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

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

JUDGE G. THOMAS PORTEOUS, JR.'S PROPOSED FINDINGS OF FACT

Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

Daniel C. Schwartz
P.J. Meitl
Daniel T. O'Connor
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Keith Miles Aurzada
BRYAN CAVE LLP
2200 Ross Avenue, Suite 3300
Dallas, Texas 75201
(214) 721-8000

Brian C. Walsh
BRYAN CAVE LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge
for the Eastern District of Louisiana

Dated: October 1, 2010

TABLE OF CONTENTS

NOW BEFORE THE SENATE, comes Respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and respectfully submits the following Proposed Findings of Fact, which have been established through testimonial evidence, documentary evidence, and/or stipulation of the parties.

BURDEN OF PROOF

Before proposing specific findings of fact, it is critical to note that the House, in its role as prosecutor before the Senate, bears the entire burden of proof. As such, the Senate may not simply weigh the evidence presented by the House and that presented by the Defense to resolve disputed facts. To the contrary, the House must prove, first, that the specific conduct alleged in the Articles of Impeachment actually occurred. This first obligation is especially important in this case where, unlike every other modern impeachment, there was no prior indictment, let alone a trial, and thus no prior adjudicated record. Second, the House must prove that the conduct that did in fact occur meets the Constitutional standard of "Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST. art. II, § 4. No other misconduct may result in removal. Since the House cannot and has not carried this heavy burden, the Senate is obligated to reject the Articles of Impeachment and acquit Judge Porteous.

Indeed, as shown below, Judge Porteous established at the evidentiary hearings that a number of the House's allegations are simply untrue. Judge Porteous further proved that much of the conduct relied upon by the House in seeking his removal from office is neither criminal nor in any way improper. Each of these showings fatally undermines the House's case and exposes its failure to carry its extensive and exclusive burden of proof.[1]

[1] While the appropriate standard of proof in impeachments may be left to "the conscience of each Senator," that standard ought to be both strict and exacting. *See* CRS Rpt. 98-990, at 5-6, *Standard of Proof in Senate Impeachment Proceedings* (internal quotations omitted). Judge

PROPOSED FINDINGS OF FACT[2]

A. Judge G. Thomas Porteous, Jr.

1. Judge Porteous was born on December 15, 1946, and is currently 63 years old. Stipulation 1.

2. Judge Porteous has four children, Michael, Timothy, Thomas, and Catherine, whom he raised with his late wife Carmella. Senate Vol. III at 1225:20-25 (Timothy Porteous); Stipulation 2-3.

3. Both Judge Porteous and his wife Carmella enjoyed gambling as a form of recreation. Senate Vol. III at 1226:7-25 (Timothy Porteous).

Porteous asserts, therefore, that the appropriate standard of proof to be applied in this case is proof beyond a reasonable doubt. Anything less would fundamentally undermine the independence of the federal judiciary and inappropriately make it easier to impeach and remove a federal judge via impeachment than to indict and convict that same judge in a criminal proceeding.

[2] This filing utilizes the following citation system:

> Testimony from the Senate Impeachment Trial Committee's (the "Committee") evidentiary hearings held on September 13 (Vol. I), 14 (Vol. II), 15 (Vol. III), 16 (Vol. IV), and 21 (Vol. V), 2010, will be cited as "Senate Vol. [no.] at [page no.] (witness)."
>
> Testimony from the Senate Depositions held on August 2, 2010, will be cited as "[Witness] Senate Dep. at [page no.]."
>
> Testimony from the Fifth Circuit Special Investigatory Committee hearings on October 29 and 30, 2007, will be cited as "Fifth Circuit at [page no.] (witness)."
>
> Exhibits offered by Judge Porteous and accepted into the Senate record will be cited as "Porteous Ex. [no.]."
>
> Exhibits offered by the House Managers and accepted into the Senate record will be cited as "House Ex. [no.]."
>
> Stipulations of fact agreed to between Judge Porteous and the House (and filed with the Committee on September 8, 2010) will be cited as "Stipulation [no.]."

4. Judge Porteous's wife Carmella passed away on December 22, 2005, as a result of a heart attack. Senate Vol. III at 1225:1-3, 1227:8-23 (Timothy Porteous); Stipulation 17.

5. Just four months before his wife Carmella's passing, Judge Porteous's house was destroyed in connection with Hurricane Katrina. Senate Vol. III at 1228:2-10, 1228:21 – 1229:21 (Timothy Porteous).

6. Following the destruction of his house by Hurricane Katrina and the death of his wife Carmella, Judge Porteous became extremely depressed and isolated. Senate Vol. III at 1235:2-24 (Timothy Porteous).

7. Some months after his wife died, Judge Porteous told his children that he had quit drinking alcohol; he had previously stopped gambling. Senate Vol. III at 1236:6 – 1237:3 (Timothy Porteous).

8. Judge Porteous sought treatment for his depression in early 2006. Senate Vol. III at 1236:2-5 (Timothy Porteous).

9. Despite his treatment, Judge Porteous felt unable to perform the duties of his judicial office, and in May of 2006 – just six months after the passing of his wife and ten months after his home was destroyed by Hurricane Katrina – Judge Porteous filed a petition for a certificate of disability from the Honorable Edith B. Jones, Chief Judge of the Fifth Circuit Court of Appeals, asserting that he suffered from serious mental depression. House Ex. 5 (Fifth Circuit Special Investigatory Committee Report, at 5).

10. Chief Judge Jones denied Judge Porteous's petition for a certificate of disability finding insufficient medical documentation of a permanent mental disability. House Ex. 5 (Fifth Circuit Special Investigatory Committee Report, at 5).

11. For several years, Judge Porteous was the subject of an investigation by the Federal Bureau of Investigation and a grand jury empanelled in the Eastern District of Louisiana. Stipulation 19.

12. In connection with that investigation, Judge Porteous signed a series of tolling agreements with the Justice Department which waived his right to assert a statute of limitations defense in connection with various potential federal criminal charges. Porteous Ex. 1003, 1004, & 1005.

13. Nevertheless, after several years of investigation, the Justice Department "determined that it [would] not seek criminal charges against Judge Porteous." Stipulation 19.

14. The Justice Department did submit, however, a formal complaint of misconduct concerning Judge Porteous to Fifth Circuit Chief Judge Jones. Stipulation 21; House Ex. 4.

15. Chief Judge Jones thereafter filed a "Complaint of Judicial Misconduct" against Judge Porteous and convened a Special Investigatory Committee to investigate. Stipulation 25-26.

16. Judge Porteous was initially represented in the Fifth Circuit Special Investigatory Committee proceedings by attorney Kyle Schonekas, until Mr. Schonekas withdrew from that representation on or before July 5, 2007. Stipulation 27-28.

17. Following Mr. Schonekas's withdrawal, beginning on or before August 2, 2007, attorney Michael H. Ellis represented Judge Porteous in the Fifth Circuit Special Investigatory Committee proceedings. Stipulation 29.

18. Just two weeks prior to the start of the Fifth Circuit Special Investigatory Committee hearings, Mr. Ellis withdrew from his representation of Judge Porteous. Stipulation 30-31.

19. Notwithstanding this last minute withdrawal and Judge Porteous's request for a continuance, the Fifth Circuit Special Investigatory Committee held its hearing on October 29 and 30, 2007, at which Judge Porteous was forced to represent himself without the assistance of counsel. Stipulation 31.

20. At the Fifth Circuit Special Investigatory Committee hearings, Judge Porteous was presented for the first time with an immunity order – which had been signed by Chief Judge Jones on October 5, 2007, but not made available to Judge Porteous until the first hearing day on October 29, 2007 – that compelled his testimony. Stipulation 32.

21. Since he had not had any opportunity to review the immunity order, Judge Porteous requested a continuance, which Chief Judge Jones denied, stating: "immunity is better than non immunity, sir. Continuance denied. You may take the stand." Stipulation 33.

22. Following the Fifth Circuit Special Investigatory Committee hearings – at which Judge Porteous was forced to represent himself and testify pursuant to an immunity order that he received only moments before being compelled to take the stand – the Fifth Circuit Judicial Council issued a report adverse to Judge Porteous. Stipulation 36.

23. Fifth Circuit Judge Dennis and three other federal judges disagreed with the Fifth Circuit Judicial Council's majority report and filed a 49-page concurring and dissenting opinion specifically disagreeing "with the council majority's conclusion that the evidence demonstrates a possible ground for [Judge Porteous's] impeachment and removal from office." Stipulation 36.

24. Judge Porteous has already been severely disciplined for his actions and the resulting appearance of impropriety, having been suspended and removed from the bench by the Fifth Circuit Judicial Conference for more than two years. Stipulation 38.

B. Article I

Article I Allegations

25. Article I alleges that Judge Porteous "deprived the parties [in the case of Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises] and the public of the right to the honest services of his office" by "den[ying] 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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

26. Article I further alleges that, in denying the motion to recuse, "Judge Porteous failed to disclose that beginning in or about the late 1980s while he was a State court judge in the 24th Judicial District Court 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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

27. Article I alleges that "the fees received by Amato & Creely [during the period of the alleged scheme] amounted to approximately $40,000, and the amounts paid by Amato & Creely to Judge Porteous amounted to approximately $20,000." 111 Cong. Rec. S1645 (Mar. 17, 2010).

28. Article I also alleges that Judge Porteous "made intentionally misleading statements at the recusal hearing intended to minimize the extent of his personal relationship with [Messrs. Amato and Creely]" and, in so doing, "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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

29. Finally, Article I alleges that Judge Porteous "engaged in corrupt conduct after the Lifemark v. Liljeberg bench trial, and while he had the case under 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" and, "[t]hereafter, 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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

30. Article I asserts that Judge Porteous "should be removed from office" because he is "guilty of high crimes and misdemeanors." 111 Cong. Rec. S1645 (Mar. 17, 2010).

31. Article I does not allege that Judge Porteous should removed from office for treason. 111 Cong. Rec. S1645 (Mar. 17, 2010).

32. Article I does not allege that Judge Porteous should be removed from office for bribery. 111 Cong. Rec. S1645 (Mar. 17, 2010).

33. Article I does not allege that Judge Porteous committed bribery or solicited or received any bribe. 111 Cong. Rec. S1645 (Mar. 17, 2010).

34. Article I does not allege that Judge Porteous engaged or participated in any illegal *quid pro quo* in connection with the Lifemark v. Liljeberg case.

35. Article I does not allege that Judge Porteous engaged in any kickback scheme. 111 Cong. Rec. S1645 (Mar. 17, 2010).

36. Article I's "honest services" allegation is based on 18 U.S.C. § 1346. 111 Cong. Rec. S1645 (Mar. 17, 2010).

The Supreme Court's Recent Decision Concerning "Honest Services" Fraud

37. The U.S. Supreme Court decided the case of Skilling v. United States, No. 08-1394, 130 S. Ct. 2896, 2010 WL 2518587, on June 24, 2010.

38. In Skilling v. United States, the U.S. Supreme Court ruled that, in order to meet constitutional scrutiny, 18 U.S.C. § 1346 must be narrowly construed.

39. In Skilling v. United States, the U.S. Supreme Court further ruled that any claim of criminal honest services fraud is unconstitutional if it goes beyond "fraudulent schemes to deprive another of honest services through bribes or kickbacks." 2010 WL 2518587, at *12 (emphasis added).

40. In Skilling v. United States, the U.S. Supreme Court specifically rejected the notion that "undisclosed self-dealing" and the "non-disclosure of conflicting financial interest," such as "the taking of official action by [a public official] that furthers his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty," can constitute a criminal deprivation of "honest services." 2010 WL 2518587, at *28.

Judge Porteous, Bob Creely, and Jake Amato Were Very Close Friends

41. Judge Porteous and Jacob (Jake) Amato met one another for the first time in the early 1970s, when they were both working as Assistant District Attorneys in the Jefferson Parish District Attorney's Office. Senate Vol. I at 117:8-16, 151:17-22 (Amato); Stipulation 48 & 50. Mr. Amato had been assigned to train Judge Porteous. Senate Vol. I at 117:8-16 (Amato); Stipulation 51.

42. In 1973, Judge Porteous, Jake Amato, and Marion Edwards opened a law practice together, which was named Edwards, Porteous, and Amato. Senate Vol. I at 117:3-7, 117:20 – 118:2, 118:7-20 (Amato); Stipulation 9 & 52.

43. Pursuant to state rules that allowed Assistant District Attorneys to maintain a private practice, Judge Porteous continued to serve as an Assistant District Attorney while he was a partner of Edwards, Porteous, and Amato. Stipulation 8 & 53.

44. Jake Amato considered Judge Porteous to be one of his best friends, and Mr. Amato considered himself one of Judge Porteous's best friends. Senate Vol. I at 164:13-14 (Amato); Senate Vol. III at 869:9-11 (Danos); Stipulation 48-49.

45. When Judge Porteous and Jake Amato were both Assistant District Attorneys, they went to lunch together frequently. Senate Vol. I at 151:25 – 152:3 (Amato); Stipulation 68. Judge Porteous and Jake Amato continued to have lunch together regularly until the early 2000s. Amato Senate Dep. at 12:16 – 13:9.

46. Jake Amato knew all of Judge Porteous's children. Senate Vol. I at 179:24 (Amato).

47. Judge Porteous's children referred to Jake Amato as "Uncle Jake." Senate Vol. I at 179:25 – 180:2 (Amato); Senate Vol. III at 1238:4-20, 1245:9-20, 1247:15-17 (Timothy Porteous); Stipulation 55.

48. Judge Porteous's son Timothy would kiss Jake Amato on the cheek when he saw him as a sign of affection. Senate Vol. I at 179:25 – 180:2 (Amato).

49. Robert (Bob) Creely first met Judge Porteous in 1973 or 1974 when Mr. Creely started working as a law clerk at Edwards, Porteous, and Amato. Senate Vol. I at 248:6-14 (Creely); Stipulation 10.

50. In approximately 1975, Jake Amato and Bob Creely left the law firm where Mr. Amato, Mr. Creely, and Judge Porteous were practicing law and opened a new law firm named Amato & Creely. Senate Vol. I at 118:3-16 (Amato); Senate Vol. I at 249:2-15 (Creely);

Stipulation 41. Mr. Amato and Mr. Creely practiced law together until 2005. Stipulation 41 & 54.

51. Judge Porteous and Bob Creely were long-time friends. Senate Vol. I at 250:12 – 251:3, 296:24 – 297:5. 297:10-13 (Creely); Senate Vol. III at 869:9-11 (Danos); Stipulation 42-44.

52. Bob Creely knew all of Judge Porteous's children. Senate Vol. I at 330:13-15 (Creely).

53. Judge Porteous's children referred to Bob Creely as "Uncle Bob." Senate Vol. I at 330:16-20 (Creely); Senate Vol. III at 1238:4-20, 1245:9-20, 1247:15-17 (Timothy Porteous); Stipulation 45.

54. Bob Creely, Jake Amato and one of his sons, and Judge Porteous and his sons would frequently fish together. Senate Vol. III at 1245:22-25, 1238:4-24 (Timothy Porteous). During these excursions, Bob Creely taught Judge Porteous's son Timothy how to fish and Jake Amato taught Timothy Porteous how to cook. Senate Vol. III at 1238:17-20 (Timothy Porteous).

Small Legal Community in Gretna, Louisiana

55. The legal community in Gretna, Louisiana consists of a small group of lawyers and judges, many of whom went to high school, college, and/or law school together, and many of whom know and interact with one another socially. Senate Vol. I at 157:7 – 158:4 (Amato); Senate Vol. IV at 1570:4-10 (Gardner); Senate Vol. V at 1783:9-13 (Mamoulides).

56. Lawyers practicing in Gretna, Louisiana regularly appear before judges who are former classmates and/or friends or acquaintances with whom they interact socially. Senate Vol. I at 158:5-7 (Amato).

57. Jake Amato was friends with all of the judges in Gretna. Senate Vol. I at 161:19-23, 164:24 – 165:1 (Amato).

58. Bob Creely was friends with many of the judges in Gretna. Senate Vol. I at 300:17-22 (Creely).

59. Jake Amato has given gifts, including wedding presents and Christmas gifts, to many state court judges over the years. Senate Vol. I at 177:22 – 178:2 (Amato).

60. One judge that Jake Amato was friends with, went to high school with, bought lunches for, and gave campaign contributions to, was George Giacobbe. Senate Vol. I at 165:23 – 166:11, 168:3-9 (Amato). Judge Giacobbe appointed Mr. Amato to sit for him on the bench *ad hoc* and handle his judicial docket approximately two to three times per year. Senate Vol. I at 166:11-23 (Amato). Mr. Amato is not aware of anyone ever suggesting that there was anything untoward about Mr. Amato's relationship with Judge Giacobbe, or Judge Giacobbe's decision to repeatedly appoint Mr. Amato to sit for him on the bench *ad hoc*. Senate Vol. I at 168:14 – 169:1 (Amato).

61. In addition to Jake Amato and Bob Creely, Judge Porteous was also close friends with a number of other attorneys who practiced in and around Gretna, Louisiana, including Don Gardner and Leonard (Lenny) Levenson. Senate Vol. III at 1238:25 – 1240:4 (Timothy Porteous); Senate Vol. IV at 1554:17 – 1555:11, 1574:24 – 1575:22 (Gardner); Stipulation 100 & 137.

<u>Judge Porteous Was Elected to the State Bench in 1984</u>

62. Judge Porteous was elected to be a state court judge in the 24th Judicial District Court in Gretna, Louisiana in 1984. Senate Vol. I at 118:21-23 (Amato); Senate Vol. I at 250:5-7 (Creely); Stipulation 6 & 11.

63. Rhonda Danos was Judge Porteous's legal secretary for nearly 24 years, both while he was a state court judge and a federal district court judge. Senate Vol. III at 868:10-12 (Danos).

64. Ms. Danos knows the Porteous family very well, and treats Judge Porteous's children like her own children. Senate Vol. III at 880:18-24 (Danos).

65. Judge Porteous served as a state court judge in the 24th Judicial District Court in Gretna, Louisiana for 10 years, from 1984 to 1994. Senate Vol. I at 119:3-5 (Amato); Stipulation 7.

66. During his time as a state court judge, Judge Porteous had friends who were lawyers appear before him regularly, nearly every day. Senate Vol. I at 200:8-11 (Amato).

67. It was routine for judges in Gretna to have friends of theirs who were lawyers appear before them. Senate Vol. I at 207:18-21 (Creely).

68. Despite the fact that lawyers frequently appeared before judges with whom they were friends and for whom they bought lunch, Jake Amato, who practiced law in Gretna for nearly 40 years, has never seen a single recusal motion either filed or granted in Gretna. Senate Vol. I at 158:11-20 (Amato).

Ethical Standards for Lawyers and Judges in Louisiana

69. In 1984, there was no rule that barred judges from having lunches purchased for them by attorneys. Senate Vol. IV at 1633:21-25 (Ciolino).

70. In 1984, the only rule relating to gifts to judges provided that a judge could not accept, and a lawyer could not give, a gift if it reasonably might appear to affect the judge's official conduct. Senate Vol. IV at 1640:3-15 (Ciolino).

71. Whether a gift reasonably might appear to affect a judge's official conduct was determined based on the totality of the circumstances surrounding the gift, a standard akin to the appearance of impropriety standard. Senate Vol. IV at 1640:16-22 (Ciolino).

72. The appearance of impropriety standard has been widely criticized as a meaningless standard because it essentially tells regulators overseeing judges that judges should not do something that appears bad, and what appears bad is anything that appears improper. Senate Vol. IV at 1641:16-22 (Ciolino). The appearance of impropriety language has been removed from most lawyer ethics codes, but it still appears in some judicial ethics codes, though there are rarely any judicial ethics enforcement actions under that appearance standard. Senate Vol. IV at 1641:23-1642:5 (Ciolino).

73. The appearance of an impropriety or the appearance that a gift is reasonably calculated to affect official conduct will be judged differently in different communities and by different people. Senate Vol. IV at 1643:1-14 (Ciolino).

74. The Louisiana ethics rules do not delineate between types of gifts, and there is no difference between a lawyer buying a judge a lunch, a flower basket, a bottle of bourbon, or an oil change. Senate Vol. IV at 1653:19-25 (Ciolino).

75. The Louisiana judicial ethics rules do not distinguish between gifts to judges from lawyers and from non-lawyers. Senate Vol. IV at 1661:1-6 (Ciolino).

76. Since the January 1, 2009 amendments to the Louisiana Code of Judicial Conduct became effective, judges may not accept gifts from an individual, and lawyers and other people may not give gifts to judges, if that individual is likely to appear before the judge as a lawyer, unless the gift fits into a specifically enumerated exemption. Senate Vol. IV at 1639:7-10 (Ciolino).

77. Revised Louisiana Code of Judicial Conduct Canon 6(b)(3)(c) provides that judges may accept "[o]rdinary social hospitality provided the total value of food, drink, or refreshment given to a judge at a single event shall not exceed $50." Senate Vol. IV at 1638:12-23 (Ciolino).

78. While the revised Louisiana Code of Judicial Conduct bars judges from accepting more than $50 in social hospitality at any one meal or event, there is no limit on the number of meals that a judge may accept in a single day or week. Senate Vol. IV at 1652:1-11 (Ciolino).

79. Professor Ciolino, an expert on Louisiana ethics, testified that he is not aware of any judge or lawyer ever being disciplined under the Louisiana ethics rules in effect prior to 2009 for accepting social hospitality. Senate Vol. IV at 1653:3-7 (Ciolino).

Judge Porteous, Bob Creely, Jake Amato, and Don Gardner Went to Lunch Together Regularly

80. While Judge Porteous was a state court judge, he, Bob Creely, and Jake Amato continued to be friends and continued to go to lunch together regularly. Senate Vol. I at 119:6-12, 119:15-17, 152:4-10 (Amato); Senate Vol. I at 250:8-16, 251:10-11, 251:15-17 (Creely); Stipulation 60 & 69-70.

81. Jake Amato does not know how many total times he and Judge Porteous went to lunch together. Senate Vol. I at 120:6-13 (Amato).

82. Jake Amato does not know the average cost of the meals that he had with Judge Porteous. Senate Vol. I at 121:18-23 (Amato). Mr. Amato does believe, however, that most of the lunches he had with Judge Porteous cost less than $50. Senate Vol. I at 15:15-17 (Amato).

83. When Jake Amato and Judge Porteous went to lunch, Judge Porteous occasionally paid for lunch. Senate Vol. I at 122:10-18, 155:21 – 156:3 (Amato); Stipulation 77. Mr. Amato

does not have a clear recollection of how many lunches Judge Porteous paid for. Senate Vol. I at 156:6-14 (Amato).

84. Jake Amato did not buy Judge Porteous lunches in order to bribe him. Senate Vol. I at 162:2-5 (Amato).

85. Jake Amato did not buy Judge Porteous lunches in order to influence him. Senate Vol. I at 162:6-8 (Amato). In fact, having worked with Judge Porteous and having tried cases with him, against him, and before him, Mr. Amato did not think that he could influence Judge Porteous. Senate Vol. I at 162:8-13 (Amato).

86. Jake Amato "always felt he [Judge Porteous] was always going to do the right thing"; a view Mr. Amato still holds today. Senate Vol. I at 162:8-15 (Amato).

87. Jake Amato always thought Judge Porteous did the right thing on the bench irrespective of Mr. Amato having taken him to lunch. Stipulation 78.

88. Jake Amato did not feel that his buying lunch for Judge Porteous would affect Judge Porteous's actions on the bench. Stipulation 77; Amato Senate Dep. at 20:4-18.

89. Between 1984 and 1994, while Judge Porteous was on the state bench, Bob Creely guesstimates that he and Judge Porteous had lunch together approximately twice a month. Senate Vol. I at 251:21 – 252:12, 253:23 – 254:4 (Creely).

90. Bob Creely does not know how many total lunches he has had with Judge Porteous. Senate Vol. I at 252:21 – 253:5, 253:23 – 254:4 (Creely).

91. When Bob Creely and Judge Porteous went to lunch, either Mr. Creely or someone else who attended the lunch paid the bill. Senate Vol. I at 254:5-9 (Creely).

92. Don Gardner and Judge Porteous went to lunch together regularly throughout their long-running friendship, including when Judge Porteous was a lawyer and a state court

judge. Senate Vol. IV at 1571:2-24, 1594:18-23 (Gardner). Judge Porteous paid for his fair share of those lunches. Senate Vol. IV at 1571:25 – 1572:4 (Gardner). In fact, each year Judge Porteous and a group of 8 to 10 lawyers from Gretna would attend a CLE and Judge Porteous would buy lunch or dinner for the group. Senate Vol. IV at 1572:4-9 (Gardner). Don Gardner and Judge Porteous and their respective families would also occasionally buy gifts for each other. Senate Vol. IV at 1572:10 – 573:2 (Gardner). Don Gardner and Judge Porteous saw each other less frequently after Judge Porteous became a federal judge. Senate Vol. IV at 1573:18 – 1574:19 (Gardner).

Lawyers and Judges in the 24th Judicial District Court Regularly Went to Lunch Together

93. Prior to the recent revision of the Louisiana ethics codes, it was very common for lawyers and judges to go to lunches, hunting trips, and fishing trips together without the judges paying. Senate Vol. IV at 1645:8-14 (Ciolino). Such hunting and fishing trips were not considered improper. Senate Vol. IV at 1646:8-12 (Ciolino). It was also common for lawyers and law firms to delivers hams, whiskey, wine, and other gifts to judges during the holidays. Senate Vol. IV at 1644:1-9 (Ciolino).

94. Between 1984 and 1994, many state court judges in the 24th Judicial District Court went to lunch with attorneys practicing in and around Gretna, Louisiana. Senate Vol. I at 152:11 – 153:12 (Amato); Senate Vol. I at 304:13-15 (Creely); Senate Vol. IV at 1570:11-23 (Gardner); Stipulation 62.

95. Historically, judges in Louisiana did not pay for lunch when they went to lunch with lawyers. Senate Vol. IV at 1685:20-21 (Ciolino); Senate Vol. I at 304:16-18, 305:5-11 (Creely).

96. In the 1980s and 1990s, a restaurant near the 24th Judicial District Courthouse named the Courthouse Cafe and/or Whitesides had a table reserved for lawyers and judges to sit at and eat lunch together. Senate Vol. I at 153:13-24 (Amato); Senate Vol. IV at 1570:11 – 1571:1 (Gardner). There was no attempt to hide the table reserved for lawyers and judges; instead it was the first table inside the front door. Senate Vol. I at 153:25 – 154:6 (Amato).

97. Lunch at the Courthouse Cafe cost between $4 and $6 dollars a plate. Senate Vol. I at 155:18-20 (Amato).

98. Both Jake Amato and Bob Creely were friends with, and went to lunch together with, many state court judges in addition to Judge Porteous. Senate Vol. I at 154:4-23 (Amato); Creely Senate Dep. at 14:16-25; Stipulation 56-59, 61, & 71.

99. Jake Amato believed it was customary for lawyers in Gretna, Louisiana to go to lunch with one another and with 24th Judicial District Court judges. Senate Vol. I at 152:11 – 153:12 (Amato); Stipulation 72-73. Jake Amato does not believe that it was ever unethical for him to have lunch with any judge. Senate Vol. I at 154:24 – 155:2 (Amato). Jake Amato did not see anything wrong with buying lunch for judges. Stipulation 74-75; Amato Senate Dep. at 15:25 - 16:3.

100. Neither Jake Amato nor Bob Creely is aware of any prohibition against lawyers buying judges lunch. Senate Vol. I at 157:3-6 (Amato); Senate Vol. I at 305:12-16 (Creely). The only rule that Jake Amato is aware of concerning lawyers buying lunches is a rule that was enacted about a year ago limiting to $50 the amount that a lawyer can spend on a meal for a public official. Senate Vol. I at 155:3-14 (Amato).

101. Bob Creely went out to lunches, dinners, and/or drinks with most of the state court judges in Gretna. Senate Vol. I at 303:1-8 (Creely). That type of socializing was very common. Senate Vol. I at 303:12-13 (Creely).

102. When Bob Creely went to lunch with state court judges in the 1980s and 1990s, unless a campaign committee sponsored the lunch, either he or the individual who invited him paid for the meal. Stipulation 63; Creely Senate Dep. at 16:18-21.

103. Bob Creely can recall only one state court judge who ever bought him a meal, and that single judge only paid for only one such meal. Senate Vol. I at 304:19 – 305:2 (Creely); Stipulation 65; Creely Senate Dep. at 16:22 – 17:1.

104. Bob Creely paid for lunches that he attended with judges out of friendship with those judges. Stipulation 64. Bob Creely never expected to receive any advantage from the judges that he took to lunch. Stipulation 67.

105. Bob Creely did not draw a connection between lunches that he went to with judges and favors from those judges. Senate Vol. I at 308:19-20 (Creely).

106. Bob Creely did not believe that there was anything improper about appearing in court before judges who he considered to be his friends. Creely Senate Dep. at 30:9-12.

Judge Porteous, Bob Creely, and Jake Amato Went Hunting and Fishing Together Regularly

107. During their 30-year friendship, Jake Amato, Bob Creely, and Judge Porteous went on hunting and fishing trips together. Senate Vol. I at 122:19-24, 123:6-10 (Amato); Senate Vol. I at 254:10-16 (Creely). It was common for lawyers and judges to go on such hunting and fishing trips together. Senate Vol. I at 159:8-10, 159:21-23 (Amato). When they went hunting and fishing, Judge Porteous would bring various things, including food and drinks. Senate Vol. I at 122:21 – 123:1, 155:24 – 156:5, 161:1-4 (Amato). Judge Porteous would also

help prepare meals and clean up after meals. Senate Vol. I at 161:5-18 (Amato). When Jake Amato and Bob Creely invited Judge Porteous to go hunting and fishing with them, they generally paid for the expenses associated with that trip. Senate Vol. I at 123:11-13 (Amato).

108. At some point while he was a state court judge, Judge Porteous went on a small number (three or less) of hunting trips in Mexico with Bob Creely and/or Jake Amato. Senate Vol. I at 255:12-22 (Creely); Senate Vol. I at 123:14 – 124:1 (Amato). Mr. Amato does not know who paid for Judge Porteous's trip, or if there was any cost associated with his going on the trip. Senate Vol. I at 123:14 – 124:5, 160:5-7 (Amato). Mr. Creely recalls that on these trips, if the group had 10 or more people (which Mr. Creely recalls that they did), then one person's trip was free, and Judge Porteous may have received that free trip. Senate Vol. I at 256:16 – 257:5, 328:7-20 (Creely).

109. When Bob Creely invited people, including lawyers and judges, onto his boat to go fishing, he always paid for all the expenses. Senate Vol. I at 327:22 – 328:6 (Creely); Stipulation 79. Bob Creely did not see anything wrong with taking judges on hunting or fishing trips. Stipulation 80.

Bob Creely and Jake Amato Appeared In Court Before Judge Porteous Infrequently

110. Bob Creely only recalls appearing in court before Judge Porteous three times. Senate Vol. I at 311:10-15 (Creely); Stipulation 82; House Ex. 69(b) (Creely 302, at PORT000000476). Two of those appearances occurred while Judge Porteous was on the state bench, one occurred while Judge Porteous was on the federal bench. Stipulation 82. Mr. Creely had "very, very, very limited business in front of [Judge Porteous]." Senate Vol. I at 297:23-25 (Creely); Creely Senate Dep. at 32:17-19.

111. Bob Creely does not feel that he ever received any special treatment or favoritism when he appeared in court before Judge Porteous. Senate Vol. I at 318:5-9 (Creely); Stipulation 84. Judge Porteous rules on the basis of the law, not his friendship with Mr. Creely. Senate Vol. I at 318:10-12 (Creely).

112. Judge Porteous ruled against Bob Creely in one case involving a post-trial motion to test the solvency of a surety following a jury trial in a construction dispute, in which the jury awarded Mr. Creely's client a $400,000 verdict. Senate Vol. I at 313:18 – 316:1 (Creely). The surety ultimately went into bankruptcy and Mr. Creely was unable to collect on the verdict. Senate Vol. I at 315:8-11 (Creely).

113. Judge Porteous also ruled against Bob Creely in connection with a temporary restraining order in federal court, which cost Mr. Creely's client about $1 million. Senate Vol. I at 320:23 – 321:1 (Creely).

114. Jake Amato did not appear in court before Judge Porteous very often. Senate Vol. I at 131:3-4 (Amato). Indeed, at his Senate Deposition, Mr. Amato could recall only one specific state court case where he appeared before Judge Porteous. Amato Senate Dep. at 19:19 – 20:3; Stipulation 88. Mr. Amato lost that case. Amato Senate Dep. at 19:19 – 20:3; Stipulation 88.

115. Jake Amato thought that Judge Porteous ruled on judicial matters fairly. Stipulation 89.

116. As a judge, Judge Porteous had a reputation for giving smaller plaintiffs a fair shake in his courtroom. Senate Vol. I at 204:23 – 205:1 (Amato).

117. Jake Amato testified that Judge Porteous tended to be a judge who moved his docket and resolved cases, and was one of the most capable people Mr. Amato has ever known. Senate Vol. I at 194:14-19 (Amato).

118. Jake Amato has never known Judge Porteous to throw a case for cash or friendship. Senate Vol. I at 206:13-16 (Amato).

While A State Judge, Judge Porteous Never Asked For Or Received Money From Jake Amato

119. While a state court judge, Judge Porteous never asked Jake Amato for money. Senate Vol. I at 151:3-11, 206:6-9, 232:10-13, 235:14-25 (Amato).

120. Judge Porteous never asked Jake Amato for any money or kickback in connection with curatorships. Senate Vol. I at 235:14-25 (Amato).

121. During the 10 years that Judge Porteous was a state court judge, Jake Amato never directly gave him any money. Senate Vol. I at 151:13-16 (Amato).

While A State Judge, Judge Porteous Received Small Gifts of Money From Bob Creely

122. At some point either before Judge Porteous was a state court judge or while he was a state court judge, Judge Porteous told Bob Creely that he needed a small amount of money (no more than $50 to $100) for daily living expenses and asked if Mr. Creely would give it to him. Senate Vol. I at 257:6-18, 258:2-4, 279:2-9 (Creely). Mr. Creely took that small amount of money out of his pocket and gave it to Judge Porteous. Senate Vol. I at 257:19-24 (Creely).

123. Bob Creely gave Judge Porteous money because he was his long-time friend. Senate Vol. I at 296:18-23 (Creely).

124. Bob Creely never gave any money to Judge Porteous as a bribe. Senate Vol. I at 299:4-8, 322:12-17 (Creely).

125. Bob Creely never gave any money to Judge Porteous that he thought was a kickback. Senate Vol. at 299:9-11 (Creely).

126. Judge Porteous testified before the Fifth Circuit Special investigator Committee that he never received a kickback from Amato & Creely in connection with curatorships. Fifth Circuit at 131:24-132:3 (Porteous).

127. Bob Creely never thought that he had a *quid pro quo* arrangement with Judge Porteous. Senate Vol. I at 299:12-17 (Creely).

128. Bob Creely never gave any money to Judge Porteous to influence him as a judge. Senate Vol. I at 299:22-24 (Creely); Creely Senate Dep. at 51:22-24.

129. Bob Creely did not see any problem at the time with giving gifts to his friends, including Judge Porteous. Senate Vol. I at 324:4-8 (Creely); Creely Senate Dep. at 51:3-13.

130. Bob Creely gave Judge Porteous money for a fairly long period of time before he received curatorships assignments from Judge Porteous. Senate Vol. I at 298:6-9 (Creely).

131. When Bob Creely gave Judge Porteous money, he gave him cash. Senate Vol. I at 261:19-22 (Creely).

132. Bob Creely did not give Judge Porteous cash because he wanted to conceal anything. Senate Vol. I at 323:17-21 (Creely). In fact, Mr. Creely has never denied or tried to hide his giving of gifts to Judge Porteous. Senate Vol. I at 323:22 – 324:3 (Creely).

133. As law partners, Bob Creely and Jake Amato had a habit of taking equal, weekly draws from their law firm partnership accounts, which would be the money that they would use for their own personal expenses. Senate Vol. I at 272:8 – 273:1 (Creely). On days that Mr. Creely took a draw, he would leave the office with as much as $1,500 in cash. Senate Vol. I at 323:8-16 (Creely).

134. Bob Creely did not keep any records of the money that he gave to Judge Porteous. Stipulation 85; Senate Vol. I at 174:9-12 (Amato).

135. Bob Creely gave cash to people other than Judge Porteous, including once giving $200 in cash to a homeless man. Senate Vol. I at 322:21-25 (Creely).

Don Gardner Similarly Gave Judge Porteous Small Gifts of Money

136. Judge Porteous would occasionally ask Don Gardner for small amounts of money. Senate Vol. IV at 1585:17-23, 1586:4-9 (Gardner). Don Gardner described Judge Porteous as a "bummer," if he was out of cigarettes, he would "bum" one from a friend; if he did not have any cash in his wallet, he would "bum" some from a friend. Senate Vol. IV at 1586:13-15 (Gardner). Don Gardner gave Judge Porteous small amounts of money ($20, $40, maybe a $100) because they were friends – "a friend giving money to another friend." Senate Vol. IV at 1586:7-25 (Gardner). When Don Gardner gave Judge Porteous money, he did so willingly and with no expectation that Judge Porteous would do anything for him as a judge or that he was in any way buying Judge Porteous. Senate Vol. IV at 1586:16-25 (Gardner). Mr. Gardner does not see any problem with giving a friend money. Senate Vol. IV at 1618:8-10 (Gardner). Mr. Gardner estimates that he gave Judge Porteous a total of approximately $100 per year. Senate Vol. IV at 1617:20-24 (Gardner).

Curatorships

137. A curatorship is an appointment by a Louisiana state court of a private attorney to represent the interests of an absent defendant. Stipulation 90; Senate Vol. I at 129:23 – 130:7 (Amato); Senate Vol. I at 260:6-11 (Creely); Senate Vol. IV at 1657:6-17 (Ciolino).

138. Curatorships are administrative tasks, which were usually handled by a secretary. Senate Vol. I at 130:8-15 (Amato).

139. Jake Amato received curatorship appointments from judges, including from judges that were his friends. Senate Vol. I at 165:2-6, 211:21-24 (Amato).

140. Bob Creely received curatorship appointments from Judge Porteous, as well as several other 24th Judicial District Court judges. Senate Vol. I at 293:16-18, 300:14-16 (Creely); Stipulation 99.

141. There was no rule against judges assigning curatorships to their friends; in fact, that was a standard practice in Gretna, Louisiana. Senate Vol. I at 165:7-12 (Amato); Senate Vol. I at 300:6-13 (Creely).

142. Throughout the 1980s and 1990s, it was common for Louisiana state judges to assign curatorships to friends, campaign contributors, and former law clerks. Senate Vol. IV at 1658:17-1659:10 (Ciolino).

143. Judges in Gretna would assign curatorships to their friends because they knew that those lawyers would do a good job and ensure that all aspects of the curatorship process were completed timely, something that did not always happen with certain lawyers. Senate Vol. at 167:5 – 168:2 (Amato).

144. Jake Amato is not aware of any complaints concerning the handling of curatorships that were assigned to either him or Bob Creely. Senate Vol. I at 169:6-16 (Amato).

145. The curatorships that Judge Porteous assigned to Bob Creely listed Mr. Creely specifically (not his firm) as the curator. Senate Vol. I at 169:2-5 (Amato).

146. Bob Creely testified that his secretary had told him that Judge Porteous had called her once and asked if Mr. Creely had received the curatorships that Judge Porteous had assigned to him. Senate Vol. I at 262:11-13 (Creely). Mr. Creely does not know why Judge Porteous made this phone call. Senate Vol. I at 262:19-20 (Creely). Mr. Creely became upset when he heard about this conversation because he did not make any connection between the curatorships

that Judge Porteous assigned to him and the money that he gave Judge Porteous. Senate Vol. I at 262:14-263:5 (Creely).

There Was Never Any Relationship Between Curatorships and Gifts

147. Bob Creely never had any agreement with Judge Porteous to exchange money for curatorships. Creely Senate Dep. at 48:18-19, 71:15-9; Senate Vol. I at 264:18-22, 296:14-17, 339:5-7, 344:12 (Creely).

148. Bob Creely never saw any link or relationship between gifts given to Judge Porteous and curatorships. Senate Vol. I at 324:16-19, 369:8 370:4, 372:22-23 (Creely); Creely Senate Dep. at 47:15 – 48:4, 73:6-10.

149. Had Judge Porteous not assigned any curatorships to Bob Creely, Mr. Creely would still have given Judge Porteous money. Creely Senate Dep. at 48:11-14.

150. Judge Porteous never asked Bob Creely for any portion or percentage of the money that Mr. Creely earned in connection with curatorships. Senate Vol. I at 296:8-13, 335:1-2 (Creely).

The Only Testimony of Any Relationship Between Curatorships and Gifts Comes From Amato

151. Jake Amato never discussed with Judge Porteous whether there was ever any relationship between curatorships assigned to Bob Creely and gifts given to Judge Porteous. Senate Vol. I at 124:10-21 (Amato).

152. Jake Amato's only knowledge concerning any relationship between curatorships assigned to Bob Creely and gifts given to Judge Porteous is based on one conversation that he thinks he had with Mr. Creely. Senate Vol. I at 124:13-16, 173:13-20 (Amato); Amato Senate Dep. at 88:12-23.

153. Jake Amato was never personally involved in any call with Judge Porteous concerning curatorship assignments and has no actual knowledge of what might or might not have been discussed during such a call. Senate Vol. I at 172:18 -173:5 (Amato).

154. Prior to the alleged conversation that Jake Amato thinks he had with Bob Creely, Mr. Amato did not know that Mr. Creely had given gifts to Judge Porteous. Senate Vol. I at 126:10-18 (Amato).

155. Jake Amato did not have anything to do with the "mechanics" of the alleged relationship between curatorships assigned to Bob Creely and gifts given to Judge Porteous. Senate Vol. I at 129:12-13 (Amato).

Bob Creely's "Estimation"

156. Bob Creely estimates that he may have given a total of approximately $10,000 to Judge Porteous during their decades long friendship (including, but not limited to, the 10 years that Judge Porteous was on the state bench), including money that was given both before and after Judge Porteous assigned curatorships to Mr. Creely. Senate Vol. I at 265:7-25, 271:18 – 272: 4, 298:10 – 299:3 (Creely).

157. Bob Creely never "calculated" the amount of money that he gave to Judge Porteous as about half of the value of the fees that he earned from curatorships. Senate Vol. I at 265:7-9, 335:16-25 (Creely).

158. Prior to meeting with the House Managers and House Impeachment Counsel, Bob Creely did not have a list of the curators that were assigned to him and did not know how many curatorships he had received. Senate Vol. I at 337:17-24, 338:5-9, 338:24-25 (Creely).

Jake Amato's "Guesstimate"

159. Before this controversy arose, Jake Amato did not have a specific recollection of how many curatorships had been assigned to either him or Bob Creely. Senate Vol. I at 172:13-17, 175:21-24 (Amato).

160. Jake Amato also did not have a specific recollection of the amount of the fees that were paid to attorneys who handled curatorships. Senate Vol. I at 175:25 – 176:2 (Amato).

161. There are no records of how much money Jake Amato and/or Bob Creely may have given Judge Porteous over decades of their friendship. Senate Vol. I at 174:9-12 (Amato).

162. When he testified before the Fifth Circuit Special Investigatory Committee, Mr. Amato testified that he did not have a clear memory concerning how much money he or Bob Creely may have given Judge Porteous. Senate Vol. I at 174:13-17 (Amato).

163. Jake Amato still does not have a clear memory concerning how much money he or Bob Creely may have given Judge Porteous. Senate Vol. I at 174:18-22 (Amato).

164. Jake Amato cannot estimate how much money he or Bob Creely may have given Judge Porteous while Judge Porteous was on the state bench. Senate Vol. I at 131:16-22 (Amato). Instead, Mr. Amato can only guess ("not estimate but guesstimate") at the total. Senate Vol. I at 131:16-22 (Amato).

165. Jake Amato believes that FBI Agent DeWayne Horner came up with the figure of $20,000 allegedly given to Judge Porteous by Mr. Amato and Bob Creely, which Agent Horner derived by looking at the number of curator cases that may have been assigned to Mr. Amato or Mr. Creely, multiplying that by the average fees associated with curator cases, and then dividing that number in half. Senate Vol. I at 175:1 – 176:16 (Amato).

166. Jake Amato never suggested the $20,000 figure as the total amount of money given to Judge Porteous while on the state bench prior to his questioning by the FBI and/or House Impeachment Counsel. Senate Vol. I at 176:11-16 (Amato).

167. In fact, at this Senate deposition, Jake Amato testified that he had no knowledge concerning how much money had been given to Judge Porteous and that "something between ten and twenty thousand dollars is the number that's been batted around, but, no, I never sat down and put a pencil to it." Amato Senate Dep. at 38:9-17.

168. Jake Amato's "guesstimate" concerning the total amount of money that may have been given to Judge Porteous while he was on the state bench has been reverse-engineered as a result of repeated questioning based on assumed facts by the House Managers and/or House Impeachment Counsel. Senate Vol. I at 175:1 – 176:16 (Amato); Amato Senate Dep. at 70:11-71:23.

169. All of the money given to Judge Porteous that Jake Amato thinks may have been connected to curatorships is confined to Judge Porteous's time as a state court judge. Senate Vol. I at 176:17-20 (Amato).

170. Jake Amato was never concerned about appearing in court before Judge Porteous while Bob Creely was receiving curatorship appointments from Judge Porteous because there was no relationship between curatorships and how Judge Porteous ruled on cases before him. Senate Vol. I at 131:5-11, 211:8-12 (Amato).

171. Neither Jake Amato nor Bob Creely ever explained to Judge Porteous how the Amato & Creely law firm was structured as a partnership or how its profits were divided. Senate Vol. I at 170:2-8, 170:14-17 (Amato); Senate Vol. I at 326:21 – 327:3 (Creely).

172. Bob Creely does not recall ever telling Judge Porteous that any of the money that Mr. Creely gave to him came from Jake Amato. Creely Senate Dep. at 38:10-12.

Judge Porteous Was Nominated and Confirmed to the Federal Bench in 1994

173. Judge Porteous was nominated and confirmed to be a federal district court judge in the Eastern District of Louisiana in 1994. Senate Vol. I at 118:24 – 119:2 (Amato); Stipulation 12-16.

174. Bob Creely was interviewed by the FBI in connection with Judge Porteous's nomination to the federal bench. Senate Vol. I at 275:19 – 276:2 (Creely). Mr. Creely does not know how the FBI got his name. Senate Vol. I at 280:18-24 (Creely).

175. Jake Amato, Bob Creely, and Judge Porteous continued to have lunch together, albeit less frequently, after Judge Porteous was appointed to the federal bench. Senate Vol. I at 251:18-20 (Creely); Amato Senate Dep. at 16:4-7; Stipulation 66.

176. Bob Creely saw Judge Porteous less frequently when he became a federal judge because Judge Porteous's chambers had moved from Gretna to New Orleans and Mr. Creely was extremely busy during that time period. Senate Vol. I at 253:11-18, 321:10 – 322:3 (Creely).

177. Judge Porteous did not assign any curatorships to either Jake Amato or Bob Creely (or anyone else) as a federal judge. Senate Vol. I at 128:14-17 (Amato).

178. As a federal judge, Judge Porteous did not have any role or involvement with curatorships. Senate Vol. I at 176:21-23 (Amato).

179. Bob Creely never directly gave any money to Judge Porteous while he was a federal judge. Senate Vol. I at 322:4-7 (Creely).

Judge Porteous's Son's Internship/Externship in D.C.

180. Timothy Porteous interned or externed for Senator John Breaux in the summer of 1994, prior to Judge Porteous being sworn in as a federal judge. Senate Vol. III at 1243:19-24 (Timothy Porteous).

181. Bob Creely testified at his Senate Deposition on August 2, 2010, that he did not know of any money given to anyone in connection with Judge Porteous's son's internship or externship in Washington, D.C. Stipulation 103.

182. Any money that Timothy Porteous received from Jake Amato or Bob Creely in connection with his internship or externship in Washington, D.C. was a gift from Mr. Amato or Mr. Creely to Timothy Porteous, which was given out of love for Timothy Porteous. Senate Vol. III at 1244:1-20 (Timothy Porteous).

183. Don Gardner gave Timothy Porteous some money (a "few dollars") to help pay for his expenses during his internship or externship in the U.S. Senate because he was proud of him and as a form of congratulations. Senate Vol. IV at 1589:16 – 1590:4, 1590:21-23 (Gardner). Mr. Gardner gave that money as a gift to Timothy Porteous, whom he has known since the day that Timothy Porteous was born. Senate Vol. IV at 1601:2-6 (Gardner).

184. Any money that Jake Amato, Bob Creely, or Don Gardner gave to Timothy Porteous in connection with his 1994 internship or externship in the U.S. Senate occurred before Judge Porteous was a federal judge, occurred two years before Judge Porteous was randomly assigned to preside over the Lifemark v. Liljeberg case, and occurred three years before the trial in that case took place. Senate Vol. IV at 1600:5-8 (Gardner).

Investiture Party

185. Bob Creely testified at his Senate Deposition on August 2, 2010, that he did not have any recollection of attending or contributing money for a party following Judge Porteous's investiture as a federal judge. Stipulation 102.

The Lifemark Case

186. The case of *Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc.* (E.D. La. No. 2:93-cv-1794) (the "Lifemark case") was randomly assigned to Judge Porteous on January 16, 1996. Stipulation 104 & 106; Senate Vol. I at 407:25 – 408:8 (Mole). The Lifemark case had been pending in federal district court since June of 1993, and Judge Porteous was at least the seventh federal district court judge to preside over it. Stipulation 105-06.

187. From the beginning of his involvement in the case, Judge Porteous made it clear that he was going to take control of the Lifemark case, stop it from continuing to bounce from court to court to court, and take the case to trial. Senate Vol. I at 194:11-13 (Amato).

188. Bob Creely did not enter an appearance in, and had no role in litigating, the Lifemark case. Senate Vol. I at 286:6-12 (Creely); Stipulation 111; Amato Senate Dep. at 56:23 – 56:4; Senate Vol. I at 417:13-19 (Mole).

189. Other than being aware the Jake Amato was involved in and spending a lot of time working on the Lifemark case, Bob Creely did not know what role Amato & Creely played in the Lifemark case. Senate Vol. I at 284:17 – 285:1, 258:12-15 (Creely).

190. Prior to entering an appearance in the Lifemark case, Jake Amato, who had been practicing law for more than 20 years and had tried scores of cases by that point, took two to three months to evaluate the merits of the case and decide whether to take the case. Stipulation

112-13; Senate Vol. I at 186:11-22, 189:20 – 190:2, 193:6-13, 218:19-23, 238:22 – 239:12 (Amato).

191. The Lifemark case resulted from a dispute between Lifemark Hospitals of Louisiana, Inc. and the Liljeberg family relating to a hospital that the Liljebergs had built with financing from Lifemark known as the Kenner Regional Medical Center. Senate Vol. I at 379:16-25 (Mole). The Liljebergs and Lifemark entered into a contractual relationship whereby Lifemark operated the hospital, while the Liljebergs operated the pharmacy in the hospital. Senate Vol. I at 380:1-7 (Mole). At trial, the litigation focused on three issues: (1) whether Lifemark was liable to the Liljebergs for damages flowing from their loss of the hospital as a result of a foreclosure sale; (2) whether Lifemark was entitled to terminate the pharmacy contract with the Liljebergs; and (3) whether Lifemark owed the Liljebergs over $20 million in unpaid pharmacy payments due under the pharmacy contract. Senate Vol. I at 380:8-23 (Mole).

192. Jake Amato never took on any case, including the Lifemark case, because he was friends with the judge presiding over it. Senate Vol. I at 184:23 – 185:8, 220:21-24 (Amato). Instead, Mr. Amato has only ever taken cases that he thought were winnable on the merits and deserved to be pursued. Senate Vol. I at 184:23 – 185:8, 220:21-24 (Amato).

193. Jake Amato has always believed that the merits of the Lifemark case were on the side of his clients, the Liljebergs. Senate Vol. I at 220:25 – 221:2 (Amato).

194. Jake Amato did not believe that his friendship with Judge Porteous would make one bit of difference in terms of winning the Lifemark case. Senate Vol. I at 221:15-18 (Amato).

195. Jake Amato never told Bob Creely that he thought that Judge Porteous would rule for him because of their friendship. Senate Vol. I at 332:21-24 (Creely).

196. Jake Amato told Bob Creely that he thought he was going to win the Lifemark case because he thought he had a good case. Senate Vol. I at 288:3-14 (Creely).

197. Jake Amato viewed the Lifemark case as one of David versus Goliath, where the Goliath (Tenet Healthcare) had hired and/or conflicted-out every large law firm in New Orleans and Texas from representing the David (the Liljeberg family). Senate Vol. I at 185:15 – 186:9 (Amato).

198. Jake Amato believed that, in connection with their dispute, Lifemark did everything that they could to break the Liljebergs, including stealing drugs from the pharmacy, mischarting information, hoarding drugs, and refusing to pay the Liljebergs money that they were owed under their contract. Senate Vol. I at 188:7-12 (Amato).

199. Lifemark, which was effectively the defendant in the Lifemark case, pursued a concerted strategy to delay the case. Senate Vol. I at 188:13-17, 190:19 – 191:15 (Amato).

200. Lifemark had been litigating with the Liljebergs since 1985. Senate Vol. I at 405:21 – 406:1 (Mole).

201. The Lifemark case was a complex case that turned on unique issues of Louisiana law. Senate Vol. I at 190:3-16 (Amato).

202. On September 19, 1996, the Liljebergs filed a motion to enter the appearances of Jake Amato and Lenny Levenson as their attorneys. Stipulation 108. Judge Porteous granted that motion on September 23, 1996. Stipulation 108.

203. Jake Amato's testimony before the Committee that Lenny Levenson came into the Lifemark case after Mr. Amato is directly contradicted by the documentary evidence and the parties' stipulations. Senate Vol. I. at 133:12-18 (Amato); Stipulation 108.

204. Lifemark (which was and still is owned by Tenet Healthcare) retained attorney Joe Mole as its counsel (and as replacement for its prior counsel) in the Lifemark case in April 1996. Senate Vol. I at 378:15 – 379:3, 380:24 – 381:1, 405:13-20, 406:24 – 407:17 (Mole).

205. Joe Mole's appearance in the Lifemark case occurred only five months earlier than Jake Amato and Lenny Levenson's formal appearance in the case. Senate Vol. I at 413:10-12 (Mole); House Ex. 50 (Lifemark Docket Report).

206. Joe Mole considered Judge Porteous to be an intelligent man and a very good trial judge. Senate Vol. I at 396:11-14 (Mole). Judge Porteous knew the Rules of Evidence very well and had a good command of the courtroom. Senate Vol. I at 396:15-20 (Mole); Senate Vol. IV at 1559:17-22 (Gardner).

207. After Jake Amato and Lenny Levenson noticed their appearance in the Lifemark case, Joe Mole spoke with a number of other attorneys in New Orleans in order to obtain additional information concerning Mr. Amato, Mr. Levenson, and Judge Porteous. Senate Vol. I at 410:12-17 (Mole). Mr. Mole recalls speaking with attorneys Ralph Capitelli (who currently represents Mr. Amato in connection with the Senate impeachment proceedings) and Tommy Lane. Senate Vol. I at 410:18 – 411:4 (Mole). Mr. Mole learned that Judge Porteous, Mr. Amato, and Mr. Levenson were close friends, who socialized and went to lunch together. Senate Vol. I at 411:5-14 (Mole).

208. On October 1, 1996, Lifemark, through its attorney, Joe Mole, filed a Motion to Recuse Judge Porteous. Stipulation 114.

209. Prior to filing his recusal motion, Joe Mole was aware of and familiar with the Fifth Circuit's statement in Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404 (5th Cir. 1994), that "[m]any courts therefore have held that a judge need not disqualify

himself just because a friend – even a close friend – appears as a lawyer." Senate Vol. I at 414:16 – 415:11 (Mole); House Ex. 53 (Liljeberg Opposition to Lifemark Motion to Recuse, at 1).

210. In the motion to recuse, Joe Mole argued that the close relationship between Judge Porteous, Jake Amato, and Lenny Levenson, including that they were known to socialize together and that Mr. Amato and Judge Porteous had been law partners more than 20 years earlier, and the timing of Mr. Amato and Levenson's appearance in the case, created a potential appearance of impropriety. Senate Vol. I at 385:8-23 (Mole). Mr. Mole also argued that it was unusual for Mr. Amato and Levenson to enter the Lifemark case because they were trial lawyers. Senate Vol. I at 408:9-15 (Mole). Mr. Mole made this argument even though trial lawyers are experienced in handling bench trials, and Mr. Mole was unfamiliar with Mr. Levenson and was unaware of Mr. Levenson's experience handling complex bankruptcy cases. Senate Vol. I at 408:16-25 (Mole).

211. When Joe Mole filed Lifemark's recusal motion, and alleged that the timing of Jake Amato and Lenny Levenson's appearance in the case created a potential appearance of impropriety, Mr. Mole did not know how long Mr. Amato and Mr. Levenson had been working on the Lifemark case prior to formally noticing their appearance in court. Senate Vol. I at 409:6-10 (Mole).

212. After extensive briefing by the parties, Judge Porteous held a hearing on the Lifemark recusal motion. Stipulation 115-18.

213. At the time of the hearing on the Lifemark recusal motion, Judge Porteous had already indicated that the trial date then set for November 1996 was likely going to be pushed back. Senate Vol. I at 413:13-20 (Mole). The trial in the Lifemark case did not ultimately begin

until mid-June 1997, nine months after Jake Amato and Lenny Levenson noticed their appearance in the case. Senate Vol. I at 414:9-15 (Mole).

214. At the hearing on the recusal motion, Joe Mole, attorney for Lifemark, stated that he was aware that Judge Porteous, Jake Amato, and Lenny Levenson were "very, very close friends." Senate Vol. I at 199:14-19 (Amato); Senate Vol. I at 411:15-20 (Mole); House Ex. 56 (Recusal Hearing Transcript, at 6:14). Mr. Mole also stated that Judge Porteous's relationship with Mr. Amato and Mr. Levenson was very well known in the legal community. Senate Vol. I at 411:21 – 412:2, 412:7-11 (Mole); House Ex. 56 (Recusal Hearing Transcript).

215. The fact that Judge Porteous and Jake Amato were close friends who went to lunch together and went hunting and fishing together was not a secret to anyone in 1999. Senate Vol. I at 199:14-19, 229:19-20 (Amato).

216. Judge Porteous specifically disclosed and confirmed during the recusal hearing that he and Jake Amato and Lenny Levenson were friends. Senate Vol. I at 415:18-22 (Mole); House Ex. 56 (Recusal Hearing Transcript at 6:25 – 7:1).

217. Joe Mole's statements during the recusal hearing concerning purported campaign contributions to Judge Porteous while he was on the state bench were inaccurate. Senate Vol. I at 200:12 – 201:13 (Amato); Senate Vol. I at 387:5-17 (Mole).

218. There is no evidence to support the allegation that Judge Porteous made intentionally misleading statements during the Lifemark recusal hearing. *See generally* Senate Vols. I-V.

219. At the time of the Lifemark recusal hearing, Jake Amato had never personally given any money to Judge Porteous. Senate Vol. I at 199:20-23 (Amato).

220. Jake Amato was confident that Judge Porteous would give the parties in the Lifemark case a fair trial. Senate Vol. I at 199:24 – 200:7 (Amato).

221. Judge Porteous denied the recusal motion in open court on October 16, 1996, and issued a written order confirming the denial of the recusal motion on October 17, 1996. Stipulation 120-21.

222. Judge Porteous did not deprive either the parties to the Lifemark case or the public of his honest services by denying the Lifemark recusal motion. *See generally* Senate Vols. I-V.

223. After denying the recusal motion, Judge Porteous granted a stay of the Lifemark case specifically to allow Lifemark and its counsel, Mr. Mole, to seek appellate review of his decision concerning recusal by the Fifth Circuit. Stipulation 122; Senate Vol. I at 406:11-18, 416:6-10 (Mole).

224. In Lifemark's appeal to the Fifth Circuit, Joe Mole specifically asserted that "there is no doubt that Messrs. Amato and Levenson are extremely close, if not best friends with Judge Porteous." Senate Vol. I at 416:11-19 (Mole); House Ex. 58 (Lifemark Petition to the Fifth Circuit, at 13). Mr. Mole further stated that the relationship between Judge Porteous, Mr. Amato, and Mr. Levenson is "well known in the legal community" and the "public perception is that Messrs. Amato and Levenson frequently dine with Judge Porteous, at their expense, and that they travel and socialize with Judge Porteous on a very frequent basis." House Ex. 58 (Lifemark Petition to the Fifth Circuit, at 13).

225. The Fifth Circuit affirmed Judge Porteous's denial of the recusal motion by denying Lifemark's petition for writ of mandamus on October 28, 1996. House Ex. 59 (Fifth Circuit Order denying Petition for Writ of Mandamus).

226. Shortly thereafter, Joe Mole contacted Tom Wilkinson, the Jefferson Parish Attorney and brother of Jay Wilkinson, the federal magistrate judge presiding over the Lifemark case, to "help [him] solve [his] problem" of having Judge Porteous in the Lifemark case. Senate Vol. I at 421:11 – 422:10 (Mole).

227. Tom Wilkinson suggested that Mr. Mole contact Don Gardner. Senate Vol. I at 423:12-14 (Mole). Don Gardner and Judge Porteous were close friends. Senate Vol. I at 332:25 – 333:5 (Creely); Senate Vol. I at 419:19 – 420:1 (Mole); Senate Vol. IV at 1554:17 – 1555:11 (Gardner).

228. Tom Wilkinson called Don Gardner and discussed the Lifemark case with him. Senate Vol. IV at 1555:22 – 1556:17 (Gardner). Mr. Gardner told Mr. Wilkinson that he did not practice in federal court, was not interested in being involved in the Lifemark case, and did not think that he could assist with the case. Senate Vol. IV at 1556:4-10, 1557:19-25 (Gardner). Mr. Wilkinson approached Mr. Gardner again and convinced him to discuss the matter with Joe Mole. Senate Vol. IV at 1558:1-7 (Gardner).

229. Joe Mole and Don Gardner discussed bringing Mr. Gardner into the case as additional counsel for Lifemark. Senate Vol. I at 423:24 – 424:13 (Mole); Senate Vol. IV at 1558:8-9 (Gardner).

230. Joe Mole wanted Judge Porteous to recuse himself from the Lifemark case and Mr. Mole thought that Don Gardner's presence in the case would accomplish that goal. Senate Vol. I at 418:6-25 (Mole).

231. In their conversations, Don Gardner consistently told Joe Mole that he would not be able to influence Judge Porteous's handling of the Lifemark case in any way. Senate Vol. I at 393:18 – 394:5, 419:1-9 (Mole); Senate Vol. IV at 1558:22 – 1559:4, 1565:3-15 (Gardner). Mr.

Gardner also told Mr. Mole that he would not do anything other than participate as a lawyer in the Lifemark case; he would not go to Judge Porteous and ask him for any favors. Senate Vol. IV at 1592:10 – 1593:4 (Gardner).

232. Joe Mole and Lifemark brought Don Gardner into the Lifemark case solely because Mr. Gardner was friends with Judge Porteous. Senate Vol. I at 390:20-23 (Mole).

233. Lifemark hired Don Gardner as additional counsel and filed a motion to enroll him in the Lifemark case on March 11, 1997. Stipulation 123; Senate Vol. I at 389:21-25 (Mole).

234. The agreement to retain Don Gardner as additional counsel for Lifemark in the Lifemark case, which Joe Mole drafted and sent to Mr. Gardner care of Tom Wilkinson, provided that Mr. Gardner would be paid a retainer of $100,000 upon enrollment as counsel of record. Stipulation 124; House Ex. 35(b) (Gardner Retainer Agreement); Senate Vol. I at 391:6-7, 425:6 – 426:15 (Mole); Senate Vol. IV at 1559:25 – 1560:7, 1562:18 – 1563:7, 1623:21-24 (Gardner). That agreement also provided that Mr. Gardner would be paid an additional $100,000 if Judge Porteous recused himself or otherwise withdrew from the case. Stipulation 125; House Ex. 35(b) (Gardner Retainer Agreement); Senate Vol. I at 391:8-15, 391:21 – 392:2 (Mole). In the event that Judge Porteous recused himself or otherwise withdrew from the case, the agreement provided that Mr. Gardner's representation of Lifemark would terminate and he would have no further connection with the case. House Ex. 35(b) (Gardner Retainer Agreement); Senate Vol. I at 391:21 – 392:8 (Mole). Mr. Gardner did not make any changes to the retainer agreement draft by Mr. Mole; he instead agreed to it as written. Senate Vol. I at 426:15-19 (Mole); Senate Vol. IV 1562:16-17 (Gardner).

235. Joe Mole is not aware of and has never heard of any other retainer agreements that offered to pay an attorney any sum of money if a judge recused himself after that attorney appeared in the case. Senate Vol. I at 432:24 – 433:11 (Mole).

236. Joe Mole believes that the retainer agreement that he drafted and entered into with Don Gardner in the Lifemark case was ethical. Senate Vol. I at 433:12-15 (Mole).

237. Professor Dane Ciolino testified that, in his expert opinion, the retainer agreement that Joe Mole entered into with Don Gardner appears to contemplate involving Mr. Gardner in the Lifemark case in an effort to get Judge Porteous disqualified from the case, which would be blatantly unethical. Senate Vol. IV at 1665:16-23 (Ciolino).

238. Professor Ciolino testified that, in his expert opinion, if the purpose of the Gardner retainer agreement was to judge shop, then that agreement is unethical and improper. Senate Vol. IV at 1668:16-20 (Ciolino).

239. Don Gardner believes that the purpose of the retainer agreement provision providing him an additional $100,000 if Judge Porteous recused himself or otherwise withdrew from the Lifemark case was designed to get him to encourage Judge Porteous to withdraw from the case. Senate Vol. IV at 1563:21 – 1564:3 (Gardner).

240. Don Gardner never approached Judge Porteous and asked him to withdraw from the Lifemark case. Senate Vol. IV at 1564:4-6, 1565:13-15 (Gardner)

241. Don Gardner believes that Judge Porteous would have reacted very negatively if Mr. Gardner had approached him and asked him to withdraw from the case. Senate Vol. IV at 1566:4-18 (Gardner).

242. Don Gardner received the $100,000 retainer payment called for under his agreement with Lifemark. Senate Vol. IV at 1566:23-25, 1613:7-13 (Gardner); House Ex. 35(b)

(Gardner Retainer Agreement). Mr. Gardner paid approximately $30,000 of that $100,000 retainer to Tom Wilkinson. Senate Vol. IV at 1567:1-14, 1613:14 – 1616:16, 1623:13-17 (Gardner); Senate Vol. I at 427:10-15 (Mole).

243. Joe Mole did not disclose to opposing counsel in the Lifemark case that he and his client had agreed to pay Don Gardner a $100,000 retainer and an additional $100,000 if Judge Porteous recused himself or otherwise withdrew from the case. Senate Vol. I at 430:12-17 (Mole). Mr. Mole also did not disclose that Mr. Gardner was very close friends with Judge Porteous, socialized with Judge Porteous, and went to lunch with Judge Porteous. Senate Vol. I at 430:18 – 431:1 (Mole).

244. Judge Porteous conducted a bench trial in the Liljeberg case from June 16, 1997, through June 27, 1997, from July 14, 1997, through July 15, 1997, and from July 21, 1997, through July 23, 1997. Stipulation 128; Senate Vol. I at 394:11-15, 430:1-3 (Mole).

245. Jake Amato was very involved in, and did a lot of work at, the Lifemark trial, including examining several witnesses. Senate Vol. I at 249:3-9 (Mole).

246. Don Gardner was not lead trial counsel and did not examine any witnesses or even speak in court during the trial in the Lifemark case. Stipulation 127; Senate Vol. I at 201:18-25 (Amato); Senate Vol. I at 390:24 – 391:5, 427:16-20 (Mole). Mr. Gardner did attend every day of trial in the Lifemark case, however. Senate Vol. IV at 1567:15-22 (Gardner). Mr. Gardner, along with Messrs. Mole, Levenson, and Draper, also met with Judge Porteous after each trial day to discuss the case. Senate Vol. I at 428:14 – 429:2 (Mole).

247. Joe Mole's recollection that at some point during the Lifemark trial Judge Porteous threw a couple of large binders full of paper at him is directly contradicted by Don Gardner's sworn testimony. Senate Vol. I at 395:10-18 (Mole); Senate Vol. IV at 1567:23 –

1568:17 (Gardner). What actually happened is that some binders accidently fell off of Judge Porteous's bench; Judge Porteous did not throw anything at Mr. Mole. Senate Vol. IV at 1568:9-17 (Gardner).

248. During trial, Lifemark made a series of offers to the Liljeberg to settle the case for amounts ranging from $18 million to just under $30 million. Senate Vol. I at 429:10-15 (Mole); Senate Vol. IV at 1568:18 – 1569:23 (Gardner).

249. At the conclusion of the Liljeberg trial in July 1997, Judge Porteous took the case under advisement. Stipulation 129.

250. Jake Amato and Judge Porteous remained friends during the pendency of the Lifemark case and continued to go to lunch as they had for more than 20 years prior to that case. Senate Vol. I at 145:7-11 (Amato).

251. While Jake Amato had an out-of-court conversation with Judge Porteous during the pendency of the Lifemark case, that conversation did not concern the merits of the case, and Mr. Amato therefore does not consider it to be an inappropriate ex parte contact. Senate Vol. I at 147:3 – 148:7, 195:20 – 196:4 (Amato). Mr. Amato remembers Judge Porteous telling him that he had better prove his case to not only his satisfaction, but also to the satisfaction of the Fifth Circuit. Vol. I at 147:3 – 148:7 (Amato). Mr. Amato explained that the Liljebergs (Mr. Amato's client) had a long line of unsuccessful litigation in federal court, and that they had been particularly unsuccessful before the Fifth Circuit. Senate Vol. I at 148:11-17 (Amato). Mr. Amato further explained that Judge Porteous was communicating to Mr. Amato that he should not count on their friendship, but instead would need to prove his case because Judge Porteous would not rule in Mr. Amato's client's favor just because he and Mr. Amato were friends. Senate Vol. I at 195:12-19 (Amato).

252. While the House has alleged that Don Gardner had an ex parte conversation with Judge Porteous concerning the Lifemark case, Mr. Gardner testified that Lenny Levenson (who represented the opposing side) was also present during that conversation. Senate Vol. IV at 1064:17 – 1606:14 (Gardner).

253. Jake Amato is certain that he proved his case at trial on behalf of his clients, the Liljebergs. Senate Vol. I at 196:23-24 (Amato); Amato Senate Dep. at 49:12-21.

254. On April 26, 2000, Judge Porteous issued a 105-page written opinion in the Lifemark case. Stipulation 130; House Ex. 62.

255. The delay between the end of the Lifemark trial and the issuance of Judge Porteous's opinion in the Lifemark case was the result of the complexity of the case and the fact that Judge Porteous did not have a law clerk assisting him with the case. Amato Senate Dep. at 63:19-23.

256. The opinion that Judge Porteous issued in the Lifemark case was largely in favor of Jake Amato's clients, the Liljebergs, and largely against Don Gardner's client, Lifemark. Senate Vol. I at 196:25 – 197:2 (Amato); Senate Vol. I at 399:2 – 400:16 (Mole).

257. Lifemark appealed Judge Porteous's decision in the Lifemark case to the Fifth Circuit. Stipulation 131; Senate Vol. I at 401:5-11 (Mole).

258. The Fifth Circuit affirmed a portion, reversed a portion, and modified a portion of the opinion that Judge Porteous issued in the Lifemark case. Senate Vol. I at 149:2-6, 198:19-22 (Amato); Senate Vol. I at 401:12-19 (Mole).

259. The Fifth Circuit panel that reviewed Judge Porteous's opinion in the Lifemark case was composed entirely of Texas lawyers. Senate Vol. I at 198:23-25 (Amato).

260. Following the Fifth Circuit's ruling, the Lifemark case settled. Senate Vol. I at 404:6-10 (Mole).

261. Jake Amato believes that Judge Porteous handled himself properly in connection with the Lifemark case. Senate Vol. I at 149:13-15 (Amato).

262. Jake Amato believes that Judge Porteous's ruling in the Lifemark case was absolutely correct and that the Fifth Circuit's opinion overturning Judge Porteous's ruling was wrong. Senate Vol. I. at 149:14-17, 199:5-10 (Amato); Amato Senate Dep. at 52:22 – 53:25 (Judge Porteous's decision in Lifemark was "absolutely correct," and the Fifth Circuit was "wrong, wrong, wrong"); Stipulation 132.

1999 Fishing Trip

263. While Jake Amato believes that he went on a fishing trip in 1999 with Judge Porteous, he does know when in 1999 that trip occurred. Senate Vol. I at 139:12-17 (Amato). Mr. Amato thinks it may have been in May or June of 1999. Senate Vol. I at 139:12-17, 140:17-22, 178:3-8 (Amato).

264. Bob Creely did not go on the 1999 fishing trip with Jake Amato and Judge Porteous. Senate Vol. I at 330:21-24 (Creely).

265. Bob Creely has no knowledge of the 1999 fishing trip over than what Jake Amato told him. Creely Senate Dep. at 60:24 – 61:7, 61:15-17.

266. Jake Amato is uncertain of when the fishing trip occurred and testified before the Committee that the copy of a calendar that the House Managers represented to be that of Mr. Amato's was "miscopied." Senate Vol. I at 139:18-22, 140:12-14 (Amato).

267. Jake Amato testified before the Committee that the 1999 fishing trip was the only time Judge Porteous ever asked Mr. Amato for money, which occurred three years after the

Lifemark recusal hearing. Senate Vol. I at 141:2-19, 178:20-22, 206:6-12, 232:10-13 (Amato); *see also* Amato Senate Dep. at 42:11-13. Mr. Amato recalls that he and Judge Porteous were on a boat late at night and were drinking alcohol and Judge Porteous became very upset (more distraught than Mr. Amato had ever before seen Judge Porteous) because his son's wedding was coming up and he did not have enough money to cover certain wedding-related expenses. Senate Vol. I at 141:2-19, 178:12-19, 179:4-13 (Amato).

268. Following his conversation with Judge Porteous, Jake Amato thinks he gave Judge Porteous either $1,000 or $2,000 dollars. Senate Vol. I at 141:15-19 (Amato). Jake Amato does not know if Bob Creely contributed a portion of this money. Senate Vol. I at 141:20-22 (Amato).

269. Jake Amato does not recall how this money was delivered. Senate Vol. I at 141:25 – 142:5 (Amato).

270. Jake Amato did not give money to Judge Porteous in 1999 as a bribe. Senate Vol. I at 179:14-16 (Amato).

271. Jake Amato did not expect any *quid pro quo* of any kind from Judge Porteous in connection with the money that he gave him in 1999. Amato Senate Dep. at 43:7-9; Stipulation 133.

272. Jake Amato did not give money to Judge Porteous in 1999 as a kickback. Senate Vol. I at 179:17-19 (Amato).

273. The reason that Jake Amato gave Judge Porteous money in 1999 was friendship and because Mr. Amato felt sorry for Judge Porteous. Senate Vol. I at 184:3-12 (Amato) Amato Senate Dep. at 42:24 – 43:6.

274. Jake Amato did not think that the money he gave Judge Porteous in 1999 would influence Judge Porteous in connection with the Lifemark case. Senate Vol. I at 179:20-22, 180:10-13 (Amato); Amato Senate Dep. at 64:15 – 65:2. Instead, Jake Amato thought that Judge Porteous would rule on that case exclusively on the basis of the law and the facts. Senate Vol. I at 180:14-16 (Amato).

275. In fact, during his direct examination by the House before the Committee, Jake Amato testified twice, "no," to the question of whether his financial interest in earning legal fees as a result of the outcome of the Lifemark case influenced his willingness to give Judge Porteous money in 1999. Senate Vol. I at 142:8-14 (Amato). Only after being pressed repeatedly by House Manager Schiff did Mr. Amato change his answer to that question. Senate Vol. I at 143:1 (Amato).

276. The only money that Jake Amato ever recalls giving to Judge Porteous while he was a federal judge was the money that Mr. Amato gave him in connection with his son's wedding. Senate Vol. I at 176:24-177:2 (Amato).

277. Bob Creely's testimony that Rhonda Danos came by the Amato & Creely offices to pick up the money is directly contradicted by Ms. Danos. Senate Vol. I at 291:20-292:2 (Creely); Senate Vol. III at 885:20 – 887:1 (Danos).

278. Rhonda Danos never picked up cash from the Amato & Creely law office. Senate Vol. III at 885:20-22 (Danos).

279. Rhonda Danos never picked up an envelope from the Amato & Creely law office that she thought contained cash. Senate Vol. III at 885:23-25 (Danos).

280. With regard to the one envelope that Rhonda Danos recalls picking up from Debbi Mull, a secretary who worked at the Amato & Creely law office, that event did not occur

before 2000 or 2001, at least a year after the 1999 fishing trip. Senate Vol. III at 886:8-19 (Danos).

Timothy Porteous's Bachelor Party in Las Vegas

281. In May 1999, a bachelor party was held in Las Vegas for Judge Porteous's son, Timothy. Stipulation 134.

282. Approximately 30 people attended Timothy Porteous's bachelor party in Las Vegas, including a number of Judge Porteous's close friends. Senate Vol. I at 289:10-14 (Creely); Senate Vol. III at 1241:4-15 (Timothy Porteous). Bob Creely and Don Gardner attended the bachelor party. Senate Vol. I at 289:10-14 (Creely); Senate Vol. III at 1242:12-16 (Timothy Porteous); Stipulation 135-36. Jake Amato did not attend, but his son did. Senate Vol. I at 146:5-10 (Amato); Senate Vol. I at 352:23-25 (Creely).

283. Bob Creely and Don Gardner did not attend Timothy Porteous's bachelor party because they were lawyers who sometimes appeared before Judge Porteous; they attended because they were long-time friends of the Porteous family. Senate Vol. III at 1242:17-23 (Timothy Porteous).

284. Jake Amato does not know how any bills associated with the bachelor party for Judge Porteous's son were paid. Senate Vol. I at 146:17-19 (Amato).

285. There is no evidence to show that the credit card charges incurred on Jake Amato's Amato & Creely firm credit card in Las Vegas in May 1999 were not incurred by Mr. Amato's son, Trey, who (unlike his father) attended Timothy Porteous's bachelor party. Senate Vol. I at 352:23-25 (Creely); *see generally* Senate Vols. I-V.

286. Bob Creely paid for a portion of a dinner that everyone on the bachelor party attended. Senate Vol. I at 289:15-22, 328:21-6 (Creely); Senate Vol. III at 1241:22-1242:11

(Timothy Porteous). Mr. Creely paid approximately $450 to cover the cost of the food and drink ordered by the four people at his table. Senate Vol. I at 289:15-22, 328:7-20 (Creely).

287. Bob Creely does not recall paying for Judge Porteous's hotel room. Senate Vol. I at 289:23-290:2 (Creely).

288. Bob Creely went to a strip club in Las Vegas with the bachelor party attendees, including Judge Porteous. Senate Vol. I at 291:7-10 (Creely). Mr. Creely gave the bouncer $200 and then left to return to the hotel. Senate Vol. I at 291:11-19 (Creely). There is no evidence to show what the bouncer did with that money. Judge Porteous's son's, Timothy, who was also at the strip club that night does not recall his father ever receiving a lap dance. Senate Vol. III at 1243:13-18 (Timothy Porteous).

C. Article II

289. Article II alleges that Judge Porteous "engaged in a longstanding pattern of corrupt conduct…." 111 Cong. Rec. S1645 (Mar. 17, 2010). Article II states that this conduct began "in or about the late 1980s while he was a State court judge in the 24th Judicial District Court in the State of Louisiana…." *Id*.

290. Article II further defines this conduct, alleging that Judge Porteous "solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit…." 111 Cong. Rec. S1645 (Mar. 17, 2010).

291. Article II alleges that while Judge Porteous solicited and accepted these things of value, he took "official actions that benefitted the Marcottes…while on the State bench." 111 Cong. Rec. S1645 (Mar. 17, 2010).

292. Article II alleges that the "pattern of corrupt conduct" continued while Judge Porteous was on the federal bench, but fails to allege any act other than that "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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

293. Article II alleges that "Judge Porteous well knew and understood" that Louis Marcotte "made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench." 111 Cong. Rec. S1645 (Mar. 17, 2010).

294. Article II does not allege that Judge Porteous suborned false statements or made a single false statement himself. 111 Cong. Rec. S1645 (Mar. 17, 2010).

Basic Facts About Relationship between Porteous and the Marcottes

295. Judge Porteous never asked that the Marcottes provide him with a percentage of the bonds he signed for them. Stipulation 163.

296. Judge Porteous never asked Bail Bonds Unlimited or the Marcottes for a percentage back, or any cash, in connection with any bonds that he set. Senate Vol. II at 617:20-25 (Lori Marcotte).

297. The Marcottes never had a conversation where they discussed or demanded certain official actions from Judge Porteous in exchange for the providing of things of value. Senate Vol. II at 563:21-25 (Louis Marcotte); Senate Vol. II at 617:08-11 (Lori Marcotte).

298. The House does not allege that Judge Porteous set any particular bond "too high" or "too low." House Pre-Trial Statement.

299. According to Professor Ciolino, if none of the bonds were set too high or too low, that would be a factor in determining whether the judge had done anything unethical in relationship with bail bondsmen. Senate Vol. IV at 1677:12-13 (Ciolino).

300. During the evidentiary hearings, the House did not present evidence of any individual or specific bond being improperly set, reduced, split, or altered. *See generally* Senate Vols. I-V.

301. During the evidentiary hearings, the House did not present evidence of any bond being set, reduced, split, or altered by Judge Porteous for the Marcottes that would not have been otherwise set by another judge or for another bonding agency. *See generally* Senate Vols. I-V.

302. The Marcottes and Bail Bonds Unlimited never gave cash to Judge Porteous. Senate Vol. II at 549:01-03 (Louis Marcotte); Senate Vol. II at 617:05-09 (Lori Marcotte).

303. The Marcottes and Bail Bonds Unlimited never made a campaign contribution to Judge Porteous. Senate Vol. II at 549:04-06 (Louis Marcotte); Senate Vol. II at 617:10-12 (Lori Marcotte).

304. The Marcottes did do a small number of bonds in federal court but Judge Porteous never set a bond for the Marcottes or Bail Bonds Unlimited while he was a federal judge. Senate Vol. II at 581:01-12; 549:07-09 (Louis Marcotte); Senate Vol. II at 611:15-19; 617:13-16 (Lori Marcotte).

305. Louis Marcotte considered Judge Porteous to be a friend. Senate Vol. II at 581:17-19 (Louis Marcotte).

The Marcottes' Credibility

306. Louis Marcotte testified that he lied to federal investigators on several occasions, going as far as to say "I wouldn't have had any reason to tell the truth." Senate Vol. II at 531:24-25; 532:16-22; 532:23-533:04 (Louis Marcotte).

307. In April 2003, Louis Marcotte swore under oath that "At no time have I ever given money or anything of value to Judge Porteous for reducing or altering any bond." House Ex. 280. In his Senate testimony, Louis Marcotte reversed course, stating that this statement was "completely false." Senate Vol. II at 544:19-24 (Louis Marcotte).

308. Louis Marcotte is a convicted felon, having pled guilty to a corruption scheme, and having spent 18 months in a federal prison. Senate Vol. II at 546:04-547:20 (Louis Marcotte); *see also* House Exs. 70, 71(b)-(f).

309. Louis Marcotte's plea agreement with the government was "predicated" upon his cooperation with government authorities. House Ex. 71(b).

310. Lori Marcotte pled guilty to corruption. She was sentenced to three years probations with six months home confinement. Senate Vol. II at 615:17-25 (Lori Marcotte).

311. Lori Marcotte's plea agreement with the government was "predicated" upon her cooperation with government authorities. House Ex. 73(a).

312. Ronald Bodenheimer testified that "I was told something to the effect of that the strength of my testimony was to bolster Louis Marcotte, because they, meaning the House attorneys, had no faith in his credibility by itself, they wanted me to bolster it. Senate Vol. III at 1310:03-13 (Bodenheimer).

Meeting Judge Porteous / Transition from Adam Barnett

313. When Louis Marcotte first entered the bail bonds business as the owner of Bail Bonds Unlimited, he occasionally worked with Adam Barnett, another bail bondsman working in the area. Stipulation 145.

314. Louis Marcotte met Judge Porteous through Adam Barnett, another bail bondsmen. Senate Vol. II at 509:07-12 (Louis Marcotte).

315. Louis Marcotte believes he met Judge Porteous sometime in the 1990s. Senate Vol. II at 513:13-16 (Louis Marcotte).

316. Louis Marcotte told the FBI that he was not heavily involved with bond matters prior to 1991. House Ex. 69(b), PORT000000514.

317. Louis Marcotte told the FBI that "he did not even know Judge Porteous in 1998." House Ex. 69(b), PORT000000514.

318. Prior to 1988 or 1989, Lori Marcotte did not work as a bail bonds agent or in the bonding industry and the Marcottes were not the dominant bonding agency in Gretna, Louisiana. Lori Marcotte Senate Dep. at 6:14-19.

319. Prior to 1993, the Marcottes used Adam Barnett to approach judges. Senate Vol. II at 560:15-22 (Louis Marcotte); Senate Vol. II at 641:21-642:01 (Lori Marcotte).

320. In September 1993, the Times-Picayune published an article that discussed Adam Barnett and his improper use of his personal home as the surety for a bond for a third-party arrestee. House Ex. 119(z).

321. After this article was published, Judge Porteous stopped working with Adam Barnett. Senate Vol. II at 561:02-562:10 (Louis Marcotte). As a result, the Marcottes began interacting directly with Judge Porteous on bond matters. *Id.*

322. Only after the Times-Picayune article was published, did the Marcottes begin to establish a close working relationship with Judge Porteous. Senate Vol. II at 562:07-10 (Louis Marcotte).

323. As a result, the Marcottes only really directly interacted with Judge Porteous between September 1993 and October 1994, a period of 13 months. *See* Proposed Facts 320-323, *supra*.

Lori Marcotte's Relationship with Rhonda Danos

324. Lori Marcotte and Rhonda Danos were friends, and Lori Marcotte often confided in Danos about Marcotte's personal problems. Senate Vol. II at 579:02-04 (Louis Marcotte); Senate Vol. III at 889:23-890:11 (Danos); Stipulation 156.

325. Lori Marcotte and Rhonda Danos would socialize together, go on trips together (even sharing a room at one point), and attend music concerts together. Senate Vol. II at 580:05-08 (Louis Marcotte); Senate Vol. II at 634:13-19 (Lori Marcotte). Moreover, for some of these activities, Ms. Marcotte was unsure whether she or Ms. Danos paid. Senate Vol. II at 650:20-23 (Lori Marcotte).

326. Lori Marcotte and Rhonda Danos celebrated New Year's Eve together in 1993 and 1994. Senate Vol. II at 634:10-12 (Lori Marcotte).

327. Rhonda Danos would often assist Lori Marcotte by planning trips and parties, scheduling social outings for certain trips the Marcottes went on, and organizing transportation for some of the Marcottes' guests. Senate Vol. II at 580:09-25 (Louis Marcotte); Senate Vol. II at 634:22-635:04 (Lori Marcotte); Senate Vol. III at 891:21-24 (Danos); Lori Marcotte Senate Dep. at 23:17-27:07.

328. During the time frame she worked for Judge Porteous, Rhonda Danos also did sales work for a travel agency and served as a booking agent for entertainment venues. Senate Vol. III at 881:03-10 (Danos).

Open Door Policy

329. Judge Porteous maintained an open door policy regarding his chambers and his chambers were "open to anybody." Senate Vol. V at 1831:23-25 (Griffin); Senate Vol. III at 888:19-22 (Danos).

330. Judge Porteous's chambers were known as a place where lawyers and court personnel could stop by to have coffee. Senate Vol. III at 888:19-22 (Danos).

331. Rhonda Danos testified that the Marcottes received no "special access" or "special treatment" to Judge Porteous's chambers. Senate Vol. III at 888:16-18; 889:16-18 (Danos). Judge Porteous never directed Danos to provide special access to his chambers for certain individuals. Senate Vol. III at 889:05-10 (Danos).

332. On occasion, Danos made the Marcottes wait until the Judge was ready to see them and turned them away at times if the Judge was busy with Court proceedings. Senate Vol. III at 874:17-21 (Danos).

Judge Porteous as an Advocate Regarding the Value of Commercial Bonds

333. Judge Porteous often publicly spoke with lawyers and judges about the value of bonds. Senate Vol. III at 1270:04-07 (Bodenheimer); Senate Vol. II at 631:13-16 (Lori Marcotte).

334. Judge Porteous was viewed as one of the most experienced judges on criminal matters given his prior work as a prosecutor. Senate Vol. III at 1254:19-23 (Bodenheimer).

335. John Mamoulides served as the District Attorney for Jefferson Parish from 1972 until 1996. Senate Vol. V at 1747:02-07 (Mamoulides).

336. John Mamoulides first met Judge Porteous in 1972 or 1973, when Porteous was assigned work with the DA's office by the State's Attorney General. Senate Vol. V at 1748:20-1749:07 (Mamoulides).

337. According to an empirical study, "Defendants released on surety bonds are 28 percent less likely to fail to appear than similar defendants released on their own recognizance." John Mamoulides agreed that, in his experience, those released on surety bonds were more likely to re-appear on their scheduled court date. Porteous Ex. 1134; *see also* Senate Vol. V at 1766:10-1767:09 (Mamoulides).

338. Jefferson Parish showed the same results as this study with prisoners with surety bonds being more likely to reappear than those released on their own recognizance. Senate Vol. V at 1767:02-09 (Mamoulides).

339. Judge Porteous spoke about the role of bonds in the criminal justice system at the following national bail bonds conventions held by the Professional Bail Agents of the United States: Las Vegas, Nevada in 1996; New Orleans, Louisiana in July 1996; and Biloxi, Mississippi in July 1999. Stipulation 160.

340. When Judge Porteous was a speaker at a convention, the Professional Bail Agents of the United States would pay for Judge Porteous's airfare and hotel expenses. Lori Marcotte Senate Dep. at 135:18-20.

341. Judge Porteous, along with Louisiana Commissioner of Insurance James H. Brown, was designated as a "listed speaker" for the July 1996 Professional Bail Agents of the United States Mid-Year Conference, held at the Royal Sonesta Hotel in New Orleans, Louisiana. House Ex. 90(a).

342. Judge Porteous was designated as an "Invited Speaker" for the July 1999 Professional Bail Agents of the United States Mid-Year Conference, held at the Beau Rivage in Biloxi, Mississippi. House Ex. 90(b).

343. On or about July 19, 1999, Judge Porteous attended a Professional Bail Agents of the United States convention at the Beau Rivage Resort in Biloxi Mississippi, at which he attended a cocktail party hosted by Bail Bonds Unlimited. Stipulation 161.

344. Regarding trips to Las Vegas before 1994, Louis Marcotte is unsure how many trips occurred, but believes there was one or two, and is unclear whether Judge Porteous was a speaker at a Bail Bonds convention during one of those trips. Senate Vol. II at 571:13-572:08 (Louis Marcotte); Louis Marcotte Senate Dep. at 101:10-15.

Jail Overcrowding

345. Jefferson Parish jail was under a "strict" court order for overcrowding that required mandatory release of prisoners after the jail population reached a certain level. Senate Vol. II at 553:07-24 (Louis Marcotte); see also Senate Vol. II at 628:22-629:03 (Lori Marcotte); *see also* Porteous Exs. 1112-1113; Senate Vol. V at 1767:02-09 (Mamoulides).

346. An individual was far more likely to return to Court for their scheduled hearing date if a commercial surety bond had been set for their release. Senate Vol. II at 554:11-18 (Louis Marcotte); Senate Vol. II at 629:22-630:21 (Lori Marcotte); Senate Vol. V at 1767:02-09 (Mamoulides).

347. The higher a bond was set, the more likely an individual would be to return for their scheduled court date. Senate Vol. II at 555:05-08 (Louis Marcotte).

348. John Mamoulides stated that Jefferson Parish: "had a serious overcrowding problem." Senate Vol. V at 1756:02-03 (Mamoulides).

349. Ronald Bodenheimer acknowledged that Judge Porteous was a strong advocate for the use of bonds but testified that he did not feel any pressure to specifically work with the Marcottes. He testified that "it didn't take long before you felt pressured to do bonds because of a federal court decree that said if you didn't do the bonds, they were going to release them with no bonds. So you did have pressure. And since Marcotte was doing the lion's share of the bonds, you did have to deal with him. But I didn't feel pressure from what I was told by Judge Porteous, no." Senate Vol. III at 1262:04-15 (Bodenheimer).

350. "Sometime there were people as bad as multiple burglars or armed robbers that were released strictly on overcrowding." Senate Vol. III at 1263:24-1264:01 (Bodenheimer).

351. Porteous was considered a leader in Jefferson Parish in terms of finding a solution to the overcrowding and bond problem." Senate Vol. III at 1270:12-16 (Bodenheimer); Senate Vol. II at 511:08-10 (Louis Marcotte).

352. Bodenheimer stated that "I would venture to say – the numbers were astronomical of the people who were released for overcrowding. It was astronomical." Senate Vol. III at 1276:21-1277:02 (Bodenheimer).

353. In September 1994, the Jefferson Parish jail was ordered to cap the total number of prisoner at 700. Porteous Ex. 1113, DEF02414.

354. There were 22 percent more reported crimes and 76 percent more criminal cases filed in the twenty-fourth judicial District Court in 1992 than in 1982. Porteous Ex. 1113, DEF02415.

355. In April 1994, 56 percent of the Jefferson Parish jail's inmates were rated Code-6, the designation for arrestees who are repeat and/or violent offenders. Porteous Ex. 1113, DEF02415. The Code 6 designation is use to identify these dangerous multiple offenders as high priority for continued detention or for vertical prosecution by the district attorney. *Id*.

356. A study conducted in 1994 found that "the majority (71 percent) of individuals released from jail were released virtually on their own recognizance, that is, with no bail, no conditions, and no supervision." Porteous Ex. 1113, DEF02416.

Magistrate Judge System

357. In the 24th Judicial District Court in the early to mid-1990s, the Court designed a rotation system, whereby individuals 24th JDC Judges would each serve as the "magistrate" or "duty" judge for a given week. Senate Vol. V at 1829:10-13; 1830:11-13 (Griffin); Senate Vol. II at 555:09-20 Louis Marcotte); Senate Vol. II at 625:03-05 (Lori Marcotte). The magistrate or duty judge would be the judge primarily responsible for reviewing and ruling on warrants and bonds during their assigned week. Senate Vol. II at 555:09-20 (Louis Marcotte); Senate Vol. II at 625:03-05 (Lori Marcotte); Porteous Ex. 1113, DEF02416 (stating "[s]ince 1991, the Twenty-fourth Judicial District Court has handled these hearings by having an appointed magistrate hold court at the jail every weekday morning. For persons charged with a crime carrying a possible

sentence of hard labor, a district court judge must set bail; and district court judges rotate the responsibility on a weekly basis.")

358. Many judges within the 24th Judicial District Court disliked magistrate duty, were hard to reach, and "a lot of judges had reputations for not being available." Senate Vol. II at 555:21-25 (Louis Marcotte); Senate Vol. II at 625:06-15 (Lori Marcotte).

359. Lori Marcotte testified that there were a number of judges that "didn't like to do bonds." Senate Vol. II at 6625:25-626:04 (Lori Marcotte).

360. Former Judge Ronald Bodenheimer testified that "most of the judges didn't like that duty. . . . I don't think any of them liked it. There were some who did it, some who were diligent about doing it, and some who just didn't do it." Senate Vol. III at 1272:10-19 (Bodenheimer).

361. Darcy Griffin, who had served as the criminal clerk for several judges in the 24th Judicial District Court during the relevant time frame, stated that some judges "absolutely" did not enjoy the service as a magistrate judge. Senate Vol. V at 1831:06-09 (Griffin). In fact, Ms. Griffin stated that "I would say that none of them really enjoyed it." *Id*.

362. Bodenheimer further testified that "some judges wouldn't answer their phone, not even if another judge called, they wouldn't answer their home phone, they wouldn't answer the magistrate phone, they wouldn't answer anything, and they just basically disappeared when it was their duty week." Senate Vol. III at 1272:20-1273:10 (Bodenheimer).

363. Like bondsmen, prosecutors would also seek judges who were not designated as magistrate judges to approve certain requests. Senate Vol. V at 1775:18-25 (Mamoulides).

364. Former District Attorney John Mamoulides stated that the way in which bonds were handled was very similar to the way in which warrant requests were handled. He stated

that "detectives knew which judges were more able to accommodate them. Yeah, go see judge such and such, he's here, across the river, this one is over here. They knew the judges and they could call and say Judge, I can't find the assigned judge, would you let us come talk to you about a warrant, a search warrant or whatever it's going to be." Senate Vol. V at 1775:18-25 (Mamoulides).

365. Mamoulides further stated that "some of the judges would not be available to the detectives who would have to go find another judge. Because they all knew all the judges, and they could call them at their home. Any district judge could sign a warrant or search warrant." Senate Vol. V at 1774:24-1775:13 (Mamoulides).

366. Detectives knew that "some judges were simply more available" and the detectives would go to those judges more often. Senate Vol. V at 1776:05-08 (Mamoulides).

Bail Bond Business in Gretna, Louisiana

367. The Marcottes controlled between ninety and ninety-five percent of the bond market in Gretna, Louisiana in 1993 and 1994. Senate Vol. II at 550:14-18 (Louis Marcotte) (stating "I would probably say 90 percent of the bonds"); Senate Vol. II at 755:02-06 (Goyeneche) (stating Mr. Marcotte had basically begun to monopolize the bail bonding system in Jefferson Parish, was writing 95-plus percent of the $44 million worth of bail bonds that were being issued in Jefferson Parish"); Senate Vol. V at 1938:05-23 (Rees) (stating that "after being in – in the Gretna area for a while, they pretty much had it monopolized. Q: So you say 90, 95 percent? A: I would say so"); Senate Vol. III at 1256:12-15 (Bodenheimer) ("Q: And were the Marcottes the dominant bonding company in Gretna? A; Oh, very much so. 90 – I wouldn't - - 90, 95 percent would be my guess"); Senate Vol. III at 890:18-21 (Danos) (stating that "In my opinion, Louis Marcotte had a monopoly on that area").

368. The standard rate that the Marcottes would receive from a given bond was 10%. The Marcottes would then pay one percent of the overall bond (or ten percent of the amount they had received) to their insurance company. Senate Vol. II at 506:12- 507:13 (Louis Marcotte).

369. Louis Marcotte testified that he would approach and request "most of" the judges to set bonds. Senate Vol. II at 525:06-08 (Louis Marcotte).

370. In general, if the District Attorney's office objected to the setting, reducing, or splitting of a bond, a judge (including Judge Porteous) would follow the recommendation of the district attorney's office. Senate Vol. II at 549:18-24 (Louis Marcotte).

371. Between 1984 and 1994, in 24th Judicial District Court of Louisiana, there was no guidebook for judges in regards to how much any given bond should be set for. Louis Marcotte Senate Dep. at 74:04-08)

372. Between 1992 and 1994, in the 24th Judicial District Court of Louisiana, the Marcottes would often go chamber to chamber seeking judges to review, set, or split bonds. *See* Louis Marcotte Senate Dep. at 97:04-07.

Split Bonds

373. Judge Porteous was not the only judge in Gretna that split bonds; in fact, most judges in Gretna split bonds. Senate Vol. II at 557:05-07 (Louis Marcotte); Senate Vol. II at 631:20-22 (Lori Marcotte).

374. Judge Porteous did not invent the concept of splitting bonds. Louis Marcotte Senate Dep. at 64:03-05.

375. Judge Porteous was not the first judge on the 24th Judicial District Court of Louisiana to split bonds. Louis Marcotte Senate Dep. at 64:03-05.

376. A lot of judges thought split bonds were a good idea. Senate Vol. II at 557:12-14 (Louis Marcotte).

377. Split bonds are not illegal. Senate Vol. II at 557:08-09 (Louis Marcotte); Senate Vol. II at 631:17-19 (Lori Marcotte).

378. Split bonds were very common in Gretna in the early to mid 1990s. Senate Vol. II at 557:10-11 (Louis Marcotte).

379. Judges viewed split bonds as a way of dealing efficiently with artificially high bonds. Senate Vol. II at 559:06-09 (Louis Marcotte); Senate Vol. II at 632:21-24 (Lori Marcotte).

380. Former District Attorney John Mamoulides did not see anything wrong with a split bond. Senate Vol. V at 1771:24-1772:08 (Mamoulides) ("Q: We've been referring to this as split bonds, both the House and the defense. Do you – did you see anything wrong with split bonds? A: Oh, absolutely not.").

381. According to Ronald Bodenheimer, "there were 16 judges. All of them used the split bond concept." Senate Vol. III at 1264:16-19; 1268:05-06 (Bodenheimer).

<u>Bond Setting by Judge Porteous</u>

382. Before setting, reducing, or splitting a bond, it was Judge Porteous's standard operating procedure to have a member of his staff call the jail and obtain information related to the criminal background of the arrestee. Senate Vol. V at 1832:07-1833:05 (Griffin); Senate Vol. III at 887:09-888:03 (Danos); Senate Vol. II at 559:21-560:11 (Louis Marcotte); Senate Vol. II at 626:09-627:01 (Lori Marcotte).

383. On occasion, Judge Porteous would make these calls to the jail on his own, rather than have the staff perform this duty. Senate Vol. II at 626:17-23 (Lori Marcotte).

384. On occasion, Judge Porteous would also seek out information from a detective, police officer, or prosecutor before he set, reduced, or split a bond. Senate Vol. II at 560:02-08; 590:25-591:04 (Louis Marcotte); Senate Vol. II at 626:13-16; 627:02-05 (Lori Marcotte).

385. As a practice, Judge Porteous would not agree to a bond solely on the basis of the information provided to him by the Marcottes. *See* Lori Marcotte Senate Dep. at 45:23-46:06; *see also* Louis Marcotte Senate Dep. at 72:25-73:22; *see also* House Ex. 74(c).

386. Darcy Griffin served as Judge Porteous's criminal minute clerk between 1992 and 1994 when he became a federal judge, is the current supervisor of criminal clerks in the Jefferson parish court system. Senate Vol. V at 1826:23-1827:09; 1827:24-1828:04 (Griffin).

387. Griffin stated that she never received any cash from Louis or Lori Marcotte, Adam Barnett, or anyone in the bonding business. Senate Vol. V at 1834:23-25; 1835:18-20; 1835:21-1836:02 (Griffin).

388. Griffin stated that her responsibilities for Judge Porteous – regarding locating and confirming information on an arrestee – were the same as those she had for Judge Tiemann and Judge Rothschild who she worked for before and after, respectively, her time with Judge Porteous. Senate Vol. V at 1836:03-1837:08 (Griffin).

389. Louis Marcotte testified that he only asked Judge Porteous to "reduce and set" bonds, as opposed to raising bonds to a higher level. Senate Vol. II at 521:04-18 (Louis Marcotte).

390. Louis Marcotte stated that he would often go to judges other than Judge Porteous in seeking out a judge to set, reduce or split a bond. Senate Vol. II at 557:01-04 (Louis Marcotte).

391. Judge Porteous turned down certain bonds that the Marcottes requested he set or reduce. Senate Vol. II at 559:18-20 (Louis Marcotte); Senate Vol. II at 626:05-08 (Lori Marcotte); Senate Vol. II at 703:05-08 (Wallace); Senate Vol. V at 1833:17-22 (Griffin).

392. On occasion, Judge Porteous rejected the amount of a bond that was requested by the Marcottes and adjusted the figure sought by the Marcottes. (*See* Lori Marcotte Senate Dep. at 52:16-20.)

393. In 1986, more than 3,200 bonds passed through the Gretna courthouse. (Porteous Ex. 2001.) This volume of bonds, prior to the Marcottes being the dominant bonding agency in Gretna, did not "surprise" Louis Marcotte. Senate Vol. II at 550:19-24 (Louis Marcotte).

394. In September 1986, Judge Porteous signed or approved 51 bonds. Porteous Ex. 2002. This volume of bonds signed by Judge Porteous, prior to the Marcottes being the dominant bonding agency in Gretna, did not "surprise" Louis Marcotte. Senate Vol. II at 551:12-15 (Louis Marcotte).

395. In February 1986, Judge Porteous signed or approved 41 bonds. Porteous Ex. 2003. This volume of bonds signed by Judge Porteous, prior to the Marcottes being the dominant bonding agency in Gretna, did not "surprise" Louis Marcotte. Senate Vol. II at 551:23-552:02 (Louis Marcotte).

396. In December 1986, Judge Porteous signed or approved 29 bonds. Porteous Ex. 2004. This volume of bonds signed by Judge Porteous, prior to the Marcottes being the dominant bonding agency in Gretna, did not "surprise" Louis Marcotte. Senate Vol. II at 552:09-12 (Louis Marcotte).

397. Louis Marcotte testified that he would have between 1 and 10 bonds move through the courthouse in a given day in 1993 and 1994. Senate Vol. II at 565:01-05 (Louis Marcotte).

398. Lori Marcotte stated that "29 bonds in a . . . 31 day month . . . is pretty normal." Senate Vol. II at 612 (Lori Marcotte).

399. Darcy Griffin thought that if Judge Porteous only signed 29 bonds in a single month, that would be "a low number." Senate Vol. V at 1838:09-12 (Griffin).

400. Available documentary evidence shows that Judge Porteous signed one bond for the Marcottes and Bail Bonds Unlimited on October 27, 1994. Stipulation 152.

401. Available documentary evidence shows that Judge Porteous signed two bonds for the Marcottes and Bail Bonds Unlimited in his last week as a state court Judge. Stipulation 153.

402. Available documentary evidence shows that Judge Porteous signed twenty-nine bonds for the Marcottes and Bail Bonds Unlimited during the month of October 1994 (his last month on the state bench) as a state court Judge. Stipulation 154.

403. Available documentary evidence shows that Judge Porteous signed twenty-seven bonds for the Marcottes and Bail Bonds Unlimited between the date of his confirmation for his federal judgeship (October 7, 1994) and the last day for which he served as a state court judge (October 27, 1994). Stipulation 155.

Things of Value Allegedly Provided to Judge Porteous by the Marcottes

Lunches

404. Louis Marcotte believed that he began having lunch with Judge Porteous in 1994 or 1995. Senate Vol. II at 513:07-10; 564:17-21 (Louis Marcotte).

405. When Judge Porteous did have lunch with Louis Marcotte, Judge Porteous rarely, if ever, had lunch with just Louis Marcotte. "Most of the time," lunches with Judge Porteous included a large group of people. Senate Vol. II at 510:16-23 (Louis Marcotte); Senate Vol. II at 635:20-25 (Lori Marcotte).

406. Jeff Duhon testified that lunches could include up to "10, 12" people. Senate Vol. II at 663:23-25 (Duhon).

407. The lunches Louis Marcotte had with Judge Porteous were in the open and in public restaurants. Neither the Marcottes nor Judge Porteous attempted to, or did, hide the fact that they were dining together. Senate Vol. II at 562:24-563:14; 588:15-23 (Louis Marcotte); Stipulation 165.

408. At the lunches with Judge Porteous, the conversation tended to focus on non-work related matters. In fact, Lori Marcotte thought it was rude to speak about bonds while at lunch. Senate Vol. II at 636:01-16 (Lori Marcotte).

409. Darcy Griffin stated that she was unaware of the Marcottes ever raising bond issues at the lunches she attended with the Marcottes. Senate Vol. V at 1834:12-17 (Griffin). She also stated that, for those lunches she attended with the Marcottes, she did not recall Judge Porteous coming often. Senate Vol. V at 1842:24-1843:03 (Griffin).

410. Once Judge Porteous became a federal judge, Louis Marcotte estimated that they only had lunch together between five and eight times. Louis Marcotte Senate Dep. at 105:16-20

411. Documentary evidence suggests that Judge Porteous, while he was on the Federal bench, attended the following lunches with the Marcottes, which they paid for:

- On August 6, 1997, there was a lunch at the Beef Connection. The bill amounted to $287.03. There were five attendees.

- On August 25, 1997, there was a lunch at the Beef Connection. The bill amounted to $352.43. There were ten attendees.
- On November 19, 1997, there was a lunch at the Beef Connection. The bill amounted to $395.77. There were ten attendees.
- On August 5, 1998, there was a lunch at the Beef Connection. The bill amounted to $268.84. There were nine attendees.
- On February 1, 2000, there was a lunch at the Beef Connection. The bill amounted to $328.94. There were eight attendees.
- On November 7, 2001, there was a lunch at the Beef Connection. The bill amounted to $635.85. There were fourteen attendees.

Stipulation 164; *see also* House Exs. 372 (a)-(d), 373(c)-(d); Porteous Demonstrative on Beef Connection Receipts.

412. Under applicable Louisiana ethical rules now in place, but which were non-existent in 1994, when determining how much of a specific meal should be attributable to a certain individual, the total costs are to be divided by the total number of attendees. Senate Vol. IV at 1648:08-22 (Ciolino); *see also* Porteous Ex. 1001(y).

413. A per person share of these lunches breaks down as follows: August 6, 1997 = $57 per person; August 25, 1997 = $35 per person; November 19, 1997 = $39 per person; August 5, 1998 = $29 per person; February 1, 2000 = $41 per person; November 7, 2001 = $45 per person. House Exs. 372 (a)-(d), 373(c)-(d); Porteous Demonstrative on Beef Connection Receipts.

414. Even assuming that Judge Porteous attended all six of these lunches, the total per person share attributable to him amounted to less than $250.00 over the course of four years. House Exs. 372 (a)-(d), 373(c)-(d); Porteous Demonstrative on Beef Connection Receipts

415. The only evidence that Judge Porteous even attended four of the six lunches the House alleges Judge Porteous attended while a Federal Judge is that the lunch bill includes a reference to "Abs" or "Abso" which the House believes references an order for Absolut vodka – a drink Judge Porteous is claimed to favor.

416. The House has not adduced any evidence of any other specific attendees at these lunches. *See generally* Senate Vols. I-V.

417. All but one of the Beef Connection lunches for which the House has provided receipts would comply with current Louisiana judicial ethics rules. Senate Vol. IV at 1649:23-1651:07 (Ciolino).

418. Only the August 6, 1997 meal would violate the current ethics rules, because the cost was $57 per person when the limit is $50. Senate Vol. IV at 1651:09-14 (Ciolino).

419. On or about March 11, 2002, Judge Porteous joined a group of people at Emeril's Restaurant, in New Orleans, Louisiana, after the meal portion of the lunch had concluded. The group included the Marcottes, newly elected state judge Joan Benge, and state judge Ronald Bodenheimer. Stipulation 166.

420. Judge Porteous did not actually eat lunch at the Emeril's lunch. Senate Vol. II at 588:24-589:02 (Louis Marcotte).

421. Lori Marcotte testified that Bail Bonds Unlimited took Justice of the Peace Kerner out to lunch with Judge Porteous. Senate Vol. II at 612:11-21 (Lori Marcotte). The House did not establish the date of this lunch.

422. Lori Marcotte testified that Bail Bonds Unlimited paid for a lunch, at Ruth Chris's Steakhouse that then-Senator John Breaux attended, along with Judge Porteous. Bail Bonds Unlimited then paid for a limousine to take Senator John Breaux and others to a casino. Senate Vol. II at 640:24-20 (Lori Marcotte).

423. Lori Marcotte testified that at the time of the Breaux lunch, there was "very important" federal legislation pending regarding bail bonds and the Marcottes' industry. Lori Marcotte Senate Dep. at 132:22-133:06.

424. Lori Marcotte testified that Senator Breaux was "important" to the Marcottes in relation to the legislation. Lori Marcotte Senate Dep. at 133:07-10. Marcotte further stated that they paid for the lunch and the limousine in an effort to get Breaux to come to the lunch. Lori Marcotte Senate Dep. at 133:22-134:07.

Car Repairs

425. The Marcottes and their employees never performed or paid for any car repairs for Judge Porteous while he was a federal judge. Senate Vol. II at 571:08-12 (Louis Marcotte).

426. On occasion, Louis Marcotte offered to assist Judge Porteous in having his automobiles repaired. Senate Vol. II at 516:04-10 (Louis Marcotte) (stating "Like if we would be at lunch, he would say Tommy's car is broke, and I would say judge, I will take care [of] it")

427. Neither the House nor the Marcottes nor any other witness has any records relating to any of the car repairs they allege they paid for on behalf of Judge Porteous. Senate Vol. II at 570:22-571:02 (Louis Marcotte); Stipulation 158.

428. Jeff Duhon stated he was not sure how often he took care of Judge Porteous's cars but that it was only "once in a while." Senate Vol. II at 655:23-25 (Duhon) ("Q: How often

would you have to take care of Judge Porteous's vehicles, say, on a monthly basis? A: Once in while . . . Exactly I don't know how many times.")

429. Jeff Duhon testified that he only performed services for Judge Porteous once he became a bail bondsmen. Senate Vol. II at 657:03-09 (Duhon) ("Q: Well, tell me, did you – did you ever perform any services for Judge Porteous prior to becoming bail bondsmen? A: Prior – once I became a bail bondsman, yeah, I did a couple of things for him. Q: Once you became a bail bondsmen? A: Yes sir.")

430. Aubrey Wallace testified that "On some occasion I would go to the Courthouse and I would receive his automobile to take it to detail it." Senate Vol. II at 682:14-19 (Wallace). Wallace never did any service on the car himself – he would simply bring it to a mechanic's shop. Senate Vol. II at 684:19-15 (Wallace). Wallace testified that Marcotte paid the bill for the car repairs. Senate Vol. II at 685:16-18 (Wallace).

431. Wallace did not know whether Judge Porteous ever reimbursed the Marcottes or others for costs related to car maintenance. Senate Vol. II at 702:19-21 (Wallace).

432. Wallace stated that the cleaning and gassing up of Judge Porteous's cars only last approximately 6-8 months. Senate Vol. II at 705:06-09 (Wallace).

Home Repairs

433. The Marcottes and their employees never performed any home repairs for Judge Porteous while he was a federal judge. Senate Vol. II at 569:10-13; 570:17-21 (Louis Marcotte); Senate Vol. II at 640:16-23 Lori Marcotte); Senate Vol. II at 706:05-07 (Wallace).

434. Louis Marcotte stated that he volunteered the assistance of his employees to help Judge Porteous repair his fence. Senate Vol. II at 569:06-09 (Louis Marcotte).

435. Lori Marcotte testified that Judge Porteous never asked her to send someone over to do any home repairs. Senate Vol. II at 640:12-15 (Lori Marcotte).

436. When Jeff Duhon began working for Louis Marcotte, part of his duties were remodeling and construction work. Senate Vol. II at 655:23-25 (Duhon).

437. The Marcottes do not have any records or documentation regarding any home repairs allegedly provided by the Marcottes or Bail Bonds Unlimited to Judge Porteous while he was a state judge. Stipulation 156.

438. The Marcottes did not personally observe work performed on Judge Porteous's fence. Stipulation 157.

439. Louis Marcotte has no recollection of who paid for the home repairs and how the materials for the home repairs were paid for. Senate Vol. II at 569:20-570:16 (Louis Marcotte).

440. Jeff Duhon testified that he also "fixed a fence for [Judge Porteous] one time." Senate Vol. II at 659:10-12 (Duhon).

441. Jeff Duhon has no records of the expenses associated with the alleged fence repairs. Senate Vol. II at 6678:11-14 (Duhon).

442. Wallace testified that he and Duhon went to Judge Porteous's residence, dismantled a wooden fence, and built a new fence. He stated that materials were paid for with the Marcotte corporate credit card. Senate Vol. II at 686:12-17 (Wallace).

443. The alleged home repairs occurred when Judge Porteous was a state judge. Senate Vol. II at 706:01-04 (Wallace).

444. Louis Marcotte testified that he and his sister were often concerned that his employees (Jeff Duhon and Aubrey Wallace) assigned to perform construction work, were, in fact, doing the work assigned to them and that he was concerned that they would fail to do the

work assigned because they were known to use illegal narcotics while on the job. Senate Vol. II at 568:07-23 (Louis Marcotte).

Parking Lot

445. The Marcottes never provided a reserved parking spot to Michael Porteous. *See* Lori Marcotte Senate Dep. at 77:17-78:23.

446. The Marcottes never subsidized or provided a reserved parking spot to Michael Porteous that would have otherwise generated revenue for the Marcottes. Lori Marcotte Senate Dep. at 77:17-78:23.

447. The parking lot utilized by the Marcottes near the Gretna courthouse in the mid 1990s did not require anyone who parked there to pay a daily fee. Lori Marcotte Senate Dep. at 77:17-78:23.

448. Occasionally, strangers would park in the parking lot and the Marcottes did not actively monitor its use. (*See* Lori Marcotte Senate Dep. at 78:01-08.)

Las Vegas Trip(s)

449. The only evidence produced by the House of any trip that Judge Porteous went on with Louis Marcotte was the testimony of Louis and Lori Marcotte. *See generally* Senate Vols. I-V.

450. Louis Marcotte stated that he didn't "know exactly" the date of the trip but that Phillip O'Neill, Bruce Netterville, and Judge George Giacobbe went on the trip. Louis Marcotte stated that he, Netterville, and O'Neill paid for Porteous's travel expenses related to the trip but the House did not introduce any documentary evidence details related to those expenses. Senate Vol. II at 518:21-520:05 (Louis Marcotte).

451. The House did not call Bruce Netterville, Philip O'Neill, or George Giacobbe to substantiate Marcotte's testimony. *See generally* Senate Vols. I-V.

452. Lori Marcotte was also unclear about the date of the Las Vegas trip that Judge Porteous allegedly attended. Senate Vol. II at 610:18-22 (Lori Marcotte).

453. Louis Marcotte stated that, in relation to the trip in which Netterville, Giacobbe, and he attended along with Porteous in 1993 or 1994, he didn't know whether Judge Porteous spoke at a bail bonds convention during that trip. Senate Vol. II at 571:13-572:08 (Louis Marcotte).

454. Marcotte invited Netterville on the Las Vegas trip because Netterville was his friend, as opposed to inviting him to make it "look better." Senate Vol. II at 572:25-573:14 (Louis Marcotte). In fact, Marcotte had served as Netterville's best man at Netterville's wedding. Senate Vol. II at 572:14-16 (Louis Marcotte).

455. Marcotte never gave Judge Porteous any cash on any trip to Las Vegas and never saw anyone else give Judge Porteous any cash on any trip to Las Vegas. Senate Vol. II at 573:20-25 (Louis Marcotte).

456. Lori Marcotte has never traveled to Las Vegas with Judge Porteous. Senate Vol. II at 617:17-19 (Lori Marcotte).

457. When she was first invited to Las Vegas by the Marcottes, Rhonda Danos asked Judge Porteous whether it was "okay" that she traveled to Las Vegas with the Marcottes but did not explain that the Marcottes were paying for her trip. Senate Vol. III at 890:22-891:04; 896:02-04 (Danos). ("Q: Did you ask the judge if it was okay if the Marcottes paid for your trip to Las Vegas? A; No, I don't think I asked him that.")

<u>Alleged Official Actions as State Judge</u>

Jeff Duhon Expungement

458. On June 15, 1976, Jeff Duhon was arrested in Case No. 76-1505. Porteous Ex. 2006. Jeff Duhon was 18 years old at the time of the arrest. Senate Vol. II at 669:08-10 (Duhon).

459. On or about September 15-24, 1976, Duhon was arrested for simple burglary. (Porteous Ex. 2006.) Jeff Duhon was 18 years old at the time of the arrest. Senate Vol. II at 669:08-10 (Duhon).

460. Duhon pled guilty to the charge of simple burglary, served no jail time, and was sentenced to "light" probation that consisted only of Duhon filling "out a form once a month and sen[ding] it to [his] probations officer." Senate Vol. II at 669:01-670:03 (Duhon).

461. On November 13, 1991, Attorney Philip O'Neill submitted a "Motion to Set Aside a Conviction and Dismiss Prosecution" for case No. 76-1505. Porteous Ex. 2006.

462. O'Neill also filed a Motion to Expunge Record of Arrest" for Case No. 76-1505 on the same date. Porteous Ex. 2006.

463. Judge E.V. Richards scheduled a show cause hearing for November 14, 1991, regarding Duhon's Motion to Set Aside his Conviction in Case No. 76-1505. Porteous Ex. 2006.

464. On July 22, 1992, Judge E.V. Richards issued an expungement order in Case No. 76-1505, directing various agencies to expunge and destroy records of arrest related to Jeff Duhon's arrest. Porteous Ex. 2006.

465. Duhon testified that he had "no idea" about the previous expungement and had "never seen none of this paperwork." Senate Vol. II at 6674:07-14 (Duhon).

466. In June 1993, Attorney Wayne Walker filed a "Motion to Set Aside Conviction and Dismiss Prosecution" in Case No. 76-770. House Ex. 77(c). The Motion stated that Duhon

had successfully completed his period of probation, had not been convicted of any other criminal offense and has no criminal charges pending. *Id*. The Motion was filed in Division B – assigned to Judge E.V. Richards. *Id*.

467. On June 16, 1993, Judge E.V. Richards entered a show cause order in Case No. 76-770 and set a hearing for June 17, 1993. House Ex. 77(c).

468. On either June 17 or 18, 1993, Judge E.V. Richards signed an Order, in Case No. 76-770, setting aside Jeff Duhon's conviction. House Ex. 77(c).

469. Louis Marcotte falsely testified that Judge Porteous "set aside" Jeff Duhon's burglary conviction. Senate Vol. II at 529:20-530:01 (Louis Marcotte) ("Marcotte: But at some point, he set aside the conviction -- Q: Judge Porteous did? A: Yes, he did and he expunged the record") Marcotte later testified that he was unaware that Judge Richards was actually the Judge who had set aside Duhon's conviction. Senate Vol. II at 577:09-11 (Louis Marcotte).

470. The first time Jeff Duhon saw the order setting aside his conviction was during the Senate evidentiary hearings. Senate Vol. II at 672:11-13 (Duhon).

471. In July 1993, Attorney Wayne Walker filed a Motion for Expungement in Case No. 76-770. House Ex. 77(a).

472. On or about July 29, 1993, Judge Porteous ordered the expungement of Jeffrey Duhon's burglary conviction. Stipulation 148.

473. At the time of Judge Porteous's order, Duhon was 35 years old. Senate Vol. II at 678:03-06 (Duhon).

474. Judge Porteous's order for expungement largely tracked Judge E.V. Richards prior order expunging Duhon's record. House Ex. 77(b) & Porteous Ex. 2006.

475. Jeff Duhon has no knowledge whether Judge Porteous and Judge Richards spoke about his expungement. Senate Vol. II at 678:25-679:04 (Duhon).

476. Jeff Duhon wasn't even aware that Judge Porteous signed the expungement order. Senate Vol. II at 679:05-09 (Duhon). (Q: And are you aware of the fact that Judge Porteous signed the expungement of your record? A: No sir. Q: You're not aware of that? A: No, I didn't see none of the paperwork").

477. Louis Marcotte was not definitive in stating that Judge Porteous expunged Duhon's record at the request of Marcotte. Senate Vol. II at 530:08-10 (Louis Marcotte) ("Q: How certain are you that Judge Porteous expunged Jeff Duhon's record at your request? A: Well, I was able to get him a bail license").

478. According to Louis Marcotte, expungements are "routine" in Gretna. Senate Vol. II at 579:08-10 (Louis Marcotte).

479. In Louis Marcotte's experience, if the District Attorney's office objected to an expungement, judges in Gretna (including Judge Porteous) would deny the request for the expungement. Senate Vol. II at 549:25-526:07 (Louis Marcotte).

480. John Mamoulides stated that there was nothing wrong with a judge signing an order relating to a case in a different division because "all of the district judges were technically the same in authority." Senate Vol. V at 1790:13-16 (Mamoulides).

481. The House has not produced any evidence suggesting Judge Porteous's actions regarding expunging Duhon's record were inappropriate. *See generally* Senate Vols. I-V.

482. The House did not call Judge E.V. Richards, Wayne Walker, Philip O'Neill, any expert, or other witness who testified that Judge Porteous took any improper action in relation to Duhon's expungement. *See generally* Senate Vols. I-V.

Aubrey Wallace Amended Sentence and Set Aside

483. On December 15, 1988, Aubrey Wallace was arrested for possession of illegal narcotics. *See* House Ex. 81; *see also* Porteous Wallace Demonstrative. Wallace did not plead guilty to this offense until February 26, 1991, more than two years later. *See* House Ex. 81; *see also* Porteous Wallace Demonstrative.

484. On May 5, 1989, almost six months after he had been arrested for the possession of illegal narcotics, Wallace was arrested for simple burglary. (*See* House Ex. 69(d), PORT 610-627; *see also* Porteous Wallace Demonstrative.

485. The burglary case was initially assigned to Judge Porteous at the time of the arrest. House Ex. 82.

486. Attorney Joseph Tosh represented Wallace at his plea hearing on the burglary charge. *See* House Ex. 69(d), PORT 610-627.

487. On June 26, 1989, sixteen months before he pleaded guilty to the drug possession charges, Wallace pleaded guilty to simple burglary. *See* House Ex. 69(d), PORT 610-627; *see also* Porteous Wallace Demonstrative. On that same day, Judge Porteous sentenced Wallace to three years of hard labor which was suspended, and two years of probation. *See* House Ex. 69(d), PORT 610-627.

488. On February 26, 1991, Wallace pleaded guilty to felony drug charges and began serving a five year jail sentence. (*See* House Ex. 81; *see also* Porteous Wallace Demonstrative.)

489. Wallace was incarcerated between February 1991 and August 1993. (*See* House Ex. 81; *see also* Porteous Wallace Demonstrative.

490. Attorney Robert Rees did not represent or assist Wallace in relation to the drug charges. Senate Vol. V at 1943:09-10 (Rees).

491. On December 11, 1991, Judge Porteous, upon the request of the probation officer, terminated Wallace's probation for the burglary charge on the grounds that he cannot complete his probation satisfactorily. *See* House Ex. 81; *see also* Porteous Wallace Demonstrative.

492. Robert Rees is an attorney who has practiced in Louisiana since 1985. Rees is a former Lafayette City policeman and former Assistant District Attorney in the 22nd Judicial District of Louisiana. Senate Vol. V at 1937:08-21 (Rees).

493. Between 1991 and 1997, Rees practiced in the 24th Judicial District Court. Senate Vol. V at 1938:24-1939:04 (Rees).

494. In 1994, Rees was serving as a criminal defense attorney and his practice was focused "100%" on state criminal work. Senate Vol. V at 1938:05-23 (Rees).

495. Attorney Robert Rees testified that if Judge Porteous suspended Wallace's sentence and sentenced him to a term of probation, that Article 893 necessarily applied. "He just didn't use the words 893." Senate Vol. V at 1976:21-25 (Rees).

496. On August 8, 1993, Wallace was released from jail. *See* House Ex. 81; *see also* Porteous Wallace Demonstrative.

497. On August 25, 1994, Judge Porteous was nominated by president Clinton to be a United States District Court Judge for the Eastern District of Louisiana. Stipulation 12.

498. Wallace stated that he formed a "desire" to become an agent and he "certainly" "wanted it [a bail bonds license] myself." Senate Vol. II at 689:15-19 (Wallace). ("Q: So he wanted you get a bail bondsman license also? A: Yes. I wanted it myself.")

499. Wallace admitted that his attorney explained that, because he had two totally separate convictions, there was a conflict in terms of Mr. Wallace's probation and sentences. Senate Vol. II at 700:16-19 (Wallace).

500. While Louis Marcotte initially asked Rees to assist Aubrey Wallace in having his sentence amended but then Aubrey Wallace personally contacted Rees to assist him – in which he estimated "several times after that until the motion got filed." Senate Vol. V at 1940:25-1941:16 (Rees); Senate Vol. II at 702:13-18 (Wallace).

501. Wallace never had any direct conversations with Judge Porteous about his burglary conviction, the motion to amend, and the motion to set aside. Senate Vol. II at 702:19-21; 713:14-16 (Wallace).

502. On September 20, 1994, Attorney Robert Rees filed a motion to amend Aubrey Wallace's sentence related to the simple burglary conviction. Rees believed he had case law to support his request. *See* House Ex. 82; Senate Vol. V at 1942:03-05 (Rees).

503. According to Rees, "Article 893 of the Code of Criminal procedure provides that upon satisfactory completion of [a] probation period, it serves as an acquittal and the conviction can be set aside, which would then allow you to use the expungement statute to remove the [arrest] from your record." Senate Vol. V at 1949:19-1950:01 (Rees).

504. Rees explained that the problem with Wallace's case was that Wallace "had two pending charges in the same jurisdiction . . . The probations shouldn't have been terminated. . . The Judge had to go back and undo the unsatisfactory termination of the probation . . . because it was based on the prior arrest, which was not grounds to revoke the probation that Judge Porteous had placed him on" Senate Vol. V at 1957:18-1959:-02 (Rees).

505. Rees stated that original termination of Wallace's probation was an "incorrect" action. Senate Vol. V at 1959:03-11 (Rees). Further, because it was incorrect, Rees stated that the Judge "would have to go back and fix it." Senate Vol. V at 1960:15-20 (Rees).

506. Motions to amend are not uncommon. In fact, during his testimony, Rees stated that he was handling a motion to amend a sentence currently. Senate Vol. V at 1950:08-11 (Rees).

507. Rees stated that he dictated the motion to amend the sentence, signed it, and filed it. Senate Vol. V at 1945:01-15 (Rees). Rees stated that the "reason for the brevity of the motion was that "it didn't have to contain anything else." Senate Vol. V at 1975:13-21 (Rees). Rees further stated that motions like this tend to be brief because the record accompanies the motion. Senate Vol. V at 1992:17-24 (Rees).

508. As was the standard, Rees filed two copies of the motion on September 20, 1994, one of the copies was to serve as a courtesy copy to be delivered to the District Attorney's Office. *See* House Ex. 82; Senate Vol. V at 1945:16-1947:03 (Rees).

509. In filing his motion, Rees did not ask for a contradictory hearing, but Judge Porteous set it for one nonetheless. *See* House Ex. 82; Senate Vol. V at 1948:03-20 (Rees).

510. According to Rees, the purpose of the contradictory hearing was to give the district attorney's office an opportunity to object to the motion. Senate Vol. V at 1948:21-24 (Rees). Reese stated that the 1994 version of Code Section 881 did not require the Court to hold a contradictory hearing. Senate Vol. V at 1953:05-10 (Rees).

511. On or about September 21, 1994, Judge Porteous held a hearing at which he ordered that Aubrey Wallace's court records n State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist. Ct., Jeff. Par., La.) be amended to include removal of the unsatisfactory completion of probation and the entering of the guilty plea under Code of Criminal procedure 893. Stipulation 149.

512. Bruce Netterville stood in for Rees at the September 21, 1994 hearing; Rees stated that it was not uncommon for someone else to cover a hearing if you were going to be unable to make it. Senate Vol. V at 1951:20-25 (Rees).

513. During the hearing, Judge Porteous stated that "if you want further relief, then file a petition to enforce 893 and then I'll execute that also." (House Ex. 246.)

514. Michael Reynolds represented the state during the motion to amend Wallace's sentence. (*See* House 69(b), PORT 620.) Reynolds raised no objection to the motion or to the Judge's actions. (*See* House 69(b), PORT 620-24.)

515. Rees, stated that as a former Assistant District Attorney, if Reynolds had objected to the motions regarding Wallace's prior convictions, he should have taken it "up his chain of command, go to a supervisor, or even vice it to the judge." Senate Vol. V at 1964:03-07 (Rees).

516. Rees and Reynolds were former law school classmates and friends. Senate Vol. V at 1940:06-11 (Rees).

517. Rees stated that it "was routine for the assistant DA and the lawyer to meet in chambers prior to going into the Courtroom." Senate Vol. V at 1993:11-17 (Rees).

518. Rees is not aware of Assistant District Attorney Mike Reynolds raising any objection to the motion to amend Wallace's sentence before or at the hearing or outside of the hearing. Senate Vol. V at 1963:04-24 (Rees).

519. District Attorney John Mamoulides, who was Reynolds's superior at the time, stated that if Reynolds had concerns regarding Wallace's motion to amend his sentence or to set aide his conviction, "if he was in a hearing, that's when he could voice his objection into the record." Senate Vol. V at 1788:16-21 (Mamoulides).

520. Mamoulides definitively stated that had Reynolds come to him with concerns about the Wallace amended sentence and set aside, he would "absolutely not" have been punished Reynolds – "nobody would get punished for that. He would give his opinion and why he was doing it." Senate Vol. V at 1789:11-1790:03 (Mamoulides). Mamoulides stated that if "the reason the judge was setting aside a conviction was to do a favor for a bail bondsmen . . . it was improper . . . [and] we would investigate or we would call for an investigation or something of that nature. Senate Vol. V at 1819:24-1820:13 (Mamoulides).

521. Mamoulides stated that "if a sentence was erroneously set originally and they recognize it, it could be brought up to be a set aside or resentenced with the discretion of the Court. Senate Vol. V at 1812:08-17 (Mamoulides). As an example of such a sentence Mamoulides stated that if a judge sentenced a convict on armed robbery charges to ten years without the benefit of parole or probation, the prosecutors office would ask him to "amend the sentence and put the right thing in." Senate Vol. V at 1824:20-1825:09 (Mamoulides).

522. On or about September 22, 1994, Judge Porteous signed a written Order that stated: "IT IS ORDERED that the sentence on Aubrey WALLACE is hereby amended to include the following wording, 'the defendant pled under Article 893.'" Stipulation 150.

523. On October 14, 1994, Judge Porteous entered an order setting aside Aubrey Wallace's burglary conviction in State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.). Stipulation 151.

524. At the October 14, 1994 hearing, Rees specifically put comments on the record because he was seeking to orally move to invoke 893. Senate Vol. V at 1965:04-13 (Rees).

525. Michael Reynolds represented the state during the October 14, 1994 hearing and made no objections. (*See* House 69(b), PORT 625-629.)

526. According to Rees, Reynolds raised no objections at the October 14, 1994 hearing inside or outside of Court. Senate Vol. V at 1965:20-1966:03 (Rees).

527. In Rees's experience, once a judge has amended a sentence, there wasn't any doubt that that he intended to enforce 893. Senate Vol. V at 1962:11-14 (Rees).

528. Rees considered the second step of enforcing the 893 as "more of an administrative step." Senate Vol. V at 1962:18-1963:03 (Rees).

529. Judge Porteous did not expunge Aubrey Wallace's burglary conviction.

530. Even if Wallace's burglary conviction had been expunged, he would still not be eligible to serve as a bail bondsmen, because of his drug conviction. Senate Vol. II at 691:24-692:07 (Wallace).

531. Rees says he probably only spent "30 minutes, if that" on the matter. Senate Vol. V at 1967:10-14 (Rees).

532. Rees did not get paid by either the Marcottes and/or Wallace for this work and viewed his time on the matter as a "small administrative task that he did for one of [his] regular clients." Senate Vol. V at 1968:05-18 (Rees).

533. Rees does not believe that the motion he filed, and which was granted by the Court, was improper in any way. Senate Vol. V at 1971:19-22 (Rees).

534. Further, Rees, based on his experience as a seasoned Louisiana criminal defense attorney, does not believe that Judge Porteous's actions in amending the sentence and then setting aside the conviction were incorrect legal rulings. Senate Vol. V at 1971:23-1972:04 (Rees). In fact, Rees stated that they were well within his realm of jurisdiction to do that. *Id*.

535. The House did not call any witness to contest Rees's testimony that Wallace's original sentence was necessarily pursuant to Section 893 or to show that Judge Porteous's order

amending Wallace's sentence or setting aside the conviction was legally improper. *See generally* Senate Vols. I-V.

536. When asked repeatedly by House counsel whether he felt he deserved the amended sentence and the set aside, Wallace replied that "I just think I was shown some compassion." Senate Vol. II at 692:24-693:13 (Wallace).

537. 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." Senate Vol. II at 709:18-23 (Wallace).

Testimony of Rafael Goyeneche

538. Rafael Goyeneche is the President of the Metropolitan Crime Commission. Senate Vol. II at 702:19-21 (Goyeneche).

539. The Metropolitan Crime Commission does not have subpoena power or the ability to force citizens or state officials to speak to the Metropolitan Crime Commission. Senate Vol. II at 739:06-10 (Goyeneche).

540. Goyeneche claims that in 1994, the Metropolitan Crime Commission received an allegation from Assistant District Attorney Michael Reynolds, related to Judge Porteous. Senate Vol. II at 719:06-14 (Goyeneche).

541. Reynolds would later give up his law license after three separate arrests, including an arrest involving the swapping of license plates. *In re Reynolds*, 3 So. 3d 457 (La. 2009); *In re Reynolds*, No. 2009-B-0216, 2009 La. LEXIS 2003 (La. Mar. 6, 2009); *In re Reynolds*, 956 So. 2d 575 (La. 2007); Police Reports, St. Tammany Arrests, Times-Picayune (June 5, 2004); *State of Louisiana v. Michael J. Reynolds*, No. 2007 KA 1284, 2007 WL 4480641 (La. Ct. App. 1 Cir.

Dec. 21, 2007); Louisiana Bar Journal, Volume 57, Number 1 (June/July 2009) (Discipline pages 42-43).

542. Goyeneche claims that Reynolds first told the Metropolitan Crime Commission about the allegations in early October 1994. Senate Vol. II at 726:24-727:04 (Goyeneche).

543. Goyeneche stated that he and Metropolitan Crime Commission Vice President Anthony Radosti interviewed Judge Porteous in November 1994. Senate Vol. II at 727:06-12 (Goyeneche).

544. Goyeneche testified that that Anthony Radosti drafted the summary of the interview and that Goyeneche would have reviewed and edited the document. Senate Vol. II at 728:19-730:04 (Goyeneche).

545. Goyeneche testified that the summary of the interview, prepared by Radosti, "fairly and accurately" represented the interview the Metropolitan Crime Commission conducted of Judge Porteous. Senate Vol. II at 730:12-15 (Goyeneche).

546. Goyeneche stated that it was "the opinion of the crime commission that Article 881 was not followed by the judge." Senate Vol. II at 734:13-735: 02 (Goyeneche).

547. In his testimony, Goyeneche stated that his interview with Judge Porteous lasted "about 35 minutes." Senate Vol. II at 736:22-23 (Goyeneche).

548. In a June 25, 2006 Times-Picayune Article, Goyeneche was quoted as saying that he and Radosti did not even have "a chance to sit down before the conversation was over." Porteous Ex. 1033.

549. In his testimony, Goyeneche admitted that during his interview of Judge Porteous, he discussed with the judge a number of topics, including the Wallace set-aside, lunch with the Marcottes, and various state statutes. Senate Vol. II at 742:13-17 (Goyeneche).

550. Goyeneche was also quoted in the article as saying that Judge Porteous told Goyeneche and Radosti that "I don't have to explain anything to you. I'm a federal judge." (Porteous Ex. 1033.) During his testimony, Goyeneche recalled making that statement to the press but, upon cross-examination, admitted that Judge Porteous had never made that statement and that he had given a false statement to the press. Senate Vol. II at 741:09-12; 743:07-23 (Goyeneche).

551. The Metropolitan Crime Commission claims that it is a privately funded non-governmental organization and advertises itself as such on its website. Senate Vol. II at 739:03-05; 748:24-749:24 (Goyeneche). Yet, as Goyeneche admitted, the Metropolitan Crime Commission received a half-million dollars in federal appropriations as recently as 2010. Senate Vol. II at 749:16-24 (Goyeneche).

552. Goyeneche admitted that during his interview of Judge Porteous, when asking Judge Porteous about trips to Las Vegas, that he failed to identify which Las Vegas trips he was asking about and that he was unaware that Judge Porteous had been a speaker at certain bail bonds conventions in Las Vegas, where his travel expenses had been paid for by Bail bonds Association. Senate Vol. II at 744:15-746:07 (Goyeneche).

553. Goyeneche admitted that the Metropolitan Crime Commission pays confidential informants for the provision of information. Goyeneche stated that, in relation to public corruption cases, they have publicly stated that they would pay up to $100,000.00. Senate Vol. II at 747:13-748:19 (Goyeneche).

554. In response to a question from Senator Kaufman about why the Metropolitan Crime Commission conducted the interview with Judge Porteous, even after he became a federal judge, Goyeneche actually argued that "we weren't aware that he had been confirmed" as a

federal judge. Senate Vol. II at 754:12-19 (Goyeneche). Yet, Goyeneche had previously testified that the interview was conducted at the federal Courthouse, clearly putting Goyeneche on notice that Judge Porteous had been confirmed. Senate Vol. II at 727:06-12 (Goyeneche).

Professor Charles Geyh

555. Professor Charles Geyh assumed all evidence as alleged by the House as true in rendering his opinion. Senate Vol. III at 833:02-22 (Geyh). Geyh testified that he did not watch or observe any of the testimony provided during the evidentiary proceedings. Senate Vol. III at 833:23-834:11 (Geyh).

556. Geyh admitted he was not an expert on Louisiana legal ethics and that before he rendered his expert testimony and was not a member of the Louisiana bar, and that he had not read any Louisiana judicial misconduct opinions. Senate Vol. III at 836:05-837:11 (Geyh).

557. Geyh further stated that he had not reviewed any material from the Louisiana Judiciary Commission. Senate Vol. III at 837:19-25 (Geyh).

558. While citing the Duhon matter as unethical, Geyh admitted that he was unaware that Judge Richards had set aside Jeff Duhon's conviction. Senate Vol. III at 834:17-20 (Geyh).

559. Geyh admitted that he had never read the relevant statutes, La. Code Sections 881 and 893, before he rendered his opinion. Senate Vol. III at 834:21-835:07 (Geyh).

560. Geyh stated that he was not even aware that Judge Porteous had already been sanctioned by the Fifth Circuit through a suspension from hearing cases. Senate Vol. III at 839:09-13 (Geyh). ("Q: And, in fact, Judge Porteous was suspended; correct? A: I'm un – I mean, I don't know. Q: Okay. A: That could be. I mean, I don't know.")

561. Geyh stated that "as an ethical matter, it's pretty well understood that if a judge misbehaves in a prior judicial office or in private practice that that can, indeed, bear on his discipline now." Senate Vol. III at 862:21-863:10 (Geyh).

Alleged Use of Power and Prestige of Office

562. Louis Marcotte testified that once Judge Porteous took the federal bench, Marcotte requested Judge Porteous's assistance in convincing Federal Magistrate Judge Louis Moore to utilize commercial bonds. Senate Vol. II at 537:01-538:12 (Louis Marcotte). Marcotte expressed no knowledge of Porteous taking any action in response to this request and expressed doubt that Judge Porteous did, in fact, take any action in response to this request. *Id.* (Marcotte stating "He told me he went to [Moore] but did he really, I don't know.")

563. Louis Marcotte stated that he had no first hand knowledge of Judge Porteous ever having talked to Judge Ronald Bodenheimer. Senate Vol. II at 539:13-15 (Louis Marcotte). ("Q: To your knowledge, did Judge Porteous say anything on your behalf to Judge Bodenheimer? A: I think he did, or he told me he did.")

564. Bodenheimer stated that it was well known that Bodenheimer had prosecuted bondsmen when he was an assistant district attorney. Bodenheimer stated that Judge Porteous may have perceived that Bodenheimer didn't like bondsmen and simply told Bodenheimer that he could trust the Marcottes when it comes to the Marcottes providing information related to a particular offender. Senate Vol. III at 1255:07-1256:06; 1262:16-1263:01 (Bodenheimer). ("What I took from Judge Porteous was him telling me, Ronny, listen, I know you don't like Marcotte, but I'm telling you, I've dealt with him in the past, he's not going to lie to you about bond information. That's what I took it to mean")

565. Bodenheimer further stated that he did not 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. Senate Vol. III at 1281:13-18 (Bodenheimer).

566. Judge Porteous never told Bodenheimer what to do in relation to the Marcottes. Senate Vol. III at 1257:09-11 (Bodenheimer).

567. In relation to the statement about never having to buy lunch, Bodenheimer stated that he "thought it was a funny statement," "it was said as a quip", that "Porteous had a wit," "he said it for everybody to hear," other people laughed, and that such jokes or quips were typical of Porteous. Senate Vol. III at 121259:03-1261:05 (Bodenheimer).

568. Bodenheimer stated that "It was true – whatever [Marcotte] told me about a particular defendant, and I would check, I believe I would say I would check every time. The information he gave me, I would call the jail and verify it, and I never, ever caught him in a lie." Senate Vol. III at 1280:09-18 (Bodenheimer).

569. Bodenheimer's indictment involved more than just the allegations of Bodenheimer taking things of value from the Marcottes. It also involved Bodenheimer pleading guilty to a conspiracy to actually plant drugs on someone he had disagreed with in order to cause them harm. Senate Vol. III at 1321:04-08 (Bodenheimer); *see also* House Ex. 88(f).

570. Bodenheimer stated that "it didn't take long before you felt pressured to do bonds because of a federal court decree that said if you didn't do the bonds, they were going to release them with no bonds. So you did have pressure. And since Marcotte was doing the lion's share of the bonds, you did have to deal with him. But I didn't feel pressure from what I was told by Judge Porteous, no." Senate Vol. III at 1262:04-15 (Bodenheimer).

571. The House produced no evidence that Judge Porteous tried to influence Judge Alan Green into working with the Marcottes. *See generally* Senate Vols. I-V.

Marcotte FBI Interviews

572. Louis Marcotte was interviewed twice by the FBI in relation to the FBI's background check of Judge Porteous. Senate Vol. II at 530:25-531:09 (Louis Marcotte).

573. Louis Marcotte claims that Judge Porteous knew that Louis Marcotte had lied to the FBI when he stated that "he had no knowledge of the candidate's financial situation." Senate Vol. II at 532:23-533:04 (Louis Marcotte). Louis Marcotte claims that this statement was clearly false because he was aware that Judge Porteous's automobiles were in bad condition. Senate Vol. II at 533:01-04 (Louis Marcotte).

574. Louis Marcotte had no knowledge, beyond his observations of the state of Judge Porteous's automobiles. Senate Vol. II at 584:13-21 (Louis Marcotte).

575. During his Senate testimony, Louis Marcotte testified that after the FBI interviews, he told Judge Porteous that he had given the FBI "thumbs up" regarding the questions he had been asked. Senate Vol. II at 535:21-22; 583:21-584:02 (Louis Marcotte).

576. Judge Porteous and Louis Marcotte never sat down and worked through the questions he was likely to be asked or discussed what answers Louis Marcotte should give. Moreover, Judge Porteous never told Louis Marcotte to be untruthful in responding to the FBI's questions. Senate Vol. II at 581:20-582:04; 582:10-12; 583:18-20 (Louis Marcotte).

577. Judge Porteous had suggested that the FBI interview Louis Marcotte. Senate Vol. II at 582:07-09 (Louis Marcotte).

578. Louis Marcotte did not take notes during his interview with the FBI, waited several days after the interview to call Judge Porteous to tell him about the interview, and when

they finally met and discussed the interview, Marcotte provided only a summary of the questions, as opposed to giving a run down of each questions asked and answered. Senate Vol. II at 582:13-24 (Louis Marcotte).

579. Louis Marcotte testified that he did not think he could have used any information that he was in possession of to coerce Judge Porteous into taking any action. Senate Vol. II at 584:03-12 (Louis Marcotte).

Gifts to Other Judges

580. The Marcotte's gave cash to approximately three dozen judges and state representatives. Senate Vol. II at 585:15-21 (Louis Marcotte); Louis Marcotte Senate Dep. at 7:25-8:02; Lori Marcotte Senate Dep. at 92:13-96:14-19.

581. Several of the judges that the Marcottes gave cash to are still state court judges in Louisiana. Senate Vol. II at 585:15-21 (Louis Marcotte); Louis Marcotte Senate Dep. at 7:25-8:02; Lori Marcotte Senate Dep. at 92:13-96:19; Porteous Ex. 1007.

582. Lori Marcotte gave $10,000 cash to a state judge in an envelope. Lori Marcotte Senate Dep. at 94:12-16.

583. Lori Marcotte gave $2,500 to another state court judge. Lori Marcotte Senate Dep. at 96:14-19.

584. Lori Marcotte reviewed, with the FBI, campaign reports and observed that the $2,500 she gave to a state court judge did not appear in the report. Lori Marcotte Senate Dep. at 97:16-98:01.

585. Lori Marcotte gave $2,500 on two different occasions to a different state judge. Lori Marcotte Senate Dep. at 97:13-15.

586. Lori Marcotte assumed that the money she gave to state court judges did not always end up being used for campaign activities. Lori Marcotte Senate Dep. at 98:02-14.

587. The Marcottes gave other gifts to other judges and court staff, including large quantities of shrimp, fake Rolex watches, hams, turkeys, cakes, and gingerbread houses. Senate Vol. II at 587:02-23 (Louis Marcotte); Senate Vol. II at 647:02-19 (Lori Marcotte); Senate Vol. V at 1835:06-17 (Griffin).

588. It was a "regular practice of Bail Bonds Unlimited to give gifts" to "several judges." Senate Vol. II at 706:11-16 (Wallace).

589. Wallace testified that he would personally "bring little boxes of the little pastries to each division of the judges." Senate Vol. II at 706 (Wallace).

590. According to John Mamoulides, it was common for lawyers and others to bring gifts to judges and the fact that a judge received a gift "wouldn't bother" Mamoulides, as the Parish's chief prosecutor. Senate Vol. V at 1785:01-19 (Mamoulides).

Government Witness Views on Judge Porteous

591. Louis Marcotte thought that Judge Porteous was a "very smart" and "very funny" Judge. Senate Vol. II at 511:08-10 (Louis Marcotte).

592. Lori Marcotte said Judge Porteous was known to be "one of the more experienced" judges, had been a "great prosecutor," and a "great jurist." Senate Vol. II at 632:25-633:13 (Lori Marcotte).

593. Aubrey Wallace stated that Judge Porteous "was a very fair and impartial judge." Senate Vol. II at 703:23-704:01 (Wallace).

594. Reverend Aubrey Wallace testified that Judge Porteous was viewed by many in the community as the type of judge that you could have a "fair chance with." Senate Vol. II at 708:04-16 (Wallace).

595. Mamoulides stated that Porteous "knew the law, he knew the evidence. And his decisions and rulings were generally good." Senate Vol. V at 1752:21-1753:05 (Mamoulides).

596. Judge Porteous became one of Mamoulides' more seasoned prosecutors, responsible for handling "some of the bigger cases" and eventually became a supervisor. Senate Vol. V at 1749:15-1750:22 (Mamoulides).

D. Article III

Article III Allegations

597. Article III alleges that Judge Porteous "knowingly and intentionally ma[de] material false statements and representations under penalty of perjury related to his personal bankruptcy filing" and "repeatedly violat[ed] a court order in his bankruptcy case." 111 Cong. Rec. S1645 (Mar. 17, 2010).

598. The only misconduct alleged by the House as the basis for conviction under Article III is that Judge Porteous (1) "us[ed] a false name and a post office box address to conceal his identity as the debtor in the case"; (2) "conceal[ed] assets"; (3) "concealed preferential payments to certain creditors"; (4) "conceal[ed] gambling losses and other gambling debts"; and (5) "incurr[ed] new debts while the case was pending, in violation of the bankruptcy court's order." 111 Cong. Rec. S1645 (Mar. 17, 2010).

599. Article III does not allege any misconduct outside of the Chapter 13 bankruptcy case that Judge Porteous and his late wife Carmella filed in 2001. 111 Cong. Rec. S1645 (Mar. 17, 2010).

600. Article III does not allege any misconduct or improprieties in connection with financial disclosure forms that Judge Porteous completed while a federal judge. 111 Cong. Rec. S1645 (Mar. 17, 2010); Senate Vol. III at 1053:13-22 (Horner).

601. Article III does not allege that Judge Porteous abused in any way his power or authority as a federal judge. 111 Cong. Rec. S1645 (Mar. 17, 2010).

602. Article I asserts that Judge Porteous "should be removed from office" because he is "guilty of high crimes and misdemeanors." 111 Cong. Rec. S1645 (Mar. 17, 2010).

603. Article I does not allege that Judge Porteous should removed from office for treason. 111 Cong. Rec. S1645 (Mar. 17, 2010).

604. Article I does not allege that Judge Porteous should be removed from office for bribery. 111 Cong. Rec. S1645 (Mar. 17, 2010).

Retention of, and Reliance Upon, Bankruptcy Attorney Claude Lightfoot

605. In the summer of 2000, Judge Porteous and his late wife Carmella retained consumer bankruptcy attorney Claude Lightfoot to assist them in attempting to restructure their debts. Senate Vol. III at 1071:22 – 1072:23, 1101:4-7 (Lightfoot); Stipulation 185.

606. Prior to retaining him as their attorney, neither Judge Porteous nor his wife had previously met Mr. Lightfoot. Senate Vol. III at 1101:8-11 (Lightfoot).

607. In retaining Mr. Lightfoot and working with him to restructure their debts, the Porteouses specifically sought to avoid filing for bankruptcy protection. Senate Vol. III at 1072:1-6, 1101:16-24 (Lightfoot); Stipulation 187.

608. At the time that the Porteouses retained him as their attorney, Mr. Lightfoot had been practicing consumer bankruptcy law almost exclusively for 10 years. Senate Vol. III at 1071:14-16, 1101:12-15 (Lightfoot).

609. The Porteouses retained Mr. Lightfoot because of his bankruptcy experience, knowledge, and expertise. Senate Vol. III at 1104:1-17, 1116:20 – 1117:2 (Lightfoot).

610. The Porteouses retained Mr. Lightfoot to assist them because neither Judge Porteous nor his wife had any particular experience, knowledge, or expertise concerning bankruptcy issues. Senate 1102:22 – 1104:17, 1116:20 – 1117:2 (Lightfoot).

611. The Bankruptcy Code is a highly technical statute, the comprehension of which requires specialized expertise that is beyond the capacity of lay people and most competent lawyers. Senate Vol. IV at 1515:6-25 (Pardo).

612. Chapter 13 bankruptcy is an extremely complicated process, which requires the completion of an enormous number of complex forms, for which most individuals seek the professional assistance of a lawyer who specializes in the practice of consumer bankruptcy law and, as a result, is aware of the various requirements (some of which are not readily apparent) of the bankruptcy forms. Senate Vol. V at 1850:11 – 1851:17, 1852:14 – 1853:8 (Hildebrand).

613. FBI Agent DeWayne Horner, who the House called to testify before the Committee concerning the Porteouses' bankruptcy case, is not a bankruptcy expert, has never practiced bankruptcy law, and has no expertise with regard to bankruptcy law. Senate Vol. III at 1019:6-14, 1021:14-17 (Horner).

614. FBI Agent Horner testified that his investigation concerning Judge Porteous is the only case that he has ever worked on where bankruptcy issues were central to the case. Senate Vol. III at 1021:4-13 (Horner).

615. Most federal district court judges, although they occasionally hear appeals of bankruptcy issues decided by bankruptcy judges, have little experience, knowledge, or expertise concerning bankruptcy issues. Senate Vol. III at 1102:22 – 1103:25 (Lightfoot); Senate Vol. IV at 1449:18 – 1451:19 (Pardo); Porteous Ex. 1067 (Vanderbilt Law Review article analyzing the disparate quality of appellate review of bankruptcy issues conducted by district court judges versus bankruptcy appellate panels composed of bankruptcy judges).

616. The Westlaw database of published and unpublished judicial decisions contains only seven opinions issued by Judge Porteous during his 16-year tenure as a federal judge in which he sat in an appellate capacity reviewing bankruptcy issues; four of which dealt with business bankruptcy cases and three of which dealt with consumer bankruptcy cases. Senate

Vol. IV at 1449:6-13 (Pardo). None of these seven opinions related to bankruptcy disclosure issues or debtors' incurrence of post-petition debt. Senate Vol. IV at 1449:14-17 (Pardo).

617. The Porteouses relied heavily upon Mr. Lightfoot's advice and counsel throughout their relationship with him, including during their attempt to restructure their debts and their eventual bankruptcy filing. Senate Vol. III at 1104:1-13, 1116:20 – 1117:2 (Lightfoot).

Documents and Disclosures Provided to Mr. Lightfoot

618. Shortly after retaining Mr. Lightfoot in the summer of 2000, the Porteouses provided Mr. Lightfoot with a number of documents, including a May 2000 paystub, a completed set of bankruptcy worksheets, a handwritten list of the Porteouses' creditors, and various credit card statements. Senate Vol. III at 1073:18 – 1074:1, 1074:22-23, 1104:18 – 1106:9 (Lightfoot); House Ex. 139 (Lightfoot file, at CL0180-83); Stipulation 186 & 237.

619. The Porteouses continued to provide additional credit card statements periodically to Mr. Lightfoot as they received them. Senate Vol. III at 1105:7-18, 1156:12 – 1157:2, 1159:24 – 1160:6 (Lightfoot).

620. Mr. Lightfoot reviewed and analyzed all of the various documents that the Porteouses provided to him, including credit card statements. Senate Vol. III at 1106:10-20 (Lightfoot).

621. At least two of the Porteouses' credit card statements found in Mr. Lightfoot's file, which he reviewed and analyzed, contained gambling related charges. Senate Vol. III at 1156:3-7, 1156:12 – 1157:6, 1158:3-24, 1159:11-21 (Lightfoot); House Ex. 343 (at JC202426 & JC202432).

622. The Porteouses disclosed to Mr. Lightfoot, in the bankruptcy worksheets that they completed and provided to him, that their monthly total income after all deductions and taxes

was approximately $7,900 per month. Senate Vol. III at 1109:1-25 (Lightfoot); House Ex. 138(b) (Worksheets at CL0032/SC00672).

Workout Attempts

623. Through the summer and fall of 2000, Mr. Lightfoot reviewed and analyzed the various documents that he received from the Porteouses and calculated the repayments that the Porteouses' creditors would have received had the Porteouses filed for Chapter 7 bankruptcy protection. Senate Vol. III at 1074:4-5, 1106:10 – 1108:2 (Lightfoot).

624. Mr. Lightfoot thereafter sent letters to the Porteouses' unsecured creditors detailing the repayments that they would likely receive if the Porteouses filed for Chapter 7 bankruptcy protection and requesting that the creditors agree to a workout proposal to be funded by additional borrowing against the Porteouses' house. Senate Vol. III at 1074:5-13, 1107:23 – 1108:2 (Lightfoot); House Ex. 139 (Lightfoot file, at CL0174).

625. Mr. Lightfoot made repeated attempts to contact the Porteouses' creditors concerning the Porteouses' workout proposal through the summer and fall of 2000 and into the winter of 2000-2001. Senate Vol. III at 1111:3-15 (Lightfoot).

626. At some point during this attempt to avoid bankruptcy by negotiating a workout with the Porteouses' creditors, Mr. Lightfoot advised the Porteouses to stop making regular payments to their unsecured creditors, including their credit card companies. Senate Vol. III at 1089:23-25, 1113:3-8 (Lightfoot).

627. The Porteouses' attempt to avoid bankruptcy by negotiating a workout with their creditors failed in February or March of 2001 when at least one of their unsecured creditors affirmatively rejected their workout proposal. Senate Vol. III at 1075:9-10, 1111:16 – 1113:13 (Lightfoot); Stipulation 188.

Considering Bankruptcy

628. Following the failure of the Porteouses' attempt to avoid bankruptcy via a workout, Mr. Lightfoot and the Porteouses discussed filing for Chapter 13 bankruptcy protection. Senate Vol. III at 1075:11-25 (Lightfoot).

629. During his discussions with the Porteouses, it was clear to Mr. Lightfoot that Judge Porteous and particularly his late wife Carmella were embarrassed and distraught over the possibility of filing for bankruptcy protection. Senate Vol. III at 1102:5-15 (Lightfoot).

630. It was also clear to Mr. Lightfoot that the Porteouses were concerned about the embarrassment that would be visited upon their four children if they were to file for bankruptcy protection. Senate Vol. III at 1102:16-21 (Lightfoot).

631. At the time that the Porteouses filed for bankruptcy protection, the Times-Picayune newspaper in New Orleans published weekly the names of all individuals who filed for bankruptcy protection. Senate Vol. III at 1080:2-3, 1117:21 – 1118:6 (Lightfoot); Porteous Ex. 1064 (Times-Picayune news article dated April 8, 2001); Stipulation 202.

632. Following his discussion with the Porteouses concerning filing for Chapter 13 bankruptcy protection, Mr. Lightfoot prepared (using a computer software program) various bankruptcy filings, schedules, and statements based on the information, documents, and worksheets that the Porteouses had previously provided to him. Senate Vol. III at 1076:1-16,1079:3-4 (Lightfoot); Stipulation 189-90.

633. In preparing the Porteouses' bankruptcy filings, schedules, and statements, Mr. Lightfoot did not request from the Porteouses either an updated paystub or any other additional documentation. Senate Vol. III at 1076:11-16, 1114:6-23, 1134:14-18 (Lightfoot); Stipulation 191.

The Ortous Pseudonym – Mr. Lightfoot's Idea

634. Mr. Lightfoot came up with and suggested the idea of filing the Porteouses' original bankruptcy petition under a pseudonym. Senate Vol. III at 1079:22-25, 1115:10-21, 1116:8-19 (Lightfoot).

635. Mr. Lightfoot selected the pseudonym Ortous. Senate Vol. III at 1117:3-8 (Lightfoot).

636. Mr. Lightfoot proposed to the Porteouses that they file their original bankruptcy petition under the pseudonym Ortous. Senate Vol. III at 10810:20-25, 1115:10-21, 1116:8-19 (Lightfoot).

637. Mr. Lightfoot proposed that the Porteouses file their original bankruptcy petition under a pseudonym out of compassion for the Porteouses, in order to avoid publicity and the embarrassment of filing for bankruptcy protection. Senate Vol. III at 1080:6-16, 1119:3-15, 1126:11-13, 1177:20-22, 1178:16-17 (Lightfoot).

The Ortous Pseudonym – No Intent to Deceive or Defraud the Court or Creditors

638. Neither Mr. Lightfoot nor the Porteouses ever intended to deceive or defraud creditors by filing the Porteouses' original bankruptcy petition under the pseudonym Ortous. Senate Vol. III at 1080:14-16, 1125:6-11, 1178:4-8 (Lightfoot).

639. There is no evidence to support the allegation that the Porteouses allowed their original bankruptcy petition to be filed under a pseudonym with a fraudulent intent. *See generally* Senate Vols. I-V.

640. When Mr. Lightfoot proposed to the Porteouses that they file their original bankruptcy petition under the pseudonym Ortous, both he and the Porteouses always intended to

file an amended petition changing the name to Porteous immediately after the pseudonym appeared in the newspaper. Senate Vol. III at 1079:22 – 1080:2, 1178:4-8 (Lightfoot).

641. After filing the Porteouses' Chapter 13 bankruptcy petition, Mr. Lightfoot called the Chapter 13 bankruptcy trustee, Mr. S.J. Beaulieu, and specifically notified him that the case had been filed with an incorrect name, but that the name had already been corrected. Senate Vol. IV at 1524:8-22, 1532:23 – 1533:1 (Beaulieu).

642. During his tenure as standing Chapter 13 bankruptcy trustee in the Eastern District of Louisiana, Mr. Beaulieu has seen a small number of bankruptcy cases filed with incorrect names. Senate Vol. IV at 1531:8-11 (Beaulieu).

643. Following the filing of the Porteouses' original bankruptcy petition, Judge Porteous and his late wife Carmella held a family meeting with their four children and explained that the reason they had allowed their bankruptcy case to be filed initially under a pseudonym was because they were tremendously embarrassed about having to file for bankruptcy protection and wanted to protect their children from that embarrassment. Senate Vol. III at 1234:4 – 1235:1 (Timothy Porteous).

644. Former Bankruptcy Judge Ronald Barliant testified that he would not refer for investigation or criminal prosecution a debtor who, at the suggestion of his attorney, filed a bankruptcy petition under a pseudonym with the intent to correct that name, and who in fact did correct the name, prior to notices being sent to creditors. Senate Vol. V at 1919:3-16 (Barliant).

645. Former Bankruptcy Judge Barliant testified that he would not make such a referral because the fact that the pseudonym was used at the suggestion of counsel and was corrected before there could be any injury to creditors would indicate to him that the debtor did not have any fraudulent intent and the filing did not have any fraudulent effect because creditors received

a correct notice in sufficient time to file claims and/or otherwise participate in the case. Senate Vol. V at 1919:17 – 1920:4, 1932:12-14 (Barliant).

646. On the basis of the facts alleged by the House in connection with the Ortous pseudonym, former Bankruptcy Judge Barliant testified that he did not believe that he could find that there was any intent to commit fraud or otherwise impair the bankruptcy system. Senate Vol. V at 1926:8-18 (Barliant).

647. Any violation of 18 U.S.C. Section 152, which criminalizes false oaths in bankruptcy cases, or 18 U.S.C. Section 157, which proscribes bankruptcy fraud, requires the presence of fraudulent intent.

648. In the Fifth Circuit, a debtor is entitled to rely on the advice of his counsel, and a conviction for false oath cannot be founded on a debtor's following the advice of counsel. *Hibernia Nat'l Bank v. Perez*, 124 B.R. 704 (E.D. La. 1991), *aff'd,* 954 F.2d 1026 (5th Cir. 1992).

The Post Office Box – Mr. Lightfoot's Idea

649. Mr. Lightfoot came up with and suggested the idea of filing the Porteouses' original bankruptcy petition using a Post Office Box address. Senate Vol. III at 1082:9-14, 1115:10-21, 1116:6-19 (Lightfoot).

650. Mr. Lightfoot proposed that the Porteouses obtain a Post Office Box address and use that address in their original bankruptcy petition. Senate Vol. III at 1082:9-14, 1115:10-21, 1116:6-19 (Lightfoot).

651. Mr. Lightfoot advised Judge Porteous that he should obtain a Post Office Box. Senate Vol. III at 1117:12-16 (Lightfoot).

652. Upon the advice of his counsel Mr. Lightfoot, Judge Porteous obtained a Post Office Box and provided that Post Office Box address to Mr. Lightfoot. Senate Vol. III at 1082:12-21 (Lightfoot); House Ex. 145 (Post Office Box Application); House Ex. 138(a) (message slip from Lightfoot file); Stipulation 200.

The Post Office Box – No Intent to Deceive or Defraud the Court or Creditors

653. Mr. Lightfoot testified that there is nothing wrong with listing a Post Office Box address on a bankruptcy petition, that debtors file for bankruptcy protection using Post Office Box addresses frequently, and that he did not have any concern advising the Porteouses to obtain a Post Office Box address for use in their bankruptcy filing. Senate Vol. III at 1119:3-17, 1128:3-11, 1152:23 – 1153:4 (Lightfoot).

654. There is no evidence to support the allegation that the Porteouses allowed their original bankruptcy petition to be filed using a Post Office Box address with a fraudulent intent. *See generally* Senate Vols. I-V.

Original Bankruptcy Petition

655. Mr. Lightfoot never discussed with the Porteouses the pre-printed language that appeared above their signatures on the original Chapter 13 bankruptcy petition that he prepared and filed on their behalf. Senate Vol. III at 1152:13-22 (Lightfoot).

656. Mr. Lightfoot had the Porteouses sign – but not date – their original Chapter 13 bankruptcy petition some period of time prior to the filing of that petition. Senate Vol. III at 1163:1-25 (Lightfoot).

657. Mr. Lightfoot dated all of the bankruptcy filings that he filed on the Porteouses' behalf, including the bankruptcy petition, the bankruptcy schedules, and the statement of

financial affairs. Senate Vol. III at 1163:1-8, 1164:17 - 1165:10 (Lightfoot); Porteous Ex. 1100(b), 1100(c), & 1100(d).

658. On March 28, 2001, Mr. Lightfoot filed a Chapter 13 bankruptcy petition on behalf of the Porteouses that included (1) the pseudonym Ortous (which Mr. Lightfoot had selected and suggested to the Porteouses), (2) a Post Office Box address (which Mr. Lightfoot had advised the Porteouses to obtain), and (3) the Porteouses' correct Social Security numbers. Senate Vol. III at 1114:24 – 1115:3, 1125:23 – 1126:2 (Lightfoot); Porteous Ex. 1100(b); Stipulation 203-04 & 207-08.

659. In 2001, more than 1,000,000 Chapter 7 bankruptcy cases and more than 400,000 Chapter 13 bankruptcy cases were filed in the United States. Senate Vol. IV at 1416:18 – 1417:1 (Pardo); *see also* www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2001/1201_f2.xls (recording 1,031,493 non-business Chapter 7 bankruptcy cases and 419,750 non-business Chapter 13 bankruptcy cases filed in calendar year 2001).

660. Former Bankruptcy Judge William Greendyke, who was temporarily assigned from the Southern District of Texas to the Eastern District of Louisiana, presided over the Porteouses' bankruptcy case from shortly after its filing in March 2001 until his retirement from the bench in June 2004. Stipulation 277.

661. Mr. S.J. Beaulieu, the standing Chapter 13 bankruptcy trustee for the Eastern District of Louisiana, served as the Chapter 13 bankruptcy trustee who administered the Porteouses' bankruptcy case. Senate Vol. IV at 1523:25 – 1524:4 (Beaulieu); Stipulation 263.

662. During the pendency of the Porteouses' bankruptcy case, Mr. Beaulieu conferred with William Heitkamp, the standing Chapter 13 bankruptcy trustee in the Southern District of

Texas, concerning certain procedures utilized by Judge Greendyke in connection with Chapter 13 bankruptcy cases. Stipulation 264-65

663. On April 8, 2001, the Times-Picayune newspaper ran an article listing the names of recent bankruptcy filers that included the original bankruptcy petition filed by Mr. Lightfoot on behalf of the Porteouses using the name Ortous. Senate Vol. III at 1119:16 – 1120:21, 1121:18 – 1122:13 (Lightfoot); Porteous Ex. 1064.

Amended Bankruptcy Petition and Additional Filings

664. On April 9, 2001, the very next day after the Times-Picayune news article ran, Mr. Lightfoot filed an amended Chapter 13 bankruptcy petition on behalf of the Porteouses that listed their full and correct names, their residential address, and their correct Social Security numbers. Senate Vol. III at 1082:22 – 1083:3, 1121:18 – 1122:13, 1127:15 – 1128:2 (Lightfoot); Porteous Ex. 1100(c); Stipulation 210-16.

665. Also on April 9, 2001, Mr. Lightfoot filed a set of bankruptcy schedules, a statement of financial affairs, and a proposed Chapter 13 repayment plan on behalf of the Porteouses. Senate Vol. III at 1082:19-22, 1131:3-11 (Lightfoot); Porteous Ex. 1100(d); Stipulation 220 &240.

666. Prior to filing the amended petition, bankruptcy schedules, statement of financial affairs, and proposed Chapter 13 repayment plan, Mr. Lightfoot filled in the date on those forms, which he had had the Porteouses sign previously. Senate Vol. III at 1163:1-8, 1164:17 - 1165:10 (Lightfoot); Porteous Ex. 1100(b), 1100(c), & 1100(d).

667. The Porteouses' bankruptcy schedules disclosed assets totaling more than $263,000. Porteous 1100(c).

Notice to Creditors

668. Bankruptcy petitions, which are filed with the bankruptcy court, are not sent to creditors. Senate Vol. IV at 1417:2-9 (Pardo).

669. Notice of commencement of the Porteouses' bankruptcy case was sent out to scheduled creditors and other interested parties on April 19, 2001, ten days after the Porteouses' amended bankruptcy petition was filed. Stipulation 217; House Ex. 128.

670. The notice of commencement of the Porteouses' bankruptcy case that was sent out to scheduled creditors and other interested parties contained the Porteouses' full and correct names and Social Security numbers. Senate Vol. III at 1124:11 – 1125:5, 1128:23 – 1129:13 (Lightfoot); Senate Vol. IV at 1529:8-13 (Beaulieu); Senate Vol. V at 1855:21 – 1856:2 (Hildebrand); House Ex. 128.

671. No creditor listed in the Porteouses' bankruptcy petition (original or amended) or bankruptcy schedules ever received any official bankruptcy notice that contained the pseudonym Ortous. Senate Vol. III at 1124:11-23 (Lightfoot); Senate Vol. IV at 1531:8-17 (Beaulieu); Stipulation 218.

672. If a debtor omits a creditor from his bankruptcy filings and, as a result, that creditor does not receive official notice of the commencement of the debtor's bankruptcy case, then the debt owed to that creditor cannot be discharged in connection with the bankruptcy. Senate Vol. IV at 1419:3-11 (Pardo).

673. When Mr. Lightfoot filed the Porteouses' original bankruptcy petition on March 28, 2001, he knew for a fact that no creditor or other interested party would receive any official bankruptcy notice containing the pseudonym Ortous. Senate Vol. III at 1122:16-19, 1124:7-10 (Lightfoot).

674. Mr. Lightfoot knew for a fact that no creditor or other interested party would receive any official bankruptcy notice containing the pseudonym Ortous because, at that time, notices to creditors and other interested parties could not be issued until after the bankruptcy schedules and proposed repayment plan were filed with the Court. Senate Vol. III at 1122:20 – 1124:6, 1128:5-19 (Lightfoot).

675. Mr. Lightfoot specifically did not file the Porteouses' bankruptcy schedules and proposed repayment plan until after he filed the Porteouses' amended bankruptcy petition, which listed their full and correct names, their residential address, and their Social Security numbers. Senate Vol. III at 1083:19 – 1084:1, 1116:4-7, 1121:18 – 1122:1, 1122:16 – 1125:5, 1130:16-19 (Lightfoot).

676. The result of the Porteouses' amendment of their Chapter 13 bankruptcy petition prior to any notice being sent to creditors was that the Porteouses' creditors received notice of the Porteouses' correct name and Social Security numbers. Senate Vol. V at 1856:11 – 1857:2 (Hildebrand).

677. Henry Hildebrand, the standing Chapter 13 bankruptcy trustee in the Middle District of Tennessee for more than 28 years, testified that, in his expert opinion, the important thing concerning notice to creditors is whether creditors and other interested parties receive notice of a bankruptcy case adequate to allow them to participate in the case. Senate Vol. V at 1856:21 – 1857:2 (Hildebrand).

Income Disclosure

678. Notwithstanding the fact that Judge Porteous disclosed his net monthly take-home pay to Mr. Lightfoot as approximately $7,900 per month, Mr. Lightfoot elected to use Judge

Porteous's May 2000 paystub as the basis for the income that he listed in the Porteouses' bankruptcy schedules. Senate Vol. III at 1087:23 – 1088:10, 1109:22 – 1111:2 (Lightfoot).

679. The bankruptcy schedules that Mr. Lightfoot filed on the Porteouses' behalf included a copy of Judge Porteous's May 2000 paystub. Senate Vol. III at 1132:24 – 1133:2 (Lightfoot); Porteous Ex. 1100(d) at 19; Stipulation 236.

680. Since a copy of Judge Porteous's May 2000 paystub was included in the Porteouses' publicly-filed bankruptcy schedules, the fact that the income disclosed in those schedules was based on a May 2000 paystub was open and obvious to anyone who reviewed the schedules, including the court, the trustee, creditors, and any other interested party. Senate Vol. III at 1133:3-10, 1133:21-24 (Lightfoot); Porteous Ex. 1100(d) at 19.

681. No one, not the court, the trustee, any creditor, or any other interested party, ever objected to the amount of income listed in the Porteouses' bankruptcy schedules. Senate Vol. III at 1133:11 – 1134:1 (Lightfoot).

682. Mr. Lightfoot testified that, both in 2001 and now, he is unfamiliar with the issue of FICA limits and their effect on net income, that the income of his regular bankruptcy clients does not approach FICA limits, and that he never discussed the issue of FICA limits with Judge Porteous. Senate Vol. III at 1134:19 – 1135:20 (Lightfoot).

683. Since Mr. Lightfoot never raised the issue of FICA limits with Judge Porteous, Professor Rafael Pardo testified that, in his expert opinion, it would not be reasonable to expect Judge Porteous to appreciate or understand the significance of the FICA limits issue in a Chapter 13 bankruptcy case. Senate Vol. IV at 1409:17-22, 1437:10 – 1438:6, 1495:18-20 (Pardo).

684. Mr. Beaulieu never requested any updates concerning the Porteouses' income. Senate Vol. III at 1135:21 – 1136:2 (Lightfoot).

685. Mr. Beaulieu, though he had the authority to do so, never sought to amend the Porteouses' Chapter 13 repayment plan to reflect additional income. Senate Vol. III at 1054:18-24 (Horner).

686. Mr. Beaulieu specifically declined to take any action with regard to the income disclosed in the Porteouses' bankruptcy case because he concluded that any underreported income "would not substantially increase the percentage paid to unsecured creditors." Porteous Ex. 1108 (Letter from Beaulieu Staff Attorney to FBI Agent Horner); Senate Vol. IV at 1527:12-14 (Beaulieu).

687. The Porteouses never had any obligation to update their income disclosures in connection with their bankruptcy case. Senate Vol. III at 1136:3-7 (Lightfoot); Senate Vol. V at 1907:2-9 (Barliant).

688. Mr. Hildebrand characterized Mr. Lightfoot's use of Judge Porteous's out-of-date May 2000 paystub as the basis for the income disclosed in the Porteouses' bankruptcy filings as "disappointing, but [] not surprising." Senate Vol. V at 1873:23-24 (Hildebrand).

689. There is no evidence to support the allegation that Mr. Lightfoot's use of Judge Porteous's out-of-date paystub as the basis for the income disclosed in the Porteouses' bankruptcy filings, and his failure to account for the effect of FICA limits on Judge Porteous's income, was an intentional misrepresentation done with a fraudulent intent. *See generally* Senate Vols. I-V.

Checking Account Disclosures

690. Among the assets listed in the Porteouses' bankruptcy schedules, Mr. Lightfoot disclosed a value of $100 for the Porteouses' Bank One checking account. Porteous Ex. 1100(d) (Schedule B).

691. In order to determine the value of the Porteouses' Bank One checking account for purposes of listing it in the bankruptcy schedules that he filed on their behalf, Mr. Lightfoot asked Judge Porteous to approximate how much money he had in that account. Senate Vol. III at 1137:25 – 1138:17 (Lightfoot).

692. Disclosing the exact actual balance in a checking account on the date of filing for Chapter 13 bankruptcy protection is less important than in a Chapter 7 bankruptcy case because Chapter 13 is a repayment plan, which focuses on future income rather than current assets, and Chapter 13 debtors are typically not required to turn over the money in their checking account. Senate Vol. III at 113:24 – 1140:19 (Lightfoot).

693. In Chapter 13 bankruptcy cases, a debtor's assets on the date of filing for bankruptcy protection (including checking accounts) are not counted for purposes of determining projected disposable income and are not required to be paid over to creditors. Senate Vol. IV at 1435:13-18 (Pardo).

694. There is no evidence to support the allegation that the failure to disclose a value higher than $100 for the Porteouses' Bank One checking account in the bankruptcy schedules that Mr. Lightfoot filed on the Porteouses' behalf was an intentional misrepresentation done with a fraudulent intent. *See generally* Senate Vols. I-V.

695. The Porteouses' bankruptcy schedules omitted their Fidelity Homestead money market checking account; the value of that account on the date that the Porteous's original bankruptcy was filed was $283.42. Stipulation 228 & 230.

696. There is no evidence to support the allegation that the omission of the Porteouses' Fidelity Homestead money market checking account from the bankruptcy schedules that Mr.

Lightfoot filed on the Porteouses' behalf was an intentional omission done with a fraudulent intent. *See generally* Senate Vols. I-V.

697. In fact, Judge Porteous testified before the Fifth Circuit Special investigatory Committee that he believed that that he had told Mr. Lightfoot about his Fidelity checking account. Fifth Circuit at 86:20-87:10 (Porteous).

698. The Bankruptcy Code does not dictate what bank account a Chapter 13 debtor may use while in bankruptcy; indeed, a Chapter 13 debtor is free to use whatever bank account he or she wishes, including bank accounts that are not listed in his or her bankruptcy schedules. Senate Vol. IV at 1439:5 – 1440:9 (Pardo).

Year 2000 Tax Refund

699. The bankruptcy schedules that Mr. Lightfoot filed on April 9, 2001, on the Porteouses' behalf inadvertently omitted the year 2000 tax refund that the Porteouses requested shortly before they filed for bankruptcy protection. Fifth Circuit at 83:21 – 84:15 (Porteous).

700. There is no evidence to support the allegation that the omission of the year 2000 tax refund from the bankruptcy schedules that Mr. Lightfoot filed on the Porteouses' behalf was an intentional omission done with a fraudulent intent. *See generally* Senate Vols. I-V.

701. During the Fifth Circuit Special Investigatory Committee hearings, Judge Porteous testified that (1) he discussed his receipt of the Porteouses' year 2000 tax refund with Mr. Lightfoot shortly after receiving that refund, (2) Mr. Lightfoot advised Judge Porteous to put that refund in his bank account but to be prepared to turn it over if the bankruptcy trustee requested it, and (3) the year 2000 tax refund was omitted from the Porteouses' bankruptcy schedules inadvertently and that omission was unintentional and not an attempt to defraud

anyone. Fifth Circuit at 83:21 – 84:15 (Porteous); Senate Vol. V at 1860:24 – 1862:5 (Hildebrand).

702. Henry Hildebrand, the standing Chapter 13 bankruptcy trustee in the Middle District of Tennessee for more than 28 years, testified that, in his expert opinion, it is fairly common for debtors (including those represented by counsel) to fail to list anticipated tax refunds in their bankruptcy filings. Senate Vol. V at 1859:8 – 1860:15 (Hildebrand).

703. Mr. Hildebrand also testified that, if a debtor told his attorney that he had received a tax refund which was not listed in the debtor's bankruptcy schedules, then the burden would be on that attorney to amend the bankruptcy schedules and disclose the tax refund. Senate Vol. V at 1862:6-23 (Hildebrand).

704. During the pendency of the Porteouses' bankruptcy case, the Chapter 13 bankruptcy trustee in the Eastern District of Louisiana normally did not seek to recover tax refunds received by Chapter 13 debtors. Senate Vol. III at 1087:12-16, 1141:21-24, 1142:23 – 1143:2 (Lightfoot); *see also* Senate Vol. V at 1863:20-25 (Hildebrand, noting a similar procedure in the Middle District of Tennessee).

705. Had the Porteouses' year 2000 tax refund been included in their bankruptcy filings, the only action that Chapter 13 bankruptcy trustee Beaulieu would have taken would have been to inquire whether the Porteouses had more disposable income to contribute to their Chapter 13 repayment plan. Senate Vol. IV at 1531:24 – 1532:2 (Beaulieu); Senate Vol. V at 1862:24 – 1864:7 (Hildebrand).

706. The year 2000 tax refund that the Porteouses received after filing for bankruptcy protection did not constitute disposable income under the Bankruptcy Code and was not required to be paid over to the Porteouses' creditors. Senate Vol. IV at 1435:23 – 1437:9 (Pardo).

Pre-Petition Payments to Creditors

707. There is nothing inherently wrong or improper about pre-petition payments to creditors. Senate Vol. IV at 1427:6-20 (Pardo); *see also In re Huber Contracting, Ltd.*, 347 B.R. 205, 215 (Bankr. W.D. Tex. 2006).

708. Rhonda Danos was Judge Porteous's legal secretary for nearly 24 years, both while he was a state court judge and a federal district court judge. Senate Vol. III at 868:10-12 (Danos).

709. During the course of their 24-year professional relationship, Ms. Danos and Judge Porteous developed an informal custom whereby Ms. Danos would occasionally write checks to pay certain of Judge Porteous's expenses when he did not have his checkbook with him. Senate Vol. III at 877:11-13, 882:3-10 (Danos). Over time, Ms. Danos gradually wrote more checks on Judge Porteous's behalf until she eventually took it upon herself to write such checks without first discussing it with Judge Porteous. Senate Vol. III at 882:11-18 (Danos).

710. When Ms. Danos would write checks on Judge Porteous's behalf, she would then tell Judge Porteous how much she had paid so that he could reimburse her. Senate Vol. III at 882:17-21 (Danos).

711. Judge Porteous always quickly reimbursed Ms. Danos for the checks that she wrote on his behalf. Senate Vol. III at 882:22 – 883:3 (Danos).

712. Ms. Danos also had a habit of writing checks for people other than Judge Porteous, including her sons, who would then reimburse her. Senate Vol. III at 883:10-13, 884:1-6 (Danos).

713. On March 23, 2001, Rhonda Danos made a $1,088.41 payment to the Fleet Credit Card Company on the Porteouses' behalf with a check drawn on her personal bank account.

Senate Vol. III at 877:14-20 (Danos); Senate Vol. III at 978:25 – 979:3, 991:2-21, 994:13-17 (Horner).

714. On March 27, 2001, Judge Porteous redeemed with cash three $500 markers at the Treasure Chest Casino. Stipulation 194.

715. Chapter 13 bankruptcy trustee Beaulieu testified that the two preference payments that the Porteouses' failed to disclose in their bankruptcy filings "were inconsequential as far as [he] was concerned," "were not to an insider," and, as a result, he "would not have probably done anything on those two items." Senate Vol. IV at 1532:3-8 (Beaulieu).

716. In order to decide whether to pursue a preference payment, Chapter 13 bankruptcy trustee Beaulieu has to weigh the cost of pursuing a payment against the amount of money that may become available to pay creditors as a result. Senate Vol. IV at 1549:24 – 1550:1 (Beaulieu).

717. When Mr. Lightfoot listed "normal installments" in response to question 3 of the Porteouses' statement of financial affairs, he intended to disclose that the Porteouses were making their normal, contractual installment payments on their car leases and home mortgages. Senate Vol. III at 1089:2 – 1090:4 (Lightfoot).

718. There is no evidence to support the allegation that Mr. Lightfoot's listing of "normal installments" in response to question 3 of the Porteouses' statement of financial affairs was an intentional misrepresentation done with a fraudulent intent. *See generally* Senate Vols. I-V.

719. In connection with Chapter 13 bankruptcy cases filed in the Eastern District of Louisiana in 2001, the Chapter 13 bankruptcy trustee typically did not seek to recover or avoid pre-bankruptcy payments to creditors. Senate Vol. III at 1144:3-22, 1145:7-9 (Lightfoot).

720. Instead, in connection with Chapter 13 bankruptcy cases filed in the Eastern District of Louisiana in 2001, the Chapter 13 bankruptcy trustee would consider pre-bankruptcy payments to creditors for purposes of determining whether the proposed Chapter 13 repayment plan satisfied the Best Interests of Creditors test, which seeks to ensure that unsecured creditors receive at least as much value as they would under a Chapter 7 bankruptcy. Senate Vol. III at 1144:3 – 1145:9 (Lightfoot).

721. There is no evidence to support the allegation that the omission from the Porteouses' bankruptcy filings of the pre-petition payment to the Treasure Chest Casino or the Fleet Credit Card Company, if those payments should in fact have been disclosed, was an intentional omission done with a fraudulent intent. *See generally* Senate Vols. I-V.

Reasonable Minds Can and Do Disagree Concerning the Legal Effect of Casino Markers

722. In order for Judge Porteous's March 27, 2001 redemption of the Treasure Chest Casino markers to constitute a pre-petition payment to a creditor, a marker must constitute a debt. Senate Vol. III at 1032:3-21 (Horner).

723. Reasonable minds, including federal judges in the Fifth Circuit and expert witnesses called by both parties to testify before the Committee, can and do disagree with regard to whether a casino marker constitutes a debt or a check. House Ex. 5 (Fifth Circuit Special Investigatory Committee Report, at 18) & 6(b) (Fifth Circuit Judicial Council Dissent, at 39); Fifth Circuit at 64:10 – 65:24 (Porteous); Senate Vol. III at 1194:17 – 1195:22 (Keir); Senate Vol. IV at 1410:21 – 1411:10, 1465:10-23, 1466:24 – 1467:10, 1508:14 – 1509:4 (Pardo); Senate Vol. IV at 1540:22-25 (Beaulieu); Senate Vol. V at 1871:8-15 (Hildebrand).

724. The Comptroller of the Treasure Chest Casino in Kenner, Louisiana, Mr. Vincent Schwartz, explained to FBI Agent Horner in June 2003 that "a marker is a temporary check,"

which the casino will negotiate if the marker is not redeemed first. Senate Vol. III at 1033:2 - 1034:15 (Horner).

725. Four federal judges who participated in Judge Porteous's Fifth Circuit judicial disciplinary proceedings held that, "Under Louisiana commercial law, markers are considered 'checks' as defined by Louisiana statute." House Ex. 6(b) (Fifth Circuit Judicial Council Dissent, at 39, *citing TeleRecovery of Louisiana, Inc. v. Gaulon*, 738 So. 2d 662, 664-66 (La. Ct. App. 1999)). Those four federal judges further concluded that it was "debatable" whether post-petition markers executed by Judge Porteous constituted an actual extension of credit. House Ex. 6(b) (Fifth Circuit Judicial Council Dissent, at 39). While the Fifth Circuit Special Investigatory Committee report took the contrary view, it did so without citing to any supporting case law. House Ex. 5 (at 18-19).

726. During the Fifth Circuit Special Investigatory Committee hearings, Judge Porteous testified that (1) he disputed whether a marker constitutes credit and (2) he does not believe that purchasing gambling chips at a casino with a personal check would have violated any court order (including the confirmation order entered in his bankruptcy case). Fifth Circuit at 64:10 – 65:24 (Porteous).

727. Personal checks are negotiable instruments, which are governed by Article III of the Uniform Commercial Code, which has been enacted in Louisiana. Senate Vol. IV at 1443:11-15 (Pardo); Senate Vol. III at 1213:1-8 (Keir).

728. Personal checks, which are orders to pay (as opposed to promises to pay), are not debt instruments. Senate Vol. IV at 1444:21 – 1445:13, 1462:22, 1503:23 – 1504:5 (Pardo).

729. Article III of the Uniform Commercial Code provides that when a check is tendered and accepted as payment for an obligation, the exchange of the check suspends the obligation. Senate Vol. IV at 1443:11-19 (Pardo).

730. When an obligation is suspended by the exchange of a check, that check is the obligee's sole avenue for payment; the obligee may not legally enforce the suspended obligation unless and until the check is presented and dishonored. Senate Vol. IV at 1443:11 – 1444:11 (Pardo).

731. Under the Uniform Commercial Code, there is no legal difference between buying gambling chips from a casino with a marker and buying potato chips from a grocery store with a personal check; the legal analysis and effect are identical in each instance. Senate Vol. IV at 1411:7-10, 1444:12-17 (Pardo).

732. Neither the payment form used nor the nature of goods or services purchased has any effect on the analysis of whether a particular transaction results in the incurrence of debt. Senate Vol. IV at 1442:24 – 1443:3, 1444:12-17 (Pardo).

733. During his testimony before the Committee, the House of Representatives' bankruptcy expert, Judge Keir, did not draw any distinction, for purposes of determining whether a debt is incurred, between buying gambling chips with a marker, buying groceries with a personal check, or cashing a check. Senate Vol. III at 1214:24 – 1215:19 (Keir)

734. Under Louisiana law, a casino marker is considered to be a check, which, as an order to pay, is not a debt instrument. Senate Vol. IV at 1444:21 – 1445:13, 1462:22, 1503:23 – 1504:5 (Pardo); *TeleRecovery of Louisiana, Inc. v. Gaulon,* 738 So. 2d 662, 664-66 (La. Ct. App. 1999) (examining the features and attributes of casino markers and concluding that markers constitute checks under Louisiana law).

735. Casino markers do not represent or constitute borrowing or extensions of credit. Senate Vol. IV at 1462:9-18, 1503:19-21 (Pardo).

736. The tender and acceptance of a casino marker (like a personal check) creates only a contingent debt, which becomes fixed and payable if and only if the casino presents the marker to its patron's bank and the marker is dishonored. Senate Vol. IV at 1462:1-8, 1463:24 – 1464:4 (Pardo).

Other Issues Concerning the Porteouses' Bankruptcy Filings

737. The chart that FBI Agent Horner prepared of Judge Porteous's gambling winnings and losing in the year prior to filing for bankruptcy protection reflects only the information that he was able to obtain from casinos and, as a result, does not include cash transactions or so-called non-rated (or non-recorded) play. Senate Vol. III at 999:17-25; 1036:15 – 1039:15 (Horner).

738. There is no evidence to support the allegation that the omission of the Porteouses' gambling losses, if they in fact had any net losses, from their bankruptcy filings was an intentional omission done with a fraudulent intent. *See generally* Senate Vols. I-V.

739. On the day that the Porteouses' original bankruptcy petition was filed (March 28, 2001), the Grand Casino Gulfport's records show that Judge Porteous did not have any markers outstanding. Stipulation 198-99.

740. There is no prohibition against a Chapter 13 debtor withdrawing money from an individual retirement account and using that money to pay expenses. Senate Vol. IV at 1440:10-14 (Pardo). Under the Bankruptcy Code, funds held in an individual retirement account are exempt and, therefore, not subject to the claims of creditors. Senate Vol. IV at 1440:15-24 (Pardo).

The Porteouses' Chapter 13 Repayment Plan

741. The Chapter 13 repayment plan originally proposed by the Porteouses was based on their actual expenses and contemplated a monthly payment to creditors of $875. Senate Vol. III at 1144:20-24, 1154:16-25 (Lightfoot); Porteous Ex. 1100(d)

742. In response to an objection by the Chapter 13 bankruptcy trustee, the Porteouses proposed an amended Chapter 13 repayment plan in which they significantly cut their expenses and nearly doubled their proposed monthly payment to creditors to $1,600, an increase of $725 per month. Senate Vol. III at 1145:4-24, 1146:18 – 1147:2, 1155:1-25 (Lightfoot); Senate Vol. IV at 1525:16 – 1526:6 (Beaulieu); Senate Vol. IV at 1434:13-20, 1435:2-12 (Pardo); Porteous Ex. 1100(g) (Trustee's Objection), 1100(h) (Amended Schedule I) & 1100(i) (Amended Chapter 13 Plan).

743. An objection by the Chapter 13 bankruptcy trustee to a proposed Chapter 13 repayment plan is a common event, which happens frequently as part of the Chapter 13 bankruptcy process. Senate Vol. IV at 1547:1-9 (Beaulieu).

744. The Chapter 13 bankruptcy trustee, Mr. Beaulieu, analyzed, approved, and recommended confirmation of the Porteouses' amended Chapter 13 repayment plan. Porteous Ex. 1100(o) (Trustee's Summary and Analysis of Chapter 13 Plan).

745. Where the bankruptcy trustee recommends confirmation of a Chapter 13 repayment plan, and no creditor or other party objects, the proposed repayment plan is typically confirmed. Senate Vol. V at 1900:25 – 1901:21 (Barliant).

Confirmation of the Porteouses' Chapter 13 Repayment Plan

746. The amended Chapter 13 repayment plan proposed by the Porteouses and approved and recommended by the Chapter 13 bankruptcy trustee, Mr. Beaulieu, was confirmed

by the Bankruptcy Court in June 2001. Senate Vol. III at 1136:22-25 (Lightfoot); House Ex. 133 (Confirmation Order); Stipulation 278-79.

747. Mr. Lightfoot did not sit down and review with the Porteouses the Bankruptcy Court's confirmation order. Senate Vol. III at 1147:3-25 (Lightfoot).

Best Interests of Creditors

748. The purpose of a Chapter 13 bankruptcy repayment plan is to deliver to the trustee an amount of money (which he then distributes to creditors) at least equal to what unsecured creditors would have received had the bankruptcy case been filed under Chapter 7, where the debtor's non-exempt assets are liquidated and the proceeds distributed to creditors. Senate Vol. III at 1184:14-18 (Keir); Senate Vol. IV at 1420:10 – 1421:2, 1422:25 – 1423:2 (Pardo).

749. A Chapter 13 debtor is not required to commit or liquidate assets in order to effectuate a Chapter 13 repayment plan. Senate Vol. V at 1863:10-19 (Hildebrand). Instead, Chapter 13 debtors typically commit future income to fund their repayment plans. Senate Vol. V at 1863:10-19 (Hildebrand).

750. The Chapter 13 repayment plan proposed by the Porteouses, approved and recommended by the Chapter 13 bankruptcy trustee, and confirmed by the Bankruptcy Court satisfied the Best Interests of Creditors test because the amount of money that the Porteouses repaid to their unsecured creditors exceeded the amount that those creditors would have received had the bankruptcy case been filed under Chapter 7, where the Porteouses' non-exempt assets would have been liquidated and the proceeds distributed to their creditors. Senate Vol. IV at 1421:6 – 1422:18 (Pardo); Senate Vol. V at 1854:4-15 (Hildebrand).

751. Even if the Porteouses' bankruptcy filings had not included the errors and omissions alleged by the House of Representatives, the Porteouses' confirmed Chapter 13 repayment plan would still have satisfied the Best Interests of Creditors test because unsecured creditors received more as a result of the Porteouses' completed repayment plan than they would have in a Chapter 7 liquidation. Senate Vol. IV at 1431:4 1432:18 (Pardo).

Post-Petition Activities

752. The Bankruptcy Code (11 U.S.C. § 101, *et seq.*) does not contain any prohibition against gambling. Senate Vol. V at 1906:7 – 1907:1 (Barliant).

753. In May 2001, Ms. Danos wrote and delivered a check to the Beau Rivage Casino on Judge Porteous's behalf to redeem a previously executed marker. Senate Vol. III at 884:8-13 (Danos); Senate Vol. III at 1006:7-11 (Horner); Stipulation 251 & 253-54. Ms. Danos did this because she had already planned to travel to the Beau Rivage Casino and was saving Judge Porteous a trip. Senate Vol. III at 884:14-16, 884:20-22 (Danos). This was not the first time that Ms. Danos had taken a check to a casino for Judge Porteous in order to save him a trip. Senate Vol. III at 884:23 – 885:4 (Danos). Prior to her taking the check to the Beau Rivage Casino, Judge Porteous endorsed a check payable to him from his exempt individual retirement account over to Ms. Danos as reimbursement. Senate Vol. III at 1006:2-6 (Horner); Stipulation 249-50 & 252.

754. Instructions given by a Chapter 13 bankruptcy trustee to a debtor, either in writing in a pamphlet or orally at a Section 341 meeting of creditors, are not legally binding and have no legal effect. Senate Vol. V at 1910:10 – 1911:1 (Barliant).

755. There is absolutely no legal authority under the Bankruptcy Code for a bankruptcy judge to prohibit a Chapter 13 debtor from incurring post-petition or post-confirmation debt. Senate Vol. V at 1908:13-24 (Barliant).

756. The Bankruptcy Code does not include any prohibition against a Chapter 13 debtor borrowing money, buying anything on credit, or incurring debt without permission from the bankruptcy court. Senate Vol. IV at 1441:12-22 (Pardo).

757. The Bankruptcy Code does not include any prohibition against a Chapter 13 debtor incurring debt without permission from the bankruptcy trustee. Senate Vol. IV at 1441:23 – 1442:7 (Pardo); Senate Vol. V at 1909:14-17 (Barliant).

758. The first sentence of paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case is absolutely unauthorized by the Bankruptcy Code and constitutes judicial error. Senate Vol. V at 1912:10-12 (Barliant); House Ex. 133.

759. A literal interpretation and application of the language of paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case would lead to absurd results. Senate Vol. IV at 1446:9-13 (Pardo).

760. For example, if paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case were interpreted and applied literally, Judge Porteous and his wife would have technically violated the order by going to a restaurant and ordering lunch, taking their car to a garage and obtaining an oil change, and turning on the lights in their house. Senate Vol. IV at 1441:23 – 1442:23, 1498:4-9 (Pardo); Senate Vol. V at 1911:12-21 (Barliant).

761. It would be impossible for any debtor to comply with a literal interpretation and application of paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case. Senate Vol. V at 1911:2-11 (Barliant).

762. If former Bankruptcy Judge Barliant had entered a Chapter 13 confirmation order containing the language set out in paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case, he would have "[k]ick[ed] [him]self for having entered the order" and either vacated the order or construed in a way to make it consistent with the Bankruptcy Code. Senate Vol. V. at 1911:22 – 1912:20 (Barliant); House Ex. 133.

763. To make paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case consistent with the Bankruptcy Code, former Bankruptcy Judge Barliant would limit the application of the first sentence to the circumstances described in the second sentence, such that post-petition debt would not be prohibited, but instead would be non-dischargeable in the Chapter 13 bankruptcy case unless it were approved by the trustee. Senate Vol. V at 1912:21 – 1913:19 (Barliant).

764. Former Bankruptcy Judge Barliant testified that neither post-petition casino markers nor Judge Porteous's post-petition use of a Capital One credit card would violate paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case, if that order were construed as necessary to make it consistent with the authority vested by the Bankruptcy Code in the bankruptcy judge who issued it. Senate Vol. V at 1929:23 – 1930:11 (Barliant).

765. The consequence under the Bankruptcy Code for a Chapter 13 debtor incurring debt after entry of a confirmation order without trustee approval is that that debt is not subject to the pending bankruptcy case and may be collected in the usual course. Senate Vol. III at 1148:3-15 (Lightfoot); Senate Vol. V at 1908:25 – 1909:13, 1909:18 1910:9 (Barliant).

766. Mr. Lightfoot, an attorney practicing consumer bankruptcy law in New Orleans for nearly 20 years, is not aware of any debtor ever being held in contempt of court or being

referred for criminal prosecution for incurring debt after plan confirmation without court authority. Senate Vol. III at 1148:16-23, 1170:19 – 1171:5 (Lightfoot).

767. Post-petition and post-confirmation prohibitions against incurring additional debt are intended to preserve the viability of Chapter 13 repayment plans. Senate Vol. III at 1153:9-18 (Lightfoot); Senate Vol. V at 1868:24 – 1869:4 (Hildebrand).

768. The Capital One credit card that Judge Porteous obtained and used following plan confirmation had a credit limit of $200 (which was later increased to $400 and then $600). Stipulation 315, 318-19.

769. FBI Agent Horner's testimony before the Committee that the first use of that Capitol One credit card occurred on September 17th is directly contradicted by the stipulated facts, specifically Stipulation 316, in which the House affirmatively stipulated that the first use of that card occurred on August 23rd. Stipulation 316; Senate Vol. III at 1009:6-8 (Horner).

770. Mr. Hildebrand testified that, if he were to discover that a Chapter 13 debtor had used a credit card without permission, he would file a motion to dismiss the bankruptcy case, which he would generally withdraw if the debtor explained his actions and agreed to a strict compliance order. Senate Vol. V at 1869:20 – 1870:11 (Hildebrand).

771. Former Bankruptcy Judge Barliant testified that, if a Chapter 13 debtor who was timely making all of his plan repayments incurred post-petition debt in violation of paragraph 4 of the confirmation order entered in the Porteouses' bankruptcy case, he would be very reluctant to dismiss the case, since doing so would end those plan repayments and not help any of the interested parties. Senate Vol. V at 1914:17 – 1915:7 (Barliant).

772. Former Bankruptcy Judge Barliant would not have pursued contempt or other sanctions against a debtor who failed to cure non-compliance with a confirmation order. Senate Vol. V at 1916:9-12, 1917:25 – 1918:6 (Barliant).

773. Former Bankruptcy Judge Barliant testified that he certainly would not, under any circumstances, make a criminal referral for potential prosecution of a debtor who incurred post petition debt. Senate Vol. V at 1917:25 – 1918:6 (Barliant).

774. A "credit line" or "line of credit" at a casino does not constitute either an extension of credit or borrowing. Senate Vol. IV at 1462:9-18 (Pardo). Instead, a casino "credit line" constitutes a casino's evaluation of the solvency of a patron (and his or her bank account) and reflects the casino's willingness to accept checks, and for up to what total amount, from that patron. Senate Vol. IV at 1462:19 – 1463:4 (Pardo).

Unlike Most Chapter 13 Debtors, the Porteouses Successfully Completed Their Chapter 13 Plan

775. The majority (ranging from more than half to upwards of two-thirds or three-quarters) of confirmed Chapter 13 repayment plans are not successfully completed. Senate Vol. IV at 1419:12-23 (Pardo); Senate Vol. III at 1153:19-22 (Lightfoot).

776. The Porteouses successfully and timely completed all payments contemplated by their confirmed Chapter 13 repayment plan. Senate Vol. III at 1149:1-6, 1153:23-25 (Lightfoot); Senate Vol. IV at 1525:14-15 (Beaulieu); Porteous Ex. 1100(z); Stipulation 329.

777. In successfully completing their confirmed Chapter 13 repayment plan, the Porteouses paid a total of $57,600 to the Chapter 13 bankruptcy trustee, of which he disbursed $52,567.01 to the Porteouses' unsecured creditors. Senate Vol. III at 1150:10 – 1151:16 (Lightfoot); Senate Vol. IV at 1525:11-13 (Beaulieu); Porteous Ex. 1100(z).

778. The Porteouses' total Chapter 13 repayments to creditors – totaling more than $52,000 – is higher than many other repayment plans that Mr. Lightfoot has seen, and was characterized by Mr. Hildebrand as "a pretty big plan." Senate Vol. III at 1151:3-9 (Lightfoot); Senate Vol. V at 1875:11-14 (Hildebrand).

Trustee Beaulieu Was Well Aware of All Allegations of Bankruptcy Misconduct

779. After filing the Porteouses' original Chapter 13 bankruptcy petition, Mr. Lightfoot called Mr. Beaulieu and specifically notified him that the case had been filed with an incorrect name. Senate Vol. IV at 1524:8-22 (Beaulieu).

780. On January 22, 2004, prior to completion of the Porteouses' confirmed Chapter 13 repayment plan and prior to discharge of their remaining debt, attorneys with the Justice Department, including Noah Bookbinder and Dan Petalas, and agents and analysts with the FBI, including Patrick Bohrer, DeWayne Horner, and Gerald Fink, met with Mr. Beaulieu at his office for approximately two hours and discussed the Porteouses' bankruptcy case. Senate Vol. IV at 1526:10-23 (Beaulieu); Senate Vol. III at 1044:12 – 1046:7, 1047:13-16 (Horner); Stipulation 326; Porteous Ex. 1108 (Letter from Beaulieu Staff Attorney to FBI Agent Horner).

781. In their discussions, the Justice Department and FBI personnel specifically made Mr. Beaulieu aware of the following issues concerning the Porteouses' bankruptcy case: (1) that the original bankruptcy petition was filed with the Porteouses' name misspelled; (2) that the Porteouses' disclosed income was based on a May 2000 paystub; (3) that the bankruptcy filings did not account for the changes in the Porteouses' income caused by the FICA limits; (4) that the Porteouses failed to disclose tax refunds; (5) that the Porteouses had used credit cards without permission; (6) that the Porteouses had executed gambling markers; and (7) the Porteouses' lifestyle activities might not be consistent with their schedule J disclosures. Senate Vol. IV at

1526:24 – 1527:11, 1539:15-25 (Beaulieu); Senate Vol. III at 1046:8 – 1047:12 (Horner); Porteous Ex. 1108 (Letter from Beaulieu Staff Attorney to FBI Agent Horner).

782. Despite being made specifically aware of the issue, Mr. Beaulieu concluded that addressing the effect of the FICA limits on the Porteouses' income would not substantially increase the amounts repaid to unsecured creditors and, therefore, declined to take any further action. Porteous Ex. 1108 (Letter from Beaulieu Staff Attorney to FBI Agent Horner); Senate Vol. IV at 1438:10 – 1439:4 (Pardo).

783. Following their discussions, Mr. Beaulieu had his staff attorney send a letter to FBI Agent Horner notifying him that Mr. Beaulieu did not intend to take any action in connection with the issues that the Justice Department and FBI raised in connection with the Porteouses' bankruptcy case. Senate Vol. IV at 1527:12-14 (Beaulieu); Senate Vol. III at 1047:17 – 1048:15, 1049:23 – 1050:1 (Horner); Porteous Ex. 1108 (Letter from Beaulieu Staff Attorney to FBI Agent Horner dated April 1, 2004); Stipulation 328.

784. Had Mr. Beaulieu decided to take action with regard to the issues concerning the Porteouses' bankruptcy raised to him by the Justice Department and FBI, he would have filed a motion to dismiss the case with the bankruptcy court and left it to the discretion of the Bankruptcy Judge and the U.S. Trustee to take whatever action they saw fit. Senate Vol. IV at 1530:8-21, 1538:11 – 1539:3 (Beaulieu).

785. The letter that Mr. Beaulieu's staff attorney sent to FBI Agent Horner specifically noted that the government was free to file an objection with the bankruptcy court concerning the Porteouses' bankruptcy case. Porteous Ex. 1108 (Letter from Beaulieu Staff Attorney to FBI Agent Horner).

786. The government never filed any objection with the bankruptcy court concerning the Porteouses' bankruptcy case. Senate Vol. IV at 1528:3-12 (Beaulieu); Porteous Ex. 1109 (Letter from DOJ Public Integrity Section to Beaulieu dated April 13, 2004).

787. Bankruptcy judges typically do not play a role in administering Chapter 13 bankruptcy cases; instead, bankruptcy judges rely extensively upon the bankruptcy trustee to perform that function, exercise his or her discretion, and bring before the court only those issues that are material and warrant the court's attention. Senate Vol. V at 1895:11 – 1898:3 (Barliant).

Discharge

788. Following successful completion of their confirmed Chapter 13 repayment plan, the bankruptcy court discharged the remaining balance of the Porteouses' scheduled debts. Stipulation 330.

789. No party ever sought to dismiss the Porteouses' bankruptcy case, or to convert that Chapter 13 case into a Chapter 7 case. Senate Vol. IV at 1496:1-9 (Pardo).

790. No creditor ever objected to any part of the Porteouses' Chapter 13 repayment plan. Senate Vol. IV at 1528:13-16 (Beaulieu).

791. Neither the Justice Department nor the FBI ever filed any objection with the bankruptcy court concerning the Porteouses' bankruptcy case. Senate Vol. IV at 1528:3-12 (Beaulieu).

No Criminal Charges

792. The federal government, acting through the Justice Department and FBI, conducted a thorough, multi-year investigation into the Porteouses' conduct in connection with their Chapter 13 bankruptcy case. Senate Vol. III at 1021:18-20 (Horner); Stipulation 18.

793. The Justice Department and FBI specifically "investigated whether Judge Porteous ... committed or conspired to commit honest services mail- or wire-fraud in violation of l8 U.S.C. §§ 371,1341, 1343, and 1346, submitted false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filed false declarations, concealed assets, and acted in criminal contempt of court during his personal bankruptcy action in violation of 18 U.S.C. §§ 152 and 401." House Ex. 4 (DOJ Declination Letter, at 1); Senate Vol. III at 1022:2-21 (Horner).

794. While he was under investigation by the Justice Department and FBI, Judge Porteous signed a series of tolling agreements extending the applicable statutes of limitations for a number of criminal violations for which he was being investigated, including bankruptcy fraud (18 U.S.C. § 152), bribery (18 U.S.C. § 201), criminal conflict of interest (18 U.S.C. § 208), criminal contempt (18 U.S.C. § 401), false statements (18 U.S.C. § 1001), and honest services mail- and wire-fraud (18 U.S.C. §§ 1341, 1343, and 1346). Porteous Ex. 1003, 1004, 1005; Senate Vol. III at 1023:24 – 1024:9, 1029:9-12 (Horner).

795. After completing its thorough, multi-year investigation into the Porteouses' conduct in connection with their Chapter 13 bankruptcy case, the Justice Department specifically declined to bring any criminal charges against Judge Porteous. Senate Vol. III at 1021:21 – 1022:1, 1022:22 – 1023:4 (Horner); House Ex. 4 (DOJ Declination Letter, at 1); Stipulation 18.

796. Among the reasons stated by the Justice Department for its decision not to bring any criminal charges against Judge Porteous are "concerns about the materiality of some of Judge Porteous's provably false statements," "the special difficulties of proving *mens rea* and intent to deceive beyond a reasonable doubt in a case of this nature," and "the need to provide

consistency in charging decisions concerning bankruptcy and criminal contempt matters." House Ex. 4 (DOJ Declination Letter, at 1); Senate Vol. III at 1023:5-13 (Horner).

Errors In Bankruptcy Are Common

797. Most individuals who prepare bankruptcy forms for the purpose of seeking bankruptcy protection are under severe economic distress and are very anxious to obtain the relief afforded by the bankruptcy process, including the automatic stay, as quickly as possible. Senate Vol. V at 1852:17 – 1853:2, 1867:9-14 (Hildebrand).

798. As a result, individuals preparing bankruptcy forms often do not read all of the instructions and do not complete bankruptcy forms accurately. Senate Vol. V at 1853:3-6 (Hildebrand).

799. An empirical study of consumer bankruptcy cases filed in 1999 in the Eastern District of Michigan conducted by U.S. Bankruptcy Judge Steven W. Rhodes determined that (1) 99% of those bankruptcy cases reviewed contained at least one error, (2) bankruptcy schedules and statements of financial affairs contained, on average, 3.4 errors, and (3) 26% of the bankruptcy cases reviewed contained five or more errors. Senate Vol. IV at 1452:12 – 1453:15 (Pardo); Porteous Ex. 1070 (Rhodes Study, at DEF01682 and DEF01706-07).

800. Errors in Chapter 13 bankruptcy cases filed in the Eastern District of Louisiana are not unusual. Senate Vol. IV at 1529:14-18 (Beaulieu).

801. Mr. Hildebrand, the standing Chapter 13 bankruptcy trustee for the Middle District of Tennessee for more than 28 years, testified that, in his expert opinion, there are errors in virtually every Chapter 13 case and that he does not believe he has ever seen a perfect Chapter 13 bankruptcy filing. Senate Vol. V at 1864:8-24 (Hildebrand).

802. Mr. Hildebrand also testified that he has seen a number of bankruptcy cases filed with incorrect or incomplete names. Senate Vol. V at 1857:12 – 1858:6, 1876:14-22 (Hildebrand). When that happens, Mr. Hildebrand simply requires the debtor to amend the petition, correct the name, and provide notice of that change to all parties in interest. Senate Vol. V at 1858:7-20, 1876:25 – 1877:2, 1877:8-14 (Hildebrand).

803. In evaluating mistakes made in Chapter 13 bankruptcies, the bankruptcy trustee is tasked with investigating and evaluating the good faith and sincerity of the debtor, which is done primarily by examining the debtor face-to-face at the meeting of creditors. Senate Vol. V at 1866:15 – 1867:3 (Hildebrand).

804. Perfection is not the standard by which bankruptcy filings are or ought to be judged. Senate Vol. V at 1889:5-8, 1890:3-7 (Hildebrand).

805. Errors in bankruptcy cases are not limited to debtors' mistakes. Senate Vol. IV at 1454:6-8 (Pardo).

806. An empirical study of 1,700 Chapter 13 bankruptcy cases filed in 2006 conducted by law professor Katherine Porter found that in 95% of those cases either the debtor, a creditor, or both made inaccurate statements in bankruptcy filings that were submitted to a bankruptcy court subject to federal criminal laws regarding bankruptcy fraud. Senate Vol. IV at 1454:9-14, 1454:21 - 1457:14 (Pardo); Porteous Ex. 1068 (Porter Bankruptcy Study).

<u>Bankruptcy Is Not A Strict Liability System</u>

807. The U.S. bankruptcy system, as established by Congress through enactment of the Bankruptcy Code (11 U.S.C. § 101, *et seq.*), is not a strict liability system. Senate Vol. IV at 1414:16-24, 1508:9-13 (Pardo).

808. Instead, the U.S. bankruptcy system, as established by Congress through enactment of the Bankruptcy Code (11 U.S.C. § 101, *et seq.*), is designed to recognize that there is a spectrum of conduct regarding nondisclosures, errors, and omissions, and the bankruptcy courts and other participants in the bankruptcy system are empowered with a variety of tools to address those issues. Senate Vol. IV at 1414:25 – 1415:18, 1458:1-24, 1507:13-25 (Pardo).

809. 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. Senate Vol. IV at 1458:9-18 (Pardo).

810. Since the Bankruptcy Code is a highly technical statute, which requires specialized expertise to understand and apply, bankruptcy issues should not be viewed as black or white. Senate Vol. IV at 1515:6 – 1516:4 (Pardo).

811. The appropriate consequence for a debtor's failure to disclose assets and liabilities candidly is denial of discharge. Senate Vol. V at 1879:4-8 (Hildebrand).

E. Article IV

Article IV Allegations

812. Article IV alleges that "[i]n 1994, in connection with his nomination to be a judge of the United States District Court for the Eastern District of Louisiana," Judge Porteous "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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

813. Article IV alleges that "[o]n 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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

814. Article IV alleges that "[d]uring 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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

815. Article IV alleges that "[o]n 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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

816. Article IV alleges that these statements were, in fact, false because Judge Porteous should have responded to the questions above in the affirmative in light of the following information:

817. That Judge Porteous had appointed Robert 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";

818. That he had solicited and accepted numerous things of value from the Marcottes while at the same time taking official actions that benefitted the Marcottes; and

819. That Louis Marcotte made false statements to the FBI in an effort to assist Judge Porteous in being appointed to the federal bench. 111 Cong. Rec. S1645 (Mar. 17, 2010).

820. Article IV alleges that Judge Porteous's failure to disclose these facts "deprived the United States Senate and the public of information that would have had a material impact on his confirmation." 111 Cong. Rec. S1645 (Mar. 17, 2010).

821. Article IV does not allege that Judge Porteous suborned false statements. 111 Cong. Rec. S1645 (Mar. 17, 2010).

822. Article IV necessarily depends on certain findings related to Articles I and II.

823. Article IV contains an identical claim as that contained in Article II: "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." 111 Cong. Rec. S1645 (Mar. 17, 2010).

824. Article IV does not contain a claim that Judge Porteous knew and understood that Robert Creely made false statements to the FBI in an effort to assist Judge Porteous in being appointed to the Federal bench. 111 Cong. Rec. S1645 (Mar. 17, 2010).

825. Article IV does not allege that Judge Porteous lied when he stated during his background check that he had not "abused alcohol . . . during his entire adult life." 111 Cong. Rec. S1645 (Mar. 17, 2010).

Lack of Evidence

826. The House has presented no evidence that Judge Porteous tried to conceal the above information or, when filling out his Supplemental SF-86, thought that there was something in his personal life that could be used by someone to coerce or blackmail him. *See generally* Senate Vols. I-V.

827. The House has presented no evidence that Judge Porteous, when filling out his Supplemental SF-86, thought that there was anything in his life that could cause an embarrassment to Judge Porteous or President Clinton if publicly known. *See generally* Senate Vols. I-V.

828. The House has presented no evidence that Judge Porteous, during his FBI background checks, believed he was concealing any activity or conduct that could have been used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on his character, reputation, judgment, or discretion. *See generally* Senate Vols. I-V.

829. The House has presented no evidence that Judge Porteous, when completing his Senate Judiciary Committee "Questionnaire for Judicial Nominees," believed that he had failed to disclose any unfavorable information that existed that could affect his nomination. *See generally* Senate Vols. I-V.

830. When asked about the facts related to his relationship with Amato & Creely during the Fifth Circuit proceedings, Judge Porteous did not conceal any activity. *See generally* House Ex. 10.

Background Check and Appointment Process in General

831. Professor G. Calvin Mackenzie, designated an expert in this matter, testified that the process of FBI background checks began in the Eisenhower administration and was directed at uncovering national security risks. Senate Vol. V at 2000:20-2001:20 (Mackenzie).

832. Mackenzie explained that once the White House decides to nominate an individual for a presidential appointment, requiring Senate approval, an elaborate process involving a lot of paper ensues. Senate Vol. V at 1999:17-2000:19 (Mackenzie).

833. Mackenzie stated that the average nominee has to answer approximately 200 written questions during the nomination process and that many of these questions are redundant. Senate Vol. V at 2018:19-2019:03 (Mackenzie).

SF-86 and Supplemental SF-86

834. On or about April 27, 1994, in connection with a possible nomination to the United States District Court for the Eastern District of Louisiana, Judge Porteous signed a completed Standard Form ("SF") 86. House Ex. 69(b) (PORT000000232-43); *see also* Stipulation 169.

835. On his SF-86, Judge Porteous listed "Don C. Gardner" as an individual who knew him well. House Ex. 69(b) (PORT000000238).

836. The SF-86 asked detailed questions, including "Have you ever been charged with or convicted of any felony offense?" and "Have you experience problems on or off a job from your use of illegal drugs or alcohol?" House Ex. 69(b) (PORT000000240-41).

837. At some point between April 27, 1994 and July 6, 1994, in connection with a possible nomination to the United States District Court for the Eastern District of Louisiana,

Judge Porteous signed a completed Supplemental SF-86. House Ex. 69(b) (PORT000000297-98); *see also* Stipulation 168 & 170.

838. The Supplemental SF-86 asked detailed questions, including "Please list all of your interests in real property" and "Have you or any firm, company or other entity with which you have been associated ever been convicted of a violation of any Federal, state, county, or municipal law, regulation or ordinance?" House Ex. 69(b) (PORT000000297).

839. The last question on the Supplemental SF-86, No. 10S, states "Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause embarrassment to you or to the President if publicly known? If so, please provide full details." House Ex. 69(b) (PORT000000298).

840. Judge Porteous dated and signed an affirmation which read "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." House Ex. 69(b) (PORT000000298).

841. Bobby Hamil was an FBI agent for twenty five years, having served between 1983 and 2008. Senate Vol. III at 902:10-14; 931:09-10 (Hamil).

842. Hamil testified that, as an FBI agent, he reviewed various completed SF-86's in preparation for interviews. Senate Vol. III at 940:17-20 (Hamil).

843. Hamil testified that, in his experience, he could not recall a single instance where a candidate responded with an affirmative answer to the question regarding whether "there is anything in your life that could cause embarrassment to you or to the President if publicly known." Senate Vol. III at 940:21-941:04 (Hamil).

844. Hamil testified that, in his experience, the individuals conducting the background investigations were not instructed to inquire further if they observed a negative response to the question on the SF-86 related to embarrassment. Senate Vol. III at 941:05-17 (Hamil).

845. Professor Mackenzie, an expert designated in this matter, testified that there are no guidelines as to what constitutes embarrassing information in relation to the question on the Supplemental SF-86. Senate Vol. V at 2013:08-2015:01 (Mackenzie). Mackenzie labeled this question "ambiguous" and "very difficult to apply." *Id.* Mackenzie further stated 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." *Id.*

846. Mackenzie testified that he is not aware of any individual who has been prosecuted or removed from office for falsely answering the question posed in the Supplemental SF-86, which is the subject of Article IV. Senate Vol. V at 2021:16-22 (Mackenzie).

847. Mackenzie testified that he is not aware of any individual who has ever responded affirmatively to this question posed in the Supplemental SF-86, which is the subject of Article IV. Senate Vol. V at 2021:23-25 (Mackenzie).

FBI Background Investigation Commences

848. On April 27, 1994, Judge Porteous signed a "Memorandum for Prospective Appointees" issued to him by Bernard Nussbaum, Counsel to the President, that gave Judge Porteous's consent to the FBI to "investigate your background or conduct appropriate file reviews in connection with the consideration of [his] application for employment." House Ex. 69(b) (PORT000000225).

849. On June 23, 1994, the United States Department of Justice instructed the "Chief of Background Investigations" to "initiate a background investigation of [Judge Porteous], a candidate for presidential appointment as the United States District Judge" for the "Eastern District of Louisiana." House Ex. 69(b) (PORT000000224).

850. Beginning on June 24, 1994, during its background investigation of Judge Porteous for his federal judgeship nomination, the FBI interviewed many individuals. Stipulation 176.

851. On June 30, 1994, the FBI interviewed Senator Bennett Johnston, through a staff assistant. Johnston reported that he had known Porteous "for five to ten years. The Senator thinks highly of the candidate and believes him to be well-qualified. … Senator Johnston continues to recommend the candidate." House Ex. 69(b) (PORT000000278).

852. On June 30, 1994, the FBI interviewed Senator John Breaux, through a staff assistant. Breaux reported that he had known Porteous "for approximately nine years. The Senator thinks highly of the candidate, both on a personal and professional basis, and considers him to be a friend. … Senator Breaux continues to recommend the candidate." House Ex. 69(b) (PORT000000279).

First FBI Interview of Judge Porteous

853. On or about July 6, 1994, in connection with his FBI background investigation, Judge Porteous was interviewed by the FBI, and a summary of that interview (an FBI "302") was prepared by the FBI. Stipulation 180.

854. Prior to that date, Judge Porteous had signed his Supplement to the SF-86. Stipulation 170.

855. Hamil stated over the course of his career, he conservatively estimated that he had performed one hundred interviews relating to FBI background checks. Senate Vol. III at 931:11-18 (Hamil).

856. Hamil was one of the two agents that were involved in the interview of Judge Porteous that took place on July 6 and July 8, 1994. Senate Vol. III at 909:10-13 (Hamil).

857. Hamil stated that prior to the interview, he would have reviewed the candidate's SF-86 as well as the instructions that come from FBI headquarters for specific questioning of the candidate. Senate Vol. III at 906:10-22 (Hamil).

858. Hamil testified that there was a standard or general format that FBI agents follow in the course of interviewing candidates in relation to background checks. Senate Vol. III at 904:03-07 (Hamil). Hamil stated that the FBI utilized an acronym CARLABFAD, as a way to remember the various points they were to focus on. Senate Vol. III at 904:08-905:20 (Hamil). C referred to character or information that would adversely influence the candidate's character; A referred to associates, R referred to responsibility, L referred to loyalty to the United States, [A refers to ability], B referred to bias and/or prejudice, F referred to financial responsibility, A referred to alcohol abuse, and D referred to use of illegal drugs or the abuse of prescriptions drugs. *Id.*

859. Hamil further testified that the last question that he is instructed to ask relates to 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 their reputation or character. Senate Vol. III at 905:21-906:05 (Hamil).

860. Hamil testified that he had no independent recollection of what he did during the background investigation regarding Judge Porteous and that he could not recall or visualize the

contextual situation of any of the interviews he performed relative to Judge Porteous's background check. Senate Vol. III at 907:11-15; 932:06-23 (Hamil).

861. Hamil testified that when a candidate is interviewed, they are not placed under oath, given the opportunity to review or comment on the summary write-up of the interview, that the interviewee is not given a copy of the document, and that Judge Porteous did not review the information before it was submitted. Senate Vol. III at 933:14-934:01 (Hamil).

862. Hamil testified that no audiotape or videotape was made of the interview with Judge Porteous. Senate Vol. III at 934:02-11 (Hamil).

863. The third page of the FBI interview of Judge Porteous states that "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 that would impact negatively on the candidate's character, reputation, judgment or discretion." House Ex. 69(i).

864. Hamil testified that the question that asks the interviewee to identify 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 is asked in the compound fashion it appears and is always asked to interviewees during background checks. Senate Vol. III at 938:01-14 (Hamil).

865. Some form of the question that asks the interviewee to identify 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 appears in over 60 interviews of various individuals within the overall background check file of Judge Porteous and not a single individual answered in the affirmative to the question. *See generally* House Ex. 69(b).

866. The fact that not a single individual answered affirmatively when asked to identify 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 did not surprise Mr. Hamil. Senate Vol. III at 939:03-07 (Hamil).

867. In Hamil's experience, in all of the interviews he has conducted where an interviewee was asked to identify 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, he cannot recall a single individual answering in the affirmative to that question. Senate Vol. III at 939:08-21 (Hamil).

868. Hamil further testified, upon questioning from House counsel, that such negative answers were not limited to just candidates, but also to non-candidate interviews, stating "you would rarely get a positive response" and "its just about always no." Senate Vol. III at 955:18-956:20 (Hamil).

869. Hamil testified that interviewees often reveal adverse information during the course of an interview, but do not do so in response to the question asking the interviewee to identify 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. Senate Vol. III at 956:16-957:07 (Hamil).

870. Professor Mackenzie, an expert designated in this matter, testified that the question asking the interviewee to identify 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 is asked "routinely" of "virtually everybody who is interviewed. Senate Vol. V at 2003:23-2004:11 (Mackenzie).

871. Professor Mackenzie, an expert designated in this matter, testified that he is not aware of any candidate that has ever responded affirmatively to the question asking the interviewee to identify 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. Senate Vol. V at 2005:23-2006:01 (Mackenzie).

872. Hamil testified that if he had learned in his interview with Judge Porteous that Judge Porteous had lunch with attorneys in his legal community, that he would not necessarily have included that information in the interview summary. Senate Vol. III at 934:01-21 (Hamil).

873. Hamil testified that if he had learned in his interview with Judge Porteous that Judge Porteous had lunch with local bail bondsmen, that he would not necessarily have included that information in the interview summary. Senate Vol. III at 934:22-25 (Hamil).

874. The third page of the FBI interview of Judge Porteous states 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." House Ex. 69(i).

First FBI Interview of Louis Marcotte

875. During its background check, the FBI was made aware that Judge Porteous knew Louis Marcotte. Stipulation 177.

876. On or about August 1, 1994, Louis Marcotte was interviewed by the FBI for the first time in connection with the background check of Judge Porteous. Stipulation 171.

877. The interview summary of the FBI's interview of Louis Marcotte states that Marcotte "knows that candidate professionally and socially." House Ex. 69(b)

(PORT000000471). The interview summary further states that "Marcotte said he sometimes goes out to lunch with the candidate and attorneys in the area." *Id.*; *see also* Stipulation 179.

878. The interview summary states that Louis Marcotte said that Judge Porteous is "really helpful and available for everybody." House Ex. 69(b) (PORT000000471). The interview summary reports that Marcotte stated that Judge Porteous is "open-minded and fair, but is not a push-over." *Id.*

879. The interview summary states that Louis Marcotte said "many times the family [of the accused] cannot come up with the 10%, so Marcotte goes to the judges to try to lower the bonds. He stated that 2% of money received by the bondsmen goes to the judges. He advised that the judges are willing to lower set bonds, because if they don't the families will not be able to pay back into the court system." House Ex. 69(b) (PORT000000471).

880. The interview summary states that Louis Marcotte said "he does not know the candidate to use illegal drugs or to abuse alcohol or prescription drugs. He advised that the candidate will have a beer or two at lunch, but he has never seen him drunk." House Ex. 69(b) (PORT000000471).

881. Louis Marcotte testified that Porteous had a high threshold for alcohol and that after several drinks, "you wouldn't even know he had a buzz." Louis Marcotte Senate Dep. at 39:16-24.

882. The interview summary states that Louis Marcotte said "he has no knowledge of the candidate's financial situation." House Ex. 69(b) (PORT000000471).

883. The interview summary states that Louis Marcotte said that "he is not aware of anything in the candidate's background that might be the basis of attempted influence, pressure,

coercion, or compromise or that would impact negatively on the candidate's character, reputation, judgment, or discretion." House Ex. 69(b) (PORT000000471).

884. Judge Porteous did not tell Louis to be "untruthful" with the FBI. Louis Marcotte Senate Dep. at 45:22-46:01.

FBI Interview of Robert Creely

885. On or about August 1, 1994, Robert Creely was interviewed by the FBI in connection with the background check of Judge Porteous. House Ex. 69(b) (PORT000000476).

886. The interview summary of Creely's interview with the FBI states that Creely told the FBI that he "has never known the candidate to use illegal drugs or abuse alcohol or prescription drugs." House Ex. 69(b) (PORT000000477).

887. The interview summary of Creely's interview with the FBI states that Creely told 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." House Ex. 69(b) (PORT000000477).

Additional FBI Interviews

888. The FBI conducted approximately 120 interviews in connection with the background investigation of Judge Porteous. *See generally* House Ex. 69(b).

Anonymous Sources

889. On August 8, 1994, the FBI interviewed an individual, who asked that his/her identity remain anonymous, but who is referred to as T-6, who stated that "Judge Porteous works with certain individuals in writing bonds, specifically…Louis and Lori Marcotte." House Ex. 69(b) (PORT000000526).

890. T-6 further stated that the Marcottes "frequently give the judge and his staff cakes, sandwiches, booze, and soft drinks." House Ex. 69(b) (PORT000000526).

891. T-6 stated that "Louis Marcotte has told people that they 'kick back' money to Judge Porteous for reducing the bonds." House Ex. 69(b) (PORT000000526).

892. T-6 stated that Judge Porteous 'frequently sign[ed] bonds ahead of time for bondsmen." House Ex. 69(b) (PORT000000526).

893. T-6 reported that Louis Marcotte told the girlfriend of an individual who had been arrested that it would take $12,500.00 to get [the boyfriend] out of jail" and that "$10,000.00 of this would go to Judge Porteous for the bond reduction." House Ex. 69(b) (PORT000000524).

894. T-6 stated that Porteous was "paid to reduce a bond" in a different case and "had been given $1,500 to reduce a bond" in that matter. House Ex. 69(b) (PORT000000526).

895. T-6 stated that Judge "Porteous had transferred a case from another division to his [Porteous] to help [redaction follows]." House Ex. 69(b) (PORT000000526).

896. On August 12, 1994, FBI headquarters sent a teletype to the New Orleans field office of the FBI and directed the field office "to conduct interviews" of a number of individuals "to verify and corroborate" information provided by a source, who asked that his/her identity remain anonymous. House Ex. 69(b) (PORT000000478-79). In particular, the field office was directed to ask Louis Marcotte whether he was "aware of an exchange of money with Judge Porteous and others to get a bond reduction" for a specific individual. House Ex. 69(b) (PORT000000479).

Second FBI Interview of Louis Marcotte

897. On or about August 17, 1994, Louis Marcotte was interviewed by the FBI for the second time. Stipulation 172.

898. FBI Agent Bobby Hamil conducted the investigation of Louis Marcotte on August 17, 1994. Senate Vol. III at 921:15-21 (Hamil).

899. Hamil testified, that prior to his second interview with Judge Porteous, he was made aware of claims regarding Judge Porteous having improperly set bonds, received cash in exchange for bonds he had set, and that Judge Porteous had signed bonds in blank. Senate Vol. III at 942:24-943:13 (Hamil).

900. According to the FBI summary of the second interview, Louis Marcotte was "confronted with questions and information about his knowledge and relationship" of specific bond matters. House Ex. 69(b) (PORT000000513).

901. According to the FBI summary of the second interview, Louis Marcotte concluded the interview "by totally denying…arranging for a portion of the bond reduction fee to go directly to Judge Porteous as a 'kickback.'" House Ex. 69(b) (PORT000000514).

902. Louis Marcotte testified that he "would never, you know, extort" Judge Porteous "in any kind of way." Louis Marcotte Senate Dep. at 127:24-128:11. When pressed by House counsel on this point and asked "You wouldn't extort him but you did have information that could potentially embarrass him to use his leverage on him?", Louis 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." Louis Marcotte Senate Dep. at 128:12-17. House counsel then asked "Did you feel that because of what you said in the FBI interview, you might be able to coerce the judge at a later date?" Louis Marcotte responded "And Ask him to do stuff for me? No, I didn't think that at the time." Louis Marcotte Senate Dep. at 46:10-14.

903. Louis Marcotte's conversations with the FBI on August 1, 1994 and August 17, 1994, referenced in Article II and Article IV, took place after Judge Porteous filled out his Supplemental SF-86 form. *See* House Ex. 69(b) (PORT000000503 & PORT000000513-14).

Second FBI Interview of Judge Porteous

904. On or about August 18, 1994, Judge Porteous was interviewed by the FBI a second time. Stipulation 173.

905. FBI Agent Bobby Hamil conducted the interview of Judge Porteous on August 18, 1994. Senate Vol. III at 907:22-908:04, 919:20-23, 924:01-12 (Hamil).

906. Judge Porteous denied the allegations raised by T-6. *See generally* House Ex. 69(k).

907. According to the FBI interview summary, Judge Porteous "denied that he had ever signed any bail bonds 'in blank' and stated that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion, or compromise and/or would impact negatively on his character, reputation, judgment, or discretion." House Ex. 69(k).

908. Hamil testified that had he been aware that Judge Porteous and Louis Marcotte sometimes went to lunch together, he would not necessarily have raised that issue or asked questions related to that topic in his second interview of Judge Porteous. Senate Vol. III at 934:22-25 (Hamil).

909. The FBI did not ask any questions about Bob Creely or Jake Amato in its interviews of Judge Porteous. House Ex. 69(i) & 69(k).

910. The FBI did not ask any questions about curatorships in its interviews of Judge Porteous. House Ex. 69(i) & 69(k).

911. The FBI did not ask any questions about gifts Judge Porteous may have received in its interviews of Judge Porteous. House Ex. 69(i) & 69(k).

Note to Department of Justice

912. Hamil testified that once the field agents conduct the investigation, they send their results to FBI headquarters. Senate Vol. III at 950:22-951:03 (Bobby Hamil).

913. On August 19, 1994, a "Note to the DOJ" was sent by the FBI that stated that "the background investigation is complete." House Ex. 69(b) (PORT000000530). The "Note to the DOJ" stated that "[a]n individual who requested total confidentiality, characterized as T-6, advised that he/she has heard that the candidate was once paid $10,000 to reduce a bond for an individual. … T-6 advised that an unknown female approached a bail bondsman named Lewis [sic] Marcotte to arrange for [redacted] immediate release. … T-6 further advised that he/she heard that the candidate was paid $1500 to reduce the bond of an individual . … T-6 also stated that Lewis [sic] Marcotte has told people that the candidate received 'kick-backs' for reducing bonds." House Ex. 69(b) (PORT000000530).

Nomination to the Federal Bench

914. On August 25, 1994, President Clinton nominated G. Thomas Porteous, Jr. to serve as the United States District Court judge for the Eastern District of Louisiana. House Ex. (a).

Senate Judiciary Questionnaire

915. During the Senate confirmation process, Judge Porteous completed a United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees. Stipulation 182.

916. On or about September 6, 1994, Judge Porteous signed the Senate Judiciary Questionnaire. Stipulation No. 174.

917. The United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees poses very specific questions, including "Were all of your taxes current as of the date of your nomination?" House Ex. 9(f).

918. The final question, Number 11 on page 34 of the document, asked Judge Porteous to "Please advise the Committee of any unfavorable information that may affect your nomination." House Ex. 9(f). Judge Porteous responded by stating "To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination." House Ex. 9(f).

919. Professor Mackenzie, an expert designated in this matter, testified that he is not aware of any individual who has ever responded affirmatively to a question that asks the candidate to "Please advise the Committee of any unfavorable information that may affect your nomination." Senate Vol. V at 2027:17-18 ().

920. Mackenzie testified that he was not aware of any individual ever having been prosecuted or removed from office for falsely answering a question that asks the candidate to "Please advise the Committee of any unfavorable information that may affect your nomination." Senate Vol. V at 2027:14-18 (Mackenzie).

Senate Judiciary Committee Investigation

921. Once Judge Porteous was nominated by President Clinton to serve as a United States District Court Judge for the Eastern District of Louisiana, but prior to his confirmation, the staff of the Judiciary Committee of the United States Senate reviewed the FBI's background investigation of Judge Porteous. Stipulation 184.

922. Once Judge Porteous was nominated by President Clinton to serve as a United States District Court Judge for the Eastern District of Louisiana, but prior to his confirmation, the

Judiciary Committee of the United States Senate was specifically aware of allegations that Judge Porteous "took kick-backs" in relation to Louis Marcotte. *See* House Ex. 439(q).

923. Once Judge Porteous was nominated by President Clinton to serve as a United States District Court Judge for the Eastern District of Louisiana, but prior to his confirmation, the Judiciary Committee of the United States Senate was specifically aware of allegations that Judge Porteous "was living beyond his means and this might mean that he is involved in some type of criminal activity." *See* House Ex. 439(q).

924. Once Judge Porteous was nominated by President Clinton to serve as a United States District Court Judge for the Eastern District of Louisiana, but prior to his confirmation, the Judiciary Committee of the United States Senate was specifically aware of allegations that Judge Porteous "has a drinking problem." *See* House Ex. 439(q).

925. Once Judge Porteous was nominated by President Clinton to serve as a United States District Court Judge for the Eastern District of Louisiana, but prior to his confirmation, the Judiciary Committee of the United States Senate was specifically aware of allegations that Judge Porteous gambled on occasion. *See* House Ex. 439(q).

926. Once Judge Porteous was nominated by President Clinton to serve as a United States District Court Judge for the Eastern District of Louisiana, but prior to his confirmation, the Judiciary Committee of the United States Senate placed additional telephone calls to and interviewed Robert Creely, Donald Gardner, and Louis Marcotte, among others. *See* House Ex. 439(q).

Charles Geyh Testimony

927. Professor Charles Geyh testified that he disagrees with the statement that "perjury is an extremely sensitive problem for the judicial system, but an allegation that a judge gave

perjurious testimony in a matter unrelated to his own judicial duties and unrelated to activities occurring while he is a judge falls outside the statute authorizing disciplinary action." Senate Vol. III at 842:04-843:02 (Geyh).

928. In response to a question about Judicial Discipline Case No. JC-04-35, which stated that "even if the alleged inconsistencies in testimony and submission to the Senate Judiciary Committee were a proper subject for a complaint, dismissal would be required…there's no evidence that respondent intentionally misled or knowingly made false statements to the Senate," Professor Geyh stated that "Certainly, I think the knowing nature of the wrong is a relevant consideration…I think that intent is one of the things one would look at, yeah." Senate Vol. III at 845:22-846:01 (Geyh).

929. Professor Charles Geyh stated that the fact a judge had not been charged or disciplined for providing false information to the Senate Judiciary Committee "doesn't surprise me, honestly." Senate Vol. III at 848:24-849:02 (Geyh). When asked "Why wouldn't he be – why wouldn't he be disciplined if he lied to the Senate Judiciary Committee?," Geyh explained that there is a "context to all cases…where you have a culmination of a long history of misconduct with a dozen different tendrils, culminating in lies to the Senate at the point of decision-making as to confirmation, that strikes me as being a reasonable thing to talk about in a larger context." Senate Vol. III at 849:03-13 (Geyh).

930. Professor Charles Geyh stated that, in relation to the Hugo Black matter, "the fact that there are examples where prosecutors [the House] exercise their discretion not to go forward doesn't mean all that much to me." Senate Vol. III at 850:22-851:04 (Geyh).

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

/s/ Daniel C. Schwartz
Daniel C. Schwartz
P.J. Meitl
Daniel T. O'Connor
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Keith Miles Aurzada
BRYAN CAVE LLP
2200 Ross Avenue, Suite 3300
Dallas, Texas 75201
(214) 721-8000

Brian C. Walsh
BRYAN CAVE LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge
for the Eastern District of Louisiana

Dated: October 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – Harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Nafees Syed – nafees.syed@mail.house.gov

/s/ P.J. Meitl