

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-347

R E P O R T
OF THE
IMPEACHMENT TRIAL COMMITTEE
ON THE ARTICLES AGAINST
JUDGE G. THOMAS PORTEOUS, JR.



NOVEMBER 16, 2010.—Ordered to be printed
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IMPEACHMENT TRIAL COMMITTEE

ON THE ARTICLES AGAINST JUDGE G. THOMAS PORTEOUS, JR.

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The Committee gratefully acknowledges the high standard of professionalism and long hours of dedicated service of its staff. The Committee also expresses its appreciation to Lynden C. Armstrong, Chief Clerk of the Committee on Rules and Administration, and to the following staff of Committee members:

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CONTENTS

| | Page |
|---|------|
| Introduction | 1 |
| PART ONE | |
| Certification to the Senate of the Committee’s Proceedings | 3 |
| PART TWO | |
| Summary of the Evidence | 4 |
| Procedural History | 5 |
| I. Article I | 6 |
| A. Text of the Article | 6 |
| B. Introduction to the Evidence | 7 |
| C. Statement of Facts | 7 |
| 1. Conduct While a State Court Judge and Curatorships | 7 |
| a. The House’s perspective | 10 |
| b. Judge Porteous’s perspective | 10 |
| 2. Conduct While a Federal Court Judge and <i>Lifemark Hospitals</i> <i>v. Liljeberg Enterprises</i> | 10 |
| a. The House’s perspective | 14 |
| b. Judge Porteous’s perspective | 14 |
| D. Expert Testimony | 15 |
| 1. Professor Charles G. Geyh | 15 |
| 2. Professor Dane Ciolino | 15 |
| II. Article II | 16 |
| A. Text of the Article | 16 |
| B. Introduction to the Evidence | 17 |
| C. Statement of Facts | 17 |
| 1. Conduct While a State Court Judge and Relationship with the Marcottes | 17 |
| a. Bail bonds process and alleged favors | 17 |
| i. The House’s perspective | 21 |
| ii. Judge Porteous’s perspective | 22 |
| b. Set aside and expungement of criminal convictions | 24 |
| i. The House’s perspective | 26 |
| ii. Judge Porteous’s perspective | 27 |
| c. Louis Marcotte’s interview with the FBI | 28 |
| i. The House’s perspective | 29 |
| ii. Judge Porteous’s perspective | 29 |
| 2. Conduct While a Federal Court Judge and Relationships with the Marcottes | 29 |
| a. The House’s perspective | 31 |
| b. Judge Porteous’s perspective | 31 |
| D. Expert Testimony | 32 |
| 1. Professor Charles G. Geyh | 32 |
| 2. Professor Dane Ciolino | 32 |
| III. Article III | 33 |
| A. Text of the Article | 33 |
| B. Introduction to the Evidence | 33 |
| C. Statement of Facts | 33 |
| 1. Background | 33 |
| 2. Chapter 13 Bankruptcy Overview | 34 |
| 3. Judge Porteous’s Chapter 13 Bankruptcy Filings | 35 |
| 4. May 9 Creditors Meeting and June 28 Confirmation of the Chapter 13 Plan | 38 |

VI

| | Page |
|---|------|
| Procedural History—Continued | |
| C. Statement of Facts—Continued | |
| 5. Gambling-Related Activity and Extensions of Credit | 39 |
| 6. FBI Investigation into Judge Porteous’s Bankruptcy Filings | 41 |
| D. Contested Issues | 42 |
| 1. Using a False Name and Post Office Box on the Original Bankruptcy Petition | 42 |
| 2. Concealing Assets and Income | 43 |
| 3. Incurring Debt Through the Use of Casino Markers | 46 |
| 4. Preferential Payments to Creditors | 47 |
| 5. Concealing Gambling Losses | 49 |
| 6. Incurring More Debt in Violation of Judge Greendyke’s Order | 50 |
| 7. The Materiality of Judge Porteous’s Conduct | 50 |
| E. Expert Testimony | 51 |
| 1. Advice of Counsel | 51 |
| 2. Judge Greendyke’s Admonishment Against Incurring More Debt ... | 52 |
| IV. Article IV | 52 |
| A. Text of the Article | 52 |
| B. Introduction to the Evidence | 53 |
| C. Statement of Facts | 53 |
| 1. FBI Interviews | 54 |
| a. Initial interviews | 54 |
| b. Follow-up interviews | 56 |
| 2. Nomination and Senate Confirmation | 57 |
| D. Contested Issues | 58 |
| 1. The House’s Perspective | 58 |
| 2. Judge Porteous’s Perspective | 58 |
| E. Expert Testimony | 59 |
| 1. Professor Charles G. Geyh | 59 |
| 2. Professor G. Calvin Mackenzie | 59 |
| Committee Rollcall Vote | 61 |

ADDENDA

| | |
|---|----|
| A. Rule XI of the <i>Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials</i> | 61 |
| B. Senate Resolution 458 | 62 |
| C. Description of Committee Proceedings | 63 |
| D. Glossary of Names Appearing in the Committee Report | 65 |

ON THE IMPEACHMENT OF JUDGE G. THOMAS
PORTEOUS, JR.

NOVEMBER 16, 2010.—Ordered to be printed

Filed, under authority of the order of the Senate of November 15, 2010

Mrs. McCASKILL, from the Impeachment Trial Committee on the Articles Against Judge G. Thomas Porteous, Jr., submitted the following

R E P O R T

INTRODUCTION

The United States Constitution provides: “The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”¹ The Constitution gives the “sole Power of Impeachment”² to the House of Representatives and the “sole Power to try all Impeachments”³ to the Senate.

On March 17, 2010, pursuant to Rule XI of the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials*,⁴ the Senate created this Impeachment Trial Committee with its adoption of Senate Resolution 458. This resolution authorized the Committee “to receive and to report evidence” with respect to the articles of impeachment presented by the House against U.S. District Court Judge G. Thomas Porteous, Jr., of the Eastern District of Louisiana.⁵ Pursuant to its mandate, the Committee received evidence on the following articles:

Article I alleges that, while a federal judge, Judge Porteous improperly denied a motion to recuse himself from presiding over a case, despite having a “corrupt financial relationship” with a law firm representing one of the parties to the case. He also allegedly misrepresented this relationship during the recusal hearing. Additionally, while the case was under advisement, Judge Porteous solicited and accepted things of value, including thousands of dollars in cash, from attorneys appearing before him.

Article II alleges “a longstanding pattern of corrupt conduct” with former bail bondsmen. While on the state court bench, Judge

¹ U.S. Const., art. II, § 1A4. While the Constitution does not define “civil Officers of the United States,” the House and Senate have consistently found federal judges to be in this category. Not including Judge Porteous, the House has impeached eighteen federal officials, fourteen of whom have been judges. Of these fourteen, the Senate has convicted seven and acquitted four. The remaining three judges resigned before their trials could be completed.

² *Id.*, art. I, 2.

³ *Id.*, art. I, 3.

⁴ The text of Rule XI appears as Addendum A to this report.

⁵ The text of Senate Resolution 458 appears as Addendum B to this report.

Porteous favorably set and structured bonds and performed other official acts for bail bondsmen while soliciting and accepting things of value from them. As a federal judge, he continued to receive things of value in exchange for “us[ing] the power and prestige of his office” to help these bondsmen form corrupt relationships with state court judges. Finally, Judge Porteous is alleged to have known that one bondsman made false statements to the Federal Bureau of Investigation (FBI) in an effort to assist Judge Porteous’s appointment to the federal bench.

Article III alleges that, in relation to his personal bankruptcy in 2001, Judge Porteous knowingly and intentionally made material false statements and representations in his bankruptcy filings under penalty of perjury and violated the bankruptcy court’s order. These alleged actions include using a false name in his bankruptcy filing, concealing assets and debts, concealing preferential payments to creditors, concealing gambling losses, and incurring new debt while the case was pending.

Finally, Article IV alleges that Judge Porteous knowingly and intentionally made material false statements to the Senate and to the FBI “in order to obtain the office of United States District Court Judge.” These statements include denying that there was anything in his background that could be used to influence, coerce, blackmail, or compromise him; embarrass him or the President if publicly known; or affect his nomination.

Having received the evidence, the Committee has two responsibilities that it fulfills in this report. First, Rule XI directs the Committee to “report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee.” The Committee satisfies this responsibility in Part I of this report. Second, Senate Resolution 458 directs the Committee to “report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.” This is a “neutral summary”⁶ because the Committee has no authority to make recommendations regarding matters as to the weight of the evidence or whether the Senate should vote to convict or acquit on the articles of impeachment.⁷ The Committee achieves this in Part II of this report.

⁶Senate Committee on Rules and Administration, *Procedure for the Impeachment Trial of U.S. District Judge Alcee L. Hastings in the United States Senate*, 101st Cong., 1st Sess., S. Rpt. 101-1, at 74 (February 2, 1989).

⁷See also *Report of the Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr.*, 101st Cong., 1st Sess., S. Rpt. 101-164, at 3 (October 16, 1989) (stating that the Committee “has no authority to recommend to the Senate whether the Senate should vote to convict or to acquit Judge Nixon on the Articles of Impeachment”); *Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings*, 101st Cong., 1st Sess., S. Rpt. 101-156, at 3 (October 2, 1989) (Hastings Committee Report) (stating that the Committee “has no authority to recommend whether the Senate should vote to convict or to acquit on the articles of impeachment”); *id.* at 10 (“The Committee’s report is meant to be a neutral statement that neither explicitly nor implicitly urges a particular result in the case, or on any aspect of it.”); *id.* at 11 (“In accordance with its limited mandate, the Committee as a whole takes no view of the evidence.”); *On the Impeachment of Harry E. Claiborne*, 99th Cong., 2nd Sess., S. Rpt. 99-511, at 1 (October 1, 1986) (“Senate Impeachment Rule XI does not authorize the Committee to make recommendations to the Senate.”).

**PART ONE—CERTIFICATION TO THE SENATE OF THE
COMMITTEE’S PROCEEDINGS**

The record of the Committee’s proceedings is printed in the *Report of the Senate Impeachment Trial Committee on the Articles Against Judge G. Thomas Porteous, Jr.: Hearings Before the Senate Impeachment Trial Committee*, S. Hrg. 111–691, 111th Cong., 2nd Sess. (2010). The Committee met on November 16, 2010, and, as Rule XI directs, certified the hearing report to be a copy of the transcript of proceedings had and testimony given before it.⁸ The roll call vote appears after the summary of the evidence.

Part 1 of this hearing report contains the Committee’s pre-trial proceedings, from its creation on March 17, 2010, to the start of its evidentiary hearings on September 13, 2010. Part 2 consists of the transcript of the Committee’s evidentiary hearings.⁹ Part 3 contains the exhibits admitted during and after the Committee’s evidentiary hearings, demonstrative exhibits used during the hearing, the parties’ proposed findings of fact, and other post-trial filings.

Prior to the consideration of the articles of impeachment before the full Senate, each Senator will receive copies of post-trial briefs from the parties. These post-trial briefs present the House’s and Judge Porteous’s positions on matters of fact and law. Each side will also have the opportunity to present a summation to the full Senate. The Senate will then meet in closed session to deliberate on the merits of the articles. Each article is to be voted on separately, and the question presented will be whether the respondent, Judge Porteous, is “guilty” or “not guilty” of the article at issue.

The Committee highlights one unresolved matter from its pre-trial proceedings. Prior to the evidentiary hearings, both parties filed a number of pre-trial motions. These included motions to dismiss the articles of impeachment, individually and collectively. The Committee declined to act on Judge Porteous’s motions to dismiss separately each article because it is not authorized to dismiss articles of impeachment. If Judge Porteous seeks to renew these motions before the full Senate, in which case the Senate may decide whether to hear argument on these issues and vote separately on the motions or whether to consider the issues raised by the motions in the context of its disposition of the articles of impeachment.

Upon the Senate’s receipt of this report, Rule XI provides that “the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate.” Thus, the Senate remains the master of the record before it and may review the admissibility of the evidence received by the Committee and summon witnesses to testify before the full Senate.

There remains a question of the appropriate standard of proof for impeachment trials. The Committee notes that during his 1986 impeachment trial, U.S. District Judge Harry E. Claiborne moved “to designate ‘Beyond a Reasonable Doubt’ as the standard of proof in

⁸To further assist Senators, Addendum C to this report provides a brief narrative description of the Committee’s proceedings.

⁹Twenty-six witnesses testified before the Committee’s evidentiary hearings. Each was subject to examination and cross-examination by the parties and to questions from Committee members.

[his] impeachment trial.”¹⁰ The Senate’s Presiding Officer ruled that “the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment.”¹¹ Upon a Senator’s request, Judge Claiborne’s motion was submitted to the full Senate, which voted 17–75 against it, thereby declining to establish an obligatory standard.¹² Each Senator may, therefore, use the standard of proof that he or she feels is appropriate.

PART TWO—SUMMARY OF THE EVIDENCE

Introduction

The Committee’s basic responsibility to receive and report evidence is the same as in the three previous impeachments for which an impeachment trial committee was used. Carrying out that responsibility, however, is unique to each impeachment trial. As a result, this report’s format and content are guided by the responsibilities assigned to the Committee by Rule XI and Senate Resolution 458, the nature of these particular articles of impeachment, and the evidence in this case. The Committee has not sought to present every fact to which the parties might attribute some meaning and has undoubtedly included facts that one party might consider irrelevant. The evidentiary summary does, however, attempt to describe those matters that the Committee understands to be the chief factual issues and to explain the significance of factual controversies.

This report is not a substitute for the parties’ own marshaling of facts and arguments in support of their positions and is but one resource that the Senate may use in this case. The principal discussion of each party’s view of the evidence and the overall case will be found not in this report but in the parties’ written briefs and oral summation before the Senate. The Committee’s description of the parties’ arguments or perspectives in this report is intended only to aid in providing a coherent and meaningful summary.

The summary of the evidence begins with a procedural history, which provides an overview of various proceedings in this matter that occurred prior to the Senate trial. This procedural history is followed by a discussion of the evidence pertaining to each article of impeachment against Judge Porteous. As the articles allege relatively distinct patterns or sets of conduct, this report will present this discussion in four separate sections, one for each article. In each section, the text of each article, as drafted by the House, will be presented, followed by a presentation of the uncontested and contested facts relevant to that article.¹³

The Committee has sought to indicate when there is conflicting evidence on any factual matter, while also presenting a report that is coherent and readable. To that end, the discussions of Articles I and II, which rely heavily on witness testimony, integrate uncontested and contested facts to a greater degree than the discussions of Articles III and IV, which rely more heavily on docu-

¹⁰ 132 Cong. Rec. 29152 (Oct. 7, 1986).

¹¹ *Id.*

¹² *Id.* at 29153; see also Hastings Committee Report, *supra* note 7, at 5.

¹³ The full text of the articles were also published within S. Doc. 111–13.

mentary evidence.¹⁴ Citation to exhibits and testimony will reference the record as contained in the hearing report.¹⁵

Procedural History

Judge Porteous served as a judge on Louisiana’s 24th Judicial District Court (JDC) from 1984 until 1994, when President William J. Clinton appointed him to the U.S. District Court for the Eastern District of Louisiana. In 1999, an FBI probe into corruption involving judges on the 24th JDC, known as “Operation Wrinkled Robe,” uncovered allegations of corruption involving Judge Porteous. While declining to seek criminal charges against Judge Porteous, the Department of Justice submitted a complaint of judicial misconduct to the U.S. Court of Appeals for the Fifth Circuit in May 2007.¹⁶ The conduct alleged in the complaint corresponds to the allegations in the first and third articles of impeachment now before the Senate.

The Judicial Council of the U.S. Court of Appeals for the Fifth Circuit appointed a Special Investigatory Committee to investigate the allegations concluded that Judge Porteous committed judicial misconduct that “might constitute one or more grounds for impeachment.”¹⁷ On December 20, 2007, the Fifth Circuit Judicial Council voted 15–4 to conclude that Judge Porteous “has engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution.”¹⁸ Ex. 5, 3B at 464. The Council also voted to certify the Justice Department’s complaint to the Judicial Conference of the United States.¹⁹

On June 17, 2008, the Judicial Conference voted unanimously to certify to the Speaker of the U.S. House of Representatives that “consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted.” Ex. 7(b), 3B at 536. On September 10, 2008, the Fifth Circuit Judicial Council issued a public reprimand of Judge Porteous for “conduct that is prejudicial to the effective and expeditious administration of the

¹⁴ Addendum D contains a glossary of persons who are frequently mentioned in this report.

¹⁵ Citations in this report, whether witness testimony (identified by last name), stipulations, or exhibits, will include the part and page number of the hearing report. The parties’ stipulations are found in Part 1C; a transcript of the evidentiary hearings are found in Parts 2A and 2B; and exhibits appear in Parts 3B through 3E of the certified record. Generally, exhibits initially identified by the House are numbered between 1–530; those identified by Judge Porteous are numbered between 1001–2007.

¹⁶ In the letter submitting a judicial misconduct complaint to the Fifth Circuit, the Department of Justice cited factors contributing to its decision not to prosecute Judge Porteous. These include “the relevant statute of limitations” regarding some incidents; whether the government could prove its case beyond a reasonable doubt to a unanimous jury; whether the government could prove elements such as materiality and an intent to deceive; the need for “consistency in charging decisions concerning bankruptcy and criminal contempt matters”; and “the availability of alternative remedies for Judge Porteous’s history of misconduct while on the bench, including impeachment and judicial sanctions.” Ex. 4, 3B at 378–388. In 2006, while a target of a federal grand jury investigation, Judge Porteous signed three agreements extending for a total of five months the five-year statute of limitations regarding certain federal crimes. These agreements did not affect the statute of limitations that had expired prior to April 2006. Exs. 1003–1005, 3E at 5538–5546.

¹⁷ The Fifth Circuit Judicial Council is comprised of the Chief Judge, nine Fifth Circuit judges, and nine U.S. District Court judges.

¹⁸ Four dissenting judges agreed that Judge Porteous must be publicly reprimanded “for legal and ethical misconduct during his tenure as a federal judge” but disagreed “that the evidence demonstrates a possible ground for his impeachment and removal from office.” Ex. 6(b), 3B at 472.

¹⁹ Pursuant to 28 U.S.C. § 354(b)(2)(A), a judicial council “shall promptly certify . . . to the Judicial Conference of the United States” a determination “that a judge appointed to hold office during good behavior may have engaged in conduct which might constitute one or more grounds for impeachment under article II of the Constitution.”

business of the courts” and that “brought disrepute to the federal judiciary.” The Council ordered that no new cases be assigned to Judge Porteous and suspended his authority to employ staff for two years or “until Congress takes final action on the impeachment proceedings, whichever occurs earlier.”²⁰ Ex. 8, 3B at 594–601.

On September 17, 2008, the House of Representatives adopted House Resolution 1448, authorizing the Judiciary Committee to inquire whether the House should impeach Judge Porteous. A Judicial Impeachment Task Force comprised of 12 House members held four hearings in November and December 2009. On January 21, 2010, the Task Force voted unanimously to recommend four articles of impeachment, followed by a unanimous vote of the House Judiciary Committee on January 27, 2010. The House, in turn, voted unanimously to approve each of the four articles of impeachment on March 11, 2010.²¹

I. ARTICLE I

A. Text of the Article

G. Thomas Porteous, Jr., while a Federal judge of the United States District Court for the Eastern District of Louisiana, engaged in a pattern of conduct that is incompatible with the trust and confidence placed in him as a Federal judge, as follows:

Judge Porteous, while presiding as a United States district judge in Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises, denied a motion to recuse himself from the case, despite the fact that he had a corrupt financial relationship with the law firm of Amato & Creely, P.C. which had entered the case to represent Liljeberg. In denying the motion to recuse, and in contravention of clear canons of judicial ethics, Judge Porteous failed to disclose that beginning in or about the late 1980s while he was a State court judge in the 24th JDC in the State of Louisiana, he engaged in a corrupt scheme with attorneys, Jacob Amato, Jr., and Robert Creely, whereby Judge Porteous appointed Amato’s law partner as a “curator” in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm. During the period of this scheme, the fees received by Amato & Creely amounted to approximately \$40,000, and the amounts paid by Amato & Creely to Judge Porteous amounted to approximately \$20,000.

Judge Porteous also made intentionally misleading statements at the recusal hearing intended to minimize the extent of his personal relationship with the two attorneys. In so doing, and in failing to disclose to Lifemark and its counsel the true circumstances of his relationship with the Amato & Creely law firm, Judge Porteous deprived the Fifth Circuit Court of Appeals of critical information for its review of a petition for a writ of mandamus, which sought to overrule Judge Porteous’s denial of the recusal motion. His conduct deprived the parties and the public of the right to the honest services of his office.

Judge Porteous also engaged in corrupt conduct after the Lifemark v. Liljeberg bench trial, and while he had the case under

²⁰ On September 8, 2010, the Fifth Circuit Judicial Council extended this effective suspension until December 31, 2010.

²¹ 156 Cong. Rec. H1335–37 (daily ed. March 11, 2010).

advisement, in that he solicited and accepted things of value from both Amato and his law partner Creely, including a payment of thousands of dollars in cash. Thereafter, and without disclosing his corrupt relationship with the attorneys of Amato & Creely PLC or his receipt from them of cash and other things of value, Judge Porteous ruled in favor of their client, Liljeberg.

By virtue of this corrupt relationship and his conduct as a Federal judge, Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for, and confidence in, the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

B. Introduction to the Evidence

Article I addresses Judge Porteous's handling of the *Lifemark v. Liljeberg* case in light of his prior relationships with Jacob Amato and Robert Creely. The statement of facts below outlines those relationships while Judge Porteous served as a state court judge, as well as his handling of *Lifemark v. Liljeberg* as a federal judge. The evidence relevant to Article I is drawn primarily from Judge Porteous's testimony before the Fifth Circuit Special Investigatory Committee,²² the parties' stipulated facts, and the testimony of Amato and Creely before this Committee. Due to the nature of the evidence, creating a cohesive narrative required integrating some contested facts with uncontested facts. Because Article I relies heavily on testimonial evidence, the credibility of witnesses and, as a result, the meaning of their testimony are accordingly important.

C. Statement of Facts

1. Conduct While a State Court Judge and Curatorships

Judge Porteous graduated from Louisiana State University in 1968 and the Louisiana State University Law School in 1971. Stip. 5, 1C at 2526. Starting in 1973 and continuing until 1984, he worked with Jacob Amato as an Assistant District Attorney in Jefferson Parish, Louisiana; for part of this time, Judge Porteous and Robert Creely also worked in the law firm of Edwards, Porteous & Amato. Stips. 8–10, 1C at 2526.²³

After his election to the state court bench in 1984, Judge Porteous remained close friends with his colleagues and would often have lunch with Amato and with Creely. Stips. 60, 69–70, 1C at 2531. Between 1984 and 1994, many state court judges in the 24th JDC went to lunch with attorneys practicing in the area. Stip. 62, 1C at 2531. Both Creely and Amato generally paid for lunches they had with state judges, including Judge Porteous. Stips. 62–65, 71–76, 1C at 2531–2532. In testimony before the Fifth Circuit Special Investigatory Committee, Judge Porteous admitted that it was

²² Over Judge Porteous's objection, the Committee admitted into evidence his testimony before the Special Investigatory Committee of the U.S. Court of Appeals for the Fifth Circuit, which was compelled pursuant to an immunity order. The Committee declined the House's request to issue a subpoena to Judge Porteous to testify in the Committee's evidentiary hearings, and Judge Porteous chose not to testify before the Committee. See Addendum C. Therefore, the only sworn testimony of Judge Porteous relating to any facts underlying the articles of impeachment was before the Fifth Circuit Special Investigatory Committee.

²³ Amato and Creely practiced law together from approximately 1973 until 2005 as partners in the law firm of Creely & Amato. Stip. 54, 1C at 2530.

not uncommon for Creely and Amato to treat him to lunch and, on occasion, dinner, noting that, when he went out with Creely and Amato, he never paid. Ex. 10, 3B at 794.

In addition to dining together, judges and attorneys in Gretna, Louisiana, also socialized in other ways, such as hunting and fishing together. Stip. 81, 1C at 2532. From their time together in private practice through Judge Porteous's appointment as a federal judge, Creely and Judge Porteous regularly hunted and fished together, and they were often joined by Amato. When Robert Creely hosted judges and other attorneys on these trips, he usually paid for all of the expenses. Amato, 2A at 125–126; Creely, 2A at 257–259; *see* Stips. 79–80, 1C at 2532; Ex. 10, 3B at 800–801. To Judge Porteous's children, who often went along on the fishing trips, Amato and Creely were “Uncle Jake” and “Uncle Bob.” Timothy Porteous, 2B at 1155, 1157, 1164; Stip. 55, 1C at 2530.

While serving on the state court bench, Judge Porteous occasionally asked Creely for money when they were having lunch or hunting and fishing. Creely indicated that Judge Porteous would ask for this money to cover “daily living expenses” or tuition for his children. Creely, 2A at 282. At first, Creely gave Judge Porteous whatever cash he had on hand, but over time, these amounts increased from under \$100 to possibly as much as \$1,000. Eventually, the amounts increased to the point that Creely confronted Judge Porteous, telling him, “I’m tired of giving you money, I’m tired of you asking for money. This isn’t what friends are supposed to do to one another.” *Id.* at 260–262. Creely refused to give Judge Porteous any more money and told him that he needed to get his finances under control. Judge Porteous acknowledged in testimony before the Fifth Circuit Special Investigatory Committee that he received money from Creely over a period of years but does not recall the total amount. There, Judge Porteous testified that he considered these payments to be gifts or loans but acknowledged that he never repaid Creely for these amounts. Ex. 10, 3B at 785–786.

Shortly after Creely refused to continue giving him money, Judge Porteous started to assign “curatorships” to the law firm of Amato & Creely.²⁴ During this time period, judges on the 24th JDC frequently assigned attorneys as “curators” to represent the interests of absent parties in litigation. These curatorship cases were largely administrative, lasted approximately three to six months, and generated fees of approximately \$150 to \$200 per case. Amato, 2A at 132, 244–245; Creely, 2A at 262–263; Stips. 90, 98, 1C at 2533.

From 1988 through 1994, available court records show that Judge Porteous assigned 192 curatorships to Creely. Stips. 91–97, 1C at 2533. According to Creely, he neither asked for nor wanted the curatorship appointments; he testified that “[a] curator was like a pain in the neck to me.” Creely, 2A at 263. However, Creely accepted the appointments, completed the work, and collected the fees for his law partnership. Amato, 2A at 131–132. These curatorships are estimated to have generated approximately \$40,000 in fees for the law firm of Creely & Amato. Amato, 2A at 134–135.

During the time he was assigning curatorships to Creely, Judge Porteous again started asking Creely for money, and Creely

²⁴In addition to receiving curatorship appointments from Judge Porteous, Creely received curatorship appointments from several other judges in the 24th JDC. Stip. 99, 1C at 2533.

obliged. Creely, 2A at 263–264. According to Creely and Amato, when Judge Porteous asked for money during this period, they would each take an equal draw from the law firm’s general operating account and arrange for cash to be put in an envelope for Judge Porteous. Amato, 2A at 129–130; Creely, 2A at 275–278; *see also* Ex. 10, 3B at 796. It was Creely’s understanding that Judge Porteous “didn’t want checks. He wanted cash.” Creely, 2A at 367. According to Amato, cash was given to “avoid any kind of paper trail.” Amato, 2A at 131.

Creely eventually began avoiding Judge Porteous because, as Creely testified, “most of the time that I was around him, he would begin to ask me for cash.” Creely, 2A at 266. After Creely started avoiding him, Judge Porteous called Creely’s secretary asking for a portion of the fees resulting from the curatorship appointments. Judge Porteous testified before the Fifth Circuit that he does not recall this conversation. *Id.* at 265; *see also* Ex. 10, 3B at 800. Amato confirmed that Judge Porteous had “called [Creely] and hounded him and, you know, [asked him] where’s, you know, my curator money.” Amato, 2A at 129. Creely testified that he was troubled by this telephone call because he had not drawn a connection between the money he gave to Judge Porteous and the fees generated by the curatorships Judge Porteous assigned to him. Nonetheless, Creely testified that it was clear to him that Judge Porteous made such a connection even though there was no explicit arrangement to that effect. Creely, 2A at 265–266, 299.

After this telephone call, Creely testified that he told Amato, “[T]his is getting out of control with a friend. I don’t know how to handle this anymore. I don’t know how to end this. I don’t know how to control this, but it’s got to stop.” *Id.* at 266–267. Creely and Amato eventually agreed that they would continue to give Judge Porteous money because, given the firm’s revenue from the curatorship fees, the payments “weren’t costing [them] anything.” *Id.* at 267, 274. While he never discussed the matter with Judge Porteous, Amato testified that he understood that Judge Porteous was assigning curatorships and, in turn, Creely was giving money to the judge from their respective draws. Amato, 2A at 127–129; Creely, 2A at 275. Amato characterized this activity as “probably unethical more than being . . . some type of criminal offense” but judged it to be a form of a kickback.²⁵ Amato, 2A at 129.

The House proffered evidence that, ultimately, Judge Porteous received approximately half of the fees generated by the assignment of curatorships to Amato & Creely. The FBI calculated that, in total, Amato & Creely generated \$40,000 in fees from the 192 curatorships that Judge Porteous assigned to Creely. Creely and Amato testified that, over a period of six years, they gave Judge Porteous \$20,000, or approximately one-half, of the total fees collected from the curatorships.²⁶ Amato, 2A at 132, 134–135, 218–220; Creely, 2A at 268, 274–275. In October 1994, Judge Porteous was confirmed as a U.S. District Court Judge for the Eastern District of Louisiana and, in this position, was no longer able to assign state court curatorships. Creely and Amato both testified that after

²⁵ Amato testified that he told Creely that he “thought it was going to turn out bad.” Amato, 2A at 128.

²⁶ Creely further testified that this \$10,000 estimate of the amount he himself provided also generally included the money given before and after the curatorships. Creely, 2A at 301–302.

Judge Porteous's appointment to the federal bench, their monetary gifts to him all but ceased. Amato, 2A at 133; Creely, 2A at 278.

a. The House's perspective

The House argues that Judge Porteous assigned curatorships to Robert Creely as part of a kickback scheme to collect a portion of the generated fees. The House asserts that, given the amount of money involved and curatorships assigned, an implicit understanding existed regarding the curatorship appointments and the money given to Judge Porteous by Amato and Creely. The House insists that admissions from Judge Porteous during his Fifth Circuit testimony, taken as a whole, paint a picture of a classic kickback relationship in which Judge Porteous received money from Creely and Amato after assigning them curatorships. Ex. 10, 3B at 785. Additionally, the House argues that Creely's testimony that Judge Porteous called Creely's secretary to inquire about the money from the curatorships demonstrates that Judge Porteous understood a linkage between the curatorships and the money Creely and Amato gave to him. The House asserts that this view is also supported by evidence that Judge Porteous stopped receiving money from them after he became a federal judge when he could no longer assign curatorships to Creely and, therefore, could no longer ask for money generated from the assignment of those curatorships. Amato, 2A at 133; Creely, 2A at 278.

b. Judge Porteous's perspective

Judge Porteous contends that the House misrepresents his long-standing and close friendships with Amato and Creely, and that the evidence shows merely that his good friends provided occasional assistance. Before the Fifth Circuit Special Investigatory Committee, Judge Porteous testified that the money he received from Creely and Amato was a loan or a gift from friends, not a kickback from the curatorship assignments. Ex. 10, 3B at 785–786. Creely also denied that there was any explicit agreement linking the curatorships to the money given to Judge Porteous. As a result, Creely did not consider his cash gifts to Judge Porteous to constitute a kickback or a *quid pro quo*. Moreover, any money that he gave to Judge Porteous could not have been intended as a bribe to influence him because Creely did not have any pending cases before the Judge. Creely, 2A at 302–303, 347–348.

2. *Conduct While a Federal Court Judge and Lifemark Hospitals v. Liljeberg Enterprises*

On January 16, 1996, *Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc.* was transferred to Judge Porteous. This was a complicated, non-jury civil case, filed in 1993, involving Louisiana law.²⁷ Stip. 104, 1C at 2533. Lifemark financed construction of the Kenner Regional Medical Center by the Liljeberg family. Once built, Lifemark operated the medical center, and the Liljebergs operated the affiliated pharmacy. The Liljebergs lost the hospital through foreclosure with another lender. Believing that Lifemark bore at least some of the responsibility, the Liljebergs sought dam-

²⁷ Before being assigned to Judge Porteous, at least seven district court judges and three magistrates presided over various portions of the case. Stip. 105, 1C at 2534.

ages from Lifemark. Lifemark then sued the Liljebergs to end its contract with them, and the Liljebergs sued Lifemark to recover under the pharmacy contract. Mole, 2A at 383–384.

Approximately six weeks before the scheduled start of the bench trial, the Liljebergs filed a motion to enter the appearances of Jacob Amato and Leonard Levenson as counsel, which Judge Porteous granted four days later.²⁸ Levenson, like Amato, was a close friend of Judge Porteous's. Stips. 108, 110, 137, 1C at 2534. Judge Porteous testified that, unlike Levenson, who often handled complex civil litigation in state courts, Amato would not ordinarily have been involved in this kind of case because his background and practice were almost exclusively in personal injury.²⁹ Ex. 10, 3B at 815. Liljeberg Enterprises hired both on a contingent fee basis. Stip. 109, 1C at 2534. The Liljebergs valued the case at between \$15 million and \$30 million, and if successful, Amato stood to earn between \$500,000 and \$1 million. Amato, 2A at 136.

Joseph Mole, Lifemark's lead attorney, was concerned by the timing of Amato's and Levenson's appearances in the case. After asking around, Mole testified that he "developed some serious concerns that Mr. Amato's and Mr. Levenson's presence in the case would be a problem that would keep the case from having a fair result." Mole, 2A at 386–387. On October 1, 1996, Lifemark filed a motion to recuse Judge Porteous, which was accompanied by the affidavit of Mole, noting Judge Porteous's close relationships with Amato and Levenson. The Liljebergs opposed the motion. *Id.* at 388–389; Stip. 114, 1C at 2534.

On October 16, 1996, Judge Porteous held a hearing on the motion to recuse, at which Amato and Levenson were present. Stips. 118–119, 1C at 2534–2535. According to the transcript of the hearing, Mole argued that an appearance of impropriety was created by the appearance of Amato and Levenson because, as Mole asserted at the recusal hearing, "All they have in common is that they are your close friends. The public perception is that they dine with you, travel with you, that they have contributed to your campaigns." Judge Porteous, however, refuted Mole's assertion that he received campaign contributions from Amato and Levenson, stating, "Well, luckily, I didn't have any campaigns, so I am interested to find out how you know that." Ex. 56, 3B at 1181. Judge Porteous noted that the one instance in which Amato and Levenson did contribute to his re-election campaign was through a "Justice for All" event organized by Jefferson Parish, from which each judge received a portion of the contributions. Judge Porteous stated:

You haven't offended me. But don't misstate, don't come up with a document that clearly shows well in excess of \$6700 with some innuendo that means that they gave 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.

²⁸ Prior to entering the case, Amato took two to three months to evaluate the merits of the case in order to decide whether to enter the case. Stip. 113, 1C at 2534. Amato was brought in before Levenson. Amato, 2A at 196.

²⁹ In Lifemark's motion to recuse, Lifemark attorney Joseph Mole describes Leonard Levenson's specialty as personal injury law. This differs from Judge Porteous's description of Levenson's specialty in the Fifth Circuit proceedings, in which he indicated that Levenson dealt with complex civil litigation in state courts. Ex. 10, 3B at 816–817; Ex. 52, 3B at 1139.

Id. at 1183. Judge Porteous also stated during this hearing, “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 members of the bar? The answer is yes.” *Id.* at 1180. Judge Porteous assured Mole that “I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them opportunity if they wanted to ask me to get off.” *Id.* at 1291.

Judge Porteous, however, did not disclose that, as a state court judge, he had never or rarely paid for lunch when he dined hundreds of times with Amato and Creely; nor did Judge Porteous disclose that they had given him approximately \$20,000 after he began to assign curatorships to Creely. Mole, 2A at 389–390; Stip. 114, 1C at 2534; Ex. 10, 3B at 818; Ex. 56, 3B at 1174–1198. Judge Porteous also failed to disclose that, several months before his appointment to the federal bench, in the summer of 1994, he told Rhonda Danos, his secretary, to solicit money from Amato, Creely, and Levenson to sponsor his son’s externship in Washington, D.C. Danos, 2A at 784–785; Timothy Porteous, 2B at 1165–1166.

Judge Porteous denied the motion to recuse but granted a stay of the trial pending Lifemark’s appeal of his order to the U.S. Court of Appeals for the Fifth Circuit. On October 28, 1996, the Fifth Circuit denied Lifemark’s request for a writ of mandamus on the motion to recuse. Stips. 12, 114, 120, 1C at 2526, 2534, 2535; Ex. 59, 3B at 1329–1330. Mole testified that, following Lifemark’s attempt “to level the playing field” before the Fifth Circuit failed, he was told to “hire someone who [knew] the judge.” In consultation with Tom Wilkinson, the Jefferson Parish Attorney who had appeared before Judge Porteous on the state court bench, Mole hired Donald Gardner, another close friend of Judge Porteous.³⁰ Stip. 100, 1C at 2533. Mole hoped that Gardner’s addition to Lifemark’s legal team would induce Judge Porteous to recuse himself since close friends represented both parties. Mole, 2A at 393–395, 425.

As part of the retainer agreement, Lifemark agreed to pay Gardner \$100,000 upon enrollment as counsel. The retainer agreement also provided that if Judge Porteous withdrew from the case, Lifemark would pay Gardner an additional \$100,000, at which time Gardner would withdraw as a counsel. *Id.* at 395–396; Stips. 124–126, 1C at 2535; Ex. 35(b), 3B at 1041–1042. On March 11, 1997, Lifemark filed a motion to enroll Gardner as an additional counsel. Stip. 123, 1C at 2535. Judge Porteous acknowledged before the Fifth Circuit Judicial Council that Gardner’s appearance in the case was “unusual” given that Gardner dealt mostly with divorces and family law and had little expertise in the complex civil issues involved. Ex. 10, 3B at 817–818.

The bench trial began on June 16, 1997, and concluded on July 23, 1997, at which time Judge Porteous took the case under advisement. Stip. 128–129, 1C at 2535. During this time, Judge Porteous continued to socialize with and accept things of value from Amato,

³⁰ Judge Porteous testified before the Fifth Circuit Special Investigatory Committee that Gardner was another friend who occasionally gave him cash. Ex. 10, 3B at 795.

Creely, Gardner, and Levenson. While the case was under advisement, Creely and Amato continued to take Judge Porteous out to lunch. Ex. 21(b) and 21(c), 3B at 907–1014. In May 1999, Creely and Gardner attended a bachelor party in Las Vegas for Judge Porteous’s son, Timothy. On this trip, Creely paid for Judge Porteous’s hotel room for three or four days, totaling more than \$250, as well as meals and entertainment-related expenses. Creely, 2A at 292–294; Stips. 134–136, 1C at 2536; Ex. 10, 3B at 806–809. Additionally, Amato and Creely’s law firm contributed to a party celebrating Judge Porteous’s five-year anniversary of his appointment to the federal bench. Amato, 2A at 148; Danos, 2A at 783–784.

Around the same time, Amato went on a fishing trip with Judge Porteous. Amato testified that, during this trip, Judge Porteous became emotionally distraught about his financial problems and worried that he would be unable to pay for his son’s upcoming wedding.³¹ Amato, 2A at 181–182. Upon returning from the fishing trip, Amato shared his conversation with Creely and proposed to share the cost with him. Creely and Amato took equal draws totaling \$2,000, from their firm’s account and placed the money in an envelope, which was picked up by Judge Porteous’s secretary, Rhonda Danos. *Id.* at 143–145; Creely, 2A at 295–297. When Danos asked what was in the envelope, Creely’s secretary rolled her eyes. In response, Danos said, “[N]ever mind, I don’t want to know.” Danos, 2A at 782–783.

Judge Porteous also continued to occasionally socialize with Levenson during the pendency of the case. Sometime between 1996 and 1998, Judge Porteous went on a hunting trip with Levenson, although no testimony was offered as to whether Levenson paid for this trip. In April 1999, Levenson attended a Fifth Circuit Judicial Conference at Judge Porteous’s invitation. At this conference, Levenson paid for Judge Porteous’s meals and drinks. Ex. 10, 3B at 794–795; Stip. 138–140, 1C at 2536.

On April 26, 2000, three years after the end of the trial, Judge Porteous issued his ruling in *Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc.* Stip. 130, 1C at 2535. Judge Porteous ruled largely in favor of Liljeberg Enterprises, returning to the Liljebergs the hospital lost earlier in foreclosure, sustaining the pharmacy contract, and ordering Lifemark to pay the Liljebergs an award of \$10 million, a portion of the damages sought. Mole regarded this as a “resounding loss” for his client. Mole, 2A at 403–404.

Lifemark appealed to the Fifth Circuit, which unanimously affirmed Judge Porteous’s decision in part, reversed in part, and remanded in part. The Fifth Circuit sided predominately with Lifemark and was strongly critical of significant parts of Judge Porteous’s reasoning, opining that Judge Porteous’s ruling was “inexplicable,” “a chimera,” “constructed entirely out of whole cloth,” “absurd,” “close to being nonsensical,” and “not supported by law.” *See* Stip. 131, 1C at 2535; Exs. 62–63, 3B at 1474–1477. Lifemark and Liljeberg settled within a month of the Fifth Circuit’s decision

³¹Judge Porteous testified before the Fifth Circuit Special Investigatory Committee that he could not recall this conversation but did not deny it. Ex. 10, 3B at 787.

because, Mole testified, “[m]y client did not want to go back to Judge Porteous on the remand.” Mole, 2A at 408.

a. The House’s perspective

The House argues that, during *Lifemark*, Judge Porteous intentionally misled the parties and actively concealed the extent of his relationships with Amato and Levenson. *See* Amato, 2A at 146–151. By denying the motion seeking his recusal without disclosing the true nature of these financial relationships, Judge Porteous deprived *Lifemark* of a fair trial and the Fifth Circuit of information necessary to properly decide the subsequently filed mandamus petition seeking to remove Porteous from the case. The House suggests that the Fifth Circuit’s decision on this matter would have been different had it known the extent of Judge Porteous’s prior financial relationship with Amato. *See* Mole, 2A at 393.

The House additionally maintains that Judge Porteous continued to abuse his office and position as a federal judge by accepting and soliciting gifts from the parties’ counsels during the three years that he had the *Lifemark* case under advisement. In particular, the House points to Amato’s testimony that Judge Porteous solicited \$2,000 for his son’s wedding during a fishing trip in May or June 1999. Amato recalled Judge Porteous asking for financial assistance, which was the only time he remembered Judge Porteous directly asking him for money. Amato, 2A at 143–44, 181–182. The House argues that, during the pendency of the *Lifemark* case, Judge Porteous exercised tremendous leverage over Amato, who worked on little else but the *Lifemark* case for two years and stood to recover nothing if he lost the case. *See id.* at 136–137. Amato himself acknowledged that the pending case somewhat affected his decision to help Judge Porteous. *Id.* at 235–236.

b. Judge Porteous’s perspective

Judge Porteous maintains that he fully acknowledged his relationship with Amato and Levenson at the recusal hearing. Judge Porteous asserts that, because there was no kickback agreement with Amato and Creely, any money given to him by Amato was given out of friendship. Thus, there was no financial relationship to disclose. Judge Porteous, moreover, contends that there was nothing wrong with dining with friends and close associates. Attorneys in Gretna, Louisiana, often paid for meals, drinks, gifts, and even trips for judges; it was local practice and custom. *See* Creely, 2A at 307–308; Ciolino, 2B at 1506.

Judge Porteous asserts that he was impartial in the *Lifemark* case despite the fact that several friends representing both sides appeared before him. Both Amato and Gardner testified that they never thought that their friendships with Judge Porteous would affect his ability to preside impartially. From the beginning, Gardner told Mole that his involvement alone would not “steer the result of the case” or “influence the judge.” According to Gardner, he only believed that he would be able to help *Lifemark* and its attorneys both to better understand Judge Porteous and to better present the evidence to him. Mole, 2A at 397, 422–423. Judge Porteous also dismisses as mistaken the criticisms found in the Fifth Circuit’s opinion, which was written by a panel of Texas judges on an arcane point of Louisiana law. In Amato’s opinion, the Fifth Circuit’s deci-

sion overturning Judge Porteous’s ruling was “wrong, wrong, wrong.” Stip. 132, 1C at 2535–2536.

Additionally, Judge Porteous argues that the gift of \$2,000, given to him by Amato and Creely, was never meant as a bribe to affect the outcome of the *Lifemark* case; Amato himself testified that he neither viewed the money as a bribe, nor did he believe that it would have an impact on Judge Porteous’s decision “one way or the other.” Moreover, the pending *Lifemark* case was not the primary reason Amato gave Judge Porteous money. Amato testified, “[I gave him money] because of my friendship, and I really felt sad for him.” Amato, 2A at 182–183.

D. Expert Testimony

The House and Judge Porteous each offered one expert witness whose testimony related to the allegations in Article I. The House called Professor Charles G. Geyh of the Indiana University—Bloomington Maurer School of Law as an expert in judicial ethics. Judge Porteous called Professor Dane Ciolino of Loyola University Law School as an expert in legal and judicial ethics. Both witnesses were accepted as experts in their designated fields. Geyh, 2A at 714–716; Ciolino, 2B at 1480–1485.

1. Professor Charles G. Geyh

Professor Geyh fielded numerous questions about the ethical behavior of Judge Porteous concerning the allegations in Article I.³² With respect to lunches and trips paid for by attorneys, Geyh testified, “[T]here is nothing wrong with lawyers and judges socializing, . . . [b]ut there is a point where, you know, a line can be crossed, where what the judge is, in effect, doing is exceeding the bounds of normal hospitality and is trading on his position as a judge for private gain.” In his opinion, Judge Porteous crossed that line. Geyh, 2A at 717–718. Geyh said Judge Porteous’s conduct in assigning curatorships to Creely was “very, very troubling” and testified that the behavior was a violation of the ABA model code of judicial conduct. *Id.* at 718–721.

Regarding Judge Porteous’s failure to recuse himself from *Lifemark*, Geyh stated that, while a judge is not required to recuse himself simply because a friend is a counsel in the case before him, “the judge must disqualify himself in any proceeding where his impartiality might be reasonably questioned.” *Id.* at 722. Geyh also opined that Judge Porteous’s solicitation of cash from Amato for his son’s wedding violated ethics rules governing gifts. Geyh testified that based on the evidence of the lunches, curatorship assignments, and monetary gifts involving Amato and Creely, Judge Porteous should have disqualified himself. *Id.* at 724–727.

2. Professor Dane Ciolino

Professor Ciolino testified about Louisiana’s Code of Judicial Conduct and the ethical standards for governing Louisiana state court judges. He explained that, during the time Judge Porteous was on the state bench, the applicable ethical rules were not

³²Geyh based his opinions on the House report and the allegations set forth within. He admitted that he was not an expert in Louisiana legal ethics, and that he did not review rulings by Louisiana judges on issues of judicial misconduct. He did, however, review some materials from the Louisiana code of judicial conduct dating back to 1984. Geyh, 2A at 744–748.

bright-line or *per se* rules, but instead incorporated the general “appearance of impropriety” standard. He considered this to be a vague standard that offered little guidance to attorneys and judges as to what exact behavior was deemed unethical. As a result, Ciolino stated that it was common in Louisiana for firms to offer judges gifts and lunches, as well as golf, hunting, and fishing outings. Ciolino, 2B at 1493–1495, 1505–1508.

Ciolino also testified that in Louisiana “most of the curatorships are given to friends of the judges, the campaign contributors for the judges. Sometimes some judges give them to younger lawyers who are just starting out to help them out [or] former law clerks.” *Id.* at 1511–1512. Curatorships awarded in conjunction with a bribe or kickback scheme, however, were both unethical and unlawful, even under the nebulous “appearance of impropriety” standard. *Id.* at 1512.

While Ciolino testified that the applicable ethical standards at the time were vague and subject to different interpretations, Ciolino found the relationship between attorneys and judges in Louisiana troubling and testified that he considered most of the alleged conduct to be unethical. Ciolino additionally testified that any ethical judgment of Judge Porteous’s conduct depends on where one draws the line along a continuum. Ciolino testified that, in his opinion, if Judge Porteous did ask for \$2,000 from Amato during the pendency of the Lifemark case, such behavior would be located on the “malignant end of the spectrum.” *Id.* at 1537–1540.

II. ARTICLE II

A. Text of the Article

G. Thomas Porteous, Jr., engaged in a longstanding pattern of corrupt conduct that demonstrates his unfitness to serve as a United States District Court Judge. That conduct included the following: Beginning in or about the late 1980s while he was a State court judge in the 24th JDC in the State of Louisiana, and continuing while he was a Federal judge in the United States District Court for the Eastern District of Louisiana, Judge Porteous engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, III, and his sister Lori Marcotte. As part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. These official actions by Judge Porteous included, while on the State bench, setting, reducing, and splitting bonds as requested by the Marcottes, and improperly setting aside or expunging felony convictions for two Marcotte employees (in one case after Judge Porteous had been confirmed by the Senate but before being sworn in as a Federal judge). In addition, both while on the State bench and on the Federal bench, Judge Porteous used the power and prestige of his office to assist the Marcottes in forming relationships with State judicial officers and individuals important to the Marcottes’ business. As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench.

Accordingly, Judge G. Thomas Porteous, Jr., has engaged in conduct so utterly lacking in honesty and integrity that he is guilty of high crimes and misdemeanors, is unfit to hold the office of Federal judge, and should be removed from office.

B. Introduction to the Evidence

Article II focuses on Judge Porteous’s relationship with Louis and Lori Marcotte, the owners of a bail bonds company in Gretna, Louisiana. This section first examines Judge Porteous’s relationship with the Marcottes first as a state court judge and then as a federal judge. The evidence presented here is primarily testimonial, and the parties challenge the credibility of several witnesses, including the Marcottes (who pled guilty to federal corruption charges). As with Article I, the description of the evidence integrates uncontested and contested facts.

C. Statement of Facts

1. Conduct While a State Court Judge and Relationship With the Marcottes

a. Bail bonds process and alleged favors

During the 1990s, as a judge on the 24th JDC, Judge Porteous was part of a rotational system in which one judge would serve as the “magistrate” or “duty” judge for a given week. The magistrate judge was primarily responsible for reviewing and setting bail and bail bonds, although all judges in the 24th JDC retained this authority. Griffin, 2B at 1637; Lori Marcotte, 2A at 576; Louis Marcotte, 2A at 456–457, 506; Ex. 1113, 3E at 5970.

When a judge sets bail, he determines the amount of money that a criminal defendant must post with the court as a condition of temporary release from imprisonment. If a defendant released on bail appears for his court dates and complies with other conditions set by the magistrate judge, the amount posted with the court is eventually returned to the defendant. If the defendant violates the terms of his release, the posted bail is forfeited.

A defendant who cannot afford to post the full amount of the set bail can contract with a commercial bail bondsman, who posts the bail on the defendant’s behalf in exchange for a premium. The bond premium is typically ten to fifteen percent of the bail set by the court. A bail bondsman profits from the premium paid so long as the defendant appears in court; otherwise, the bail bondsman forfeits the entire bail amount to the court. When a defendant purchases a bail bond, he does not recover the premium paid to the bondsman. Louis Marcotte, 2A at 456–458; *see also* Ex. 442, 3D at 4650–4651.

In the 1980s, Louis Marcotte and his sister Lori started Bail Bonds Unlimited (BBU) in Gretna, Louisiana. Louis Marcotte, 2A at 454; Stip. 11, 1C at 2526. By 1993, the Marcottes controlled approximately 90 percent of the bail bonds business in the area. In the late 1990s, BBU received approximately \$6 to \$7 million in premiums. In the following years, BBU grew considerably, and in 2003, BBU made approximately \$30 million in premiums and operated in thirty-four states, with approximately 300 employees and 1,000 licensed bail agents. Louis Marcotte, 2A at 454–455, 501.

Louis Marcotte aggressively pursued a strategy to maximize BBU's profits. *Id.* at 456–460. Generally, he sought to have bail set at the highest amount for which each defendant could afford to pay the percentage-based premium. In many cases, the highest bond a defendant can afford may also be the socially optimal bond level, so as to eliminate unnecessary detention while providing the maximal incentive for the defendant to appear. *See id.* at 504–06. A particular challenge for BBU occurred when a bond was set at an amount higher than what the defendant could pay; in such a case, unless the bond was reduced, the bail bondsman would lose potential business from that defendant. *Id.* at 457. BBU would also lose business when a defendant was released on his own recognizance, so Marcotte sought to have bail bonds set by a friendly judge before this occurred. *Id.* at 457–458.

To achieve this end, a BBU employee or agent would seek to interview a defendant soon after arrest to gather basic identifying information, the basis for the arrest, and any prior criminal history. BBU would also locate, interview, and run credit reports on family or friends of the defendant willing to post the bond to determine how much of a bond premium they could afford to pay. BBU would use this information to make a bail bond recommendation to a judge. *Id.* at 455–456, 473–476.

After a bail amount had been set, a judge could also choose to reduce a bond or approve a “split” bond. A split bond is comprised of two components: a standard commercial bond and a surety, such as property bond or a promissory note signed by an individual. For example, if the original bond was set at \$200,000, it could be divided into a \$100,000 standard commercial bond underwritten by the bondsman and a \$100,000 property bond or promissory note. Bail bondsmen, including Louis Marcotte, often favored split bonds because they reduced the amount of cash premium that a defendant needed to pay the bondsman and therefore had the same practical effect as a bond reduction. *Id.* at 477.

Louis Marcotte testified that the bond-setting practices of the state judges had an enormous financial impact on his business because how bonds were set, reduced, or split affected whether defendants needed the services of a bondsman. Therefore, a favorable judge willing to exercise discretion in setting, reducing, and splitting bonds upon the recommendation of BBU was important to maximizing profits. *Id.* at 457–460, 472, 474–475; Ex. 447, 3E at 4999.

As a judge on the 24th JDC, Judge Porteous set bail for criminal defendants and approved bail bonds, including cases where BBU acted as the bail bondsman. Louis Marcotte met Judge Porteous through another bail bondsman, Adam Barnett. Louis Marcotte, 2A at 460; Stip. 145, 1C at 2536. Around September 1993, Judge Porteous began working directly with Marcotte, and the two became closer. Louis Marcotte, 2A at 511–512.

Marcotte testified that Judge Porteous was “available to do bonds at [Marcotte’s] request.” *Id.* at 472. Then-BBU employee Jeffrey Duhon indicated that Marcotte enjoyed an “open door” policy with Judge Porteous and testified, “[S]ometimes me and Louis walked in there, they might have had 10, 12 lawyers sitting there, and we just went right by them, right straight into [Judge Porteous’s chambers].” Duhon, 2A at 613. If a magistrate had not set a bond

at all or the bond set was too high, Marcotte would go to Judge Porteous to have the bond set or reduced. Louis Marcotte, 2A at 472. On these occasions, Marcotte testified that he would drop off his worksheets, which identified how much the defendant could pay, and Judge Porteous would often approve the amount. Sometimes he would give Judge Porteous these worksheets himself; other times he would drop them off with Rhonda Danos, the judge's secretary. When Marcotte needed a bond set at night or when the court was not in session, he was able to reach Judge Porteous on his home phone. *Id.* at 472–473.

During this time, Judge Porteous developed a social relationship with Louis Marcotte. Sometime around 1992 to 1994—the precise year is disputed,³³ Judge Porteous began to have regular lunches with Louis and Lori Marcotte. These lunches, for which the Marcottes paid, often included Judge Porteous, other judges, and local attorneys. Judge Porteous and the Marcottes would discuss a variety of business and personal topics at these lunches, including bonds, their families, sports, and politics. Stip. 144, 1C at 2536.

Louis Marcotte testified that the lunches, which were occasionally initiated by Judge Porteous, occurred once or twice a week, and that BBU always treated the attendees; Judge Porteous never paid. Louis Marcotte, 2A at 460–465, 513–514; *see* Danos, 2A at 804–805; Ex. 442, 3D at 4652–4653; Ex. 448, 3E at 5085–5186, 5130, 5136–5137. Judge Porteous was allowed to invite whomever he wished because he was perceived as a leader at the courthouse, and the Marcottes wanted him to have a good time. Thus, according to Marcotte, it was common to dine in groups of up to ten or more people. Louis Marcotte, 2A at 461–462; Duhon, 2A at 614–615. In these groups, the Marcottes stated that Judge Porteous would use his influence to persuade other state court judges and business executives to put trust in and to develop professional relationships with Louis Marcotte. Louis Marcotte testified that Judge Porteous “brought strength to the table.” Ex. 447, 3E at 5062. Having lunch with Judge Porteous demonstrated to other judges in attendance that Louis Marcotte was “a businessman instead of a bondsman” and that the Marcottes were “trusted people.” Louis Marcotte, 2A at 462, 489; *see* Lori Marcotte, 2A at 563. According to the Marcottes, Judge Porteous helped “train” new state court judges in the practice of setting and splitting bonds, and even gave a “sales pitch” emphasizing the importance of setting commercial bonds.³⁴ Ex. 448, 3E at 5128–5130. Louis Marcotte believed that these lunches were an investment in his business. Louis Marcotte, 2A at 465; *see also* Ex. 442, 3D at 4660; Ex. 448, 3E at 5131–5132.

Although Judge Porteous contests the testimony proffered at the hearings, several witnesses also stated that Marcotte arranged and

³³Louis and Lori Marcotte offered somewhat conflicting testimony about when the regular lunches with Judge Porteous began. Lori Marcotte believed that the lunches started around 1992. Ex. 448, 3E at 5085–5086, 5130. Louis Marcotte testified that he recalled that the lunches began in 1994 or 1995 but said that it could have been earlier; he also recalled that he began dealing directly with Judge Porteous and taking him out to lunch following some unfavorable press coverage of Judge Porteous's dealings with the bondsman Adam Barnett in September 1993. Louis Marcotte, 2A at 511–513; Ex. 119z, 3C at 2459.

³⁴For example, Lori Marcotte testified that Judge Porteous helped the Marcottes form a relationship with another judge on the 24th JDC, who was ultimately charged and convicted on federal corruption charges. According to Lori Marcotte, it was during a lunch with this other judge that Judge Porteous explained the concept of splitting bonds and “[t]hat was kind of like the stage of everything else that would happen.” Ex. 442, 3D at 4665; *see also* Ex. 73(a)–(d), 3C at 1917–1936.

paid for Judge Porteous's car to be repaired and maintained on multiple occasions. This service included picking up Judge Porteous's car to have it washed, detailed, and filled with gas, as well as fixing tires and radios, repairing the transmission, and performing bodywork. Louis Marcotte, 2A at 466–469. When Judge Porteous needed to have one of his cars repaired, he or his secretary would let Marcotte know. His cars would be picked up and taken for maintenance or repairs by Jeffrey Duhon or Aubrey Wallace, both BBU employees during this period. Duhon, 2A at 608–610; Wallace, 2A at 634–636. Marcotte testified that Judge Porteous owned three or four old cars that “were broken a lot,” and Marcotte, through BBU, would pay for repairs “once a month or once every three months.” These repairs, however, occurred over a period of only six or eight months. Louis Marcotte, 2A at 467–469; Stip. 158, 1C at 2537; Ex. 442, 3D at 4653–4654; Ex. 448, 3E at 5155.

Several witnesses testified that on one occasion, Marcotte sent Duhon and Wallace to repair a wooden fence on Judge Porteous's property after it was damaged in a storm. Louis Marcotte, 2A at 469, 520–521, 591. Duhon and Wallace testified that this project was completed in approximately three days and that Louis Marcotte paid for the necessary materials. Duhon, 2A at 610–612; Wallace, 2A at 637–638; Ex. 442, 3D at 4654.

Louis Marcotte also provided local judges, including Judge Porteous, with occasional gifts, including bottles of liquor or coolers filled with shrimp. Marcotte testified that, with these gifts, he wanted to “make a statement” and would give judges between \$300 and \$500 worth of shrimp at a time. According to Louis Marcotte, Judge Porteous, unlike some state judges, never refused Marcotte's gifts. Louis Marcotte, 2A at 553, 637; *see* Wallace, 2A at 637, 657.

Finally, Louis Marcotte testified that he took at least one trip with Judge Porteous to Las Vegas in 1993 or 1994. On this trip, Marcotte and Judge Porteous were joined by two local attorneys who were friends of Marcotte, several friends of Judge Porteous, and another state court judge. Marcotte testified that, “given the stain that the bail bonds business has at the national level,” he felt that it was important for Judge Porteous to invite some attorneys on the trip so “it wouldn't look so bad with him going to Las Vegas with me.” Louis Marcotte, 2A at 469–471. According to Marcotte, Judge Porteous's expenses were split between him and the two local attorneys, who paid Danos in cash. Danos then deposited the money into her account and “cut the checks for [Judge Porteous's] tickets.”³⁵ Louis Marcotte explained that they reimbursed Judge Porteous for his trip in this manner to “hide it from the world.” *Id.* at 471; *see also* Lori Marcotte, 2A at 561–562; Ex. 442, 3D at 4654, 4664; Ex. 447, 3E at 5026–5027.³⁶

³⁵ Danos also accompanied the Marcottes to Las Vegas on several occasions, and the Marcottes paid for these trips “because she was Judge Porteous's secretary and we wanted to get some help from that office.” Lori Marcotte, 2A at 561–562. Danos testified that she believed that Judge Porteous was aware that the Marcottes were paying her way. Judge Porteous disagrees that he had any knowledge of this. Danos, 2A at 788, 803, 807–808; Ex. 448, 3E at 5092, 5096, 5180–5182.

³⁶ The House also points to Judge Porteous's failure to disclose his attendance at conventions of the Professional Bail Agents of the United States in 1996 and 1999 on his annual disclosure forms as additional evidence that Judge Porteous was attempting to hide his relationship with the Marcottes. Ex. 102a, 3C at 2141–2144; Ex. 105a, 3C at 2384–2387.

i. The House's perspective

The key factual disagreement regarding this article is whether, as the House alleges, Judge Porteous engaged in a corrupt scheme with the Marcottes to set bail and reduce or split bonds in criminal cases to maximize their profits at the expense of defendants, their families, and the public in exchange for things of value. In particular, the House alleges that Judge Porteous's enjoyment of free meals, repairs, and gifts from the Marcottes was linked to his favorable bail bonds decisions and other official actions he undertook on their behalf. While an occasional meal gifted by a professional associate may not be worrisome, the House argues that the evidence proves that Judge Porteous and the Marcottes had a far more extensive arrangement of regular, expensive meals that often included heavy drinking. The House contends that a number of witnesses corroborate key elements of the Marcottes' testimony about these meals, including Judge Porteous's secretary, Rhonda Danos, and other employees of BBU. Danos, 2A at 804–805; Duhon, 2A at 614–615; Griffin, 2B at 1650–1651.

According to the House, the lunches, home and car repairs, and other favors Louis Marcotte gave to Judge Porteous were in return for greater access to the judge and to strengthen the Marcottes' bail bonds business. While giving Judge Porteous things of value, the Marcottes testified that they frequently circumvented the magistrate or duty judge assigned to handle bonds for the 24th JDC to have Judge Porteous set bonds at their preferred amounts. According to Louis Marcotte, his close relationship allowed him direct access to Judge Porteous whenever he thought Judge Porteous would set a more favorable bond than the assigned magistrate. Louis Marcotte, 2A at 458–460, 471–479; Ex. 447, 3E at 5064–5065.

The House contends that the Marcottes enjoyed special access to Judge Porteous. Louis Marcotte testified that they would go by Judge Porteous's chambers, drop off paperwork with Rhonda Danos, or call at Judge Porteous at night or on the weekend when the courthouse was not open. *See* Louis Marcotte, 2A at 473; *see also* Duhon, 2A at 612–613; Wallace, 2A at 633. Marcotte testified that after he took Judge Porteous to lunch or cared for his car, Judge Porteous would be “more apt to do things” for them. Louis Marcotte described the reasons he gave Judge Porteous things of value: “I wanted service, I wanted access, and I wanted to make money” and “[Judge Porteous] would do more when we would do more for him.” Louis Marcotte believed that Judge Porteous knew he was helping BBU make money by setting favorable bonds. Louis Marcotte, 2A at 471–479, 553–554; Ex. 442, 3D at 4655; Ex. 447, 3E at 4987, 5048; *see also* Ex. 448, 3E at 5193.

Marcotte testified that his special access to Judge Porteous for bond decisions continued until the very end of his state court tenure in October 1994. Louis Marcotte, 2A at 517–519. The House points to documentary evidence that Judge Porteous signed twenty-nine bonds for BBU in October 1994; twenty-seven of these bonds were signed after his Senate confirmation on October 7, 1994. Stips. 152–153, 1C at 2537. The House characterizes these bonds as a late rush by the Marcottes and Judge Porteous to capitalize on their corrupt relationship before Judge Porteous took the federal bench.

Furthermore, the House alleges that there was a connection between Louis Marcotte's favors and Judge Porteous's official actions. Louis Marcotte made no pretense that the expensive meals and other favors he gave Judge Porteous were anything but shrewd investments in his bail bonds business. *See, e.g.*, Louis Marcotte, 2A at 471–479, 553–554. Judge Porteous in turn provided BBU direct access to his chambers to deal with bond issues. The House notes that not all judges worked directly with bondsmen and that at least three judges in the 24th JDC would work only with lawyers rather than with the bondsmen. *See* Griffin, 2B at 1652–1653.

ii. Judge Porteous's perspective

Judge Porteous denies that he set, reduced, or split bonds to favor the Marcottes in exchange for meals and other things of value and argues that the House's evidence consists only of general, misleading testimony about the bond setting process and Judge Porteous's relationship with the Marcottes. Judge Porteous argues that the House exaggerated both the frequency and cost of the meals for which the Marcottes allegedly paid. To support this claim, Judge Porteous points to the House's lack of documentary evidence of any meal purchased by the Marcottes for Judge Porteous while he was on the state bench. Moreover, Judge Porteous argues that when these meals occurred, they were in the open and in public restaurants; he asserts that no one tried to hide the fact that they were dining together because the acceptance of the lunches was common and customary in Gretna and did not violate any applicable rules or ethical obligations.³⁷ *See* Louis Marcotte, 2A at 514, 539. Judge Porteous contends the purpose of these lunches was more social in nature than business-oriented and that the conversation tended to focus on matters unrelated to work. *See* Lori Marcotte, 2A at 587; Louis Marcotte, 2A at 513–514. Furthermore, Judge Porteous argues that there was nothing improper about accepting occasional meals as gifts, and no connection between the occasional lunches he had with the Marcottes and the bail bonds he set. *Id.* at 514–515; Griffin, 2B at 1641–1642, 1650–1651.

Although Judge Porteous acknowledges that he occasionally accepted meals from the Marcottes, he asserts that the testimony that Louis Marcotte paid for car and home repairs or trips to Las Vegas is grossly overstated. Judge Porteous disputes that Marcotte routinely paid for car repairs and maintenance and, while offering no contradictory testimony, notes that no documentary evidence corroborates any of the testimony offered by the House, all of which is from witnesses who are convicted felons. *See* Louis Marcotte, 2A at 521–522. Moreover, Judge Porteous similarly disputes testimony that Louis Marcotte ever had his fence repaired and emphasizes that the House has no records or documentation to corroborate this claim. On cross-examination, Marcotte admitted that he never saw the repaired fence. Judge Porteous also challenges the credibility of Aubrey Wallace and Jeffrey Duhon, the two BBU employees allegedly sent to repair the fence, by noting Louis Marcotte's testimony that they were known to use illegal narcotics while on the job. *See*

³⁷Testimony regarding ethics rules is discussed in section D.

id. at 519–521; Wallace, 2A at 656–657; Stips. 156, 157, 1C at 2537.

Judge Porteous does not deny that he received occasional gifts of shrimp and liquor from Louis Marcotte, but he points to Marcotte’s testimony that such gifts were provided to all of the local judges and many court personnel, at least during the holiday season. *See* Louis Marcotte, 2A at 538–539; Wallace, 2A at 637, 657; Ex. 448, 3E at 5139–5143.

Judge Porteous also denies that Louis Marcotte paid for any trip to Las Vegas, noting that no documentary evidence of the details of those expenses has been introduced. To support this position, Judge Porteous points to Marcotte’s uncertainty over whether he was accompanied by Judge Porteous on one or two trips while on the state court, as well as Marcotte’s admission that Judge Porteous may have been traveling to Las Vegas in a professional capacity to speak at a Professional Bail Agents of the United States (PBUS) convention, in which case the PBUS would have compensated Judge Porteous for his travel costs and hotel room. *See* Louis Marcotte, 2A at 522–525; Ex. 447, 3E at 5026–5027.

Judge Porteous argues that he never set, reduced, or split bonds in order to benefit the Marcottes’ bail bonds business. He defends his practice of managing bonds in the context of an imperfect criminal justice system. Judge Porteous maintains that he was a proponent of using commercial and split bonds to address chronic problems such as jail overcrowding and that aggressive use of commercial bonds, in this context, was in the public interest.³⁸ Louis Marcotte, 2A at 504–506; Lori Marcotte, 2A at 579–582. During the relevant period, the Jefferson Parish Correctional Center was under a federal court consent decree that limited its capacity to 700 inmates. Under the circumstances, many defendants who were not released on bond might be released instead on personal recognizance under the terms of the consent decree. Bodenheimer, 2B at 1180–1183, 1193–1194; Mamoulides, 2B at 1562–1566; Stip. 162, 1C at 2538. John Mamoulides, the District Attorney in Jefferson Parish from 1972 until 1996, agreed that defendants released on commercial bonds were more likely to appear for required court dates because there was another interested party, the bondsman, who would be actively looking for those who “jumped bond.” Mamoulides, 2B at 1574–1575. Former Judge Ronald Bodenheimer testified that Judge Porteous was viewed as an experienced judge on criminal matters, a public advocate for commercial bonds, and a local leader in finding a solution to the jail overcrowding problem. Bodenheimer, 2B at 1171, 1179–1180, 1187–1188, 1193–1194.

Judge Porteous notes that the House has not identified a single particular bond that he improperly set, split, or reduced. Furthermore, given that the Marcottes held a near-monopoly of the bail bonds business around the 24th JDC, he argues that he essentially had to deal with the Marcottes when setting bail or deciding bonds. This problem was exacerbated, according to Judge Porteous, because other judges on the 24th JDC disliked magistrate duty, were hard to reach, and did not like setting bonds. Thus, it was common for bail bondsmen and attorneys to bypass the assigned magistrate

³⁸ According to studies cited by Judge Porteous, defendants are 28 percent more likely to appear when released on bonds rather than on their own recognizance. *See* Ex. 1134, 3E at 6071.

and seek out another judge to secure a bond. Bodenheimer, 2B at 1188–1191; Griffin, 2B at 1638–1639; Lori Marcotte, 2A at 576–577; Louis Marcotte, 2A at 506–507; Ex. 448, 3E at 5118–5122.

According to Judge Porteous, he neither “invented” split bonds nor was the only judge who used them; split bonds were very common in the early to mid 1990s. Bodenheimer stated that, of the 16 judges in the 24th JDC, “[all] of them used the split bond concept.” Bodenheimer, 2B at 1181, 1185. The Marcottes also went to many other judges to set, reduce or split bonds. Lori Marcotte, 2A at 582; Louis Marcotte, 2A at 508–510; Mamoulides, 2B at 1576; Ex. 447, 3E at 4989.

Judge Porteous insists that he gave no “special access” to the Marcottes but maintained an open-door policy to his chambers for everyone. Danos, 2A at 800; Griffin, 2B at 1639. Rhonda Danos, Judge Porteous’s former secretary, testified that the Marcottes did not receive special access or treatment from chambers. Danos, 2A at 786–787, 800–801. Moreover, Danos and Darcy Griffin, Judge Porteous’s criminal clerk, testified that Judge Porteous did not merely take Marcotte’s assertion that a certain bond level was appropriate at face value. Before setting, reducing, or splitting a bond, it was his standard operating procedure to have a member of his staff call the jail and obtain information related to the criminal background of the arrestee. *Id.* at 799–800; Griffin, 2B at 1640–1641. Lori Marcotte indicated that, at times, Judge Porteous would personally call the jail, rather than have his staff perform this duty and, on occasion, rejected bond requests. Lori Marcotte, 2A at 577–578; Ex. 448, 3E at 5115–5116; *see also* Danos, 2A at 799–800; Griffin, 2B at 1641; Louis Marcotte, 2A at 510–511; Wallace, 2A at 654.

Judge Porteous refutes the House’s theory that he approved an unusually large number of bonds in October 1994 before he was sworn in as a federal judge. He notes that the House failed to offer evidence of the average number of bonds handled by a judge on the 24th JDC and cites evidence that, as a state judge, he signed just as many, if not more, bonds in other months. Exs. 2002–2004, 3E at 6077–6197. Thus, twenty-nine bonds in a month for BBU, which held a near monopoly of the bail bonds business in that courthouse, was not an unusually high number. Griffin testified that twenty-nine bonds processed in a month was a low number. Griffin, 2B at 1646.

b. Set aside and expungement of criminal convictions

Judge Porteous’s actions involving the process to expunge the criminal convictions of BBU employees Jeffrey Duhon and Aubrey Wallace in the early 1990s are also at issue. Louis Marcotte wanted Duhon and Wallace to obtain bail bondsman licenses to expand his business, but their prior criminal convictions precluded them from doing so. Duhon, 2A at 616; Louis Marcotte, 2A at 479–480. Both Duhon and Wallace testified that Marcotte had spoken with Judge Porteous about the expungement of their prior criminal convictions. According to Duhon, he was told that Marcotte would “take care” of Duhon’s criminal conviction so that he could get a bail bondsman license; one of Duhon’s two felony convictions was eventually expunged by Judge Porteous. Duhon, 2A at 616–618. Wallace also testified that he believed that the set-aside of his burglary conviction

tion was done by Judge Porteous at Marcotte's request, an accusation that Judge Porteous has denied. Wallace, 2A at 641; Goyeneche, 2A at 681–682.

In Louisiana, there are multiple steps for expunging a criminal conviction. If a judge did not originally sentence a defendant under "Article 893," a motion must first be made to amend the sentence to an Article 893 sentence. Article 893 of the Louisiana Code of Criminal Procedure permits a sentence to be set aside if probation is successfully completed.³⁹ An individual must then petition for the enforcement of Article 893 upon satisfactory completion of probation. After petitioning for the enforcement of Article 893, a motion must be made to set aside the conviction, and finally, a separate motion must be made to expunge the conviction. These last two steps are primarily administrative and routine steps if the motion to amend sentence and the petition to enforce Article 893 are granted without objection. Rees, 2B at 1769, 1793–1794.

Duhon had two convictions from 1976 on his record. One conviction was set aside and expunged by Judge E.V. Richards on July 22, 1992. Ex. 2006, 3E 6203–6214. A second conviction was set aside by Judge Richards on or about June 17, 1993, but Judge Porteous signed the expungement order on July 29, 1993. After his record was cleared of his convictions, Duhon eventually obtained a bail license. Duhon, 2A at 607; Stip. 148, 1C at 2537; Exs. 77(a)–(c), 3C at 1937–1943.

Wallace had a drug conviction arising from a December 1988 arrest and a burglary conviction from a May 1989 arrest. Wallace pled guilty to and was first sentenced on the burglary charge, which arose from the *second* arrest. Judge Porteous sentenced Wallace on June 26, 1990, to a three-year suspended sentence and two years of probation. On October 15, 1990, while on probation, Wallace pled guilty and was sentenced to five years imprisonment for the earlier drug charge. Wallace's guilty plea on the drug charge and prison sentence triggered a violation of his terms of probation on his burglary conviction and caused the unsatisfactory termination of his probation. Wallace completed his drug sentence and was released from prison in August 1993. Wallace, 2A at 656; Ex. 81, 3C at 1944–2004.

On September 20, 1994, attorney Robert Rees filed a motion to amend Wallace's burglary sentence to an Article 893 sentence to begin clearing Wallace's criminal record. On September 21, 1994, Judge Porteous held a hearing and ordered that Wallace's record in the burglary case be amended to remove the unsatisfactory completion of probation and to amend the sentence to one under Article 893. Stip. 149, 1C at 2537. On September 22, 1994, Judge Porteous amended Wallace's burglary sentence to reflect that he had pled under Article 893. Stip. 150, 1C at 2537. On October 14, 1994, Judge Porteous entered an order setting aside Aubrey Wallace's

³⁹ Article 893(E) of the Louisiana Code of Criminal Procedure states, in relevant part,

When the imposition of sentence has been suspended by the court for the first conviction only, as authorized by this Article, and the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set aside and dismiss the prosecution and the dismissal of the prosecution shall have the same effect as acquittal, except that said conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a multiple offender, and further shall be considered as a first offense for purposes of an other law or laws relating to cumulation of offenses. Dismissal under this Paragraph shall occur only once with respect to any person.

1989 burglary conviction. Stip. 151, 1C at 2537; Ex. 81, 3C at 1944–2004; Ex. 82, 3C at 2005–2111. Judge Porteous, however, never entered an expungement order on Wallace’s burglary conviction.

The parties offered conflicting evidence on whether Judge Porteous erred as a matter of law in setting aside Wallace’s conviction. Several sections of the Louisiana Code of Criminal Procedure were referenced in testimony regarding the judicial authority to set aside a sentence that had already been served.⁴⁰

Although Mike Reynolds, the Assistant District Attorney who was present for the hearing on the motion to amend Wallace’s sentence, did not object in court, Reynolds later reported that Judge Porteous had unlawfully set aside Wallace’s conviction to the Metropolitan Crime Commission (MCC), a local nonprofit organization that investigates crime and corruption.⁴¹ Rafael Goyeneche, the President of the MCC, investigated the facts and agreed with Reynolds that Article 881, which allows for correction of a sentence “prior to the beginning of the sentence,” precluded Judge Porteous from invoking Article 893 after the commencement of Wallace’s sentence and ultimately ordering an expungement of his record. Goyeneche, 2A at 670, 672–674, 681–687.

Rees, Wallace’s attorney, disagreed and explained that regardless of whether Article 893 was explicitly referenced in Wallace’s original suspended sentence on the burglary conviction, it was necessarily invoked because that section provided the sole authority for a judge in a felony case to order a suspended sentence and probation. Rees, 2B at 1784–1786, 1799–1800. In other words, Rees believed that the motion to amend was a mere formality because the underlying sentence was already an Article 893 sentence. According to Rees, the motion to amend Wallace’s sentence was therefore lawful and proper. *Id.* at 1773, 1779–1780; Ex. 69(d), 3B at 1803–1822. In addition, Rees stated that in the first place, it had been “incorrect to terminate [Wallace’s] probation based on that, the fact that he got jail time as a result of a prior arrest.” The wrongful termination of Wallace’s probation, in his view, permitted Judge Porteous to go back, review, and amend the sentence under Section 882. Rees, 2B at 1765–1768.

i. The House’s perspective

The House argues that Judge Porteous intervened in a highly questionable manner to expunge the conviction of Jeffrey Duhon in a case assigned to another judge and violated Louisiana law in setting aside Aubrey Wallace’s sentence. In the House’s view, Judge Porteous’s actions constituted improper favors provided to Louis Marcotte.

The House contends that Judge Porteous completed the expungement of Duhon’s burglary conviction at the request of Louis Marcotte, a point supported by both Marcotte’s and Duhon’s testi-

⁴⁰In addition to Article 893, Articles 881 and 882 were also discussed. Article 881 provides that “the Court may amend or change the sentence, within the legal limits of its discretion, prior to the beginning of the sentence.” Ex. 69(d), 3B at 1823. Article 882 permits the court to correct or review an “illegal” sentence. *Id.* at 1824–1828.

⁴¹John Mamoulides, the Jefferson Parish District Attorney during the relevant period, could not explain why Reynolds—if he had reservations about the set aside—did not object at the hearing or raise the issue with his supervisors before going to the MCC. Mamoulides, 2B at 1596–1598.

mony. The House asserts that Judge Porteous's action in expunging Duhon's conviction was noteworthy because a judge in another section of the court originally had sentenced Duhon and completed all but the final step in the expungement process. Duhon, 2A at 616–618; Louis Marcotte, 2A at 480–481; Ex. 442, 3D at 4656.

The House also considers the set aside of Wallace's burglary conviction as an egregious example of misconduct. The House maintains that Louis Marcotte repeatedly asked Judge Porteous to set aside Wallace's felony burglary conviction in the summer of 1994, around the time that Judge Porteous was nominated to the federal bench. Notwithstanding Rees's interpretation of the applicable provisions, the House insists that Article 881 precludes the amendment of a sentence after its commencement. Judge Porteous nonetheless amended Wallace's sentence, which he had already served, to permit relief under Article 893 and to set aside the conviction. Goyeneche, 2A at 683–687; Louis Marcotte, 2A at 487–488; Wallace, 2A at 643–644; *see also* Rees, 2B at 1783.

The House alleges that the timing of Judge Porteous's actions to set aside Wallace's conviction was motivated by his Senate confirmation to the federal bench. According to Marcotte, “[Judge Porteous] said look, Louis, I'm not going to let anything stand in the way of me being confirmed and my lifetime appointment, so after that's done, I will do it.” Louis Marcotte, 2A at 487. The House argues that the confirmation timeline corroborates Marcotte's testimony by showing that Judge Porteous set aside Wallace's conviction on October 14, 1994, one week after the Senate confirmed him on October 7, 1994, and two weeks before he was sworn in on October 28, 1994. *Id.* at 488; Stips. 14, 16, 1C at 2527; Ex. 442, 3D at 4659; *see* Rees, 2B at 1793–1795.

ii. Judge Porteous's perspective

Judge Porteous contends that the House misconstrues what happened and wrongly interprets the applicable Louisiana law. He maintains that what he did in these cases was to act on a routine, administrative request for Duhon and to correct a legal error from his prior order terminating Wallace's probation.

Judge Porteous counters that the witness testimony proffered by the House regarding his role in the Duhon expungement is wrong and that Marcotte and Duhon were both discredited on this point at the evidentiary hearings. While Marcotte and Duhon both testified that Judge Porteous cleared the burglary conviction from Duhon's record, the documentary evidence shows that another judge had granted the motion to amend the sentence, the petition to enforce Article 893, and the motion to set aside the conviction. About a month after the motion to set aside was granted by Judge Richards following a hearing, Judge Porteous granted the motion for expungement—the final, administrative step in the process. This fact, in Judge Porteous's view, undermines the credibility of Marcotte and Duhon. *See* Duhon, 2A at 620–624; Louis Marcotte, 2A at 527–529; Ex. 77(a)–(c), 3C at 1937–1943.

Judge Porteous also maintains there was nothing improper in his handling of the set aside of Aubrey Wallace's burglary conviction. In fact, Judge Porteous went beyond the minimum required by statute and scheduled a “show cause” hearing on the motion to amend Wallace's conviction, providing the District Attorney with

an opportunity to object. *See* Rees, 2B at 1752, 1761–1762. Judge Porteous insists that the motion to amend had merit because Wallace’s probation on the burglary charge was wrongly terminated; his plea and sentence on the drug charge did not violate the terms of his probation on the burglary conviction because the drug arrest pre-dated the burglary arrest. Rees, who represented Wallace and filed the motion to set aside the conviction, testified that Judge Porteous’s actions were not wrong as a matter of law. *Id.* at 1750, 1773, 1799–1800.

Judge Porteous argues that there is no evidence that the set aside of Wallace’s conviction was either a pre-arranged deal with Louis Marcotte or timed to avoid scrutiny during Judge Porteous’s Senate confirmation. Judge Porteous insists that he acted on a routine motion to set aside a conviction that was properly noticed and filed on behalf of Wallace to which the District Attorney’s office did not object. Rees, 2B at 1749–1750, 1756–1761, 1764–1774, 1783, 1800; Ex. 69(d), 3B at 1818–22; *see also* Ex. 82, 3C at 2005–2111. Judge Porteous also argues that the House’s asserted motive is doubtful because even if Wallace’s burglary conviction had been expunged, he still would have been ineligible to serve as a bail bondsman because of his separate drug conviction. To address the drug conviction, Wallace would have needed a pardon from the governor. *See* Rees, 2B at 1765–1766; Wallace, 2A at 643, 658–659.⁴²

c. Louis Marcotte’s interview with the FBI

In 1994, the FBI interviewed Louis Marcotte as part of its background investigation of Judge Porteous, who was being considered for an appointment to the U.S. District Court for the Eastern District of Louisiana. The FBI interviewed Louis Marcotte on or about August 1, 1994. Stips. 171, 178, 1C at 2539. Marcotte testified that Judge Porteous told him that the FBI was going to be coming to interview him. Louis Marcotte, 2A at 482.

According to the written summary of the interview prepared by the FBI, Marcotte explained that he was a professional and social acquaintance of Judge Porteous who “sometimes [went] out to lunch with the candidate and attorneys in the area.” Stip. 179, 1C at 2539. Marcotte also told the FBI that Judge Porteous was “really helpful and available for everybody” and was “open-minded and fair, but [was] not a push-over.” In his interview, Marcotte generally discussed bond setting practices in the Jefferson Parish courthouse and his bail bonds business. Ex. 69(b) (full exhibit, at 471).⁴³

Also in this interview, Marcotte denied knowledge of any abuse of alcohol or prescription drugs by Judge Porteous; Marcotte stated that Judge Porteous would have a beer or two at lunch but Marcotte had never seen him drunk. Marcotte also told the FBI that

⁴² Judge Porteous also relies on the testimony of Wallace, who stated that it was he who wanted to pursue a bail bondsman license. When Wallace—now a reverend—was asked whether he deserved the amended sentence and the set aside, he replied, “I just think I was shown some compassion.” Wallace stated that, since his conviction was amended and set aside, he has seen Judge Porteous on occasion, and that he could tell Judge Porteous viewed Wallace with “a sense of pride.” Wallace, 2A at 639–640, 644, 659–660.

⁴³ The Committee admitted Exhibit 69(b), the FBI background investigation file for Judge Porteous’s federal nomination, with certain limitations. Parts of Exhibit 69(b) are part of the public, certified record; however, the full exhibit is available only to Senators upon their request. Citations to portions of the exhibit that were not included into the public record will reflect a general citation to the full exhibit and the appropriate Bates number.

he had “no knowledge of the candidate’s financial situation” and assured the FBI that “he [was] 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.” *Id.* After the interview, Marcotte told Judge Porteous, “Thumbs up.” Louis Marcotte, 2A at 486.

At the evidentiary hearings, however, Marcotte testified that his statements to the FBI in 1994 about Judge Porteous’s financial circumstances, his alcohol usage, and general “integrity” were false. According to Marcotte, he lied to protect Judge Porteous because the Judge was someone who had been good to him, and Marcotte wanted to aid Judge Porteous’s appointment to the federal bench. Louis Marcotte, 2A at 483–485.

i. The House’s perspective

The House argues that Louis Marcotte lied to the FBI during its background investigation of Judge Porteous to help him attain his judicial appointment and to protect against the exposure of their corrupt relationship. Marcotte was a close and trusted associate who could be counted on by Judge Porteous to say positive things, even if that meant lying, given all that Judge Porteous had done for Marcotte over the years. In other words, Marcotte’s lies on Judge Porteous’s behalf were an element of their corrupt relationship.

ii. Judge Porteous’s perspective

Judge Porteous argues that Marcotte did not say anything demonstrably false in his FBI interview. Statements to the effect that Judge Porteous may have appeared drunk are uncorroborated; the available documentary evidence only shows that Judge Porteous had one or two drinks at lunches. Exs. 372(a)–(d), 3D at 4394–4401; Ex. 373(d), 3D at 4408–4410. Furthermore, Judge Porteous contends that Marcotte could not have lied about Judge Porteous’s financial condition because Marcotte had no direct knowledge of his financial affairs. He argues Marcotte’s contrary impeachment trial testimony is based solely on his observations about the decrepit state of Judge Porteous’s cars, “lifestyle,” and gambling habits. Louis Marcotte, 2A at 535.

Finally, with regard to Marcotte’s response to the compromise-or-coercion question, Judge Porteous points to Marcotte’s own admission that he would have never extorted or blackmailed Judge Porteous. *See id.*; Ex. 447, 3E at 5052–5053. Even when asked if Marcotte had information that could potentially embarrass Judge Porteous and be used as leverage against him, Marcotte responded, “But I would have never leaned on him that kind of way. I would do without before I would have leaned on him in that kind of way.” *Id.* at 4971, 5053. From this testimony, Judge Porteous maintains that Marcotte himself refutes the House’s allegations.

2. *Conduct While a Federal Court Judge and Relationship With the Marcottes*

It is uncontested that after Judge Porteous became a federal judge, his relationship with Louis Marcotte changed, and their lunches became less frequent. Nonetheless, records submitted as

evidence show that the Marcottes paid for lunches with Judge Porteous on at least six occasions.⁴⁴ Stip. 164, 1C at 2538; Exs. 372(a)–(d), 3D at 4394–4401; Ex. 373(a), 3D at 4402–4404; Ex. 373(c), 3D at 4405–4407; Ex. 373(d), 3D at 4408–4410; Ex. 375, 3D at 4411. Moreover, Louis Marcotte testified that he tried to maintain his relationship with Judge Porteous. Louis Marcotte, 2A at 489–490.

In March 2002, Marcotte arranged a lunch at Emeril’s Restaurant with Judge Porteous and Judge Ronald Bodenheimer of the 24th JDC, a relatively new state court judge; Marcotte wanted Bodenheimer to “step into [Judge Porteous’s] shoes.” *Id.* at 490. Prior to that lunch, Judge Bodenheimer “kind of stayed away from Louis Marcotte intentionally,” because, at that time, “the rumor was that [Marcotte] was doing drugs.” Bodenheimer, 2B at 1174–1175. Judge Porteous, however, spoke highly of Louis Marcotte’s honesty in the bond business, and Bodenheimer took Judge Porteous’s statements seriously. *Id.* at 1171–1175, 1177; Louis Marcotte, 2A at 462, 490; *see* Stip. 166, 1C at 2538; Ex. 447, 3E at 5036–5037. Bodenheimer also testified that, at some other time, Judge Porteous told him that now that Bodenheimer was a judge “he would never have to buy lunch again.” Bodenheimer clarified that he thought the statement to be made in jest. Bodenheimer, 2B at 1175–1177.

According to Louis Marcotte, after this lunch he provided meals, house repairs, and a trip to the Beau Rivage casino to Bodenheimer, and in return, Bodenheimer “became helpful to the Marcottes in setting bonds.” Louis Marcotte, 2A at 490–491; *see* Ex. 375, 3D at 4411; Ex. 442, 3D at 4661; Ex. 447, 3E at 5040–5041; Ex. 448, 3E at 5144. In his testimony, however, Bodenheimer maintained that Judge Porteous never told him what to do in relation to the Marcottes, nor did Bodenheimer feel that Judge Porteous ever used his position as a federal judge to pressure Bodenheimer to work with the Marcottes or to issue any bonds. Judge Porteous simply told Bodenheimer that he could trust the Marcottes when it came to providing information related to a particular offender. Bodenheimer always verified the information provided by Marcotte and “never, ever caught him in a lie.” Bodenheimer, 2B at 1197. Moreover, Bodenheimer stated that the pressure to set bonds, in general, came from the fact that many defendants would be subject to release on personal recognizance due to a federal court decree. Given this situation and BBU’s dominance in the area, Bodenheimer testified that he believed that working with the Marcottes was unavoidable. *Id.* at 1172–1173, 1178–1183, 1196–1197.

Louis Marcotte pled guilty in 2004 to criminal racketeering charges arising from his bail bonds business. Lori Marcotte pled guilty to conspiracy to commit mail fraud in 2004. Bodenheimer pled guilty in 2003 to three counts, including one count of honest

⁴⁴For example, in 1997, the Marcottes set up two lunches with Judge Porteous and two justices of the peace, who also had the ability to set bonds. At this lunch, Judge Porteous vouched for the Marcottes, but in both cases, the justices of the peace were uncomfortable with forming a professional relationship with them. Louis Marcotte, 2A at 563–564; Ex. 447, 3E at 5035–5038; Ex. 448, 3E at 5187–5188. Judge Porteous also met with an official from the insurance company that set the Marcottes’ bond writing authority. At this lunch, Judge Porteous’s presence helped the Marcottes “to develop trust, [a good] reputation, [and] stability . . . on our part,” which were important in securing the ability to write larger bonds from the insurance company. Lori Marcotte, 2A at 564–565.

services fraud. Ex. 71(a), 3B at 1848, 1858–1859; Ex. 71(e), 3C at 1891–1896; Ex. 88(d), 3C at 2112–2115; Ex. 88(f), 3C at 2122–2133; Ex. 88(h), 3C at 2136.

i. The House’s perspective

The House argues that, when Judge Porteous became a federal judge, he could do less for the Marcottes, and, accordingly, the Marcottes did less for him. After his appointment to the federal bench, the Marcottes no longer repaired Judge Porteous’s cars or home. *See* Lori Marcotte, 2A at 591; Louis Marcotte, 2A at 522; Wallace, 2A at 657. Nevertheless, the House maintains that the Marcottes continued to pay for some lunches and drinks, and that Judge Porteous assisted them by using the power and prestige of his office to recruit state judges to fill his former position as the “go-to” judge for the Marcottes in setting bonds.

The Marcottes and BBU also paid for meals and drinks for Judge Porteous when he was invited to speak at the annual convention of the Professional Bail Agents of the United States (PBUS) in 1996 and 1999. In 1996, the convention was held in New Orleans and hosted by the Marcottes. In 1999, the convention was held in Biloxi, Mississippi, and although PBUS paid for Judge Porteous’s room and some expenses, the Marcottes subsidized other meals and drinks. Lori Marcotte, 2A at 565–566; Ex. 90(a), 3C at 2137–2138; Ex. 90(b), 3C at 2139–2140.

The House asserts that the charges against Bodenheimer mirror the current allegations against Judge Porteous, in that Bodenheimer was charged with “enrich[ing] himself by setting, reducing, and splitting bonds in various criminal matters pending before him as well as other judges on terms most advantageous to the bail bonding company in exchange for things of value, including meals, trips to resorts, campaign contributions, home improvements, and other things of value.” According to the House, Louis Marcotte, Lori Marcotte, and Bodenheimer all pled guilty to charges arising out of their corrupt relationship, while Judge Porteous avoided criminal sanction for his similarly corrupt conduct with the Marcottes. *See* Ex. 71(a), 3B at 1845–1863; Ex. 71(e), 3C at 1891–1896; Ex. 88(d), 3C at 2112–2115; Ex. 88(f), 3C at 2122–2133; Ex. 88(h), 3C at 2136.

ii. Judge Porteous’s perspective

Judge Porteous maintains that his contact with the Marcottes was minimal after he became a federal judge, which by Louis Marcotte’s own admission amounted to only five to eight lunches. Accepting those lunches was not barred under the canons of judicial ethics because he did not use his office as a federal judge to influence others inappropriately on behalf of the Marcottes. While Marcotte may have wanted Judge Porteous to lobby and pressure state court judges to deal with BBU, there is no evidence that he did anything other than provide a professional reference for Marcotte, as Judge Porteous did with Bodenheimer. *See* Danos, 2A at 805–806; Louis Marcotte, 2A at 490; Ex. 447, 3E at 5029–5030.

Judge Porteous argues that the alleged corrupt conduct in Article II, then, amounts to a handful of lunches and contradictory testimony as to whether he abused the power and prestige of his federal judgeship to lobby other state judges on behalf of the

Marcottes. Rather than providing concrete evidence of misconduct, Judge Porteous argues that the House merely attempts to link him with the criminal convictions of the Marcottes and Bodenheimer, despite the fact that he was never charged with a crime. In particular, unlike other judges investigated by the FBI and accused of wrongdoing, Judge Porteous never asked that the Marcottes provide him with a percentage of the premium earned from the bonds he signed for them, nor did he receive improper cash payments from the Marcottes. *See* Lori Marcotte, 2A at 568–569; Stip. 163, 1C at 2538.

D. Expert Testimony

1. Professor Charles G. Geyh

In preparing his testimony as an expert witness for the House, Professor Geyh used the House Report and sworn pretrial testimony before the Senate⁴⁵ as the basis to form his opinions.⁴⁶ Geyh, 2A at 716. Geyh stated the applicable ethical standard at the time was that no judge should accept any gifts or favors that might reasonably appear designed to affect his judgment or influence his conduct. He testified Judge Porteous’s alleged relationship with the Marcottes was a “traditional” form of corruption tantamount to a *quid pro quo* arrangement. *Id.* at 728. Professor Geyh viewed these allegations to be an “abuse [of] the prestige of his office, this time to favor the Marcottes’ interests. . . . And in this case, Mr. Marcotte . . . thought of Judge Porteous as being on commission. I mean, these gifts are designed to affect the judge’s conduct.” *Id.* Similarly, Professor Geyh viewed the account of the lunch meeting with new state judges where Judge Porteous was described as “bringing strength to the table” as a continuing *quid pro quo* where Judge Porteous traded on the prestige of his federal office. *Id.* at 731.

2. Professor Dane Ciolino

As discussed in Article I, Judge Porteous’s expert, Professor Ciolino, testified that a judge could not accept a gift if it might reasonably appear to affect the judge’s official conduct. For a more complete discussion on this standard, please refer to Professor Ciolino’s testimony in Article I.

With respect to the allegations of Judge Porteous doing favors for the Marcottes in return for receiving things of value, Ciolino also testified that if the allegations regarding the Judge’s actions were true and a *quid pro quo* relationship existed, then the behavior would be criminal and unethical. Ciolino, 2B at 1524. According to Ciolino, an express agreement is not necessary to establish a *quid pro quo* relationship. *Id.* at 1536. Since the applicable standard weighs the totality of the circumstances, any change in a fact, such as whether or not bonds were set too high or too low for the defendant, may result in a different conclusion. *Id.* at 1529–1530.

⁴⁵ Louis and Lori Marcotte gave sworn pretrial deposition testimony on August 2, 2010. *See* Ex. 447, 3E at 4926–5070; Ex. 448, 3E at 5071–5206.

⁴⁶ Geyh acknowledged that he did not reject any House assertion as being untrue. Geyh, 2A at 745.

III. ARTICLE III

A. *Text of the Article*

Beginning in or about March 2001 and continuing through about July 2004, while a Federal judge in the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., engaged in a pattern of conduct inconsistent with the trust and confidence placed in him as a Federal judge by knowingly and intentionally making material false statements and representations under penalty of perjury related to his personal bankruptcy filing and by repeatedly violating a court order in his bankruptcy case. Judge Porteous did so by—

- (1) using a false name and a post office box address to conceal his identity as the debtor in the case;*
 - (2) concealing assets;*
 - (3) concealing preferential payments to certain creditors;*
 - (4) concealing gambling losses and other gambling debts;*
- and*
- (5) incurring new debts while the case was pending, in violation of the bankruptcy court's order.*

In doing so, Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for and confidence in the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

B. *Introduction to the Evidence*

Article III addresses Judge Porteous's actions regarding his Chapter 13 personal bankruptcy and relies heavily on documentary evidence that is largely uncontested. While there was also broad agreement among fact and expert witnesses regarding the process of a Chapter 13 bankruptcy generally and Judge Porteous's case specifically, a few distinct areas of sharp disagreement remain. For this reason, the discussion of Article III is organized differently than the discussions of Articles I and II, and the House's and Judge Porteous's perspectives on contested issues are integrated in one separate section following the statement of facts.

C. *Statement of Facts*1. *Background*

Between 1996 and 2000, Judge Porteous accrued increasing levels of credit card debt and, by the summer of 2000, was in a "downward financial spiral." Ex. 5, 3B at 434. Judge Porteous hired Claude Lightfoot, a New Orleans bankruptcy attorney with 10 years of experience, in an attempt to "workout" debts accrued on various unsecured credit cards informally through a payment financed by an additional mortgage against Judge Porteous's home. Judge Porteous first pursued this option, as opposed to filing for bankruptcy, in order to avoid the embarrassment of seeking bankruptcy protection, about which Judge Porteous's wife, Carmella, was particularly distraught. Lightfoot, 2A at 983–984, 1013–1014.

In order to formulate the workout plan, Lightfoot acquired information about Judge Porteous's assets and liabilities soon after he

was hired. Judge Porteous provided Lightfoot with his May 2000 pay stub, which listed a net monthly income of \$7,531.52, and a handwritten list of his creditors. In August 2000, Lightfoot asked Judge Porteous to fill out bankruptcy worksheets, which provided a fuller picture of Judge Porteous's financial health and listed his assets and creditors. Additionally, Judge Porteous periodically sent Lightfoot credit card statements in order to keep these worksheets current. *Id.* at 985–988, 1000, 1017–1018; Ex. 138(b), 3C at 2553–2581.

In pursuit of an informal workout, on December 21, 2000, Lightfoot wrote a letter to each of Judge Porteous's unsecured credit card creditors, asking them to accept a *pro rata* share of money to be borrowed against Judge Porteous's home. Judge Porteous's total unsecured credit card debt was listed as \$182,330.23 across 13 credit cards, with balances ranging from \$1,724.23 to \$28,708.98. This letter twice indicated that Judge Porteous might be forced to file for bankruptcy. Lightfoot, 2A at 987; Ex. 5, 3B at 431–432; Ex. 146, 3C at 2752.

Lightfoot attempted to follow up with these creditors for months but failed to receive a response. At that point, Lightfoot advised Judge Porteous to stop making payments to his unsecured creditors in an effort to get their attention, a tactic that ultimately increased Judge Porteous's level of indebtedness. In March 2001, when it became clear to Lightfoot that the workout plan would be unsuccessful, Judge Porteous decided to file for Chapter 13 bankruptcy protection. Lightfoot, 2A at 987, 995, 1023–1025.

2. Chapter 13 Bankruptcy Overview

Chapter 13 bankruptcy is often called a wage earner's bankruptcy. Unlike Chapter 7 bankruptcy, in which the debtor's current assets are liquidated to pay creditors, Chapter 13 bankruptcy is a voluntary process through which a debtor commits future disposable income to repay creditors at least the value they would have received if the debtor had filed for Chapter 7 protection. Chapter 13 bankruptcy plans cannot move forward if this equivalency requirement is not met, which is determined by the "best-interest-of-creditors" test. If this test reveals that the debtor's projected disposable income over the course of the plan is insufficient to satisfy this standard, the debtor's current assets may be used in the plan. Keir, 2A at 1096, 1120; Horner, 2A at 932–933; Hildebrand, 2B at 1656, 1662; *see also* 11 U.S.C. § 541(a).⁴⁷

When a Chapter 13 bankruptcy petition is filed, a bankruptcy estate is automatically created by statute.⁴⁸ Although a debtor continues to own his estate throughout the Chapter 13 bankruptcy process, a trustee is appointed to administer it. All property not accounted for in the debtor's plan when the confirmation order is

⁴⁷The Committee accepted the following individuals as expert witnesses: Bankruptcy Judge Duncan W. Keir of the District of Maryland, in the area of bankruptcy; Henry Hildebrand, Standing Chapter 13 Trustee for the Middle District of Tennessee, in matters relating to Chapter 13 bankruptcy cases; Professor Rafael Pardo, Professor of Law at the University of Washington School of Law, in matters pertaining to bankruptcy law; and former Bankruptcy Judge Ronald Barliant of the Northern District of Illinois, in matters pertaining to bankruptcy law. *See* Barliant, 2B at 1701–1702; Hildebrand, 2B at 1655; Keir, 2A at 1095; Pardo, 2B at 1261–1262.

⁴⁸Unlike a Chapter 7 estate that, with some exceptions, is composed only of what the debtor owned when the petition was filed, a Chapter 13 estate also encompasses the debtor's future income and other post-petition assets. Some assets, such as individual retirement accounts, are generally exempt. Pardo, 2B at 1288–1290.

issued vests back to the debtor. Keir, 2A at 1117–1118; Pardo, 2B at 1293.

Creditors are sent a notice of the commencement of the case after the filing of the petition. This notice contains identifying information about the debtor, the deadline by which creditors must file claims against the estate, and the date of the creditors meeting.⁴⁹ This meeting allows creditors to ask questions and object to the plan. During this meeting, the trustee reviews the debtor’s bankruptcy filings, which include a petition, bankruptcy schedules containing information on the debtor’s assets and liabilities, and a statement of financial affairs. Trustees use this opportunity to evaluate the sincerity of the debtor through an examination of the debtor under oath. Hildebrand, 2B at 1674–1675; Lightfoot, 2A at 1004–1005; Pardo, 2B at 1270–1271.

All Chapter 13 plans must be confirmed by a bankruptcy judge. After the meeting, the trustee makes a recommendation to the assigned bankruptcy judge as to whether the plan should be confirmed. If the trustee objects, which is a common occurrence, the plan is subject to litigation before a bankruptcy judge at a confirmation hearing. After the confirmation hearing, the judge rules on the trustee’s objection and decides whether to confirm the debtor’s plan.⁵⁰ Beaulieu, 2B at 1400.

Chapter 13 plans can last between three and five years and, if the plan is completed, the debtor’s debts may be discharged.⁵¹ The statutory basis for the denial of a discharge in a Chapter 13 case is failure to complete the plan, which occurs in more than two-thirds of cases. A plan may also be converted to a Chapter 7 plan or dismissed if the plan was not proposed in good faith. If a discharge has been granted, it may be revoked if the debtor obtained the discharge through fraud. Lightfoot, 2A at 1065; Pardo, 2B at 1265–1268, 1272, 1313; *see also* 11 U.S.C. § 1307.

3. Judge Porteous’s Chapter 13 Bankruptcy Filings

On March 28, 2001, Judge Porteous filed for Chapter 13 bankruptcy protection. His petition was filed under the fictitious name of “G. T. Ortous” and used a newly acquired post office box as his residential address. His filing accurately listed his Social Security number. Lightfoot suggested the idea of using the name “G. T. Ortous” and a post office box to avoid any embarrassment that would result from inclusion of Judge Porteous’s bankruptcy filing in the New Orleans Times-Picayune’s weekly listing of local bankruptcies. Both Lightfoot and Judge Porteous signed the petition under the following declaration: “I declare under penalty of perjury that the information provided in this petition is true and correct.” Lightfoot 2A at 991–994, 1027; Stips. 202, 208, 1C at 2541, 2542; Ex. 125, 3C at 2492–2493; Ex. 138(a), 3C at 2551; Ex. 145, 3C at 2749.

⁴⁹ Creditors meetings are also referred to as “341 meetings” throughout the testimony. This refers to the section of the United States Code (11 U.S.C. § 341) requiring this meeting of the creditors.

⁵⁰ If confirmed, appeals of this order are heard by U.S. District Court judges or, in a few circuits, U.S. Bankruptcy Court judges sitting on a bankruptcy appellate panel. In the Eastern District of Louisiana, appeals are heard by one of the twelve U.S. District Court judges. Pardo, 2B at 1301–1303.

⁵¹ Nevertheless, neither debt omitted from the debtor’s bankruptcy schedules nor debt accrued post-bankruptcy will be discharged when the plan is completed. *See* Pardo, 2B at 1266–1272.

On April 8, 2001, the Times-Picayune printed a list of local bankruptcies, including Judge Porteous's bankruptcy, which was filed under the name "G. T. Ortous." Lightfoot filed an amended petition on the following day using Judge Porteous's correct name, accompanied by bankruptcy schedules, a Chapter 13 plan, and a statement of financial affairs to accompany the amended petition. These documents were prepared by Lightfoot, based on the information he had previously received from Judge Porteous. The notice to creditors was not sent until after Judge Porteous's schedules were filed, and as a result, no creditor received a notice with the name "G. T. Ortous." Beaulieu, 2B at 1382; Lightfoot, 2A at 991-995, 1032-1037; Stips. 189-190, 1C at 2540; Exs. 126-127, 3C at 2497-2498; Ex. 1064, 3E at 5566-5568.

The bankruptcy schedules filed by Judge Porteous, labeled "A" through "J," require that the debtor list real property; personal property, including assets held in bank accounts or retirement plans; all creditors holding various types of secured and unsecured claims; any contracts or leases; current income; and current expenditures. Judge Porteous signed this form under the following declaration: "I declare under penalty of perjury that I have read the forgoing summary and schedules, consisting of 18 sheets plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief." Ex. 127, 3C at 2499-2524.

The statement of financial affairs, filed with a debtor's bankruptcy schedules, requires the debtor to answer a series of 21 questions to further assess the financial health of the debtor. Among other things, the statement of financial affairs asks whether the debtor has made any payments to creditors over \$600 in the 90 days preceding the debtor's bankruptcy filing (question 3). The statement also requires the debtor to list any gambling losses incurred in the year immediately preceding the commencement of the bankruptcy case or since (question 8). Judge Porteous signed this form under the following declaration: "I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments hereto and that they are true and correct." *Id.* at 2499-2524.

Although unknown to the bankruptcy trustee at the time, Porteous's bankruptcy schedules failed to disclose certain assets and undervalued others. Judge Porteous's Schedule B, on which he was required to list any "checking, savings, or other financial accounts," as well as the value of those assets (question 2), undervalued his listed Bank One checking account. Judge Porteous listed this account as having a balance of \$100, despite having deposited \$2,000 into this account on March 27, 2001, the day prior to the filing of his original petition. Moreover, from March 23 through April 23, the account had an opening balance of \$559.07 and a closing balance of \$5,493.91. At no time during this period did Judge Porteous's balance drop as low as \$100. Horner, 2A at 906-907; Stips. 223-224, 226, 1C at 2543; Ex. 127, 3C at 2499-2524, Ex. 144, 3C at 2732-2748.

Additionally, Judge Porteous failed to list his Fidelity money market account on this schedule. Judge Porteous used this account frequently, and in the days shortly prior to filing for bankruptcy, Judge Porteous wrote numerous checks drawn on the Fidelity ac-

count, including a check for \$40 on March 27, 2001. The value of this account on March 28, 2001, the date on which Judge Porteous filed his original petition, was \$283.42. However, for several months during Judge Porteous's bankruptcy, the undisclosed Fidelity money market account carried a balance significantly higher than in the disclosed Bank One account.⁵² Horner, 2A at 907, 927–928; Stips. 228, 230, 1C at 2543; Ex. 143, 3C at 2725–2731.

Schedule B also requires the debtor to list “[o]ther liquidated debts owing debtor[,] including tax refunds.” In response to this question, Porteous marked “none.” However, on March 23, 2001, Judge Porteous had filed for a tax refund of \$4,143. This refund was deposited into Judge Porteous's Bank One checking account on April 13, 2001, four days after the filing of Judge Porteous's amended petition and bankruptcy schedules. Horner, 2A at 902; Lightfoot, 2A at 998; Stips. 221–222, 240, 1C at 2543, 2544; Ex. 127, 3C at 2504; Ex. 141, 3C at 2723–2724; Ex. 144, 3C at 2732–2748.

In addition to the issues described above, Judge Porteous's bankruptcy schedules did not accurately reflect his net monthly income. Schedule I requires the debtor to list gross monthly wages, less payroll deductions, and any other income the debtor derives from other sources, which provides the trustee with an accounting of the debtor's total net monthly income. On this schedule, Judge Porteous listed both his gross wages and net monthly income as \$7,531.52, and his May 2000 pay stub—the same pay stub used by Lightfoot to calculate the “workout” plan in the summer and autumn of 2000—was attached. Ex. 127, 3C at 2516–2517.

Judge Porteous's Schedule I misrepresented his monthly income in two ways. First, Judge Porteous had received a pay increase between May 2000 and March 2001.⁵³ Second, Judge Porteous's Schedule I did not account for the fact that Social Security taxes were withheld from Judge Porteous's salary only until his income reached a statutorily defined annual gross salary referred to as the Social Security “wage base.” His income typically reached this level in July of a calendar year. At that point, certain federal taxes are no longer withheld, and his net monthly salary increased by several hundred dollars.⁵⁴ Horner, 2A at 925–926; Stip. 238, 1C at 2544.

Finally, Question 8 on the statement of financial affairs requires the debtor to “list all losses from fire, theft, casualty, or other gambling within one year immediately preceding the commencement of this case or since the commencement of the case.” Judge Porteous's listed response was “none.” Although the parties dispute the amount of Judge Porteous's offsetting gambling winnings, Judge Porteous incurred at least \$12,700 in gambling losses over the previous year. Horner, 2A at 910, 913; Ex. 127, 3C at 2521.

⁵² For example, in May 2002, the account balance in the Fidelity money market account was \$8,760.37, and the account balance in the Bank One account was \$1,120.91. In June 2002, the account balance in the Fidelity account was over \$7,800, and the balance in the Bank One account was \$857.

⁵³ On the day that his original petition was filed, Judge Porteous's net monthly income was \$7,705.51, about \$174 more than the net monthly income listed on the schedule.

⁵⁴ In July 2001 through the end of the year, Judge Porteous's monthly net salary increased to roughly \$8,500, about \$1,000 more than was listed as his net income on his bankruptcy schedules.

4. May 9 Creditors Meeting and June 28 Confirmation of the Chapter 13 Plan

Judge Porteous's Chapter 13 trustee, S.J. Beaulieu, Jr., conducted the creditors meeting on May 9, 2001. At this meeting, Judge Porteous testified under oath that he had listed all of his assets. During this meeting, neither the trustee nor any creditor objected to the amount of income listed in Judge Porteous's bankruptcy schedules. Additionally, a large number of creditors failed to file claims to collect the money available through the Chapter 13 plan. Beaulieu, 2B at 1381; Lightfoot, 2A at 1134.

At the end of the meeting, Beaulieu told Judge Porteous that he was prohibited from borrowing money or buying anything on credit while his case was pending. Specifically, Judge Porteous was informed, "Any charge cards that you may have . . . you cannot use any longer. So basically you [sic] on a cash basis now." Any loan or purchase on credit would have to be approved by Beaulieu. Beaulieu, 2B at 1398; Ex. 130, 3C at 2537; Ex. 135, 3C at 2548.

Beaulieu had mailed Judge Porteous a pamphlet entitled "Your Rights and Responsibilities in Chapter 13" prior to the meeting. This pamphlet explained that while the Chapter 13 process was ongoing, the debtor was prohibited from borrowing money or buying anything on credit without permission from the bankruptcy court, including using credit cards or charge accounts of any kind. The pamphlet additionally stated that "[t]he Trustee also has the right to use [tax] refunds to fund your plan." While testifying before the Fifth Circuit Special Investigatory Committee, Judge Porteous indicated that he had understood that he could not incur more credit in bankruptcy. Lightfoot, 2A at 1006; Ex. 10, 3B at 728; Ex. 148, 3C at 2754–2758.

Prior to the creditors meeting, Beaulieu had objected to Judge Porteous's original plan, indicating that he was not making use of all available disposable income and had not met the Chapter 7 equivalency value.⁵⁵ In his objection and motion to amend the bankruptcy plan, Beaulieu requested that the bankruptcy court increase the percentage payable to unsecured creditors. To resolve these issues, a telephone confirmation hearing was arranged with U.S. Bankruptcy Judge William R. Greendyke, who was sitting by designation from the Southern District of Texas.⁵⁶ Beaulieu, 2B at 1378–1379, 1398–1399; Ex. 129, 3C at 2533; Ex. 135, 3C at 2547; *see also* Lightfoot, 2A at 1007–1008.

On June 28, 2001, Judge Greendyke confirmed the amended bankruptcy plan, allowing an increase in Judge Porteous's monthly payments from \$875 per month to \$1,600 per month, per Beaulieu's request, payable to the Chapter 13 trustee for a period of 36 months. The failure of many creditors to file claims resulted in each creditor receiving a higher repayment percentage than proposed by the original plan—in total, 34.5%. Beaulieu, 2B at 1379, 1398; Lightfoot, 2A at 1058; Ex. 133, 3C at 2543–2545.

⁵⁵In particular, Beaulieu objected to an expense relating to the Porteouses' daughter, who was receiving \$300 to \$400 a month for her college food plan and rent. Beaulieu, 2B at 1378, 1530; Lightfoot, 2A at 1057.

⁵⁶The Fifth Circuit had ordered that the three bankruptcy court judges in the Eastern District of Louisiana recuse themselves from Judge Porteous's bankruptcy case; Judge Greendyke was assigned by Judge Carolyn Dineen King. Ex. 10, 3B at 723.

Echoing Beaulieu's admonishment during the May 9 creditors meeting, paragraph 4 of Judge Greendyke's order expressly stated: "The debtor(s) shall not incur additional debt during the term of this plan without written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable," meaning that any debt that Judge Porteous incurred after the confirmation hearing would not discharge upon the completion of the plan. Judge Porteous received a copy of this order. Lightfoot, 2A at 1008–1009, 1060; Ex. 10, 3B at 728; Ex. 133, 3C at 2443–2445.

Prior to the end of the 36-month period, Judge Porteous completed the repayment plan but, on the advice of his attorney, continued to make his monthly payments and distribute money to his creditors. Upon the completion of the plan, the bankruptcy court discharged the remainder of Judge Porteous's scheduled debts in July 2004. In total, Judge Porteous paid \$57,600 to the trustee to fulfill the Chapter 13 plan, \$52,567.01 of which was distributed to Judge Porteous's unsecured creditors. Compared with most Chapter 13 plans, Judge Porteous was considered to have completed a large plan. If he had entered into Chapter 7 bankruptcy, and all of his assets been accurately listed, the net amount available to creditors would have been about \$33,677, or \$18,890 less than Judge Porteous actually paid out to creditors. *See* Beaulieu, 2B at 1378; Hildebrand, 2B at 1683; Lightfoot, 2A at 1061, 1063; Pardo 2B at 1275–1284; Stip. 330, 1C at 2551; Ex. 4, 3B at 379; Ex. 1100(z), 3E at 5823.

5. Gambling-Related Activity and Extensions of Credit

Throughout this process, Judge Porteous gambled at casinos in and around New Orleans using markers. Under Louisiana law, a marker is a check from an individual's bank account, which is drawn in exchange for casino chips.⁵⁷ Article III of the Uniform Commercial Code, which has been adopted by the state of Louisiana, defines a check to be a negotiable instrument in the form of a "draft," which is payable on demand and drawn on a bank.⁵⁸ If a marker is not repaid, the casino will negotiate, or deposit, the marker at the individual's bank for payment like a normal check. Horner, 2A at 946; Pardo, 2B at 1297.

In the 90 days prior to filing for bankruptcy, Porteous executed, or took out, nine markers worth \$5,500.⁵⁹ These nine markers were executed on two separate occasions. The first two, totaling \$2,000, were executed in February 2001 at the Grand Casino Gulfport in Gulfport, Mississippi. Judge Porteous left the casino without first redeeming, or repaying, the markers. On March 16, the Grand Ca-

⁵⁷Four judges on the Fifth Circuit Judicial Council noted in the dissent to the certification of misconduct, "Under Louisiana commercial law, markers are considered 'checks' as defined by Louisiana statute." This statement does not necessarily imply that markers should be treated as checks rather than loans in the bankruptcy context, although the definition of markers under Louisiana commercial law provides "some support for a good faith understanding that 'markers' would be treated as checks and not credit in the bankruptcy context within Louisiana and the Fifth Circuit." Ex. 6(b), 3B at 510.

⁵⁸Article III, §3–104(f), of the Uniform Commercial Code defines a check to be "(i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check." An instrument may be a check even though it is described on its face by another term, such as "money order."

⁵⁹The parties disagree as to whether executing and redeeming markers constituted preferential payments to creditors that should have been listed on his statement of financial affairs. This issue is discussed in the "Contested Issues" section.

sino Gulfport deposited these markers,⁶⁰ which cleared Judge Porteous's account on March 24, 2000. On the day his original bankruptcy petition was filed, Judge Porteous's balance at the Grand Casino Gulfport was zero.⁶¹ The remaining seven markers, totaling \$3,500, were executed at the Treasure Chest Casino. Four of these markers were redeemed on the same day with chips. Judge Porteous redeemed the remaining three markers on March 27, 2001, the day before he filed for bankruptcy. Horner, 2A at 890, 896–897; Stip. 193, 1C at 2540.

Judge Porteous also gambled using markers between the date of his original bankruptcy filing on March 28, 2001 and the creditors meeting on May 9, 2001. During this time, Judge Porteous gambled using markers on two separate occasions.⁶² On these two trips, Judge Porteous executed eight markers, totaling \$6,000.⁶³ Two markers, totaling \$1,000, were later repaid by a personal check written by Judge Porteous's secretary, Rhonda Danos. Judge Porteous reimbursed her by signing over a \$1,000 check, drawn from his individual retirement account.⁶⁴ Danos, 2A at 796; Horner, 2A at 918. Between the creditors meeting on May 9, 2001 and Judge Greendyke's confirmation of his Chapter 13 plan on June 28, 2001, Judge Porteous continued to gamble using markers. During this time, he executed four markers, totaling \$2,000.⁶⁵

Finally, Judge Porteous's gambling activities continued in the year following Judge Greendyke's confirmation of his Chapter 13 bankruptcy plan. In total, between July 19, 2001, and July 5, 2002, Judge Porteous gambled with markers on 14 different occasions and executed 42 markers, totaling \$33,400, at 4 different casinos.⁶⁶ Horner, 2A at 922.

⁶⁰To cover the markers, Judge Porteous deposited \$2,000 into his Fidelity money market account, \$1,960 of which was drawn from his Fidelity Individual Retirement Account (IRA). Horner, 2A at 896; Stips. 197, 225, 1C at 2541, 2543; Ex. 143, 3C at 2725–2732; Ex. 144, 3C at 2732–2748; Ex. 301(a), 3D at 3732.

⁶¹Stip. 199, 1C at 2541. These markers, however, were returned as uncollected on April 3, 2001, due to an invalid account number on the markers. This occurred because Porteous's bank merged with another bank, and the routing number and account number were incorrect as a result. After the markers were returned to the casino on April 3, the casino contacted Porteous and the error was corrected. On April 4, 2001, Porteous's markers were deposited into the correct account. Finally, on April 12, the two \$1,000 markers cleared Porteous's bank account. See Horner, 2A at 916; Stips. 198–199, 1C at 2541; Ex. 301(a), 3D at 3732.

⁶²Between April 7 and 8, Porteous executed four markers, totaling \$2,000, at the Beau Rivage Casino in Biloxi, Mississippi. Before leaving the casino on April 8, Porteous redeemed \$1,000 worth of markers in chips, but left the casino with \$1,000 in markers outstanding. Stips. 247–248, 1C at 2545; Ex. 303, 3D at 3741. On May 7, 2001, Judge Porteous executed four markers at the Treasure Chest Casino in Kenner, Louisiana. At this casino, Porteous took out four \$1,000 markers, which were repaid with cash on the same day. Stips. 258–259, 1C at 2546; Ex. 307, 3D at 3747–3748.

⁶³Judge Porteous redeemed six of these eight markers, totaling \$5,000, on the same days they were executed.

⁶⁴On May 4, 2001, Danos's \$1,000 check to the Beau Rivage Casino, written on Judge Porteous's behalf, was paid at the cage and was credited against Judge Porteous's Beau Rivage account. The Beau Rivage Casino deposited Danos's \$1,000 check on May 5, 2001. Stip. 253, 1C at 2545; Ex. 304, 3D at 3742–3743.

⁶⁵On two separate trips, Judge Porteous executed two markers, worth \$1,000 total, at the Treasure Chest Casino. He redeemed each of these markers on the same day they were executed. The remaining two markers, worth \$1,000 total, were executed at the Grand Casino Gulfport on the same trip. Judge Porteous made a \$900 payment on these markers, repaying one marker in full the day it was executed and another in part; the remaining \$100 was repaid on the following day.

⁶⁶During this time, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana, on eight occasions (Stips. 282–302, 1C at 2547–2549; Ex. 312, 3D at 3755; Ex. 313(a), 3D at 3756–3757; Ex. 315–316, 3D at 3760–3762; Ex. 318–319, 3D at 3764–3766; Ex. 322, 3D at 3769; Ex. 530, 3E at 5247–5250), Harrah's Casino in New Orleans on two occasions (Stips. 304–306, 1C at 2549; Ex. 314, 3D at 3759; Ex. 320, 3D at 3767), the Beau Rivage Casino in Biloxi, Mississippi, on one occasion (Stip. 307, 1C at 2549, Ex. 317, 3D at 3763), and the Grand Casino Gulfport in Gulfport, Mississippi, on three occasions (Stips. 308–312, 1C at 2549–2550;

In order to execute markers at a casino, an individual must first apply for a line of credit and undergo a credit check. Throughout the bankruptcy process, Judge Porteous sought to obtain additional credit at three different casinos. In particular, Judge Porteous submitted two applications for increases in existing credit or new credit lines prior to the May 9, 2001, creditors meeting. On April 6, 2001, less than two weeks after the original filing of his bankruptcy petition, Judge Porteous requested a temporary credit limit increase of \$1,500 at the Beau Rivage Casino, bringing his total credit limit to \$4,000 for that particular visit to the casino. On April 30, Judge Porteous submitted a different credit application, this time for a new \$4,000 credit limit at Harrah's Casino. Judge Porteous's last application for an increase in credit occurred on July 4, 2002. On this occasion, Judge Porteous requested an increase in his credit line at the Grand Casino Gulfport, from \$2,000 to \$2,500. *See* Horner, 2A at 917–919; Pardo, 2B at 1315–1316, 1354–1355; Stips. 230, 245, 1C at 2543, 2545; Ex. 10, 3B at 791–793; Ex. 149, 3C at 2759; Ex. 303, 3D at 3741; Ex. 324–325, 3D at 3771–3774.

Following the confirmation of his plan, in addition to applying for extensions of credit at casinos, Judge Porteous applied for and used a Capital One Visa credit card without the written approval of the trustee. On August 13, Judge Porteous's credit card application was approved with a \$200 limit. The first charge on this card, which occurred on August 23, 2001, was a \$49.00 charge toward a security deposit.⁶⁷ In May 2002, the credit limit on this card was increased to \$400 and, six months later, increased again to \$600. Horner, 2A at 920–921; Stips. 314, 318–319, 323, 1C at 2550, 2551.

6. *FBI Investigation into Judge Porteous's Bankruptcy Filings*

In late 2001 or early 2002, Special Agent DeWayne Horner was assigned as the case agent in the FBI's investigation of Judge Porteous after he was identified as a target in "Operation Wrinkled Robe." Agent Horner, with other FBI and DOJ personnel, met with Beaulieu on two occasions prior to completion of Judge Porteous's Chapter 13 repayment plan. In these meetings, FBI and DOJ personnel discussed Judge Porteous's bankruptcy filings with Beaulieu, including problems with Judge Porteous's initial filing, his listed assets, his use of a new credit card after the confirmation hearing, and his execution of markers at casinos. Beaulieu, 2B at 1379–1380; Horner, 2A at 956–959; Stips. 326–327, 1C at 2551.

After his second meeting with Beaulieu, Agent Horner received a letter from a staff attorney in Beaulieu's office. The letter, responding to advice from FBI and DOJ personnel that Beaulieu conduct an investigation into Judge Porteous's conduct, indicated that because the FBI was unwilling to provide the trustee with "any evidence of improprieties by [Judge Porteous]," Beaulieu had decided against taking any action. Beaulieu presented the FBI with the op-

Ex. 321, 3D at 3768; Ex. 323, 3D at 3770; Ex. 325, 3D at 3772–3774). Of the 42 total markers, Judge Porteous repaid 26 of the 42 markers on the day the marker was originally executed—a total of \$21,500. Many of these payments were made with chips. An additional six markers, totaling \$3,500, were repaid within one day of their execution. Horner, 2A at 952–954.

⁶⁷In his testimony, Horner incorrectly identified the first purchase made on this credit card as a purchase at Lucy's Restaurant on September 17, 2001. *See* Stip. 316, 1C at 2550; Ex. 341(b), 3D at 3921.

portunity to provide him with more information or object to Judge Porteous’s plan before its completion. The FBI did neither.⁶⁸ Beaulieu, 2B at 1381; Horner, 2A at 962–965; Exs. 298–299, 3D at 3728–3731.

D. Contested Issues

1. Using a False Name and Post Office Box on the Original Bankruptcy Petition

The first charge in Article III accuses Judge Porteous of attempting to defraud the court and his creditors by filing his original bankruptcy petition using a false name and a recently acquired post office box. However, Judge Porteous has argued that he was merely following the advice of counsel and that, while done knowingly, filing his original petition under a false name was not done with the intent to defraud creditors. Rather, the intent was to avoid unwanted publicity. By filing under a false name, Lightfoot hoped that Judge Porteous would avoid the publicity that would eventually come from not only the initial notice in the Times-Picayune, but any investigation into Judge Porteous’s private life that may follow. Lightfoot, 2A at 991–992, 1028–1031, 1036–1037; Stip. 202, 1C at 2541.

Judge Porteous’s contention that he did not intend to defraud the creditors is supported by the fact that, as discussed above, no creditor received a notice regarding Judge Porteous’s bankruptcy under the false name “G. T. Ortous.” Judge Porteous and Lightfoot’s plan was always to file an amended petition immediately after the Times-Picayune listed Porteous’s bankruptcy under the false name. Upon filing an amended petition, they would also file the bankruptcy schedules and Chapter 13 plan. Only after these documents were filed would a notice be sent to creditors. As a result, Lightfoot knew that no creditor would receive a petition listing a false name. This differed from most other petitions filed with inadvertently incorrect names in the Eastern District of Louisiana, in which the incorrect name is not usually caught until after the notice is sent to the creditors. *See* Beaulieu, 2B at 1383–1384; Lightfoot, 2A at 1034.

Furthermore, although Lightfoot “rue[s] the day” that he thought of the idea to file the original petition under a false name, he asserted that there is nothing inherently wrong with using a post office box as the address on the bankruptcy petition. Debtors frequently list post office boxes as their address for a variety of reasons. Unlike filing under a false name, Lightfoot had no reservations in advising the Porteouses to use a post office box in the initial filing. *Id.* at 1029, 1032–1033.

Finally, Judge Porteous argued that, as a debtor faced with navigating a complex and highly technical bankruptcy code, he was entitled to rely on the advice and guidance of his bankruptcy attorney. Four judges on the Fifth Circuit Judicial Council issued a dissent from the Fifth Circuit’s decision to certify findings of misconduct to the Judicial Conference of the United States, in which

⁶⁸ Horner testified that the FBI did not provide Beaulieu with more information because “the position of the Department of Justice was that, you know, if you learned something through the questions that we ask you, you know, you have to take your own steps, that we can’t provide you with evidence and documents and things like that, you have to ask your own questions, get your own records, and take your own course of action.” Horner, 2A at 954–955.

they stated that “[g]enerally, a debtor is entitled to rely on the advice of his bankruptcy counsel where reliance is reasonable and in good faith.”⁶⁹ *Id.* at 1028; Ex. 6(b), 3B at 508–509.⁷⁰

The House argues, in contrast, that even though no creditor received notice of the bankruptcy petition under the false name of “G. T. Ortous,” Judge Porteous committed perjury and the defense of “no harm, no foul” is unacceptable. Furthermore, creditors may still have been deceived by the bankruptcy listing in the newspaper and been deprived of the opportunity to make a claim or take another action with respect to the bankruptcy. Judge Porteous’s original filing created a false record with the bankruptcy court in the Eastern District of Louisiana. If a business wanted to check whether Judge Porteous had filed for bankruptcy protection between March 28, 2001, and April 9, 2001, and had contacted the bankruptcy court, it would have been misled by the false name on the record. Keir, 2A at 1098–1101.

2. Concealing Assets and Income

The second charge in Article III alleges that Judge Porteous concealed various assets on his bankruptcy schedules and statement of financial affairs. Both parties agree that Judge Porteous’s bankruptcy filings did not accurately list assets held by Judge Porteous at the time of his original bankruptcy filing. The House contends that Judge Porteous intentionally hid his assets from the bankruptcy trustee and his own bankruptcy attorney. By failing to list certain accounts in his bankruptcy schedule and undervaluing others, Judge Porteous withheld funds that potentially could have been made available to creditors. Ex. 4, 3B at 382–383. To support this position, the House presented evidence that Judge Porteous hid his undisclosed Fidelity money market account from his own bankruptcy attorney while, at the same time, using the account to accumulate cash for gambling and other purposes.

Judge Porteous argues that the omission of his Fidelity money market account was accidental and, despite its absence on his bankruptcy filings, he “honestly believe[s]” that he told Lightfoot about the Fidelity money market account. Ex. 10, 3B at 753. From Judge Porteous’s perspective, there was no reason not to tell Lightfoot about this account. Judge Porteous testified before the Fifth Circuit that, at any given time, the disclosed Bank One account, into which Judge Porteous’s paychecks were deposited, would have had a higher balance than the Fidelity account. Furthermore, Judge Porteous presented evidence that keeping money in his Fidelity accounts after the plan was confirmed was not improper. After a debtor’s petition is filed, he is not prohibited from keeping money in accounts not listed on his Schedule B filings. Horner, 2A

⁶⁹To support this position, the dissenting opinion cited the following cases: *Hibernia Nat’l Bank v. Perez*, 124 B.R. 704, 710–11 (E.D. La. 1991), *aff’d* 954 F.2d 1026 (5th Cir. 1992); *First Beverly Bank v. Adeeb (In re Adeeb)*, 787 F.2d 1339 (9th Cir. 1986) (noting that reasonable and good faith reliance on advice of counsel sufficient to show debtor lacked requisite fraudulent intent to revoke or deny discharge); *Beckenstein v. United States*, 232 F.2d 1, 4 (5th Cir. 1956) (“The advice of counsel is also important in determining whether appellant made the statement with a corrupt motive.”). Additionally, the dissent also noted that, “according to the Commentary to Canon 5C of the Code of Conduct for United States Judges, [a] judge has the rights of an ordinary citizen with respect to financial affairs.” Ex. 6(b), 3B at 508–509.

⁷⁰The House’s argument on this issue additionally relies on expert testimony, which is discussed in section D.

at 928; Pardo, 2B at 1292; Stip. 230, 1C at 2543; Ex. 10, 3B at 753.⁷¹

The House claims that, in addition to concealing his Fidelity money market account, Judge Porteous also intentionally undervalued his Bank One checking account. For example, the House points to a \$2,000 deposit to the Bank One account made by Judge Porteous on March 27, 2001, the day before he filed his original bankruptcy petition. This suggests that Judge Porteous must have been aware that his stated account balance of \$100 was incorrect. Horner, 2A at 906–907.

Similar to the omission of the Fidelity money market account, Judge Porteous argues that the undervaluation of his Bank One account was unintentional. A few days before the filing of the bankruptcy schedules, Lightfoot asked Judge Porteous to approximate the amount of money in his Bank One checking account. He asked only for an approximation, because the actual amount in a debtor's checking account at the time of filing is not as important in a Chapter 13 plan, which commits future income, as it is in a Chapter 7 plan, in which all assets are liquidated to pay creditors. Lightfoot did not ask Judge Porteous this question until immediately before filing the schedules “because checks are coming and going all the time.” Lightfoot 1138:4–1140:19. Additionally, Judge Porteous's bankruptcy filings were not signed by him on the date they were filed. Rather, Lightfoot gave the forms to Judge Porteous in his chambers, and the Judge then took them home for his wife to sign. The date on Judge Porteous's bankruptcy documents reflects the date they were filed, not the date on which they were signed. *Id.* at 1050–1052, 1075–1077.

The House also asserts that, beyond his undisclosed Fidelity money market account and his undervalued Bank One account, Judge Porteous attempted to conceal his year 2000 tax refund from the bankruptcy trustee and his creditors. The presence of a tax refund indicates that there is monthly income that should possibly be distributed to creditors, and the debtor's plan may be too low. Although it may or may not be included in the debtor's Chapter 13 plan, if the trustee does not know that the debtor is receiving a tax refund, then he cannot ask the debtor to surrender it. Beaulieu believed that this tax refund should have been included in Judge Porteous's bankruptcy schedules. Its inclusion would have enabled Beaulieu to raise questions as to the amount of disposable income available to Judge Porteous, especially since it was a large refund, and would have prompted Beaulieu to perform a closer examination of Judge Porteous's taxes. Furthermore, the House presented evidence that the right to receive a refund is an asset. Judge Porteous's refund, for which he had filed prior to his original bankruptcy filing, should properly be considered to be a liquidated sum.⁷² When Judge Porteous failed to list his expected tax refund, he falsified his schedule. Judge Porteous discussed his expected year 2000 tax refund with neither his bankruptcy attorney nor the

⁷¹This was a practice of Judge Porteous before he filed for bankruptcy in 2001. From 1997 through his bankruptcy, when Judge Porteous drew down on his IRA, he would receive funds by check. On these occasions, he would deposit the funds into a Fidelity money market account. On many occasions, he used this account to write checks to casinos to pay gambling debts. See Horner, 2A at 968; Ex. 383, 3D at 442; Ex. 529, 3E at 5241.

⁷²Judge Keir clarified that “[l]iquidated does not mean collected; it means quantified.” Keir, 2A at 1103.

Chapter 13 bankruptcy trustee. *See* Beaulieu, 2B at 1383; Keir, 2A at 1103–1104; Lightfoot, 2A at 998, 1053.

Judge Porteous disputes that he was attempting to conceal his tax refund. Judge Porteous testified before the Fifth Circuit Special Investigatory Committee that he discussed his year 2000 return with Lightfoot, who advised him that “[i]f the trustee didn’t put a lien on it, put it in your account; but they may . . . ask for it back.” Ex. 10, 3B at 749–750. However, Judge Porteous argued that, regardless of whether he informed others of his pending refund, the trustee was not in the habit of asking for the debtor’s current or future tax refunds to distribute to creditors. Lightfoot, 2A at 1053; Ex. 6(c), 3B at 526; Ex. 124, 3C at 2469–2470.

Judge Porteous also presented evidence that debtors often submitted their bankruptcy schedules without listing their tax refund, and that these debtors are almost always represented by counsel. If a debtor tells an attorney that he had received a tax refund, the burden is on the attorney to make sure that the tax refund was included on the debtor’s bankruptcy schedules. Two witnesses also testified that whether or not the tax refund was accidentally omitted from Judge Porteous’s bankruptcy schedules, a tax refund from a previous year should not be included in a debtor’s Chapter 13 estate. While a Chapter 13 debtor may liquidate property, “there can be no requirement for him to do so.” Hildebrand, 2B at 1667, 1671; Pardo, 2B at 1288–1290.

In addition to the previously discussed assets, the House also points to the fact that Judge Porteous’s net monthly income, as listed on his bankruptcy schedules, was inaccurate. As discussed in the previous section, Judge Porteous’s actual net monthly income was roughly \$174 greater than the listed amount. This information, which was derived from an outdated May 2000 pay stub, also failed to disclose that Judge Porteous reached the Social Security “wage base” on or around July of each calendar year.

Judge Porteous argues, however, that Lightfoot was not aware that he received a pay increase prior to his bankruptcy filing, nor was Lightfoot aware of federal tax limits associated with the Social Security wage base, as Lightfoot’s regular clients never approached this limit. Moreover, Beaulieu never requested that Judge Porteous update his schedules in any way, and Judge Porteous was under no obligation to make additions to the schedules. Generally, debtors are only ordered to update their schedules to reflect changes in income when the debtor experienced large fluctuations in his monthly income due to the nature of his employment. Barliant, 2B at 1715–1716; Lightfoot, 2A at 1047–1048.

Finally, Judge Porteous presented evidence to demonstrate that errors and omissions, such as those found in his own bankruptcy filings, are not uncommon among debtors. To illustrate this, Judge Porteous presented the findings of an empirical study of 1,700 Chapter 13 bankruptcy cases filed in 2006. This study found that in 95% of cases examined, the debtor, a creditor, or both made inaccurate statements in bankruptcy filings. In a separate study of 200 randomly selected bankruptcy filings, U.S. Bankruptcy Judge Steven W. Rhodes of the Eastern District of Michigan, found that 198 (99%) contained at least one error, with an average number of 3.4 errors per case. Thus, an all-or-nothing approach to the bankruptcy system, where perfect bankruptcy filings are a prerequisite

to any relief, is unworkable, unrealistic, and would cause the entire bankruptcy system to grind to a halt.⁷³ Pardo, 2B at 1305–1311; Ex. 1068, 3E at 5650; Ex. 1070, 3E at 3737.

Moreover, Judge Porteous argues that, although he served as a U.S. District Court judge, he was relatively inexperienced in the area of bankruptcy law. District court judges in the Eastern District of Louisiana hear few bankruptcy appeals. Judge Porteous had written only seven bankruptcy opinions in his career as a federal judge, of which only three dealt with consumer bankruptcies. Pardo, 2B at 1302. Judge Porteous also presented evidence that opinions of federal district court judges in bankruptcy cases were reversed at a much higher rate than decisions rendered by bankruptcy judges sitting on bankruptcy appellate panels. Pardo, 2B at 1301–1304.⁷⁴

Finally, Judge Porteous submitted testimony and exhibits suggesting that he did not fully understand his own finances. In particular, Judge Porteous indicated that “he did not fully understand his financial status and, therefore, never knowingly misrepresented his bank accounts.” Judge Porteous also presented evidence that his wife and secretary normally handled his personal finances. For example, in a practice that developed over time, Danos began paying Judge Porteous’s bills as they came in, and she would tell him the amount for which he needed to reimburse her. Ex. 6(b), 3B at 511; see Danos, 2A at 794–796.

3. Incurring Debt Through the Use of Casino Markers

The third, fourth, and fifth charges in Article III allege that Judge Porteous concealed preferential payments to creditors, concealed gambling losses and other gambling debts, and incurred new debts while his case was pending, in violation of the bankruptcy court’s order. The House argues that Judge Porteous’s habit of gambling at casinos using markers is a component of each of these offenses.

As discussed in the previous section, Judge Porteous gambled using markers both before and after his plan was confirmed. The House recognized that a casino marker is a three-party instrument called a “draft,” which is an order to pay by the signer or drawer (Judge Porteous) on a drawee (the bank) to pay the payee or holder (the casino). To support its position that this activity created debt, however, the House presented evidence that the marker itself is “separate and apart” from the underlying debt that arises when Judge Porteous uses the chips procured by executing a marker. As soon as Judge Porteous made a wager on credit, he had an obligation to repay the casino for that amount. In other words, “[w]hen the casino pushes the markers across the counter to the gambler, who doesn’t immediately pay for them, but will pay for them, the gambler is now obligated to pay the casino for the value of the markers. That’s when the debt arises.” Horner, 2A at 946; Keir, 2A at 1106–1107.

⁷³Hildebrand testified that perfection is not the standard by which bankruptcy filings are or ought to be judged. Hildebrand, 2B at 1698.

⁷⁴The study also found that circuit courts cited the opinions of district court judges less frequently than they cited the opinions rendered by a bankruptcy appellate panel. Both of these findings were statistically significant. Ex. 1067, 3E at 5571–5572.

From this perspective, markers, like any other personal check, do not suspend the individual's underlying obligation to pay. Rather, the obligation to pay is "just not extinguished." For example, an individual who pays for groceries with a check "technically incurs a debt until the check is honored by his or her bank." Once the check is honored, however, the drawer's obligation to pay is extinguished. If the check is not honored, then the holder of the check may pursue a contract action or a suit on the instrument. Keir, 2A at 1126–1127.

Judge Porteous, however, introduced evidence that the use of markers did not generate debt for the purposes of bankruptcy. In particular, Judge Porteous disagreed with the House's interpretation that the execution of a draft, such as a marker or personal check, did not suspend the drawer's underlying obligation to pay. Judge Porteous presented evidence that when a payment is made using a check, the drawer is liable and able to be sued by the check's holder if and only if the drawee does not honor the check. In other words, contrary to the evidence presented by the House, the underlying obligation is suspended until the bank dishonors the check. As a result, a marker, which is a check and, therefore, an order to pay, is not a debt instrument. Pardo, 2B at 1263–1264, 1296–1297, 1316–1317.

Judge Porteous presented additional evidence that the suspension of the liability is not affected by the amount of time the casino holds the marker before depositing it. However, what does result is a contingent liability or contingent debt, in the sense that the liability is not an actual liability until the marker is presented at a bank and dishonored. From this perspective, although any markers outstanding at the time Judge Porteous's bankruptcy petition was filed should have been listed on his bankruptcy schedules as contingent debt, redeeming a marker is not equivalent to using a credit card or borrowing money. Pardo, 2B at 1281–1283, 1297–1298, 1371–1375.

4. Preferential Payments to Creditors

As mentioned above, the third charge in Article III alleges that Judge Porteous concealed preferential payments to creditors in his statement of financial affairs filed with his amended petition on April 9. The House points in particular to Judge Porteous's response to question 3 on his statement of financial affairs, which requires the debtor to list any payments to creditors exceeding \$600 in the 90 days preceding his bankruptcy filing. Judge Porteous's response was "normal installments." The phrase "normal installments" was meant to capture regular contractual payments associated with Judge Porteous's two car leases and two home loans, as Judge Porteous had stopped paying his unsecured credit card creditors during the "workout" period under advice of counsel. Horner, 2A at 899–900; Lightfoot, 2A at 1001; Ex. 127, 3C at 2499.

As discussed in the previous section, Judge Porteous made payments over \$600 at two casinos in the 90 days prior to his original bankruptcy filing. Judge Porteous also paid his wife's Fleet credit card bill in full. To make this payment, Judge Porteous asked his secretary, Rhonda Danos, to write a personal check to cover the balance on the Fleet credit card, totaling \$1,088.41. This payment cleared Danos's account on March 29, 2001, and Judge Porteous

later reimbursed her for the amount. Danos, 2A at 789–790, 796; Ex. 329, 3D at 3777.

Based on the House’s understanding of markers, the House argues that Judge Porteous should have reported his payments to two casinos in the 90 days prior to his original bankruptcy filing as “payments to preferential creditors” on his statement of financial affairs. However, these payments were not listed, either as debts outstanding to unsecured creditors or payments to preferred creditors, on his bankruptcy schedule. *See* Beaulieu, 2B at 1393–1394; Hildebrand, 2B at 1693; Horner, 2A at 899–900; Ex. 127, 3C at 2510.

Under Judge Porteous’s understanding of markers, however, his payments to casinos made immediately prior to filing for bankruptcy do not qualify as “preferential payments to creditors” and, as such, were correctly excluded on his statement of financial affairs. In order for a payment to be voidable, or preferential and recoverable by the court, it must be a payment to the creditor by the debtor for an antecedent, or existing, debt. However, if markers are not debt instruments, any obligation Judge Porteous incurred upon executing a marker was suspended until the casino deposited the marker against his account.⁷⁵ From this perspective, there was no antecedent debt. Alternatively, providing payment to a casino for a marker could be viewed as a way of purchasing back a marker, which is a negotiable instrument, making it Judge Porteous’s property—not a debt. Pardo, 2B at 1281–1282.

Moreover, Judge Porteous argues that there is nothing technically wrong with paying a creditor within 90 days of filing for bankruptcy; these are legal debts owed to the creditor that require payment. Before an individual files for bankruptcy, the principle of equitable distribution does not apply. Once a debtor files for bankruptcy protection, however, creditors are entitled to an equitable distribution of the debtor’s assets under his plan. Any recent payments to creditors are perceived as having a negative effect on the debtor’s ability to equitably repay each creditor. Thus, to ensure a fair distribution to all creditors, pre-bankruptcy payments may be recovered. *Id.* at 1280.

Additionally, Judge Porteous argues that Danos’s payment on the Fleet credit card may not properly be considered a voidable payment because Danos, who was a third-party, and not Judge Porteous, made the payment. If Danos paid with her own funds and was reimbursed by Judge Porteous, he should have listed his payment to Danos as a preferential payment. However, if Danos’s bank account was merely a conduit, and the bill was paid with Judge Porteous’s money, then the credit card company should have been listed as a preferential payment to a creditor. *Id.* at 1363–1367.

Judge Porteous maintains that, regardless of whether these payments are voidable, his failure to list these payments on his statement of financial affairs was immaterial because the Chapter 13

⁷⁵ Additionally, Judge Porteous presented evidence that the federal circuits are split as to when, for the purposes of determining preferential payments to creditors, a debt is deemed to arise. Some circuits take the view that a debt does not arise “until . . . the debtor first becomes legally bound to pay.” While the casino is still in possession of the marker, the debtor has no obligation to pay. From this perspective, the payment would only need to be listed on Judge Porteous’s statement of financial affairs if the casino had attempted to deposit the marker and the bank refused to honor it. Pardo, 2B at 1280–1283.

trustee in the Eastern District of Louisiana generally did not try to recover preferential payments to creditors. Beaulieu testified that he would not automatically attempt to recover preferential payments but, because recovering voidable payments costs money, he would weigh the cost of going after the payments to preferred creditors. In this case, Beaulieu testified that had he known payments to preferred creditors had been made in Judge Porteous's case, he would not have attempted to recover the payments because, in his opinion, the payments were "inconsequential," and were not payments to an insider. Beaulieu, 2B at 1385, 1402–1403; Lightfoot, 2A at 1055–1056.

5. *Concealing Gambling Losses*

The fourth charge in Article III alleges that Judge Porteous concealed gambling losses and other gambling debts. The House asserts that, as with his concealment of bank accounts, Judge Porteous also concealed gambling losses accrued in the previous year. When asked on his statement of financial affairs if he had experienced any gambling losses in the previous year, Judge Porteous indicated "none." However, an FBI analysis proffered by the House indicated that Judge Porteous experienced total gross gambling losses of \$12,895.35 and gross winnings of \$5,312.15, with net gambling losses of \$7,583.20. Although gambling losses are not evaluated as part of the "best-interest-of-creditors" test, the statement of financial affairs requires the debtor to answer this question because the answer may prompt the Chapter 13 trustee to ask particular types of questions in an examination of the debtor. Horner, 2A at 913–914; Lightfoot, 2A at 1003–1004; Ex. 337, 3D at 3832–3853; *see also* Ex. 5, 3B at 428.

Judge Porteous, however, argues that Agent Horner's analysis of Judge Porteous's gambling losses is not necessarily accurate. His table was calculated using only Judge Porteous's winnings and losses when gambling as a "rated player." When an individual gambles as a rated player, casinos track "how much [the gambler] bets, how much he wins, [and] how much he loses." Rated players may earn "comps" from the casinos based on how much they play, in the form of complimentary or reduced rates on hotel rooms or free meals and drinks. Being a rated player is also useful for tax purposes. Horner, 2A at 910–911; Ex. 337, 3D at 3832–3853.⁷⁶

Judge Porteous indicated, however, that he did not always gamble as a "rated player." While Porteous was fairly well known at the Treasure Chest, he was less well known at casinos like the Beau Rivage or others on the Gulf Coast. In these casinos, Judge Porteous may have gambled without being rated, meaning that Judge Porteous's winnings and losses were not tracked at these casinos. Thus, Judge Porteous's net gambling losses may have differed from those indicated by Agent Horner's analysis. Horner, 2A at 950–952; Ex. 337, 3D at 3832–3853.

Finally, the House argues that Judge Porteous's effort to intentionally hide his gambling losses is reflected in his failure to inform his own bankruptcy attorney of his gambling activities. Lightfoot indicated that Judge Porteous never told him about his gambling

⁷⁶ Horner noted that rated players must fill out a credit application with the casino in order to open up a line of credit. Rated players then draw on their line of credit to gamble at the casino. Horner, 2A at 910–911.

losses, and he did not know that Porteous gambled at all. Judge Porteous contends that Lightfoot should have noticed gambling-related charges reflected in two credit card statements sent to Lightfoot in the summer of 2000. When questioned about this, however, Lightfoot testified that he did not realize that the Beau Rivage and the Treasure Chest, the gambling establishments at which Judge Porteous used his credit cards, were casinos. Lightfoot, 2A at 1071–1072; Ex. 343, 3D at 3997, 4003.

6. Incurring More Debt in Violation of Judge Greendyke's Order

The fifth and last charge contained in Article III alleges that Judge Porteous incurred new debt in violation of Judge Greendyke's June 28 confirmation order. The House argues that Judge Porteous violated the order in several ways, including: gambling using markers; applying for credit at casinos; and applying for and using a new credit card after the confirmation of the order. Since gambling with markers necessarily creates debt, under this view, Judge Porteous's execution of 42 markers after confirmation of his plan violated Judge Greendyke's order. Furthermore, the House presented testimony that, the instant the credit card was used, Judge Porteous had incurred an obligation to repay. Keir, 2A at 1106–1108.

Judge Porteous argues, however, that executing markers does not create debt for the purposes of bankruptcy and, therefore, as a result, gambling with markers did not violate Judge Greendyke's bankruptcy order. Furthermore, Judge Porteous presented evidence that, contrary to Judge Greendyke's confirmation order, there is nothing in the bankruptcy code to preclude the debtor from borrowing money or making purchases on credit without the trustee's approval. The bankruptcy code expressly recognizes that a debtor will incur more debt by indicating that such debt may not be allowable, meaning not part of the Chapter 13 case, or dischargeable upon completion of the plan, with certain exceptions. Barliant, 2B at 1716–1717; Pardo, 2B at 1294–1295.

Finally, Judge Porteous contends that a literal interpretation of Judge Greendyke's order would lead to "an absurd result," because a debtor incurs debt when doing ordinary tasks, such as going out to eat, getting the oil changed in his car, and even turning on the lights in his home. However, the House presented evidence that prohibitions on incurring debt were common and, while the debtor may choose to appeal an order, no one has the right to disregard a lawful order. Barliant, 2B at 1719; Hildebrand, 2B at 1692–1693; Keir, 2A at 1104–1105; Pardo, 2B at 1295–1296.

7. The Materiality of Judge Porteous's Conduct

In all of these charges, the House alleges that Judge Porteous's conduct harmed the resolution of his bankruptcy estate. This position is supported by Beaulieu's testimony, in which he indicated that, given the importance of a debtor acting in good faith, if he had known about Judge Porteous's intentional use of a false name, he would have petitioned the court to dismiss and "[left] it to the discretion of the judge and the U.S. trustee to follow up on it if

they saw fit.”⁷⁷ Furthermore, if Judge Greendyke had known about the “preferred payments, the omitted tax refund, the understated bank account balances, and the false names on the petition, he would not have signed the confirmation order and would have *sua sponte* objected to confirming a plan on the basis of good faith.” Beaulieu, 2B at 1383; Ex. 335, 3D at 3823.

Judge Porteous argues, however, that even if the Chapter 13 trustee was aware of Judge Porteous’s knowing use of a false name and the errors on his bankruptcy filings, the trustee still should have granted a discharge of his debts. Lightfoot testified that, in his experience in the Eastern District of Louisiana, he had never seen a debtor be held in contempt of court for incurring post-confirmation debt without court authority. Lightfoot, 2A at 1060.

Beyond the individual consequences of Judge Porteous’s actions, the House also argues that Judge Porteous’s conduct is detrimental to the viability of the bankruptcy system. Specifically, the House contends that, in order for the bankruptcy system to function, a debtor must act in good faith when filing for bankruptcy. The House argues through his concealment of assets, preferential payments to creditors, undisclosed gambling losses and debts, and accrual of new debt following the confirmation of his plan, Judge Porteous failed to act in good faith and materially damaged the bankruptcy system. Given the number of bankruptcy cases active in the Eastern District of Louisiana at any given time, there is no opportunity for the trustee to double-check the debtor’s petition, schedules, and statement of financial affairs. Because of this, the candor and honesty of the debtor is important; otherwise “Chapter 13 or Chapter 7 does not work.” Beaulieu, 2B at 1388.

D. Expert Testimony

1. Advice of Counsel

As discussed above, Judge Porteous argues that he was entitled to rely on advice of counsel with respect to the use of a false name on his original bankruptcy petition. Expert witnesses presented by the House, however, were critical of the position that Lightfoot’s recommendation constituted legal advice. The Honorable Duncan W. Keir, Chief U.S. Bankruptcy Judge for the District of Maryland, testified that he knew of no legal defense of or cure for perjury, which Judge Porteous committed when he signed his bankruptcy filings under a false name. Moreover, Judge Keir indicated that advising someone to knowingly commit a wrongful legal act does not constitute legal advice and that it may actually be collusion. Keir, 2A at 1099–1100, 1102.

Professor Charles Gardner Geyh, who was designated as an expert in judicial ethics, echoed this sentiment. Professor Geyh testified that Lightfoot’s suggestion to commit perjury cannot be considered advice of counsel in a “traditional context,” let alone in Judge Porteous’s bankruptcy case. Professor Geyh opined that, unlike an undereducated layperson, Judge Porteous should fully understand what signing his bankruptcy documents under penalty of perjury means. The advice of defense counsel, in his opinion, does not obvi-

⁷⁷ Beaulieu did not know at the time that the misspelling of Porteous’s name was intentional. Beaulieu testified that Lightfoot called him and told him that a “typographical error” had been made on the original petition. Beaulieu, 2B at 1377.

ate the ethical implications of Judge Porteous, who “being a lawyer and a judge, was able to exercise independent legal judgment [and yet] did not.” Geyh, 2A at 758–759, 769.

2. Judge Greendyke’s Admonishment Against Accruing More Debt

The parties also disagreed as to the validity of paragraph 4 of Judge Greendyke’s order prohibiting Judge Porteous from accruing additional debt. Ronald Barliant, a former U.S. Bankruptcy Judge in the Northern District of Illinois, testified that he considered Judge Greendyke’s order to constitute judicial error. Barliant testified that had he issued such an order, he would have “kicked himself for having entered” it and vacated the first sentence in paragraph 4 prohibiting the accrual of additional debt. Barring that, Barliant testified, he would attempt to “construe the order in a way that was consistent with the Bankruptcy Code.” Moreover, Barliant testified that he would be very reluctant to dismiss a Chapter 13 case as long as the debtor made timely payments, even if that debtor had incurred post-petition debt, since doing so would end plan repayments and not help any of the interested parties. Barliant, 2B at 1719–1723.

IV. ARTICLE IV

A. Text of the Article

In 1994, in connection with his nomination to be a judge of the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation in order to obtain the office of United States District Court Judge. These false statements included the following:

(1) On his Supplemental SF-86, Judge Porteous was asked if there was anything in his personal life that could be used by someone to coerce or blackmail him, or if there was anything in his life that could cause an embarrassment to Judge Porteous or the President if publicly known. Judge Porteous answered “no” to this question and signed the form under the warning that a false statement was punishable by law.

(2) During his background check, Judge Porteous falsely told the Federal Bureau of Investigation on two separate occasions that he was not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on his character, reputation, judgment, or discretion.

(3) On the Senate Judiciary Committee’s “Questionnaire for Judicial Nominees”, Judge Porteous was asked whether any unfavorable information existed that could affect his nomination. Judge Porteous answered that, to the best of his knowledge, he did not know of any unfavorable information that may affect [his] nomination”. Judge Porteous signed that questionnaire by swearing that “the information provided in this statement is, to the best of my knowledge, true and accurate”.

However, in truth and in fact, as Judge Porteous then well knew, each of these answers was materially false because Judge Porteous had engaged in a corrupt relationship with the law firm Amato &

Creely, whereby Judge Porteous appointed Creely as a “curator” in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm and also had engaged in a corrupt relationship with Louis and Lori Marcotte, whereby Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench. Judge Porteous’s failure to disclose these corrupt relationships deprived the United States Senate and the public of information that would have had a material impact on his confirmation. Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

B. Introduction to the Evidence

Article IV focuses on the completeness and accuracy of Judge Porteous’s statements to the FBI and the Senate in connection with his nomination to the U.S. District Court. These include his responses to questions in the background investigation forms, questionnaires, and interviews. As with Article III, the evidence comprises mostly documents and is largely uncontested. This discussion begins by providing a narrative statement of facts, followed by contested issues identified by the parties.

C. Statement of Facts

In 1994, President William J. Clinton began considering Judge Porteous for an appointment to the United States District Court for the Eastern District of Louisiana. Judge Porteous was required to complete and submit various forms and questionnaires, including “Standard Form 86” (SF-86), which he completed and signed on or about April 27, 1994. The SF-86 includes numerous background questions and requests personal and professional references. The form also asks the candidate about any prior criminal history, use of illegal drugs, or abuse of alcohol. *See* Stips. 167–169, 1C at 2538–2539; Ex. 69(b) (full exhibit, at 232–243).

Judge Porteous also filled out and signed a document entitled “Supplement to Standard Form 86 (SF-86), Questionnaire for Sensitive Positions (For National Security)” (Supplemental SF-86). Stip. 170, 1C at 2539. Among other topics, the Supplemental SF-86 form inquires into the candidate’s personal finances and interests in business entities. Ex. 69(b), 3B at 1790–1791. The final question on the Supplemental SF-86 form asks whether “there [is] 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?” Judge Porteous answered, “No.” He also signed the document and adopted the following declaration: “I understand that the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 dated April 27, 1994 and a false statement on this form is punishable by law.” Ex. 69(b), 3B at 1791.

Finally, Judge Porteous signed a “Memorandum for Prospective Appointees” issued by the White House, allowing the FBI to “investigate [his] background or conduct appropriate file reviews in connection with the consideration of [his] application for employment.” On June 23, 1994, the FBI received instructions to “initiate a background investigation of [Judge Porteous].” Ex. 69(b) (full exhibit, at 224–225).

1. FBI Interviews

Starting on or about June 24, 1994, a number of FBI agents conducted approximately 120 interviews of Judge Porteous’s personal and professional associates as part of his background investigation. Hamil, 2A at 843; Stip. 176, 1C at 2539; *see generally* Ex. 69(b) (full exhibit).⁷⁸ Bobby Hamil, an FBI agent from 1983 to 2008,⁷⁹ participated in several key interviews, including two of Judge Porteous. *See* Hamil, 2A at 814–815. Although he had no independent recollection of his responsibilities during Judge Porteous’s background investigation, Hamil offered testimony about the general background investigation interview process and Judge Porteous’s investigation based on contemporaneous notes and summaries he had prepared in 1994. *Id.* at 819–821, 844.

Prior to a witness interview, an agent would review the candidate’s SF–86, as well as instructions from FBI headquarters. *Id.* at 818. When candidates, like other witnesses, are interviewed, they are not placed under oath nor are they given the opportunity to review or comment on the FBI agent’s summary write-up of the interview.⁸⁰ *Id.* at 845–846.

FBI agents follow a standard interview format that focuses on the candidate’s character, associates, responsibility, loyalty to the United States, ability, bias or prejudice, financial responsibility, alcohol abuse, and use of illegal drugs or abuse of prescription drugs. The last question in a background interview is the so-called “compromise or coercion” question. This question asks whether there is anything in the candidate’s background that could be used to coerce or compromise the candidate or might subject the candidate to undue influence or would impact negatively on his or her reputation or character. *Id.* at 816–818, 849–850.

a. Initial interviews

In early July 1994, FBI Agents Charlene Tackett and Bobby Hamil interviewed Judge Porteous and prepared a summary. Stip. 180, 1C at 2539. They asked Judge Porteous a series of questions designed to elicit information that might bear upon his fitness to serve as a federal judge. The agents’ summary states, “PORTEOUS said he is not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or

⁷⁸Early in the investigation, the FBI interviewed staff assistants of Senator J. Bennett Johnston, Jr., and Senator John Breaux of the State of Louisiana. Both Senators’ aides told the FBI that the Senators had known Judge Porteous for several years, thought he was well-qualified to be a federal judge, and had not heard any derogatory comments about him. Ex. 69(b) (full exhibit, at 278–279).

⁷⁹Hamil conservatively estimated that he had performed 100 interviews relating to FBI background checks over the course of his career. Hamil, 2A at 843.

⁸⁰The FBI uses a standard form (FD–302) to prepare interview summaries; these summaries are routinely referred to in the impeachment proceedings as “302s.” *See, e.g.*, Hamil, 2A at 844–845.

that would impact negatively on the candidate's character, reputation, judgement [sic], or discretion."⁸¹ Ex. 69(i), 3B at 1831.

Hamil was not surprised that neither Judge Porteous nor any of the other persons interviewed in the background investigation answered the compromise-or-coercion question in the affirmative. Hamil could not recall a single candidate answering "Yes" to that specific question in all of the background investigation interviews he conducted over the course of his career; and even in non-candidate interviews, the answer is "just about always no." See Hamil, 2A at 851, 867–868; *see also* Ex. 69(b) (full exhibit).⁸²

The FBI interviewed Louis Marcotte on two occasions during its background investigation of Judge Porteous. The first interview occurred on or about August 1, 1994. Stips. 171, 178, 1C at 2539. According to the FBI interview summary, Marcotte stated that he was a professional and social acquaintance of Judge Porteous who "sometimes [went] out to lunch with the candidate and attorneys in the area." Stip. 179, 1C at 2539. Marcotte also told the FBI that Judge Porteous was "really helpful and available for everybody" and was "open-minded and fair, but [was] not a push-over." Marcotte generally discussed bond setting practices in the Jefferson Parish courthouse and his bail bonds business. Ex. 69(b) (full exhibit, at 471).

In his interview, Marcotte denied knowledge of any use of illegal drugs or abuse of alcohol or prescription drugs by Judge Porteous; Marcotte stated that Judge Porteous would have a beer or two at lunch but Marcotte had never seen him drunk. Marcotte also told the FBI that he had "no knowledge of the candidate's financial situation" and assured the FBI that "he [was] 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." Ex. 69(b) (full exhibit, at 471). As discussed above in the context of Article II, Marcotte testified in the evidentiary hearings that he lied to the FBI during this interview about Judge Porteous's financial circumstances, his alcohol usage, and in response to the general "integrity" questions. Marcotte stated that he understood at the time he was interviewed that his relationship with Judge Porteous was improper and that he lied to protect the lifetime federal appointment of Judge Porteous, who had been good to him, and himself. Louis Marcotte, 2A at 481–486.

The FBI also interviewed Robert Creely on or about August 1, 1994. The FBI summary of Creely's interview states that Creely told the FBI that he had "never known the candidate to use illegal drugs or abuse alcohol or prescription drugs" and that he "was 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." Ex. 69(b) (full exhibit, 476–477). At

⁸¹The FBI interview summary also indicates that "PORTEOUS said that he has not abused alcohol or prescription drugs or used illegal drugs, to include marijuana, during his entire adult life. He has had no participation in drug or alcohol counseling/rehabilitation programs since age 18." Ex. 69(i), 3B at 1829–1833.

⁸²Interviewees occasionally reveal adverse information about a candidate, but not in response to the question about any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgment or discretion. Hamil, 2A at 868–869.

the evidentiary hearing, Creely testified that he misled the FBI in this interview about Judge Porteous's finances because he "didn't want to hurt the man and hurt his appointment." Creely, 2A at 282–283.

On August 8, 1994, the FBI interviewed an individual who asked that his/her identity remain anonymous.⁸³ This confidential source (referred to in the interview summary as T-6) made a number of allegations regarding Judge Porteous. This source alleged that Judge Porteous received things of value from Louis Marcotte in return for signing bonds ahead of time and reduced bonds in exchange for money. Ex. 69(b) (full exhibit, at 524, 526).

b. Follow-up interviews

After the FBI Headquarters in Washington, D.C., received the results of the initial background investigation, it instructed the FBI field office in New Orleans to conduct an additional investigation. On August 12, 1994, FBI Headquarters sent a teletype to the New Orleans field office directing additional interviews "to verify and corroborate" information provided by a confidential source. Ex. 69(b) (full exhibit, at 478–479); Hamil, 2A at 831–832. In particular, FBI Headquarters ordered the field agents to seek additional information concerning Judge Porteous's bond-setting practices. FBI agents were also instructed to ask Louis Marcotte whether he was aware of any "exchange of money with Judge Porteous and others to get a bond reduction" for a specific individual. The agents were further instructed to re-interview Judge Porteous and to give him an opportunity to address these allegations. *See* Ex. 69(b) (full exhibit, at 462–463, 478–480).

Pursuant to the teletype, FBI agents interviewed Adam Barnett, another bail bondsman in Gretna, Louisiana, on August 17, 1994. Barnett stated that he did not know of any questionable conduct or acts by Judge Porteous, financial problems experienced by Judge Porteous, or personal problems or habits that would bar Judge Porteous from service as a federal judge; he went on to recommend Judge Porteous for the federal bench. Stip. 175, 1C at 2539.

On or about August 17, 1994, Louis Marcotte was re-interviewed by the FBI. According to the FBI summary, Marcotte was "confronted with questions and information about his knowledge and relationship" of specific bond matters. Hamil, 2A at 833; Stip. 172, 1C at 2539. Marcotte "totally den[ied] . . . arranging for a portion of the bond reduction fee to go directly to Judge Porteous as a 'kickback.'" Ex. 69(b) (full exhibit, at 513–514).

On or about August 18, 1994, Judge Porteous was interviewed by the FBI for the second time. Hamil, 2A at 836; Stip. 173, 1C at 2539. Agent Hamil interviewed Judge Porteous regarding the allegations of misconduct regarding bond-setting practices.⁸⁴ Judge Porteous was asked about allegations that he had received monies

⁸³The Committee requested that the Department of Justice and the FBI provide unredacted versions of this and other FBI interview summaries. The Department declined to disclose information about the identity of a number of its confidential sources.

⁸⁴According to Hamil, *after* receiving instructions from FBI Headquarters to re-interview Judge Porteous but *before* he had contacted Judge Porteous to set up a second interview, Judge Porteous called him to discuss allegations of improper bond setting. Apparently, the FBI had raised these allegations in its interview of Jolene Acy, Judge Porteous's civil court clerk, and she had apprised Judge Porteous. Hamil stated that he considered Judge Porteous's unsolicited call to discuss such allegations to be "out of the ordinary" for a candidate. Hamil, 2A at 833–835; *see* Ex. 69(b), 3B at 1795.

from an attorney and a bail bondsman to reduce bonds; he was also questioned about his reduction of an unrelated bond, for which Adam Barnett was the bondsman. Judge Porteous denied these allegations and the allegations raised by FBI confidential source T-6. According to the FBI interview summary, Judge Porteous “denied that he had ever signed any bail bonds ‘in blank’ and reiterated that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion, or compromise and/or would impact negatively on his character, reputation, judgment, or discretion.” See Hamil, 2A at 837–839; Ex. 69(b), 3B at 1797–1798; Ex. 69(k), 3B at 1835.⁸⁵

Once the FBI field agents completed the background investigation, the results were sent to FBI Headquarters for transmittal to the Department of Justice. On August 19, 1994, the FBI sent a background note to the Department of Justice, summarizing the FBI’s findings (including the allegations made by the confidential source identified as T-6) and stating it had completed the investigation. Hamil, 2A at 862–863; Ex. 69(b) (full exhibit, at 530).

2. Nomination and Senate Confirmation

On August 25, 1994, President Clinton nominated Judge Porteous to be a United States District Court Judge for the Eastern District of Louisiana. During the Senate confirmation process, Judge Porteous completed a United States Senate Judiciary Committee “Questionnaire for Judicial Nominees” (Senate Judiciary Questionnaire). Ex. 9(a), 3B at 602–604; Stips. 12, 182, 1C at 2526, 2539.

When asked on the Senate Judiciary Questionnaire whether there was “any unfavorable information that may affect your nomination,” Judge Porteous answered, “To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.” Judge Porteous adopted the affidavit at the end of the Senate Judiciary Questionnaire, which stated: “I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.” The Senate Judiciary Questionnaire was signed by Judge Porteous and notarized. Stip. 174, 1C at 2539; Ex. 9(f), 3B at 696–697.

Upon receiving Judge Porteous’s nomination, Senate Judiciary Committee staff was given access to his FBI background investigation file. One staff member took notes on this file, which included the following allegations: that Judge Porteous “took kick-backs” in relation to Louis Marcotte, that he was living beyond his means and questioned whether he might be involved in some type of criminal activity, that he had a drinking problem, and that he gambled on occasion. The Judiciary Committee staff also placed additional telephone calls to Robert Creely, Donald Gardner, and Louis Marcotte, among others. Ex. 439(q) (full exhibit)⁸⁶; *see also* Stip. 184, 1C at 2540.

Judge Porteous’s confirmation hearing before the Senate Judiciary Committee was held on October 6, 1994; he was confirmed by

⁸⁵Hamil did not ask Judge Porteous about lunches with Louis Marcotte, curatorships, or gifts received from Robert Creely or Jacob Amato. *See* Hamil, 2A at 846; Exs. 69(i), 3B at 1829–1833; 69(k), 3B at 1835.

⁸⁶Like Exhibit 69(b), the Exhibit 439 series is also omitted from the public record, but available to Senators upon request.

the Senate on the following day. Judge Porteous received his judicial commission on October 11, 1994, and was sworn in on October 28, 1994. Stips. 13–16, 1C at 2527; Ex. 9(c), 3B at 655–656.

D. Contested Issues

The parties offer sharply different views about whether Judge Porteous misled or withheld information from the FBI or the Senate during his background investigation. The core factual disagreement is whether, as the House argues, Judge Porteous lied to and withheld relevant information from the FBI in response to certain questions about his background or whether, as Judge Porteous contends, his answers were realistic responses to flawed and ambiguous “catchall” questions.

1. The House’s Perspective

The House maintains that several of Judge Porteous’s answers in response to the background investigation and Senate confirmation questions were false and made with the intent to deceive in order to obtain a judicial appointment without disclosing material information that would have adversely affected his nomination. The House identifies four separate occasions in which Judge Porteous allegedly lied prior to his confirmation: once on the White House Supplemental SF–86, twice during FBI interviews, and once to the Senate on the Judiciary Committee Questionnaire. According to the House, Judge Porteous withheld information during the background investigation and confirmation process about his ongoing corrupt relationships, namely, the “curatorship scheme” with Creely and the firm of Amato & Creely, and his corrupt relationship with Louis and Lori Marcotte. *See* Ex. 69(b), 3B at 1791, 1796–1798; Ex. 69(i), 3B at 1829–1833; Ex. 9(f), 3B 662–697.

2. Judge Porteous’s Perspective

Judge Porteous denies that he withheld information from, or otherwise lied to, the FBI or the Senate during his confirmation. Judge Porteous faults the broad “catchall” questions on the Supplemental SF–86, the FBI interviews, and the Senate Judiciary Committee Questionnaire as overly vague and ambiguous. To the extent that he admits receiving lunches and gifts from friends who were attorneys and bail bondsmen, he argues that there is no evidence that *he* believed such conduct to be a basis for coercion, blackmail, public embarrassment, or unfavorable to his nomination. In fact, he notes that the lunches with Creely, Amato, and the Marcottes all occurred in public places because he had nothing to hide. He insists that the House has presented no evidence that he concealed unfavorable or embarrassing information from the White House, the FBI, or the Senate.

Judge Porteous also dismisses the notion that he misled the FBI in light of the information of alleged misconduct gathered by the FBI and made available to the Senate. He cites as evidence the FBI summaries of Louis Marcotte’s interview about his occasional lunches and professional relationship with Judge Porteous. Hamil, 2A at 847–848, 856–857. These summaries were made available to the Senate Judiciary Committee. *See* Ex. 69(b) (full exhibit, at 471, 526); Ex. 439(q). Judge Porteous also cites Marcotte’s testimony that Marcotte never thought he would extort or embarrass Judge

Porteous as leverage. Ex. 447, 3E at 5052–5053. In Judge Porteous’s view, this admission only confirms that he responded truthfully to the compromise-or-coercion, public embarrassment, and unfavorable information questions in the Supplemental SF–86, the FBI interviews, and the Senate Judiciary Committee Questionnaire.

D. Expert Testimony

The parties offered two experts who addressed the allegations in Article IV. The House called Professor Charles Geyh of the Indiana University—Bloomington Maurer School of Law as an expert in judicial ethics. Judge Porteous offered Professor G. Calvin Mackenzie of Colby College as an expert in presidential appointments, the appointments process, and governmental ethics. The Committee accepted both professors as experts in their designated areas. See Geyh, 2A at 714–716; Mackenzie, 2B at 1807.

1. Professor Charles G. Geyh

Professor Geyh was asked a number of questions regarding the discipline of a judicial officer for misleading or providing false information to the Senate Judiciary Committee. When asked about his expert opinion on Judge Porteous’s alleged conduct during the federal nomination and Senate confirmation process, he opined that if Judge Porteous had made false statements under oath it would reflect adversely on his integrity. Although he acknowledged that the statements in the confirmation process are “a trickier question” because the standard compromise-or-coercion question has “weasel room,” the serious allegations regarding the curatorships, the bail bonds, and other *quid pro quo* schemes, if true, are subjects that would affect any nominee in Judge Porteous’s position and possibly make him vulnerable to blackmail. Therefore, in this circumstance, answering “no” to the compromise-or-coercion question in his background investigation would “qualify as perjury.” See Geyh, 2A at 734–736.

On cross-examination, Professor Geyh was asked about several instances in which a candidate for presidential appointment was alleged to have made false statements to the Senate Judiciary Committee. When asked about one case in which a judge provided allegedly inconsistent testimony and submissions to the Senate, Professor Geyh agreed that the intent of the judge is a relevant factor when considering discipline of a judge who provided inconsistent or false information to the Senate Judiciary Committee. Professor Geyh also emphasized that there is important “context to all cases.” See *id.* at 757–758, 760–761.

2. Professor G. Calvin Mackenzie

Professor Mackenzie testified that the process of FBI background checks began in the Eisenhower administration and was directed at uncovering national security risks. Mackenzie explained that the decision to nominate an individual for a presidential appointment requiring Senate approval begins an elaborate process involving numerous forms and document productions. Mackenzie, 2B at 1807–1809. Professor Mackenzie stated that the average nominee has to answer approximately 200 written questions during the nomination process and that many of these questions are redun-

dant. *Id.* at 1826–1827. He also stated that there is evidence that “these background checks are not very useful to most people in the process” because of the accumulation of unverified information in background files.”⁸⁷ *Id.* at 1810.

Professor Mackenzie opined that many candidates find answering numerous specific and intrusive questions about their professional and personal lives to be quite burdensome and that when asked a broad “catchall” question (such as the compromise-or-coercion question) at the end of the form or interview, most candidates consider the question to be redundant and answer “No.” When asked if he personally knew of any candidate who had answered the compromise-or-coercion question affirmatively, he responded, “No, I don’t, but I suspect [any such candidates] wouldn’t have completed the process if they added something different to that question.” *See id.* at 1811–1814.

Regarding the question on Supplemental SF–86 that seeks information that was potentially embarrassing or could be used for coercion or blackmail, Professor Mackenzie testified that the question is “ambiguous” and “very difficult to apply.” He further noted that “history is replete with examples of people who have answered no to this question, gone into the confirmation process or sometimes even gone through successfully the confirmation process, only to have information come out later which was embarrassing to them, sometimes embarrassing to the President.” Professor Mackenzie also testified that while the compromise-or-coercion question is asked “routinely” of “virtually everybody who is interviewed,” he could not recall any candidate who had ever responded affirmatively to this question. *Id.* at 1811–1814. Nor was he aware of any individual who has ever responded affirmatively to a question that asks the candidate to “advise the Committee of any unfavorable information that may affect your nomination” or any nominee who had ever been prosecuted or removed from office for falsely answering such a question. *See id.* at 1835.

Professor Mackenzie clarified that candidates have no right to lie in response to “catchall questions” on the Supplemental SF–86 or the Senate Judiciary Questionnaire, and if the nominee were to give false answers, that would be a problem. *Id.* at 1890. He agreed that the disclosure that a candidate had taken kickbacks from attorneys as a state court judge, as well as receiving gifts from and performing favors for bail bondsmen, would unfavorably affect, and likely kill, any federal appointment. *See id.* at 1863–1867. He also acknowledged that the catchall question serves the purpose of preventing a candidate from hiding and rationalizing unfavorable facts during the background investigation as long as no question specifically asked about that fact. *Id.* at 1885–1886. For these reasons, he was “not opposed to the catchall questions.” *See id.* at 1860–1862, 1887.

* * * * *

⁸⁷ On cross-examination, Professor Mackenzie agreed that the forms and questionnaires include many valid questions (such as the compromise-or-coercion question) that are important safeguards for high-level federal appointments; he only advocated eliminating some of the redundancy in the forms and questionnaires. *Id.* at 1855–1857.

COMMITTEE ROLLCALL VOTE

In compliance with paragraph 7(b) and (c) of rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote of the Impeachment Trial Committee on the Articles Against Judge G. Thomas Porteous, Jr., to issue this report to the Senate was as follows:

| YEAS | NAYS |
|----------------------|------|
| Mrs. McCASKILL | |
| Mr. HATCH | |
| Ms. KLOBUCHAR | |
| Mr. WHITEHOUSE | |
| Mr. UDALL | |
| Ms. SHAHEEN | |
| Mr. DEMINT | |
| Mr. BARRASSO | |
| Mr. WICKER | |
| Mr. JOHANNIS | |
| Mr. RISCH (by proxy) | |

ADDENDUM A

RULE XI OF THE RULES OF PROCEDURE AND PRACTICE IN THE
SENATE WHEN SITTING ON IMPEACHMENT TRIALS⁸⁸

That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

⁸⁸*Procedure and Guidelines for Impeachment Trials in the United States Senate*, 99th Cong., 2nd Sess., Doc. 99-33, at 4 (August 15, 1986).

ADDENDUM B

111th Congress, 2d Session

S. RES. 458

To provide for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Judge G. Thomas Porteous, Jr.

IN THE SENATE OF THE UNITED STATES, MARCH 17, 2010

Mr. REID (for himself and Mr. MCCONNELL) submitted the following resolution; which was considered and agreed to

RESOLUTION

To provide for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Judge G. Thomas Porteous, Jr.

Resolved, That pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The majority and minority leader shall each recommend six members, including a chairman and vice chairman, respectively, to the Presiding Officer for appointment to the committee.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under Rule XI.

SEC. 4. During proceedings conducted under Rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the Presiding Officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6. (a) The actual and necessary expenses of the committee, including the employment of staff at an annual rate of pay, and the employment of consultants with prior approval of the Committee on Rules and Administration at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee, except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay.

(b) In carrying out its powers, duties, and functions under this resolution, the committee is authorized, in its discretion and with

the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

SEC. 7. The committee appointed pursuant to section one of this resolution shall terminate no later than 60 days after the pronouncement of judgment by the Senate on the articles of impeachment.

SEC. 8. The Secretary shall notify the House of Representatives and counsel for Judge G. Thomas Porteous, Jr. of this resolution.

ADDENDUM C

DESCRIPTION OF COMMITTEE PROCEEDINGS

This Addendum offers a brief overview of the Committee's proceedings, which are documented by the certified record. The Committee's proceedings are best understood in two phases: the pre-trial matters and the evidentiary hearings.

PRE-TRIAL MATTERS

The pre-trial phase of the Committee's work occurred from March 17 to September 13, 2010, during which the Committee addressed discovery issues, pre-trial evidentiary disputes, witness subpoena and immunity requests, stipulations, and other procedural matters. In addition to document discovery, the Committee authorized the pre-trial deposition of four principal witnesses upon Judge Porteous's request: Jacob Amato, Robert Creely, Louis Marcotte, and Lori Marcotte.⁸⁹ 1A at 296–298. The correspondence, filings and motions, and Committee orders on these pre-trial matters are found in Part 1 of the certified record. Three pre-trial matters deserve to be highlighted.

First, in June 2010, the Committee disqualified one of Judge Porteous's counsel because of a serious conflict of interest based on his concurrent representation of two of the most important witnesses, Louis and Lori Marcotte, in a pending, related civil proceeding. 1A at 625–632. The Committee continued its scheduled hearings by six weeks to account for the substitution of additional counsel. The filings and the Committee's order addressing this conflict of interest are found in Part 1A.

Second, on August 4, 2010, the Committee held a hearing on three issues raised in the parties' pre-trial motions: Judge Porteous's motion to dismiss based on the asserted unconstitutional aggregation of conduct in the articles of impeachment, the parties' cross-motions on the use of Judge Porteous's prior immunized testimony before the Fifth Circuit Special Investigatory Committee, and the parties' cross-motions on the admissibility of other prior witness testimony from the Fifth Circuit judicial disciplinary hearings and the House impeachment proceedings. The Committee declined to hear pre-trial arguments on Judge Porteous's four motions to dismiss the individual articles of impeachment because the motions relied on and cited to evidence that had not yet been received by the Committee. After deliberations and votes on the remaining motions, the Committee issued an order on August 25, 2010, denying

⁸⁹ Judge Porteous requested a total of ten depositions.

Judge Porteous's motion to dismiss based on the aggregation of conduct, permitting use of Judge Porteous's immunized testimony from the Fifth Circuit, and deeming admissible some other witness testimony from the Fifth Circuit and the House impeachment proceedings, namely, the prior testimony of fact witnesses who had been the subject of cross-examination. 1B at 1967–1973. The Committee denied the House's motion to compel Judge Porteous to testify. The order, related filings, and transcript from the pre-trial motions hearing are found in Part 1B.

Third, the Committee engaged in prolonged discussions, on behalf of Judge Porteous, with the Department of Justice regarding discovery requests for documents within the possession of the Department. 1C at 1999–2000. As a result, the Department made a number of productions from its investigation of Judge Porteous in late August and September 2010. The filings and correspondence regarding the discovery to the Department are found in Part 1C.

THE EVIDENTIARY HEARINGS

The evidentiary hearings of the Committee took place over five days, on September 13, 14, 15, 16, and 21, 2010.

The Committee subpoenaed all fact witnesses requested by the parties with two exceptions. Judge Porteous requested subpoenas for two attorneys with the Department of Justice, Criminal Division, who were involved in the investigation of Judge Porteous. The House requested a subpoena to compel Judge Porteous's testimony. For both of these matters, the subpoena requests were considered and denied by the full Committee. The Committee declined to subpoena the parties' proffered expert witnesses, but permitted selected expert testimony to be introduced. The Committee paid for the travel expenses of all subpoenaed witnesses. 1A at 553.

Each party was allotted twenty hours to present its case. The House called 14 witnesses; Judge Porteous called 12 witnesses. Each witness was subject to examination by counsel for the parties and, in some cases, by the members of the Committee. Neither side was denied the opportunity to call a witness based on insufficient time. 1C at 2581–2582.

The Committee also admitted exhibits during the evidentiary hearings and additional exhibits in consultation with the parties following the hearings to complete the record. 3A at 342–363. The Committee declined to include in the certified record two admitted exhibits in their entirety: Exhibit 69(b), which is the FBI's background investigation file for Judge Porteous's federal appointment, and Exhibit 439, which is the Senate Judiciary Committee's nomination file of Judge Porteous. These exhibits, however, will be available to Senators only upon request for review. The transcripts of the evidentiary hearings are found in Parts 2A and 2B, and the admitted exhibits are contained in Parts 3B, 3C, 3D, and 3E.

After the evidentiary hearings, the Committee requested from the parties proposed findings of fact and post-trial briefs on the factual and legal issues. The proposed findings of fact are found in Part 3A. The post-trial briefs will be provided separately to each Senator along with this report and the certified record.

ADDENDUM D

GLOSSARY OF NAMES APPEARING IN THE COMMITTEE REPORT

1. Amato, Jacob J., Jr.—Attorney with longstanding friendship with Judge Porteous, who was retained as counsel for Liljeberg in the *Lifemark v. Liljeberg* case that is the subject of Article I. Former law partner of Judge Porteous and of Robert Creely.
2. Barliant, Ronald—Former U.S. Bankruptcy Judge for the Northern District of Illinois, called by Judge Porteous as an expert witness on bankruptcy law.
3. Barnett, Adam—Bail bondsman in Gretna, Louisiana, who worked with the Marcottes and Judge Porteous.
4. Beaulieu, S.J., Jr.—Chapter 13 Bankruptcy Trustee for the Eastern District of Louisiana who oversaw Judge Porteous’s personal bankruptcy.
5. Bodenheimer, Ronald—Former state court judge of the 24th Judicial District Court, first elected in 1999, who pled guilty to corruption in “Operation Wrinkled Robe.”
6. Ciolino, Dane—Professor at Loyola University School of Law called by Judge Porteous as an expert witness on judicial ethics and standards, as well as practices in the 24th Judicial District Court.
7. Creely, Robert—Attorney with longstanding friendship with Judge Porteous and partner of Jacob Amato.
8. Danos, Rhonda—Judge Porteous’s secretary during his time as both a state court judge and a federal district court judge.
9. Duhon, Jeffrey—Former Employee of Bail Bonds Unlimited.
10. Gardner, Donald—Attorney with longstanding friendship with Judge Porteous, who was retained by Lifemark in the *Lifemark v. Liljeberg* case that is the subject of Article I.
11. Geyh, Charles G.—Professor at Indiana University School of Law who was called as an expert witness by the House on judicial ethics.
12. Goyeneche, Raphael—President of the Metropolitan Crime Commission, a non-profit community organization to report crime and corruption in New Orleans, LA.
13. Greendyke, William R.—Former judge of the U.S. Bankruptcy Court for the Southern District of Texas who presided over Judge Porteous’s personal bankruptcy from 2001 through 2004.
14. Griffin, Darcy—Criminal minute clerk for Judge Porteous between 1992 and 1994 on the 24th JDC.
15. Hamil, Bobby P., Jr.—Former FBI Agent who was involved in the background investigation of Judge Porteous for his federal judicial nomination.
16. Hildebrand, Henry—Standing Chapter 13 Bankruptcy Trustee for the Middle District of Tennessee who was called as an expert witness by Judge Porteous on bankruptcy law.
17. Horner, DeWayne—FBI agent who was part of “Operation Wrinkled Robe” and who led the related investigation of Judge Porteous.
18. Keir, Duncan W.—Chief Judge of the U.S. Bankruptcy Court for the District of Maryland who testified as an expert witness for the House on the area of bankruptcy law.

19. Levenson, Leonard—Attorney with longstanding relationship with Judge Porteous who represented Liljeberg in the *Lifemark v. Liljeberg* case that is the subject of Article I.

20. Lightfoot, Claude—Bankruptcy attorney retained by Judge Porteous in the summer of 2000.

21. Mackenzie, G. Calvin—Professor of Government at Colby College who was called as an expert witness by Judge Porteous on the federal appointments process and Senate confirmation.

22. Mamoulides, John—Former Jefferson Parish District Attorney from 1972 to 1996, during which time Judge Porteous was an Assistant District Attorney and, later, a state court judge.

23. Marcotte, Lori—Former employee of Bail Bonds Unlimited and sister of bail bondsman Louis Marcotte.

24. Marcotte, Louis—Bail bondsman who founded Bail Bonds Unlimited.

25. Mole, Joseph—Attorney who represented Lifemark in the *Lifemark v. Liljeberg* case that is the subject of Article I.

26. Netterville, Bruce—Attorney with longstanding relationship with the Marcottes and Judge Porteous.

27. Pardo, Rafael—Professor of law at the University of Washington School of Law who was called as an expert witness by Judge Porteous on bankruptcy law.

28. Porteous, Timothy—Judge Porteous's son.

29. Rees, Robert B.—Criminal defense attorney who represented Aubrey Wallace on the set aside of his burglary conviction.

30. Reynolds, Mike—Former Assistant District Attorney who represented the state in the hearing on the motion to set aside Aubrey Wallace's burglary conviction.

31. Tackett, Cheyenne—Former FBI Agent who was involved in the background investigation of Judge Porteous for his federal judicial nomination.

32. Wallace, Aubrey—Former employee of Bail Bonds Unlimited.