JUN 19 2008

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

June 18, 2008

Honorable Edith Hollan Jones
Chief Judge
United States Court of Appeals
12505 Bob Casey United States Courthouse
515 Rusk Street
Houston, TX 77002-2600

Dear Judge Jones:

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

The Certificate and report are herewith transmitted to you in your capacity as chair of the Fifth Circuit Judicial Council. The transmission to the House of Representatives will also include the record of proceedings in this matter.

Sincerely,

James C. Duff
Secretary

Enclosures

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

CERTIFICATE

TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES:

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

The determination is based on substantial evidence that:

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

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

c) Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in cases in which lawyers who appeared before him had given him cash and other things of value and for the Fifth Circuit Judicial Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value. Parts F(1)(a), (b), (2)(a), (b), and G of the Report of the Committee are incorporated by reference.

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

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

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

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

Executed this 17th day of June, 2008.

James C. Duff
Secretary

REPORT AND RECOMMENDATIONS

OF THE JUDICIAL CONFERENCE

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

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

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

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

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

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

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

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

A. PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. THE ISSUE BEFORE THE CONFERENCE

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

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

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

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

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

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

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

C. PROCEDURAL CONCERNS

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

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

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

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

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

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

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

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

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

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

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

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

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

D. VALIDITY OF THE FIFTH CIRCUIT PROCEEDINGS

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

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

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

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

E. DEFINITION OF IMPEACHABLE CONDUCT

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

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

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

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

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

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

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

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

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

1) The Evidence

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

a) Financial Disclosure Forms

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

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

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

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

b) Solicitation and Receipt of Cash and Things of Value

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

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

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

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

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

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

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

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

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

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

c) Bankruptcy Fraud

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

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

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

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

d) Bank Fraud

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

2) Nature of the Offenses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c) Bankruptcy Fraud; Perjury

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

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

d) Bank Fraud

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

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

G. CONCLUSION; RESPONSE TO THE FIFTH CIRCUIT DISSENT

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

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

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

the cash payments and payments to vendors were simple gifts from friends, and the failure to disclose that the gifts or loans were never repaid as required by law was an innocent or negligent mistake involving only "private conduct and reporting of private financial affairs." [JCD. 53] In addition, they view the failure to recuse in cases in which the donors appeared as counsel, even when the adversary moved for recusal, as simply a mistake causing only an appearance of impropriety.

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

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

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

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

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

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

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

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

H. CERTIFICATION

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

> Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report By the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.
>
> The determination is based on substantial evidence that:
>
> a) Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him. Parts F(1)(a), (2)(a), and G of Report of the Committee is incorporated by reference.
>
> b) Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard of the bankruptcy court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1). Parts F(1)(c), (2)(c), and G of the Report of the Committee are incorporated by reference.
>
> c) Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in

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

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

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

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

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

I. MISCONDUCT PROCEEDING

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

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

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

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

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

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

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

Respectfully submitted,

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

Appendix A

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

APPENDIX A

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

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

1) Cash Gifts From Creely & Amato

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

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

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

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

2) Curatorship Scheme

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

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

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

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

3) Fishing Trip & Las Vegas Bachelor Party

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

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

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

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

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

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

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

B) Financial Disclosure Violations

1) 1999 Cash Payments and Las Vegas Trip

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

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

2) 2000 Financial Disclosure Report

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

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

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

3) Unexplained Cash Deposits Between 1998 and 2000

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

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

C) Abuse of Judicial Power

One of the most disturbing examples of Judge Porteous's misconduct involves his handling of In Re: Liljeberg Enters. Inc. v. Lifemark Hosps., Inc., No. 2:97-cv-01784, a

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

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

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

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

In March 1997, Don Gardner became an attorney of record for Plaintiff Lifemark. [SCR 56; SC. Ex. 82 at 37] This appearance came forty-five months into the case and five months after Judge Porteous denied Lifemark's recusal motion. [Id.] Mole testified that he sent a fee agreement letter to Gardner which guaranteed him a $100,000 retainer "payable upon enrollment of counsel of record." [SCR. 56; SC. 397-98] Mole testified that the fee arrangement, which contained some unusual contingencies -- an entitlement to $100,000 if Judge Porteous withdrew or the case was settled -- was to make sure his client was not embarrassed and to ensure that Gardner, whom Mole did not know very well, remained "interested in the outcome" and loyal to Lifemark. [SCHT. 177-81] Mole testified that he was aware of Judge Porteous's close friendship with Gardner as well as with Amato and Levenson. [Id.] He testified that after Amato and Levenson made their appearances, he became concerned that their presence in the case, in addition to the Liljebergs' reputation for trying to "influence the judicial process through whatever means they could," would be a problem for his client. [SCHT. 158] According to Mole, his conversations with members of the legal community who knew "Jefferson Parish politics" substantiated his concerns. [Id.] He also testified that his client insisted that he level

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

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

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

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

D) Bankruptcy Fraud

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

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

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

1) False Initial Petition

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

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

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

2) Incurring Impermissible Debts

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

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

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

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

3) Other Bankruptcy Misrepresentations

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

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

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

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

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

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

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

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

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

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

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

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

E) Bank Fraud

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

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

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

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

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

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

Porteous's deteriorating financial condition, that he had been negotiating a workout settlement with his creditors for approximately six months, and the possibility of bankruptcy, he would have, according to the bank's standard policy in such situations, attempted to secure the loan with collateral before granting an additional six-month extension on the promissory note. [SCHT. 287, 291-92] Even Lightfoot conceded that the change in Judge Porteous's finances were what a bank in Regions' position would characterize as "material." [SCHT. 456]

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