean, the employee's name. There were, like, five employees before the family that came against us.

Mr. SCHIFF. And that was a noncompete case, as well?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. And, in that case, the judge said that he would talk to another judge, and that judge ruled in your favor?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. And do you know whether he, in fact, did talk to that other judge?

Ms. LORI MARCOTTE. He said he did. I mean, I need to see—I can't remember the employee's name.

Mr. SCHIFF. Now, you brought this up in the context of other actions or things the judge said that indicated he understood the wrongfulness of what he was doing. During these three or more times when you asked the judge to intervene with another judge, did Judge Porteous ever say to you, "Yes, I will do it, but, you know, you are asking a lot of me; this is really not something I am supposed to do"? Did he ever indicate to you verbally that he understood what he was doing was wrong?

Ms. LORI MARCOTTE. Not verbally. But, you know, I think he wanted to help us and to foster the relationship that we had.

Mr. SCHIFF. Anything else that you would like to share with us, either one of you, that will help give the Task Force guidance in terms of what Judge Porteous's thoughts were in terms of your relationship and his awareness of the inappropriate nature of it?

Ms. LORI MARCOTTE. Well, when Louis was talking about Judge Porteous having reservations about doing the expungement until after—you were asking about times when he acknowledged——

Mr. SCHIFF. Yes.

Ms. LORI MARCOTTE. That is one. And I think Louis remembers the employee's name and the judge.

Do you remember, from the other one?

Mr. LOUIS MARCOTTE. Was it Rebecca Dunn? I believe it was Rebecca Dunn, but I don't remember what judge it was in that case. It may have been Skip Hand. I don't know.

Mr. SCHIFF. Is this the noncompete case that you are referring to?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. The third one that you weren't sure you could remember which one? Is that what you are referring to?

Ms. LORI MARCOTTE. Yes.

Mr. SCHIFF. Okay. Anything else that you want to share with the Committee?

Mr. LOUIS MARCOTTE. Only that I am sorry that all this happened.

Mr. SCHIFF. That concludes my questions, and that will conclude our testimony for today.

I want to thank you both for your testimony. I am sure it wasn't something you were looking forward to, but we appreciate your coming to share your experiences with us.

Without objection, the record will remain open for 5 legislative days for the submission of any other additional materials.

This hearing of the Impeachment Task Force is now adjourned.

[Whereupon, at 2:39 p.m., the Task Force was adjourned.]

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