S. Hrg. 111–691

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE G. THOMAS PORTEOUS, JR.

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE G. THOMAS PORTEOUS, JR., A JUDGE IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

November 16, 2010

Volume 2 of 3, Part A

Available via the World Wide Web: http://www.access.gpo.gov/congress/senate

U.S. GOVERNMENT PRINTING OFFICE

61–910 PDF WASHINGTON : 2010

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ACKNOWLEDGMENTS

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

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Volume 2 of 3, Part A
V. EVIDENTIARY HEARINGS—
SEPTEMBER 13–16 & 21, 2010

United States Senate

Impeachment Trial Committee

Impeachment of Judge G. Thomas Porteous, Jr.,

U.S. District Judge

For the Eastern District of Louisiana

Volume I

Monday, September 13, 2010

Dirksen Senate Office Building

Washington, D.C.

APPEARANCES:

SENATE IMPEACHMENT TRIAL COMMITTEE:

Senator Claire McCaskill (D-MO) - Chairman

Senator Orrin Hatch (R-UT) - Vice Chairman

Senator John Barrasso (R-WY)

Senator James DeMint (R-SC)

Senator Michael Johanns (R-IA)

Senator Edward Kaufman (D-DE)

Senator Amy Klobuchar (D-MN)

Senator James E. Risch (R-ID)

Senator Jeanne Shaheen (D-NH)

Senator Thomas Udall (D-NM)

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-- continued --

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Representative Robert W. Goodlatte (R-VA)

Representative Zoe Lofgren (D-CA)

Representative Henry C. Johnson (D-GA)

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Brian Walsh, Esq.

Daniel Schwartz, Esq.

P R O C E E D I N G S (8:08 a.m.)

CHAIRMAN MC CASKILL: Good morning.

The evidentiary proceedings of the Senate Impeachment Trial Committee on the articles against Judge G. Thomas Porteous, Jr. of the Eastern District of Louisiana will now come to order.

With the adoption of Senate Resolution 458 on March 17, 2010, this committee was appointed to perform the duties and exercise the powers provided for in Rule 11 of the Rules of Procedure and Practice in the Senate while sitting in impeachment trials.

Rule 11 requires this committee to receive evidence and to take testimony on the four articles of impeachment which were presented to the Senate by the House of Representatives.

Following extensive pretrial proceedings, we are here today to begin receiving evidence.

At the conclusion of these evidentiary proceedings, the committee shall, as mandated by Rule 11 and by Senate Resolution 458, report to the full Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before this committee. And, in addition, statement of facts that are uncontested and a

summary of the evidence that the parties have introduced on contested issues of fact.

These proceedings may be viewed live in each Senate office, on television or on the committee's Web site at www.sitc.senate.gov.

The proceedings are also being recorded so that each Senator who is not on the committee may have an opportunity at any time to view the testimony of the witnesses as well as read the transcripts of their testimony.

Under Senate Impeachment Rule 11, the full Senate retains the power to determine the competency, relevancy and materiality of the evidence that the committee will report to it. The Senate also retains the power to send for any witness to testify in open Senate or, indeed, to order that the entire trial be conducted in open Senate.

Regarding the House request to waive Rule 22 and allow two persons to present its opening statement, that request is hereby granted and the rule is waived.

Rule 19 requiring that senators wishing to ask a question put the question in writing and through the presiding officer was previously waived.

Members will be permitted to ask questions directly of the witnesses once that witness has been cross-examined.

And I would now defer to both sides of the trial to begin their opening statements.

MR. SCHIFF: Madam Chair, Senators, I'd like to begin by introducing the team of Representatives from the House that will be presenting the case. Of course, I'm Adam Schiff. I am joined by my colleague --

CHAIRMAN MC CASKILL: Excuse me, Congressman, I think you need to turn the microphone on.

MR. SCHIFF: Thank you, Madam Chair. Much better.

I'm joined by my colleague Bob Goodlatte from Virginia. We'll be joined during the trial by our colleagues Hank Johnson, Jim Sensenbrenner and Zoe Lofgren, also assisted by some very able counsel, Alan Baron, Mark Dubester, Harry Damelin and Kirsten Konar.

At the outset, the House recognizes what an extraordinary proceeding this is and how seldom an impeachment is undertaken. I think this is a reflection of several things, not the least of which

the caliber of men and women who are nominated for the federal bench, vast majority of which who have acquitted themselves of great distinction, and not given cause for their removal from office.

I think it's also a tribute to the confirmation process that does a good job in vetting out those who are not suitable for the bench. And I also think it's a reflection of how infrequently the House believes that this extraordinary remedy is required.

I won't spend much time this morning in discussing the standard for impeachment, the content of crimes and misdemeanors, there will be time for that later.

Other than that, I think the members of this committee understand that standard probably better than I or anyone else could articulate.

But I will share at least, in my view, one of the formulations I think House and Senate have arrived on in considering judicial impeachments, and that is that a judge has committed a serious violation of the public trust, that in the phraseology of Governor Morris, one of the framers, that the judge has so misdemeaned himself by violating the public trust that it necessitates his

removal from the bench.

And I will also say in the unanimous view of the House of Representatives, the conduct of Judge Porteous was so unethical, so deplorable and inimical to the public trust that he cannot be allowed to remain on the bench.

What was that conduct? I'd like to give you a brief overview of the facts of the case before I turn it over to my colleague, Mr. Goodlatte, to go through the evidence in more detail. But before I do, it's worth pointing out that the vast majority of the facts, the underlying conduct in this case, is not disputed.

The central conduct in this case is simply not contested. And that conduct involves four areas. It involves the judge's relationship with two attorneys, Jake Amato and Bob Creely, it involves his corrupt relationship with the bail bonds company run by the Marcottes, it involves the concealment of the nature of his relationship with these attorneys and this bail bonds company during his own confirmation, and it involves his numerous false statements, representations and violation of the bankruptcy court order during his bankruptcy case.

Let me start first with the lawyers Amato and Creely. The evidence will show that he had known these lawyers for a long time, that he had in fact been a partner of theirs in their law practice before he was appointed to the state bench, that at some point while he was on the state bench, whether because of his expenses in the course of his family occasions, weddings or whatnot, whether it was because of his gambling or his drinking or his taste for expensive lunches, he started asking for cash from one of the attorneys, Creely.

In the beginning it was small amounts, $50, $100, whatever Bob Creely had on him. But over time he became to ask for more cash, $500, $1000. And at some point, Bob Creely got tired of being hit on by the judge for cash, and he told the judge it had to stop. The judge had to change his lifestyle or do whatever was necessary, but the cash had to stop.

And after they had this conversation, the judge started sending curatorships to the law firm of Creely and Amato. Curatorships are essentially small administrative cases, often when there's an absent party and it's necessary for somebody to take an ad out in the paper or do other administrative

tasks for the court.

These cases weren't very much, $175 or $200. Amato and Creely will testify they didn't even want these cases, didn't ask for them, didn't want them. But once the judge started sending these curators to the firm of Amato and Creely, he started again to hit them up for cash. He would call and he would want some of the curator money, and the evidence will show that they started to give him basically 50 percent of the curator money.

The evidence will also show that they continued to give him curator money, and they would both take a draw from the firm, they would each basically get $1000 as a draw from the firm. They would then turn that into cash and give the cash to Judge Porteous.

This went on for a period of time, until Judge Porteous was nominated for the federal bench. Once he was appointed to the federal bench, he was no longer in a position to send curators to the firm of Amato and Creely. When the curatorship stopped, the cash also stopped.

Now, that cash stopped and the request for cash stopped with the end of the curators, when he was appointed to the federal bench. The requests

for cash stopped until a certain point. And that point came when Judge Porteous was assigned a multi, multimillion dollar piece of litigation called Liljeberg versus Lifemark, involving the fight over a hospital contract, pharmacy within the hospital, a very complex case that's not necessary to go into great detail about.

But this case had been going on for years. Six weeks before the trial, Liljeberg brings in, among others, two new lawyers, and one of them is Jake Amato, the other is a lawyer named Levenson.

Opposing counsel, a gentleman named Joe Mole, became concerned with the late addition six weeks before trial in this multiyear, very complex multimillion dollar, perhaps as much, the evidence will show, as worth $200 million, very concerned with the late addition of these lawyers, so he did some due diligence, contacted people that he knew that understood the bar in New Orleans.

What he was told really alarmed him, that basically the thing that these two attorneys had in common, Amato and Levenson, was they were close friends, basically cronies of the judge. They were told in no uncertain terms, Mr. Mole was told, not by people who wanted to identify themselves, not by

people who would speak publicly, but the fix was in, that they better make a good record for themselves on appeal because they were going to lose this case.

Now, this put Mr. Mole in a very difficult position, because the case was a bench trial. There was going to be no jury. Judge Porteous was going to decide the facts, he was going to decide the law, he was going to write the order. And Mr. Mole didn't have hard evidence that he could cite to. Most of what he was told -- basically he was told in a way that he could not use in court.

But he did know that they had lunch together, although he did not know how frequently, and he was able to find through court records that, he believed, that Mr. Amato or Mr. Levenson had given a contribution to Judge Porteous's campaign.

And these were the only facts he really could cite to, their friendship, this campaign contribution, having lunch together and his motion to recuse.

But he felt he had no choice. He had to try and ask the judge to remove from the case. So he files the motion. The judge makes it quite clear during the recusal hearing -- and we will share with you the transcript of that recusal hearing because

it's one of the most illuminating pieces of evidence in the case.

The judge makes it clear he understands the ethical standards, he understands when he has to take himself off a case. He goes through that with counsel.

And then he chides Mr. Mole for suggesting that he had gotten a campaign contribution from Mr. Amato and Mr. Levenson. He says, I never had a campaign. The contribution you're talking about was a contribution to all the judges, for all their campaigns, a program that was called Justice for All, attributed to all the judges' reelection. That was the only money he got from these lawyers.

Now, this, of course, we know was a quite deliberate misrepresentation because, in fact, he had gotten thousands and thousands of dollars for these curatorships from Mr. Amato and Mr. Creely, none of which he discloses.

All he does is chide the attorney for not doing his homework. Of course, if Mr. Mole had really done the homework, if he had been able to do the homework he needed and found out about all this cash the judge had received, the recusal motion on appeal, because he later appeals, and of course the

Court of Appeals doesn't know the information and denies it, the appeal would have been successful, the judge would have been forced to recuse himself.

But the judge doesn't. He rules against the motion. The appeal is denied. The case goes to trial.

After the case goes to trial, Judge Porteous takes the case under submission. This is worth an enormous amount to the law firm of Amato and Creely. They have a commission arrangement, contingency case. They don't make a penny unless they win this case, and if they do win, Mr. Amato will testify, they stand to earn somewhere between half million to a million dollars. He's taken no other case in two years as Mr. Amato's work on this case, was worth an awful lot to his firm.

Case is under submission for three years. While it's under submission, they continue having their lunches together, the evidence will show Creely or Amato had -- Levenson had lunch with the judge probably hundreds of times over the years, expensive restaurants, lots of liquor.

They continued having the lunches and the wining and dining. But more than that, they pay for parties for the judge, they pay for other expenses

for the judge.

And on one very pivotal weekend, Mr. Amato goes fishing with the judge, and they're on the fishing boat, and the judge says -- breaks down, and says I need money for my son's wedding, you've got to help me, I need money for my son's wedding, can you give me 2000, $3000, can you get me that cash? Can you give it to me? Can you find somebody to give it to me? I need the money.

And Mr. Amato will testify he made the worst decision of his life. Mindful of the fact that he had this very important litigation in his courtroom, he gives him the money. Can't remember whether he gave it to him personally or had his -- or the judge sent his secretary over to pick it up, but gives him 2000, $2500 in cash in an envelope.

Now, during the recusal hearing, the judge made a point of saying I know the standard that I'm to be held to. It's my responsibility as a judge to disclose if there's something that the attorney should ask me to remove myself from the case.

Does Judge Porteous disclose at any point during the case while it's under submission that he has solicited cash from one of the lawyers? Does he tell other counsel about it? Of course not.

Ultimately, the judge rules and rules in favor of Mr. Amato's client. It's a huge victory for Mr. Amato's client, writes a lengthy opinion. Mr. Mole as he knew he would have to appeal the opinion, and in large part, the Court of Appeals reverses. And not only reverses, but in one of the more scathing opinions you'll ever read, accuses Judge Porteous of making up remedies and arguments out of whole cloth, baseless -- a baseless decision, is essentially what the Court of Appeals views what Judge Porteous has written.

The evidence will also show that at the same time that this illicit relationship is going on with Amato and Creely, it's not the only relationship of its kind going on in the Gretna courthouse, in the state courthouse.

Judge Porteous also has a relationship with a bail bonds company run by Louis Marcotte. With respect to the Marcottes, Louis and his sister Lori, the evidence will show a very similar pattern, the Marcottes taking the judge out to probably over the years dozens if not hundreds of meals at expensive places, buying him liquor, more than that, doing repairs on the judge's car, doing repairs at the judge's home.

And for his part, the evidence will show Judge Porteous set bonds in a manner that would maximize profits to Louis Marcotte and his company. One would hope that a judge's priority in setting bond would be to assure defendant's appearance in court.

But the evidence will show here that the Marcottes asked for bonds that would be set at amounts that would benefit him, Mr. Marcotte, and that Judge Porteous was more than willing to comply. And the judge did more for Louis Marcotte. On two separate occasions, he was asked by Mr. Marcotte to expunge the convictions of employees of the bail bonds business who could no longer work, could no longer be licensed to work in the bail bonds business because of their convictions.

So Louis Marcotte goes to the judge and says will you expunge the conviction first of a guy named Jeff Duhon, and the judge does it, and later of another bail bonds employees, Aubry Wallace, and the judge expunges that conviction too.

Interestingly enough, these are two of the bail bonds employees who were doing the work for the judge, doing the car repairs and doing the home repairs.

And when the judge takes the federal bench and can no longer set bonds to advantage Louis Marcotte, Judge Porteous helps to recruit a new judge to take his place with the Marcottes, a state judge, a new state judge named Bodenheimer, who will later go to jail after pleading guilty to a charge almost identical to the conduct here.

With respect to the confirmation process, the evidence will show that Judge Porteous knowingly failed to disclose the corrupt nature of these relationships to the FBI and to the Senate.

How do we know that the failure to disclose was knowing? How, apart from the obvious fact that he was certainly aware of the cash he got from Creely and Amato, he was aware of the curatorships that were the basis of that cash, he was aware of the lunches and the parties they paid for, he was aware of the drinking and the gambling? How, apart from the obvious, do we know that Judge Porteous quite deliberately kept this from the Senate?

Well, he tells us so. He tells us and he shows us so. Let me give just one example of how he does that.

Louis Marcotte, when he asks him to

expunge one of these convictions, the second of the convictions, Aubrey Wallace, he will testify that when he asks Judge Porteous to expunge this conviction, Judge Porteous says I will do it, but not right now. I won't do this until after my Senate confirmation. I'm not blowing a lifetime appointment to the bench to do this for you.

And that's exactly what happens. He waits until after his Senate confirmation, and just before he's sworn in to expunge the conviction of Aubry Wallace.

Now, why does he do it precisely then? Obviously he doesn't want to do it before the confirmation because he knows this would materially affect his confirmation if he's expunging convictions for this bail bonds company.

But why, just before he's sworn in? Well, he also knows that the moment he's sworn into the federal bench, he's no longer in a position to expunge any conviction. He can only do that as a state judge, so it has to be exactly then, and in fact the evidence will show that's exactly when he expunges the conviction.

Now, during the confirmation, Judge Porteous is asked by the Senate, is he aware of any

unfavorable information that may affect his nomination. And he answers in his written statement under penalty of perjury, "to the best of my knowledge, I do not know of any unfavorable information that may affect my nomination."

Now, defense might object, well, how could he disclose the expungement of Aubry Wallace's conviction when he so shrewdly waited until after the confirmation to do it. And the answer is he had already done it with respect to Jeff Duhon. This was only the second time he did it.

But, of course, he also knew about all the cash, knew about all the other expenses and failed to disclose that. And I think there's no question that would have materially not only affected his confirmation but ended his confirmation.

With respect to the bankruptcy, the evidence will show a similar effort to conceal the truth. He begins the bankruptcy process by filing the petition in a phony name, not Porteous, but he picks a name Ortous, he files the petition in the name Ortous.

He opens a post office box so that this first petition won't be associated with him publicly. Why does he do this? Why file under

phony name? Perhaps it's to avoid certain creditors or perhaps it's to avoid having the casinos read about his bankruptcy and decline to extend credit markers to him in the future, or perhaps, as the defense will suggest, it's simply to avoid public embarrassment.

But if a man will go to the extreme length of filing a bankruptcy petition in a false name and certify under penalty of perjury that that name is, in fact, his real name, if he will go to the further length of taking a post office box to conceal that it is his true identity, will he not conceal other information from the Senate in order to obtain a lifetime appointment to the bench?

The evidence will show that he would and that he, in fact, did.

There are numerous other false statements in the bankruptcy proceeding, which we will chronicle later, but Judge Porteous repeatedly violates the bankruptcy judge's order not to incur new debt when he goes to casinos again and again, filling out credit applications, taking out markers and borrowing from the casino to gamble.

Now, as I mentioned, none of these facts are seriously contested. In fact, Judge Porteous

admits to most of them in the 5th Circuit. He is asked about the curator moneys, and he admits sending the curators and he admits calling them and getting cash back.

He will not call it a kickback, but Judge Porteous does not deny getting the cash after sending the curatorships.

When he is asked how much money did he get from Creely and Amato during the 5th Circuit proceedings, his answer, I have no earthly idea. I have no idea.

Not I didn't get the money, not I don't know what you're talking about, but in terms of how much, I have no idea. He got cash so often after such a prolonged period of time, he has no idea exactly how much he got from them.

Does he admit getting the 2- to 3000 in cash after soliciting it during the pendency of this case, the Liljeberg case, in an envelope? Yes, he admits that too in the 5th Circuit.

He takes issue, strangely enough, with the envelope. He can't remember whether it was a bank envelope or a regular envelope, but he doesn't deny getting an envelope with cash during the pendency of this multimillion dollar litigation. He doesn't

remember whether he got it personally or whether he sent his federal secretary to pick up the cash for him but he doesn't deny getting cash.

He admits not disclosing curator money during recusal hearing, he admits not paying taxes on the cash income he got from Amato and Creely. He admits filing his judicial disclosure forms, federal disclosure forms, and claiming that he had about $30,000 in credit card debt when, in fact, he had over $180,000 worth of credit card debt.

He admits filing his bankruptcy under a false name, saying only it was his lawyer's idea. He admits filling out credit applications for casinos and incurring more debt in the form of markers with those casinos when the bankruptcy order prohibited him from doing so.

None of this he denies. Not the lunches, not the parties, not the favors, not the cash, not the false statements, not the expungements, not the split bonds, not the false name. None of this do we expect he has or will deny.

So if the facts are largely uncontested, what is the issue here. As I will discuss briefly, after Mr. Goodlatte goes through the evidence of these facts in more detail, the issue in this case

is largely this. Judge Porteous doesn't believe any of this conduct is wrong. He doesn't believe any of it is unethical or immoral. In his view, it is at best the appearance of impropriety.

As the defense states in its statement of the case, the conduct alleged here is, "a variety of acts that constitute, at most, the appearance of impropriety."

It is the unanimous view of the House of Representatives that Judge Porteous's conduct was not only wrong but so violative of the public trust that he cannot be allowed to remain on the bench without making a mockery of the court system.

I would now like to turn it over to my colleague, Bob Goodlatte, to go through the evidence in more detail.

MR. GOODLATTE: Thank you, Mr. Schiff.

Chairman McCaskill, Vice Chairman Hatch, members of the committee, now let me turn to the facts that we shall prove in the case in more detail.

Judge Porteous was born in December 1946, and he will be 64 this December. In 1971, he graduated from LSU law school, and he was a partner with Jacob Amato, from whom we will hear later

today, between 1973 and 1974.

Robert Creely, who you will also hear from later today, also practiced at that law firm. From October 1973 to August 1984, Judge Porteous also served as an assistant district attorney in Jefferson Parish, Louisiana.

In August 1984 Judge Porteous was elected and served as a State District Court judge on the 24th Judicial District Court for Jefferson Parish, Louisiana, where he served as a state judge from August 1984 to October 28, 1994.

While a state judge, Amato and Creely regularly and frequently took him to lunch and provided and paid for other entertainment for Judge Porteous. Judge Porteous virtually never paid for any lunches he attended with Creely or Amato.

Let me first start off by talking about Judge Porteous's curatorship scheme with attorneys Creely and Amato.

As Mr. Schiff stated, at some point after he became a state judge, Judge Porteous began to request money from Robert Creely. The evidence will show that Judge Porteous claimed that he needed money for personal reasons, such as tuition, car repairs or home repairs. Creely would give him the

moneys as requested.

Over time, as Judge Porteous's requests for money persisted and the amounts he sought increased, Creely came to resent and resist them, to the point that Creely would avoid Judge Porteous's phone calls. Creely went so far as to tell Judge Porteous that he felt he was being taken advantage of.

This committee has ruled that the transcripts from the 5th Circuit and the House hearings are admissible, so I will quote here from what Creely previously testified before the 5th Circuit.

"I don't recall if I specifically told him that it was because of his lifestyle, but I told him that I -- we could not continue giving him money, I couldn't continue giving him money."

In light of Creely's resistance, Judge Porteous came up with the following scheme. Judge Porteous used his judicial power to assign Creely curatorships. These are appointments whereby Creely would represent a missing party in a case, such as a case to clear title on a foreclosure, for which Creely would receive a set fee of approximately $200 from the court.

And after Creely was paid for those curatorships, Judge Porteous requested from Creely money constituting some portion of the curatorship fees. Again, Creely testified in the 5th Circuit,

"Question: Did Judge Porteous make a request of you after sending you curatorships for a portion of the fees that you were being paid by the court?

"Answer: Yes, sir.

"Question: And how did that -- how did he do that?

"Answer: I don't recall how it came about, but it came about. And he got -- and I can't -- I can't tell you that he got all of the curator fees that we generated, but he got a good portion of the fees that we generated from the curators."

Creely told his partner, Amato, that Judge Porteous was asking for money from the curatorships. Here's how Amato described this in his deposition of August 2 of this year, in response to questioning by Judge Porteous's attorney.

"Question: Was it your understanding that there was a connection between the money that was the cash that was given to Judge Porteous and the

curatorships?

"Answer: At some point in time, yes.

"Question: And how did you reach that understanding?

"Answer: Bob Creely came in my office one day, told me that Porteous was sending curatorships and he wanted us to, you know, give him some money back. And I told him, this is going to wind up bad."

And as you can see, Mr. Amato could not have been more prescient.

Let me pause here. The evidence here is not simply the testimony of Creely and Amato. Judge Porteous himself has admitted essential aspects of this sequence of events leading to and including his actions regarding the curatorships. For example, in his testimony under oath to the 5th Circuit, Judge Porteous confirmed that Mr. Creely refused to pay him money before the curatorship started.

"Answer: He may have said I needed to get my finances under control, yeah."

Similarly, Judge Porteous confirmed that during the time he sent curatorships over to the Amato and Creely firm, he would receive money back from them.

"Question: And after receiving curatorships, Mr. -- Messrs. Creely and/or Amato and/or their law firm would give you money; correct?

"Answer: Occasionally.

"Question: During the time you were giving Creely and Amato and the law firm curatorships and you were getting cash back, was that cash you received a kickback for the curatorship, in your mind?

"Answer: No, sir."

Though Judge Porteous disputes whether the arrangement should be characterized as a kickback, he does not dispute the fundamental premise of the arrangement that was then in place, that there was a time that he was giving, quote, Creely and Amato and their law firm curatorships and was getting cash back.

Thus, Creely and Amato acceded to Judge Porteous's requests and gave him cash that was funded by the curatorships. Creely and Amato took equal draws from the firm to come up with the cash to give Judge Porteous in response to his demands.

Here are examples of orders that Judge Porteous signed, assigning a curatorship to Creely, orders that Judge Porteous signed in his judicial

capacity in order to enrich himself.

During the 1988 to 1994 time periods, the house has identified approximately 200 curatorships that Judge Porteous assigned Creely, amounting to fees of close to $40,000 to the firm. Creely and Amato have each estimated that they collectively gave Judge Porteous approximately $20,000 or $10,000 each from the curatorship proceeds.

And as to money amounts he received, Judge Porteous had testified.

"Question: Judge Porteous, over the years, how much cash have you received from Jake Amato and Bob Creely or their law firm?

"Answer: I have no earthly idea.

"Question: It could have been $10,000 or more, isn't that right?

"Answer: Again, you're asking me to speculate. I have no idea, is all I can tell you."

Though the money came directly from Creely, the evidence will show that Judge Porteous well understood that the money was 50/50 from Amato as well. The evidence will be clear that Judge Porteous spent time with both men and understood they had a classic partnership relationship.

However, after Judge Porteous became a

federal judge in 1994, his ability to assign Creely the curatorships came to an end and thus, his cash requests came to an end for the time being.

We believe you will conclude that the fact that Judge Porteous stopped making cash requests at the same time he stopped assigning curatorships is powerful evidence that Judge Porteous understood that those two events would be inextricably interwoven.

Now let me turn to Judge Porteous's handling of the Liljeberg case in federal court, a case where Amato was the attorney for one of the parties.

In early 1996, Judge Porteous, now a federal judge, was assigned a complicated civil case involving the dispute between a hospital, Lifemark, and a company that was running a pharmacy at the hospital, known collectively as the Liljeberg.

Trial was set for early November 1996, and just six weeks prior to the date for trial, in late September 1996, the Liljeberg hired Mr. Amato and the law firm of Amato and Creely and another of Porteous's very close friends, Leonard Levenson, to represent them at trial.

As Mr. Schiff noted, Lifemark's counsel

filed a motion to recuse Judge Porteous. Lifemark argued that the timing of known close friends of Judge Porteous entering this complex case raised suspicions about the integrity of the process. Lifemark's attorney, Joseph Mole, had no idea that Amato had, in fact, in partnership with Creely, given Judge Porteous close to $20,000 in cash.

In October 1996, Judge Porteous conducted a hearing on Lifemark's recusal motion. It is worth going through what happens at that recusal hearing in a little bit of detail.

At the recusal hearing, Judge Porteous described his relationship with Amato and Levenson as follows: "If anyone wants to decide whether I'm a friend with Mr. Amato or Mr. Levenson, I will put that to rest. The answer is affirmative, yes. Mr. Amato and I practiced law together probably 20-plus years ago."

Judge Porteous further stated, "yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes. Have I been going to lunch with all the members of the bar? The answer is yes."

In short, at the hearing Judge Porteous portrayed his relationship with Amato as simply the same sort of unexceptional relationship that he would have had with any member of the bar, limited to having, quote, gone to lunch with him.

Even that is misleading, because the evidence will show that Judge Porteous had, in fact, accepted hundreds of meals at expensive restaurants from Amato without reciprocating.

More significantly, in describing his relationship with Amato, Judge Porteous makes no mention whatsoever of what really is the issue, that is, that he has received thousands of dollars in cash from Amato's law firm, money that he knows comes from Amato as well as Creely.

Mr. Mole, at a great disadvantage, says, "the public perception is that they do dine with you, travel with you, they have contributed to your campaigns."

And Judge Porteous pounces on this. "Well, luckily, I didn't have any campaigns, so I'm interested to find out how did you know that? I never had any campaigns, Counsel. I have never had an opponent. The first time I ran, 1984, I think, is the only time they gave me money."

Judge Porteous goes on to challenge Mole about the suggestion that Amato and Levenson had given him campaign contributions, saying that Mole "should have done his homework better." He makes the self-serving comment in which he promises to notify counsel if he has any question that he should recuse himself and concludes, "I don't think a well-informed individual can question my impartiality in this case."

Well, in effect, what you have here is Judge Porteous and Amato, who know the facts, just not disclosing it, completely misleading and disguising the nature of the actual relationship.

Amato knows this is not right. Here's what Amato described the deception in the courtroom in response to questioning by Mr. Schiff at his Senate deposition.

"Question: And he, in fact, told the other attorneys they should have done their homework better because this was a contribution to a general judge's fund.

"Answer: That's correct. That's the short story.

"Question: And while he was making this show for the other counsel, that they should have

done their homework better, he didn't tell them anything about the approximately $20,000 in curator fees that you and your partner kicked back to him, did he?

"Answer: No, he didn't tell them anything about the curatorships.

"Question: Do you think that was misleading, Mr. Amato, for him to pound his chest and say, I never got any campaign contributions, but failed to tell them he got about $20,000 in cash under the table?

"Answer: Yes.

"Question: So you don't feel he was being honest during that hearing, do you?

"Answer: I don't think he was being honest."

In the summer of 1997, Judge Porteous presided over the Liljeberg trial and took the case under advisement. He did not issue his opinion until April of 2000.

The evidence will show that in May of 1999, while Judge Porteous had the Liljeberg case under advisement, Judge Porteous invited Creely, Amato's partner, to Las Vegas for Judge Porteous's son's bachelor party prior to his wedding.

On that trip, Creely paid for Judge Porteous's hotel room, contributed several hundred dollars to the bachelor party dinner and paid for other entertainment for Judge Porteous.

Indeed, Judge Porteous admitted in his 5th Circuit testimony that Creely made those payments for him.

In June of 1999, also while still having the case under advisement, Judge Porteous went on a fishing trip with Amato and told him that his son's wedding expenses were more than anticipated and requested that Amato give him cash.

In response to that request, Amato and Creely gave Porteous approximately $2000.

Just pause for a moment. Here we have a federal judge, while having a nonjury case under advisement, asking one of the attorneys for cash.

Like much of the other evidence that we shall introduce, the fact that Judge Porteous solicited and received money from Amato in 1999 in connection with his son's wedding, and while the Liljeberg case was pending, is not really contested.

Here's how Judge Porteous testified.

"Question: Do you recall in 1999, in the summer, May, June, receiving $2000 from them?

"Answer: I've read Mr. Amato's grand jury testimony. It says we were fishing and I made some representation that I was having difficulties and that he loaned me some money or gave me some money.

"Question: Whether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2000 shortly thereafter?

"Answer: Yeah, something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope or anything about it.

"Question: Wait a second. Is it the nature of the envelope you're disputing?

"Answer: No, money was received in an envelope.

"Question: And had cash in it?

"Answer: Yes, sir.

"Question: And it was from Creely and/or --

"Answer: Amato.

"Question: Amato?

"Answer: Yes.

"Question: And it was used to pay for your son's wedding?

"Answer: To help defray the cost, yeah.

"Question: And would you dispute that the amount was $2000?

"Answer: I don't have any basis to dispute it."

In addition, in the fall of 1999, while Judge Porteous still had the Liljeberg case under advisement, Creely and Amato paid over $1000 for a party in honor of Judge Porteous's fifth year on the federal bench.

In April 2000, Judge Porteous issued his opinion in the Liljeberg case, ruling for the Liljebergs on all major issues. Lifemark appealed Judge Porteous's opinion, and the 5th Circuit reversed Judge Porteous in scathing terms, describing it variously as, quote, inexplicable, a chimera, constructed entirely out of whole cloth, bordering on the nonsensical and absurd.

Thus, Article I charges a pattern of course of conduct in connection with Judge Porteous's handling of the Liljeberg case, including his failure to recuse himself, his making false and misleading statements at the recusal hearing, his solicitation and receipt of $2000 from Amato while the case was pending before him, and his receipt of

other things of value from Creely, including Creely's payments for certain of Judge Porteous's expenses at the 1999 trip to Las Vegas.

Now let me turn to Article II. Judge Porteous's relationship with bail bondsman Louis Marcotte and his sister, Lori Marcotte, that Mr. Schiff discussed. For that it is necessary to return to Judge Porteous's roots as a state court judge. First, let me take a second to describe how the bail bonds business worked in New Orleans and why Judge Porteous's actions in setting bonds was so financially significant to the Marcottes.

This is somewhat detailed and I have tried to distill it to its essentials. A bail bond is basically an insurance policy. The prisoner pays the premium, typically 10 percent of the amount of the bail bond, to the bail bondsman, and the bail bondsman promises the court that the prisoner will show up when he is required.

So if a bond is set at $50,000, a prisoner would pay the bail bondsman $5000.

Louis Marcotte, the bail bondsman, will testify that he would make no money if the bond was set so high that the prisoner could not afford the premium or too low, so that the premium would be an

insignificant sum.

What Marcotte really wanted was for a bond to be set at the maximum amount for which the prisoner could afford to pay Marcotte the premium.

It is against this background that Judge Porteous's relationship with the Marcottes can thus be understood. Prior to taking the federal bench, starting in the early 1990s, Judge Porteous developed a relationship with the Marcottes, where he solicited and accepted things of value from them, and at the same time took numerous official acts as a state judge for their financial benefit.

First, as to what the Marcottes gave Judge Porteous, the Marcottes frequently took Judge Porteous to high-end restaurants for lunch, paying both for meals and drinks. The Marcottes also paid for numerous car repairs and routine car maintenance for Judge Porteous, they paid for home repairs for Judge Porteous when a fence of Judge Porteous had to be fixed.

The Marcottes also paid for a trip to Las Vegas for Judge Porteous.

In return, Judge Porteous willingly became Marcottes' go-to judge for setting bonds. Marcotte went directly to Judge Porteous with recommended

bond amounts, bond amounts that would maximize their income.

Judge Porteous was receptive to them and signed countless bonds at their request, judicial acts which he knew to be of financial benefit to them.

Now, at a prior hearing, Mr. Turley has argued to the committee that the House cannot identify any corrupt bonds that were set by Judge Porteous.

That is not the point or what the articles of impeachment allege. Rather, the evidence will demonstrate that Judge Porteous eagerly solicited and willingly accepted things from the Marcottes which he knew to be inducements and rewards for his taking many judicial acts for the financial benefit of the Marcottes.

The evidence will show that they were not social friends, as you or I may conceive that term. They knew each other solely through work, and they formed a corrupt, mutually beneficial relationship.

In addition, in addition to setting bonds as requested, Judge Porteous took other judicial acts of significance for the Marcottes.

In 1993, Judge Porteous expunged the

conviction of a Marcotte employee, Jeff Duhon. This was worked out between Louis Marcotte and Judge Porteous, and Judge Porteous expunged Duhon's conviction as Marcotte requested.

In 1994, at Marcotte's request, Judge Porteous also set aside the conviction of another Marcotte employee, Aubry Wallace. Again, this was worked out between Louis Marcotte and Judge Porteous. It took place during Judge Porteous's last days on the state bench, a final judicial act by Judge Porteous for the Marcottes' benefit, and evidences the extent to which Judge Porteous was beholden to the Marcottes.

Now let me turn to Judge Porteous's confirmation as a federal judge. At some point in 1994 -- at some point in 1994, Judge Porteous came under consideration to be appointed as a federal judge. Judge Porteous knew that if the White House and the Senate had found out about his relationships with either Creely or the Marcottes, he would never be nominated, let alone confirmed.

In the course of the background investigation, and during the confirmation process, Judge Porteous was asked questions on no less than four occasions that would have logically called for

his disclosure of his relationships with Creely and Amato and the Marcottes, had he been truthful and forthcoming.

First, at some time prior to July of 1994, Judge Porteous filled out a form referred to as the supplement to the SF 86. On that form is a question that goes to the very heart of the issue associated with the background process.

I want to show you that question and answer to -- I want to show that question and answer to the committee. In that form, Judge Porteous was asked.

"Question: Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President, if publicly known? If so, please provide full details."

To which Judge Porteous answered "no."

Judge Porteous signed that document under the penalties of false statements. Of course, the evidence will show that he knew of the facts I have described and, thus, knew that answer was false.

The evidence will show that thereafter, on July 6 and July 8, Judge Porteous was interviewed by

an FBI agent as part of the background check process. Judge Porteous was asked by the agent the same sort of questions, and his answers were incorporated in a memorandum of the agent that summarized the interview.

Let me again show you the exhibit. In the FBI write-up of that interview, Judge Porteous was recorded as saying that he was not concealing any activity or conduct that could be used to influence, pressure, coerce or compromise him in any way, or that would impact negatively on the candidate's character, reputation, judgment or discretion.

After that interview, the FBI in New Orleans sent the background check to FBI headquarters in Washington, which reviewed the background check. Upon that review, they directed the agents to interview Judge Porteous a second time about a very particular allegation that the FBI had received in 1993 that Judge Porteous had taken a bribe from an attorney to reduce the bond for an individual who had been arrested.

This allegation did not implicate the Marcottes. So on August 18, the FBI returned and conducted a second in-person interview with Judge Porteous, probing possible illegal conduct on his

part in connection with bond setting.

Once again, the FBI records Judge Porteous as stating, quote, that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion or compromise, and/or would impact negatively on his character, reputation, judgment or discretion.

Finally, on United States Senate committee on the judiciary -- the United States Senate committee on the judiciary sent Judge Porteous a questionnaire for judicial nominees. Again, I am showing you the document on the screen. In that questionnaire, Judge Porteous was asked the following question and gave the following answer.

"Please advise the committee of any unfavorable information that may affect your nomination.

"Answer: To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination."

The signature block is in the form of an affidavit that the information provided in the document is true and correct.

Thus, on four occasions, Judge Porteous concealed the truth as to his relationships with

Creely and Amato and the Marcottes from the FBI and the Senate.

In addition, the two men who Judge Porteous had been receiving things from, Creely and Marcotte, were each interviewed by the FBI. Each made misleading or false statements designed to protect Judge Porteous.

Now let me turn to an act undertaken by Judge Porteous during the time of the confirmation process that evidences first that Judge Porteous well knew that his relationship with Marcotte was corrupt and, second, that demonstrates that he wanted to conceal that relationship from the Senate.

As I mentioned, Marcotte had an employee named Aubry Wallace. Wallace had two felony convictions, a burglary conviction and a drug conviction, for which he was on parole.

In the summer of 1994, at around the time period of the confirmation, Marcotte went to Judge Porteous and asked him to set aside Wallace's burglary conviction to take the first step in getting rid of his felony convictions so that Wallace would ultimately be allowed to obtain a bail bonds license.

The evidence will show that Judge Porteous

told Marcotte that he would set Wallace's conviction aside but only after the Senate had confirmed him.

I would like to read an excerpt from Mr. Marcotte's testimony before the House impeachment task force, which has been ruled admissible, that illuminates Judge Porteous's intent.

"Mr. Schiff: You mentioned that with respect to Mr. Wallace, that Judge Porteous expressed a reservation about setting aside the conviction until his confirmation took place. Can you tell us a little bit about that conversation? You said you had to press him. Did he tell you why he was concerned it would affect his confirmation?

"Mr. Louis Marcotte: Because if anyone -- if the newspaper grabbed hold of it, then he would be worried that it would interfere with him being -- his confirmation.

"Mr. Schiff: And can you tell us what his words were as best you can recall, how he expressed to you his concern that things might become public?

"Mr. Louis Marcotte: He said, 'Louis, I am not going to let Wallace get in the way of me becoming a federal judge and getting appointed for the rest of his life to set aside his conviction.

Wait until it happens and then I'll do it.'"

In short, with regard to Article IV, the evidence will show that Judge Porteous deliberately sought to conceal material information from the Senate, and did so in a calculated manner precisely with the intent to confound the Senate in the exercise of its confirmation responsibilities.

The factual record confirms Marcotte's testimony. Judge Porteous did, in fact, wait until after he was confirmed by the Senate, and before he was sworn in, to set aside Wallace's conviction.

Judge Porteous's concerns that he expressed to Louis Marcotte, that if the set aside was discovered, it might detail his nomination, appear to have been justified. The media picked up this conduct and reported that Judge Porteous had engaged in an unlawful act. But this time, however, Judge Porteous had secured his federal judgeship.

After he became a federal judge, the Marcottes' relationship with Judge Porteous did not continue precisely as when he was a state judge.

Judge Porteous could not do as much for the Marcottes and they accordingly did less for him. They stopped taking care of his cars. They took him to lunch less frequently.

However, even if the relationship slowed down, it did not come to an end. You will hear that Judge Porteous was influential with other state judges from the 24th JDC, where he had previously presided. Moreover, the Marcottes knew that it was useful to have a federal judge in their corner, so even when Judge Porteous was a federal judge, the Marcottes continued to take him to expensive lunches, especially where persons they sought to impress, state judges and businessmen, would be present.

As but one example, the evidence will show that Judge Porteous vouched for the Marcottes with newly elected state judge Ronald Bodenheimer in or about 1999. Bodenheimer, who prior to Judge Porteous's intervention held the Marcottes in low regard, ended up forming the same sort of corrupt relationship with the Marcottes that Judge Porteous previously had with them, accepting meals, home repairs and hospitality on various trips, and in return, setting bonds as they requested.

Ultimately, Bodenheimer and another state judge, Alan Green, went to jail for conduct that was substantially similar to that of Judge Porteous vis-a-vis the Marcottes.

Both Louis Marcotte and Lori Marcotte were also convicted of felony offenses for having given numerous state officials, including judges and law enforcement personnel, things of value.

Thus, Article II alleges that while he was a state court judge in the 24th Judicial District Court in the State of Louisiana, and continuing while he was a federal judge in the United States District Court for the Eastern District of Louisiana, Judge Porteous engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, III and his sister, Lori Marcotte.

It also alleges that as part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs and car repairs, for his personal use and benefit, while at the same time taking official actions that benefited the Marcottes.

In Article IV, charges that Judge Porteous, quote, knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation, in order to obtain the office of United States District Court judge.

The last aspect of our case relates to Judge Porteous's bankruptcy while a federal judge, set forth in Article III. Throughout the 1990s and into 2001, Judge Porteous's financial condition deteriorated, largely due to gambling at casinos, to the point that by 2001, when he filed for bankruptcy, he had over $190,000 in credit card debt.

There are different ways that the evidence will describe his financial activities, but perhaps the most compelling is that his credit card statements from 1995 through 2000 reflect over $130,000 in gambling charges, and his bank statement from 1997 through 2000 reflect over $27,000 in cash withdrawals at casinos.

In 2000 Judge Porteous met with bankruptcy attorney Claude Lightfoot about his financial predicament. The evidence will show that Judge Porteous did not tell Lightfoot at that time, or indeed at any time, that he gambled.

They decided that Lightfoot would attempt to work out Judge Porteous's debts owed to his creditors and then, if that failed, Judge Porteous would consider filing for bankruptcy.

Lightfoot's attempts at a workout failed,

and in or about February of 2001, Lightfoot and Porteous commenced preparing for chapter 13 bankruptcy.

In March of 2001, in the weeks and days immediately prior to filing for bankruptcy, the evidence will show that Judge Porteous undertook numerous actions to conceal assets, to conceal certain unsecured debts and to structure his financial affairs so that he would be able to continue to gamble and obtain credit from casinos while in bankruptcy.

First, as part of these efforts, Judge Porteous, in consultation with his attorney, agreed that he would file his bankruptcy petition under a false name. To further this plan, Judge Porteous obtained a post office box so that his initial petition would have either his correct name or a readily identifiable address. He secured that post office box five days before he filed bankruptcy.

Ultimately, on March 28, 2001, Judge Porteous filed for bankruptcy under the false name G.T. Ortous, and with a post office box that Judge Porteous had obtained on March 23, 2001, listed as his address.

Judge Porteous signed his petition twice,

once under the representation, "I declare under the penalty of perjury that the information provided in this petition is true and correct," the other over the typed name "G.T. Ortous."

On April 9, 2001, Judge Porteous submitted a statement of financial affairs and numerous bankruptcy schedules. This time they were filed under his true name.

However, the evidence will show that they were false in numerous other ways, all reflecting his desire to conceal assets and gambling activity from the bankruptcy court and his creditors.

I'm not going through all his false statements during the bankruptcy at this time, but I thought I would at least point out some to you.

He knowingly failed to disclose that he had filed for a tax refund claiming a $4400 refund, even though the bankruptcy forms specifically inquire as to whether he filed for a tax reform. He checked that box "no."

He knowingly failed to disclose that he had gambling losses within the prior year, even though the form specifically asked that question. In fact, he has admitted before the 5th Circuit that he had gambling losses.

He deliberately concealed casino debts he had incurred in the weeks prior to filing, even though the forms in various places would have required those to be disclosed.

He reported his account balance in his checking account as $100, when the day prior to filing he had deposited $2000 into the account.

He deliberately concealed altogether a money market account that he regularly used in the past to pay gambling debts. And there are others we will establish during the trial.

The single organizing principle that arranges this pattern of false statements is Judge Porteous's desire to conceal assets and to conceal his gambling so that he could gamble while in bankruptcy without interference from the court or the creditors or even his lawyer.

At a hearing of creditors on May 9, 2001, Judge Porteous was asked under oath to vouch for the accuracy of his schedules, to which he testified falsely as follows:

"Bankruptcy trustee: Everything in here true and correct?

"Judge Porteous: Yes."

That statement, like so many of Judge

Porteous's statements under oath that you will hear about during this proceeding, was false. That bankruptcy trustee also informed Judge Porteous that he was on a cash basis going forward.

At the end of June 2001, bankruptcy Judge William Greendyke issued an order approving the Chapter 13 plan and specifically ordered Judge Porteous not to incur new debt without permission of the court.

Notwithstanding Judge Greendyke's order, Judge Porteous did incur debt. He applied for a credit card, more particularly, Judge Porteous continued to borrow from casinos without the court's permission. In some instances he paid those casino debts back through the bank account that he concealed.

In short, the evidence will show that he engaged in a pattern of deceitful activity designed to frustrate and confound the bankruptcy process.

I know I've taken some time here, and I appreciate your attention. Now let me turn the podium back to Mr. Schiff.

MR. SCHIFF: Senators, I mentioned at the outset the vast majority of what you've now heard of the evidence is uncontested, so what are the issues

here?

There are really two arguments the defense will make, and the central one is this: Porteous did nothing wrong. Judge Porteous may have done all of these things but there's nothing wrong with any of it. None of it was unethical, improper, wrong. It is nothing more than an appearance problem. He is being impeached essentially for having lunch.

That is the gist of the defense. There will be a suggestion that Judge Porteous may have done all these things but the House chose not to charge him with a violation of the kickback statute, 18 USC, code section whatever. When as the Senate has already made clear to counsel, this is not a criminal case and the House has no obligation to charge or prove the elements of a particular statute.

There will be a similar suggestion that the House has not charged a violation of the Honest Services statute, when, of course, he's not charged with violating that statute either nor is the House required to make a charge of a particular code section.

There will even be a suggestion that after all, Senators, we're talking about New Orleans.

It's New Orleans. They all do it, and if you're going to impeach judges in New Orleans for this kind of stuff, you're going to have to impeach all of them. There will be a hint of that. But the real argument is he did nothing wrong, and on this the House could not disagree more.

We believe that the evidence in this case fully supports the view of the House of Representatives that sending court cases to a law firm and taking cash back is wrong, dead wrong.

The evidence will show that allowing yourself to be wined and dined by lawyers who have a case before you is wrong. The evidence will show that allowing those lawyers to pay for parties, to pay for your lunches, your liquor, your hotel room, to have a stripper dance in your lap, all of that is wrong.

To falsely represent your financial relationship with lawyers in the courtroom is unethical and wrong. The evidence will show that to solicit cash from lawyers with a multimillion-dollar case under submission in your courtroom is wrong. To set bail based on how much it will benefit a bail bondsman is wrong. To accept car repairs and home repairs and lunches and liquor from that same bail

bondsman is wrong.

The evidence will show that to expunge the convictions of their employees, to recruit other judges to form the same corrupt relationship is wrong. To file a false petition in bankruptcy is wrong.

We believe that when you hear the evidence, the uncontested evidence, you will agree it is wrong and that he must be removed from the bench.

There's a second argument the defense will make that I also want to comment on very briefly, and that is the Senate cannot consider the evidence of any of Judge Porteous's conduct before he was sworn into federal office.

As Representative Goodlatte's evidentiary presentation made clear, some of the conduct in articles 1 and 2 took place before the judge's appointment to the federal bench, during the confirmation proceeding and after his appointment to the federal bench.

Article 3, the bankruptcy count, involves conduct only while he was on the federal bench, and the final article, Article IV, involves conduct during the confirmation process itself.

In Judge Porteous's view, the Constitution prohibits the Senate from considering in an impeachment proceeding anything that took place before his swearing in.

The Senate confirmation process, in this view, is a high stakes game of hide the ball. If you can get confirmed, no matter what you conceal, no matter what false representation you make, you are home free for life.

Nothing in the Constitution compels this view. In fact, the Constitution is silent on when the high crimes and misdemeanors must take place.

But Judge Porteous would have you read into that silence an intent to make any prior conduct unreachable. This would lead to an absurd result.

Let us say the evidence showed that a judge had committed murder prior to his appointment. Could he not be removed? Let's say that the evidence showed the judge were convicted and sentenced to jail after their appointment to the federal bench but based on conduct that was committed before they were appointed to the federal bench.

Can we imagine a situation where that

judge might serve the rest of their life in jail and the Senate would be powerless to remove them or withdraw their salary or pension?

In this case, the defense makes much of the fact that Judge Porteous was not prosecuted by the Department of Justice. Let's say that he had. Let's say that he had been prosecuted for the curatorship scheme. It would be the defense's position that because the conduct took place before, notwithstanding that he goes to jail now, he cannot be impeached or removed from the bench.

As Professor Amar, one of the nation's leading constitutional scholars, testified before the House, if a judge bribed his way onto the bench, would he be beyond the reach of impeachment? Of course not.

The standard, we believe, for impeachment is whether the judge has misdemeaned himself so much that he betrayed public trust and cannot be allowed to remain on the bench. Viewed from this perspective, it matters not when the actions took place but whether the public can have confidence that the judge will honestly and honorably undertake his public responsibilities and in accordance with the law.

In this case we believe the evidence will show that the public cannot have that confidence.

Let me conclude where I began with one final observation on the standard to be applied as you hear the evidence. What does it mean to betray a public trust?

I can only give you my view, and that is if I were a member of the public and I had to appear in Judge Porteous's courtroom in the future, could I have the requisite confidence that he would undertake his responsibilities in accordance with the law?

If I had a case in his courtroom that was very important to me and opposing counsel was a friend of the judge, could I be confident that he was not taking cash from them, that he would disclose his full relationship with them, that he would not ask for more cash while that case was under submission, that I would not need to hire another crony of the judge to protect myself? I simply could not have that confidence.

If I were a creditor in a bankruptcy case, could I expect a fair result when the bankruptcy party -- when the bankrupt party lied on bankruptcy petitions, used an alias, concealed debts or

violated the court order by incurring new gambling debts? How could I have that confidence?

When the party in question can say, Judge, how can you criticize me for filing under a false name? Doesn't the name Ortous ring a bell?

With that, Senators, I would conclude my remarks.

CHAIRMAN MC CASKILL: Thank you. Judge Porteous's counsel now has an opportunity for an opening statement.

MR. TURLEY: Thank you, Chairman McCaskill, Vice Chair Hatch, distinguished members of the Senate Impeachment Trial Committee. Good morning.

My name is Jonathan Turley, and I have the honor of representing United States District Court Judge G. Thomas Porteous, Jr.

Joining me at counsel's table with Judge Porteous are my colleagues, Daniel Schwartz, Keith Aruzada, Brian Walsh, P.J. Meitl, Dan O'Connor, from the law firm of Bryan Cave.

Senators, if the parties agree on one thing, it is this: By any measure, this is an historic moment. It's not simply because this constitutional proceeding has only occurred 14 times

in our history. It's a proceeding that the framers crafted with the likes of James Madison to guide your actions today, this week and in this case.

In the history of this republic, in over two centuries, there has only been seven federal judges, of thousands, that have been removed under this standard.

Now, for past senators, and frankly currently senators, it would be an easy thing to simply convict the judge and yield to the passions of controversy. Yet this is an occasion where the Senate is given a specific duty to adjudicate, not just legislate or deliberate. Impeachments are not about one judge. They're about all judges. And the constitutional guarantees under which they serve.

James Madison stated it best when he warned that removal must be based on a high showing, a high standard, to avoid interpretations, quote, so vague as to be the equivalent of tenure at the pleasure of the Senate.

For that reason, the framers adopted the standard of treason, bribery or high crimes and misdemeanors.

It is the obligation of every Senator -- and I know you take these obligations seriously --

to make two distinct determinations before voting to remove a federal judge.

First, you must conclude that the underlying facts, the alleged acts, were proven to have occurred. In a criminal case, facts must be proven beyond a reasonable doubt, a standard should be no lower for an impeachment, particularly in a case where the accused was never afforded the protections and due process of a criminal trial.

Second, if the acts were proven to have occurred, you must determine that the acts constitute treason, bribery or other high crimes and misdemeanors.

In most past cases, the second determination was the focus of your deliberations, the focus of the Senate.

However, in this case your factfinding has far greater impact in the absence of a prior trial record than all of these prior modern judicial impeachments.

As I mentioned, the House opted to bring this impeachment, despite the fact that Judge Porteous has never been indicted, let alone convicted of any crime. That is unlike any modern judicial impeachment.

Judge Porteous signed three tolling agreements to allow the government to prosecute him, regardless of the running of the statute of limitations. He waived that protection.

As will be shown, the Justice Department investigated these very claims and found that they did not warrant criminal charges. As a result, there was no trial, where evidence and witnesses were subject to judicial review, or a full adversarial process.

A trial of this kind in federal court would take weeks or months, in an actual court of law. You would have months simply spent on going through the evidence.

Indeed, even with a prior trial, former Judge Alcee Hastings's Senate trial lasted 18 days. In the 19 hours allowed to the defense after opening arguments, we will not be able to present a full panoply of witnesses or testimony as if this were a criminal trial.

Indeed, we've reduced our witnesses to try to stay within the allotted time. However, you will hear testimony that core allegations in this case either did not factually occur or have been contributed by core witnesses, including the House's

own star witnesses.

You will be hearing new evidence never disclosed previously in this case, including facts that were never disclosed to the members of the House before their impeachment vote.

Indeed, I expect many House members may be surprised to learn that the articles were based on alleged acts that we now know could not have occurred, as well as alleged acts used as the basis for removal that were entirely lawful under either judicial ethics or bankruptcy rules.

Indeed, this is the first impeachment that I know of where the House impeached on some factual allegations that didn't actually occur. I know of no other impeachment where facts were found, and we will demonstrate clearly, that the acts didn't happen, simply did not happen.

This impeachment reads like a scene in Sherlock Holmes in the Silver Blaze case, where Holmes solved a mystery by noting "the curious incident of the dog in the nighttime." The Scotland Yard detective, however, objects and tells Mr. Holmes the dog didn't do anything in the nighttime. To which Holmes responds that was the curious incident.

It was the absence of the dog barking that Holmes found so suspicious.

The curious incident in this case is that while the House continually refers to a massive investigation of various judges called Wrinkled Robe, and despite the fact that Judge Porteous waived the statute of limitations on crimes, no indictment was ever brought against him, after years of inquiry.

There was a reason the dog did not bark in this case. Judge Porteous's actions, while in some cases showing poor judgment, were, in fact, entirely legal.

Now, there's been an effort to portray the defense past inquirers in this case as to cast blame on the judges of Louisiana, or suggesting that misconduct is generally accepted. Mr. Schiff attempted to make that argument, saying that we were going to argue, oh, it's just New Orleans.

That's not what we're arguing. We've refrained from answering those types of ill-informed typecasts in the Times-Picayune. We waited to present the evidence to you.

The purpose of this evidence is to show how small courthouses work, not just in Gretna, but

around the country.

Sitting here in D.C. can warp your view of legal practice. On any corner of this city, you can throw a stick and hit two lawyers. In most towns, small communities carry out the daily business of the law, in a civil and close-knit environment. Lawyers and judges grow up together. They socialize with one another.

What may seem sinister about a judge knowing a bail bondsman, for example, in Washington is not surprising in a town like Gretna, where there's basically one bail bondsman, handling all the bonds going through the judge's chambers.

While we will present new evidence to you, however, we will ask you to keep in mind two legal truths.

First, while we feel obligated to address the allegations about Judge Porteous when he was a state judge, a federal judge cannot be removed on the basis of pre-federal conduct, including in this case conduct going back 25 years before taking office.

I will not argue the motions to dismiss that we have filed on these threshold issues. As you are probably aware, constitutional scholars have

criticized these articles as unprecedented and dangerous, dangerous to our system.

The House did not invite a single scholar to testify, to offer substantive evidence on why these articles are so out of line with the constitutional standard.

Now, Mr. Schiff refers to Mr. Omar, Professor Omar, as testifying and somehow suggesting that this is not a problem. I found that rather surprising, since what Professor Omar said was the state court stuff, well, that's arguably just state court stuff. He dismissed the idea of pre-federal conduct.

Now, we've not been allowed to argue these threshold issues before you. I understand the procedural difficulties of presenting that evidence to the committee and I'm not questioning that decision.

But we only ask the individual senators to support our request to be able to present these issues to the full Senate before closing arguments.

The defense side of these issues has never been heard in oral arguments, since they didn't call any witnesses that would support this view in the House. We are only asking for the same time allowed

to the House and the defense that were given to the earlier motions, to present to the Senate why this is unprecedented, why it is dangerous, and then we are prepared to go forward with the closing arguments.

We are not the only ones asking the members to hear such arguments. In the 5th Circuit, Judge Dennis and his colleagues stressed that "Congress lacks jurisdiction to impeach Judge Porteous for any misconduct prior to his appointment as a federal judge."

You just heard the House managers. They want to change that. I think you should seriously consider whether you want to change that, and we would like to be heard in the full Senate to that effect.

Second, whether it is a lunch or a gift, none of these acts actually violated state ethics rules in Louisiana, and many other states. What the Congress has impeached this judge for is an appearance of impropriety, a matter already addressed by the 5th Circuit.

Indeed four appellate and district court judges in the 5th Circuit expressly objected that the circuit had only found and submitted appearance

violations and not impeachable conduct. I commend that decision to you. It's one of the most -- it's one of the best written opinions I have read in a long time.

Judge Porteous has already accepted punishment for any lapse in judgment, despite what the House managers just told you. He has been sanctioned by the 5th Circuit for those appearances of impropriety, and he will retire next year from the federal bench.

Such appearance controversies are routine, and their use as the basis for removal would wipe away centuries of precedent by this body in defining what are removable offenses.

Perhaps for that reason, the House managers that were quoted in the media last week, stating that they want the senators to adopt a new standard, to treat the impeachment process as merely an employment termination case, they would literally have this body adopt the very standard that Madison rejected, for judges to serve at the pleasure of the Senate, like at-will employees.

Senators, federal judges are not at will employees.

You will hear from all four of the major

House witnesses, Mr. Creely, Mr. Amato and the two Marcottes, that they never bribed this judge, and that they did not and do not believe this judge could be bribed.

They will all tell you that Judge Porteous was viewed as a brilliant jurist who would not be influenced in a decision by any friendship or gifts.

In observing our witnesses and the new evidence that we have gathered, we ask you to demand the same burden and showing from the House that you would want for yourself if you were accused of wrongdoing and threatened with removal from federal office without the due process of a trial.

You may not approve of the state rule, or even the choices made by Judge Porteous. However, impeachments, as you know, are not popularity contests. The framers left it to 100 senators who they believed had the institutional integrity to demand a showing of proof and not simply passion from the House.

In two centuries, Senators have shouldered that duty brilliantly. They have refused to remove judges when there is more proof -- there is more passion than proof.

Now, unfortunately, this case proves one

thing, and an old military adage that when you only have a hammer, every problem looks like a nail.

Faced with witnesses who deny criminal acts, including denials of bribes and other crimes by Judge Porteous, the House substitutes generalized ethical claims for the missing crimes and evidence in this case.

It was not enough that Judge Porteous accepted sanctions from his court or announced his resignation next year. The staff and resources for impeachment had been committed, and regardless of the damage to our constitutional system, the House demanded removal on the basis of appearance of impropriety and minor bankruptcy violations.

The result is precisely what Madison warned you against, a standard so dangerously ill-defined that Congress could literally remove judges at its pleasure.

Let's turn to Article I. In Article I, the Congress -- the House impeached Judge Porteous on the theory that he deprived the public and litigants of, quote, honest services by failing to recuse himself from presiding in the Lifemark case that my opposing counsel mentioned to you.

This article poses a unique problem for

you. For the first time in history, the House based an article of impeachment on a legal theory that was later found unconstitutional by the Supreme Court in the case of Skilling versus United States.

That is also in one of those pending motions that we're asking to be heard on.

Putting aside the fact that the Supreme Court rejected the honest services theory, and by the way, the House managers knew that case was pending when they crafted that article around honest services, this article seeks to remove a judge over his response to and failure to grant a recusal motion for a single case in decades of judging.

You will hear testimony about hundreds of judges who face recusal motions around the country every year, and they are occasionally reversed due to personal conflicts in a case with counsel or parties.

You will hear from New Orleans Professor Dane Ciolino, who is a widely cited expert to the Louisiana judicial system.

You will see dozens of cases of personal conflicts with judges, including financial conflicts in recusal controversies.

To remove a judge for his decision not to

recuse himself would create an absurdly low standard and could be used against literally dozens of currently sitting federal judges.

The use of such an instance amounts to removing a judge because of his judicial decisions, not because of his conduct. What is fascinating is that the lawyers in the Lifemark case testified that Judge Porteous gave them a fair trial. Even the lawyers that lost the case testified that Judge Porteous gave them a fair trial.

The House brings up this business about $2,000 and alleges that Judge Porteous's failure to recuse himself was due to a wedding gift that he received, a gift that was split by his two long-term friends, long-time friends and former partners, Bob Creely and Jake Amato. The gift was made in conjunction with the wedding of Judge Porteous's son and did not occur until three years after the recusal hearing.

Now, I know that in impeachments, facts become fluid, and friends suddenly become cronies. Suddenly, Mr. Amato is a crony, according to the House Manager. Suddenly Mr. Creely is a crony, not friends.

You will hear from them. Whatever

disagreement we may have with their testimony, we don't believe they're cronies. Indeed, Judge Porteous has never challenged their integrity or their credibility, even though some evidence they gave was painfully against him.

You will hear from both Mr. Creely and Mr. Amato, the two witnesses on this allegation, that they have stated unequivocally that they did not give this money to Porteous as a bribe or to influence him. Indeed, both have testified that they were and continue to be absolutely certain that the wedding gift had no influence on Porteous as a federal judge. It was a gift, a wedding gift from long-standing friends.

This is not to say, Senators, that there is not a conspiracy in this case. There is. However, the real conspiracy involved Judge Porteous not as the subject -- I'm sorry. The real conspiracy involved Judge Porteous, not as the beneficiary, but the subject of the conspiracy. You will hear testimony that a large hospital corporation had hired an army of lawyers that succeeded in delaying a lawsuit brought against the corporation by a family of pharmacies.

At issue was control of the St. Jude

Hospital, potentially worth hundreds of millions of dollars. When this case came to Judge Porteous, the case had been bounced from judge to judge for years. In that three-year time span, the parties had gone through 13 judges. That's over four judges per year.

For its part, Lifemark seemed eager to keep the case bouncing as a defendant from court to court and actually demanded a 14th judge. Judge Porteous was assigned to this case randomly and looked at this record and said in open court, I'm going to be your last judge in this case.

That did not sit well with Lifemark or its lead counsel, Mr. Joe Mole. While Judge Porteous confirmed his close relationship with plaintiff's counsel in a subsequent recusal hearing, he stated that he did not view that relationship as a barrier to his ruling fairly.

And by the way, I also would like you to read that hearing transcript. I didn't see him pouncing on people. What I did see at the end of the transcript was his working with Mr. Mole to make sure that Mr. Mole had everything he needed to appeal him to the Fifth Circuit. I commend that transcript to you to read, and you can decide who is

presenting it more fairly.

Indeed, you will hear from witnesses that Judge Porteous's response to the refusal motion was consistent with his practice and those of his colleagues in the former state courthouse in Gretna. He had been a judge for 10 years in Gretna. It was common for judges to hear cases from friends and recusals rarely occurred, since most judges and lawyers in that small legal community grew up with each other or knew each other. You would shut down small town courts if judges recused themselves from every case with a friend or acquaintance. You just wouldn't get anything done.

After Judge Porteous refused to pass the case to another judge, that 14th judge in three years, Mole took an extraordinarily step. The magistrate in the case, Jay Wilkinson, was a friend of Mole. Mole wanted Porteous gone, and he ultimately went to Judge Wilkinson's brother, Tom Wilkinson, the Jefferson Parish attorney, someone who could help with a problem with a judge.

Tom Wilkinson is reportedly under criminal investigation in Louisiana for corruption, and his brother, Magistrate Wilkinson, repeatedly recused himself from all criminal cases.

Tom Wilkinson arranged with Mole to have one of Porteous's closest friends, Don Gardner, enter the case. Gardner, as you will hear, was far closer to Porteous and his family than either of the plaintiff's attorneys, Mr. Amato or Mr. Levenson.

Mole not only promised Gardner $100,000 for just appearing in the courtroom in the case, he promised him an additional $100,000 if he could get Porteous to recuse himself or otherwise leave the case. Under this effective bounty agreement on a federal judge, Mole had just promised another lawyer a total of $200,000 for just appearing in the case and getting this judge to remove himself.

What is remarkable, Senators, is that this unethical promise was put into a written contract, and we have that contract. In return, Gardner gave the magistrate's brother, Tom Wilkinson, $30,000. The problem was that Porteous wasn't going anywhere.

While the Mole conspiracy should have been the subject of an investigation, the House decided to call Mole, as they just told you, as their witness on the alleged unethical act of Judge Porteous. Now, ultimately, Judge Porteous ruled against his closest friend, Gardner, and cost him that $100,000 bounty and other possible fees.

With only a gift made years after the recusal hearing, the House tried to rely on money given to Judge Porteous over a 25-year friendship before he became a federal judge. This is what led those judges in the Fifth Circuit to write that opinion that I just referred to.

The House argues that Judge Porteous, as a state judge, granted curatorships to Bob Creely in order to get occasional loans and gifts from his friend. Mr. Goodlatte just told you that the judge concedes the relationship between the money and the curatorships. That's news to me, and it's certainly news to the judge. We have never conceded that.

However, let's look at the actual witnesses. Mr. Creely recently testified in a deposition conducted by the defense that the Senate allowed us to hold. This was his first exposure to the full examination of defense counsel.

In that examination, Mr. Creely expressly and repeatedly denied that there was any connection between his loans and gifts over decades of his relationship. That is why you didn't see any quotes from the recent deposition being thrown up on these screens by the House.

Instead, they went back years to find

better testimony. Not that long ago, Mr. Creely, just a matter of a few weeks, said that he gave money to the judge because they were close friends. He testified he never expected any benefit from such small loans or gifts and that Judge Porteous would never give him any benefit, and he stated repeatedly these gifts had nothing to do with curatorships. In fact, Mr. Creely noted in the few times he appeared before Judge Porteous, Porteous ruled against him, including one case where Judge Porteous cost him a $400,000 judgment.

The House continues to advance this allegation on the basis of a statement from Amato about what he remembers Creely telling him. We have Creely. Creely just testified and said that he did not give money in relation to the curatorships. He himself has now expressly denied that in a sworn testimony.

We can disagree with Judge Porteous's decision to remain in Lifemark, but Judge Porteous had a good reason to refuse to kick this case down the road to a 14th judge. When you look at that docket, most judges would view that docket as a mockery. Someone is gaming the system. You cannot burn through 14 judges in three years. You will

hear that Judge Porteous has had a reputation for stopping this type of thing, for moving dockets along and resolving cases.

And by the way, if you look at that docket, you can tell a lot of these judges were more than eager to get rid of this case. It was highly complex, perhaps one of the most complex cases I've ever seen. Ultimately, the spell-bindingly complex case was decided by the judge.

By the way, the Fifth Circuit reversed it in part and upheld it in part. But they disagreed with the judge's ruling. This was a Texas panel that disagreed with Judge Porteous on a rather arcane aspect of Louisiana law.

Now, I'm not going to explain that arcane Louisiana law any more than Mr. Schiff did, for one simple reason. I'm not sure I understand. Reviewing this case only served to reaffirm my decision to be a constitutional law professor.

In the end, however, a disagreement over his judicial decision is woefully insufficient as a basis for removal and would create -- would elevate a routine conflicts issue to a constitutional clash between two coequal branches of government. Moreover, the House would have you remove a judge,

not only on the basis of pre-federal conduct, but conflicted pre-federal conflict evidence.

You have two former partners who have now disagreed on the underlying facts, an evidentiary status that would not even meet the lower preponderance of the evidence standard in a court.

Once you strip away all the rhetoric, and once you look at all the evidence, you will find that the House's solution to this problem was not to increase the evidence to meet the standard, but as you just saw, to try to lower the standard to meet the evidence.

Let's turn to Article II. In Article II, the House impeached Judge Porteous purely on the basis of pre-federal conduct that goes back decades before he became a federal judge. This is precisely, by the way, what the House's own experts said they could not do. Article II alleges that while a state judge, Judge Porteous received, quote, things of value from bail bondsmen, Louis Marcotte and Lori Marcotte, a brother and sister, and took actions that benefited the Marcottes.

Notably, not only did the federal government reject this as the basis of criminal charge, but the Fifth Circuit expressly ruled out

relying on such acts on the state level as relevant to his position as a federal judge. The allegations in Article II were not a part of the Fifth Circuit inquiry. The Marcottes didn't testify, because those judges, as with past Senators, treat pre-federal conduct as immaterial to whether he abused his office as a federal judge.

The House position on the bond allegations with the Marcottes has continued to evolve, as conflicting evidence has mounted in recent weeks. As you will see, roughly a week ago, the House stated in its pretrial statement that "the House does not allege that Judge Porteous set any particular bond too high or too low."

So despite months of discussing bond amounts and splitting bonds, the House has now conceded that Judge Porteous did not manipulate bond amounts to assist the Marcottes. What is left is the fact that he signed bonds as a state judge with the Marcottes, who, by the way, handled 95 percent or more of the bonds going through that state court.

What is left is that Judge Porteous had lunches and received gifts from the Marcottes, as did other judges in the district. Yet, the government does not claim a single bond, not one was

ever set by Judge Porteous as too high or too low to assist the Marcottes. Moreover, the House concedes that Judge Porteous did not sign a single bond, not one, for the Marcottes as a federal judge, not high, not low, not ever as a federal judge.

Putting aside the fact that Judge Porteous's conduct as a state judge is irrelevant to his conduct as a federal judge, Article II ignores that judges are not barred from receiving meals and gifts from lawyers or others. While the House cannot produce any receipts for the gifts or meals, it just told you that it could be hundreds of meals, but if that's our evidentiary standard, it could be millions of meals. He could have never stopped eating.

The fact is, we don't have the receipts in the record, but we don't deny that Judge Porteous and all of the judges in Gretna often had lunches bought for them. But they're suggesting that this is, quote, corruption, even if it didn't violate judicial ethics.

You will hear from all four of the House's star witnesses, Creely, Amato, and the Marcottes, were regularly bought meals and given gifts by lawyers, bail bondsmen, and others. We're not

saying that this was a den of corruption. We're saying it was lawful. And if you go to a lot of small towns, you will see the same thing.

If you want to restrict the rules, you can change the rules. But by the way, we've put into the record opinions by courts that say they believe this is a good thing, to have judges and lawyers who have social relationships. We've already put that in the record.

This is something that's not new. You're going to see this comes up a lot when people allege these recusals, and uniformly, the courts have said don't come to us and just say that this guy is a close friend. That's not enough to force a judge to recuse himself, let alone to remove him in a constitutional trial.

The House does its best to take a small number of lunches as a federal judge and make it look sinister. The problem is that the House could only come up with six lunches at a place called the Beef Connection in Gretna, Louisiana, when he was a federal judge, those lunches, six.

Now, what the House did is they presented these lunches and basically portrayed the total value of the lunches that went to Judge Porteous.

It looks like he received a considerable amount of money in these lunches.

However, as this display shows, the House actually was dealing with the totals of meals for large parties where Judge Porteous was just one of many lunch guests. They just charged the whole lunch against him. In reality, even if he was present at these lunches, it would amount to $250 in five years. I'd like to repeat that. $250 in five years. These meals included meals as low as $29.

Now, by the way, I said if Porteous was at these lunches. The reason I say "if" is because the House included a couple of meals where there's no specific record of Judge Porteous being actually at the lunch.

However, what their position is that since someone had Absolut vodka and Judge Porteous is known to drink Absolut vodka, it must have been him. So they added those two to the six, and they just counted those against him.

I can tell you in our visit to the Beef Connection, we were able to confirm that Judge Porteous was not the only person in Louisiana who drinks Absolut vodka. But as you can see, the key fact that they rely on is a notation that somebody

at this table had two Absoluts, and they submitted that to you so that you could throw it into the mix for a removal of a federal judge.

The House suggests that such meals from the Marcottes were intended to influence Judge Porteous and get him to help them with bonds, a type of beef-for-bonds theory. By giving him beef, he give them bonds. But now the House concedes that they're not saying he set bonds too high or too low for the Marcottes. You actually didn't hear them cite any bonds that were invalid or that this guy didn't even deserve a bond.

After our deposition with the Marcottes, the House had to concede this point. You will hear from both of the Marcottes, if their testimony is consistent, that they did not believe that Judge Porteous was influenced in his decisions on bonds by meals or gifts. There was no beef for bonds. Indeed, they have both testified that Judge Porteous regularly rejected bonds from them and could not be bought.

You will hear from Gretna Criminal Clerk Darcy Griffin that Porteous insisted that any representations made by the Marcottes be checked out with the district attorney, the police, or the jail

before the granting of a bond. Indeed, you will hear testimony that Judge Porteous himself often picked up a phone, called the prosecutors or called the jail to personally make sure that the underlying facts were correct.

Perhaps the most serious misrepresentation to the House was the portrayal of Judge Porteous's granting bonds and splitting bonds. Now, a split bond is well known to criminal defense attorneys. It is simply split between a commercial component and a property or third-party component. In this case, a person who might not be able to afford the full or entire bond could still secure the bond by getting a family member to come in and put her property up as a surety.

Despite the representations made in this case, Judge Porteous did not invent split bonds. Most judges in Gretna split bonds with the support of the state prosecutors. Split bonds were viewed as a way to guarantee the return of prisoners who would otherwise be released under mandatory court orders. If you have a bond on the guy, someone will find them because they have a financial interest to find them.

You will hear from former District

Attorney John Mamoulides and Louisiana Judge Joseph Tiemann on how and why split bonds were widely used and accepted in Gretna.

Likewise, the House has alleged that Judge Porteous dramatically increased the number of bonds as he was leaving to take the bench. This was a big part of what the House was told before their impeachment. There was this -- it's called the floodgates theory. And you heard part of it today, but you will notice that they stopped talking about the bond setting and now they're talking about an expungement, one or two expungements or set-asides.

The floodgate theory that the House members were told about was that in the last month, in the last day, Judge Porteous issued an unusually high number of bonds in repayment for the beef and other benefits from the Marcottes. The only problem with the floodgates allegation is it happens to be completely and demonstrably untrue.

It turns out there was only one bond signed by Judge Porteous on his last day and only 29 signed in the last month. It actually falls to 27 if you look at from the time he was confirmed. This is described by the Marcottes in their testimony as the average number of bonds for any period. There's

no floodgate.

However, to dispel any doubt, we asked the Gretna clerk to send us a random year from Judge Porteous's tenure as a state judge. We selected 1986. We had no information on that year other than the fact that it was before the Marcottes established themselves in the bond business.

One of the best ways to look at whether the floodgates theory is true, take a year before the Marcottes controlled the business. Those bonds have been submitted into the record and show that various months of that year exceeded the number of bonds signed by Judge Porteous during the so-called floodgate month in 1994, even though the Marcottes were not involved.

Indeed, one month, September 1986, shows 51 bonds signed by Judge Porteous, far greater than 19 bonds that was presented in this sinister way as this must have been a rush to try to pay back for those -- for the beef. Moreover, the 1986 records show a total of approximately 3,200 bonds signed by all the judges in the district.

Now, if we extend that over 10 years -- by the way, the number should be higher because Gretna over 10 years expanded and the Court actually

expanded. Let's take that lower figure and forget about expansion. That would mean at least 32,000 bonds passed through Gretna while Judge Porteous served on the bench.

The House was never told what the total pool of bonds were. They were never told that Judge Porteous signed more bonds in some months before the Marcottes established themselves.

Now, Mr. Goodlatte switched rails, and suddenly the floodgate theory is not about bonds, which was the subject of so much discussion with the House members. Now it's about two set-asides or expungement cases.

And what Congressman Goodlatte said is that Judge Porteous said that he was not going to set aside or expunge Aubry Wallace's case because he didn't want to do that before he was confirmed.

The only problem with that argument is it is also untrue. Wallace's burglary conviction was set aside on September 21st, 1994, before Judge Porteous was confirmed. Not only that. In the hearing, Judge Porteous said that he intended to expunge the record before he was confirmed. That was in open court.

All that remains in this case is the fact

that Judge Porteous signed bonds for the Marcottes. You will hear testimony that virtually all of the judges signed bonds for the Marcottes for one simple reason. The Marcottes reportedly did 95 percent or more of the bonds in Gretna. Virtually no one else was doing bonds in Gretna.

If you take any judge, you will find roughly 95 percent of the bonds came from the Marcottes for that obvious reason. Moreover, you will hear testimony that Judge Porteous was a national advocate for the use of bonds as a vital part of the criminal process.

Jefferson Parish during this entire period was under a court order for overcrowding. It was a case where virtually any prisoner in meant one prisoner out. It was one of the most stringent court orders in the nation.

And so people, thousands of felons were being released under court order and were just vanishing. These judges in Gretna would constantly call these people, and they would just be told they're gone. Judge Porteous -- and we've heard the House's own witnesses admit this -- often spoke publicly and encouraged other judges to use bonds, because the chance that a person will return if they

have a bond on them is much, much higher, because you've got a bail jumper agent who will find them.

Otherwise, the only way these people will be found is if they get pulled over by a police officer and they happen to run their record and say all right, you're a bond jumper. But if you put a bond on them, someone has a clear financial interest to locate that guy.

In fact, Judge Porteous, who has spoken nationally on this, was correct. Studies show that by getting a bond on any prisoner, the chances that they will end up in court and not flee or at least not flee and not be found, are much, much higher.

In the end, when you take all of this evidence -- let's strip away the false claims. Article II is nothing more than what Macbeth described, a tale full of sound and fury signifying nothing. He signed bonds as a state judge, like the other judges in Gretna.

Let's turn to Article III. We actually agree with the House Managers when they say this is the one that isn't based on pre-federal conduct. We actually agree with that.

Article III is, in fact, a nonpre-federal conduct article. Instead -- basically what they are

arguing, instead of pre-federal conduct, is that he made a series of errors and mistakes in connection with a personal bankruptcy that he and his late wife Carmella filed in 2001.

What is most striking about Article III is that the House is trying to use common problems that literally occur in hundreds of thousands of bankruptcy cases, which you will hear in testimony. They are trying to take something that occurs in hundreds of thousands of cases and saying it's the akin to things like treason and bribery.

To do this, the House suggests these errors were a part of a nefarious plan to defraud the bankruptcy court or his creditors. The problem with this theory is that Judge Porteous -- and I want to emphasize this -- paid more than he was scheduled to pay in bankruptcy. He paid more than what originally he was scheduled to pay his creditors.

That was never explained to House members. They just talk about this bankruptcy and errors in the bankruptcy, as if that's something new in bankruptcy. As thousands of citizens each year, Judge Porteous made mistakes in a personal bankruptcy case, but those mistakes had nothing to

do with his office, had nothing to do with the basis for removing him as a federal judge.

The Porteouses filed Chapter 13 bankruptcy protection in 2001. This case was processed like every other bankruptcy case with one exception. But ultimately, it resulted in the successful discharge of the portion of their debts in 2004, after they paid more than $57,000 to the trustee, of which $52,000 went to their creditors.

The exception I was referring to was that this case was scrutinized far more heavily than a normal bankruptcy case. He had two bankruptcy judges preside over it. A Chapter 13 trustee, Mr. Beaulieu, who you will be hearing from, administered. The Federal Bureau of Investigation and the Department of Justice investigated.

In fact, the DOJ and the FBI consistently met with the bankruptcy trustee while the Porteouses' bankruptcy case was still pending. This wasn't after. They met with the trustee while it was pending and discussed with him all of these allegations. Nevertheless, not one of these authorities, not the bankruptcy judges, not the trustee, not the FBI, not the DOJ, took any steps to alter the course of the bankruptcy case.

As in the Silver Blaze case, there was no bark to be heard to change the status of the bankruptcy case. What's more, the DOJ specifically declined to pursue criminal charges against Judge Porteous in connection with his bankruptcy case. As you know, the DOJ routinely prosecutes bankruptcy issues.

Finally, none of the Porteouses' creditors ever made an objection or filed a complaint. They had no problem with this bankruptcy.

The Porteouses, like so many Americans, simply became overwhelmed with their mounting credit card debt, which is the result of raising kids.

And yes, the House Managers keep on referring to the fact that they gamble. The secret is out. The Porteouses gamble. They gamble for recreation. They probably gamble too much, but that's not illegal.

With credit card bills mounting, they sought the help from a bankruptcy attorney that the House Managers referred to you earlier, Mr. Lightfoot. Embarrassed about their deteriorating financial situation, they asked Mr. Lightfoot to help them, quote, work out or restructure their debts. This was an effort to

avoid bankruptcy.

They worked through the summer and fall of 2000 and the winter of 2001 to avoid bankruptcy, and then they concluded that they would have to declare bankruptcy, as Mr. Lightfoot tried to work with the creditors. So February 2001 it became clear that they had to file for bankruptcy, and like many of us, in that case and certainly most of the people in bankruptcy, the Porteouses were shown to be horrible recordkeepers and, obviously, bad money managers. That's a fairly common trait, by the way, when people declare bankruptcy. They tend to have problems with records and money management.

During these discussions, Mr. Lightfoot proposed the idea that the Porteouses file their original bankruptcy petition under the pseudonym Ortous. Let me repeat that. Mr. Lightfoot proposed that they file under that name. He's previously testified to that effect. He said it was his idea to avoid embarrassment for the Porteouses and for their children, because they didn't want it plastered all over the Times-Picayune.

The newspaper in 2001 published weekly names of everyone who sought bankruptcy protection, and Carmella was particularly embarrassed by the

type of publicity for the family. While most bankruptcy filers enjoy anonymity through this process, it involves so many cases, public officials were and are singled out with their bankruptcy files.

As public figures yourself, I'm sure you can understand, these files are examined in excruciating detail, and people love it. They love to read about bankruptcy of famous people.

To avoid this, Mr. Lightfoot proposed that the Porteouses file their original bankruptcy petition under the pseudonym, and they also used a P.O. box that Mr. Lightfoot advised Judge Porteous to obtain. Mr. Lightfoot has testified that neither he nor Judge Porteous ever intended to defraud the Court or any of Porteous's creditors.

There's no evidence that Mr. Lightfoot proposed the changing of this name for this period because he wanted to assist in a fraud. His purpose was obvious and, frankly, was humane. He was trying to protect the family from the initial embarrassment of bankruptcy.

The Porteouses, however, when they filed those original papers, included their true Social Security numbers. Those numbers, as you will hear,

are very important in bankruptcy, because that's what's used to track. That's what creditors use to track people in bankruptcy.

Trustee Beaulieu later stated that he had seen the use of PO boxes in other cases and that since the names were changed before the first notice went to creditors, he said, quote, no harm, no foul. What you have to understand is that the names were just changed about 12 days later, so no creditors actually got this material. There were no creditors that were misled, and the trustee himself said look, it's no harm, no foul.

And you will also hear, by the way, even though the House makes this great deal about the use of a P.O. box, you will hear P.O. boxes are used all the time. More importantly, you have a trustee saying no harm, no foul. And the House turned around and said maybe no harm, no foul, but let's use it to remove the eighth federal judge in the history of the republic.

Judge Porteous and Mr. Lightfoot specifically claimed to file, and in fact they did file, that amended claim in 12 days, correcting the name and address. As a result, no creditor received any notice in connection with the Porteouses without

full and accurate information.

In the end, the only party that did not get information was the Times-Picayune that it was correct, but that was only for a short time, and the Times-Picayune quickly began running the very news stories that Mr. Lightfoot and the Porteouses wanted to avoid.

Throughout the bankruptcy process, and especially in connection with the decisions about what information to include in these filings, Judge Porteous relied heavily on Mr. Lightfoot. Even though he is a federal judge, I think you would understand most of the federal judges do not have expertise in bankruptcy.

The House has further alleged a series of other errors and inaccuracies in the Porteouses's bankruptcy schedules and materials. The House argues that each of these discrepancies must be a part of a dark plan to co-opt the bankruptcy system for his own gain.

Here again the facts simply don't support the allegations. And the allegations, even if true by the way, even if you take everything that my colleagues from the House have said, it would still not warrant a basis for removal. The House decided

small omissions of assets to suggest that creditors were defrauded.

However, the House never told the House members that the Porteouses were in the minority of debtors to successfully complete their bankruptcy. They were in the minority of debtors who completed their bankruptcy. Indeed, they provided almost 35 percent repayment to unsecured creditors and over $52,000. You will hear from experts, former judges and trustees, that this is actually significantly more value to his creditors than would have been the case under a Chapter 7 liquidation.

The House also relies on the fact that Judge Porteous gave Lightfoot his May 2000 pay stub for his income, but he later didn't supply an updated pay stub reflecting a slight increase in salary. What the House did not inform the House members was that this difference amounted not just to only about -- specifically, $173.99 per month, but that it had no material impact on the creditors who were paid $52,000.

Moreover, Lightfoot's files show that Judge Porteous did tell him that his net income was $7,900. He did tell him. He did reveal it and reveal it was higher than that earlier pay stub.

The errors were his counsel's and not Judge Porteous's.

Once again, I'm not casting aspersions on Mr. Lightfoot. These are very small things that happen in bankruptcy when you have all of these receipts coming from people who, obviously, had trouble managing their money.

Likewise, the House cites such errors as the Bank One account -- you just heard about some of this -- that had as low as $200 in assets, as somehow a clever design to defraud creditors. Does that track? I mean, does that really make sense, $200?

Then there's the Fidelity Homestead Association account. Now, here, you didn't just have $200, and we concede that. You had $283.42. So let's round it upwards, shall we? Let's say it's $300. Is that going to be relied on for the removal of a federal judge after 16 years of service? Whether it's a tax refund check or a single credit card, these problems are routine. That's what these experts are going to tell you.

Moreover, errors cited by the House members were actually not material to the bankruptcy plan, such as this business of small prepetition

payments that were not listed in the forms. The House members heard there were prepetition payments that you should consider to impeach this judge. The problem is that prepetition payments are legal under bankruptcy law.

While the House cites incurring new debt, there's no bar to incurring debt by statute in this area. It's important to remember that the confirmation order that you're going to hear about was designed to guarantee completion of the repayment plan. Most people don't complete it. The Porteouses did. They completed it and paid more under that plan.

Now, throughout these allegations, the House mentions errors and mistakes but never mentions that those issues had no impact, material impact on creditors who are, after all, the focus of the bankruptcy process. Both the Porteouses gamble as their primary form of recreation, a practice that Judge Porteous later stopped with professional help and hasn't resumed since.

However, the House Managers keep on trying to distract the Senate, as they did the House, by disclosing -- without disclosing key Louisiana law governing what are called markers. That's what

you're going to be hearing about. That's a marker. That's what you're going to be hearing about. In the dissent in the Porteous case before the Fifth Circuit, the judge objected to the use of markers as evidence of wrongdoing in bankruptcy matters because, and I quote, "under Louisiana commercial law, markers are considered checks as defined by Louisiana statute." They treat this as an uncashed check.

Now, should they have continued to gamble? No. But in the end, this continued gambling was not a problem for the creditors of the Porteouses. It was a problem for the Porteouses. It was a personal problem, and the judge overcame it.

We will be creating a record that was never made in the House on this issue of bankruptcy. You will hear from Professor Ralfael Pardo from the University of Washington who will explain important differences between Chapter 7 and Chapter 13 bankruptcies that the House appears to have missed in the earlier discussions. He will show errors like these are quite common by both debtors and creditors in bankruptcy cases and that mistakes in this case created no material harm to creditors.

You will also hear from United States

bankruptcy judge of the Northern District of Illinois, Ronald Barliant, who is widely cited and respected in this field. Judge Barliant will explain how Chapter 13 cases develop and how judges in bankruptcy rely on trust, he's like Magistrate Beaulieu. He will explain how the bankruptcy code contains no authority for an order barring a debtor from incurring debt after a bankruptcy petition, as simple as that, something the House staff just didn't mention to House members.

We will also explain that Congress has specified that the principal consequence for unauthorized debt is that the debt is simply nondischargeable. That's the consequence. If you have that debt, it's nondischargeable. I would say that's significantly different in magnitude from being removed in a Senate trial as a federal judge.

You will also hear from the United States bankruptcy trustee, Hank Hildebrand -- we're not just calling Beaulieu. We're going to call a separate trustee. Magistrate Hildebrand is another leader in his field who has worked extensively. His opinions are cited quite widely.

He will explain that Chapter 13 is a voluntary repayment program and that the most

serious problems simply result in the threat of a dismissal of a case and that that threat is usually withdrawn as soon as the problems are remedied.

He will explain how Chapter 13 debtors frequently fail to complete the plans. He will explain that 55 percent of debtors fail to fulfill the plan and that the Porteouses were in the minority in successfully completing and paying more to creditors.

None of these issues were explained to the House. Instead, the House impeached a judge on errors that did not materially affect his creditors, did not prevent him from completing his bankruptcy plan or paying creditors more than he had originally told. This would take the Senate from a standard citing such crimes of treason to the removal of a judge based on such things as a $200 discrepancy on a credit card.

Let's move to the last article. As with Article II, Article IV seeks Judge Porteous's removal on the basis of pre-federal conduct going back decades. This time under the guise of a failure to disclose such conduct during the confirmation.

The standard that the House seeks to

impose is, frankly, absurdly subjective. Did Judge Porteous failure to disclose information that he, Judge Porteous, thought would be embarrassing to President Clinton? Assuming Judge Porteous thought he had done nothing wrong or inappropriate, and that's what we're going to be presenting evidence about, he did not think it would be embarrassing to him or to President Clinton.

Even if the Senate comes to the conclusion that Judge Porteous acted improperly and should have put something of these floating allegations down, they can't conclude that he thought that these actions were improper and, therefore, embarrassing without concluding that Judge Porteous acted with the intent to deceive. There's no basis for that conclusion.

The evidence will show that allegations contained in this article are also completely and demonstrably untrue. I'm not saying challenged. I'm saying untrue. For example, the House specifically impeached Judge Porteous on the failure to mention a brief conversation he had with Louis Marcotte.

Now, you didn't hear this mentioned by the House Managers in their presentation, but boy, was

it mentioned before, but more importantly, it's in the article. Now, the House Managers have said that the judge should be impeached because he failed to mention this conversation when he filled out these forms, when he filled out the background form, for example.

The only problem, as we revealed after the House impeached this judge, the conversation occurred after the forms were filled out. It was impossible for him to put into these documents a conversation that hadn't occurred yet. Moreover, even if you believe that a judge, when someone like Marcotte comes to him and says I gave you a clean bill of health -- by the way, the most common thing that background witnesses tell nominees, I gave you a clean bill of health.

Even if you believe there's something wrong with him not immediately picking up the phone and saying I would like to submit a supplemental filing saying this guy just gave me a clean bill of health, even if you think that warrants an impeachment, it couldn't have happened in this case the way the article stated. Indeed, I believe this is the first impeachment that I know of where a fact contained in an article of impeachment simply did

not occur.

The embarrassment question, as you know as Senators, is universally answered in the negative by nominees, even though there are many cases where some embarrassing facts are, in fact, disclosed.

Testimony from experts will show you what the figures are like on this, what the cases are like, but nominees routinely omit financial, ethical, even criminal histories from their background reports, omissions that have occurred literally in dozens of high-profile cases that resulted in no action, no action taken against the nominees, including some cases where the embarrassing facts were revealed before confirmation and they were confirmed, revealed not by the nominee but they were confirmed.

Furthermore, the evidence will show that Judge Porteous's issuance of bonds and curatorships were in line with other judges. There's no reason he would say this is embarrassing because I did something that all of us in Gretna did, not because it was corrupt but because that was how it was done. It was not illegal.

Finally, we will show that the basic allegations contained in Article IV were known by

the FBI and the Senate committee before Judge Porteous's confirmation. This is precisely what the House's own experts warned could not be the basis for removal.

The pre-federal conduct referred by the House was known at the time of confirmation. We have put into the record proof of that. The House members were never told that before impeachment. Once again, this was never discussed or disclosed to the House.

We found new evidence before the Senate. Moreover, not only are curatorships and bonds matters of public record that Judge Porteous took no effort to conceal, they were, in fact, the same records and actions of all of the judges.

You will hear testimony from Professor Calvin Mackenzie, who is widely viewed not as a leader in this field, he's viewed as the leader in the field. He has numerous books on the confirmation process and background investigations. You will hear testimony of the failure to make disclosures is common on federal nominees with literally dozens of these cases.

As Senators, we admit we probably don't have to tell you this. You deal with it regularly.

You've seen countless such questionnaires. And I dare say I would be surprised if you know of many questionnaires where someone answered the embarrassment question in the negative. But Professor Mackenzie will come and show you dozens of cases where it was answered in the negative and, either before a successful confirmation or after, embarrassing things were disclosed, not just for judges but for justices.

If this could be the basis for removal, think about it. Congress could sit on a background questionnaire and simply remove a judge at will for failure to disclose. You just file these things and find things that you now think he should have thought was embarrassing and bring them up on the identical articles, Article IV. Literally dozens of judges could be removed on the same grounds, judges sitting today on the federal court.

In this case, the House wants you to remove a judge in a failure to disclose information that he did not consider relevant or embarrassing when those allegations were already known by the Senate and the FBI.

In closing, I will note that in only a couple of months of representing Judge Porteous,

we've been able to show fundamental errors, contradictions, and withheld evidence in this case. This is the peril of proceeding to impeachment without a prior criminal trial. That's why Congress has, in all modern impeachments, waited for a criminal trial.

Even if the trial, by the way, acquits the judge, that doesn't stop you from hearing the impeachment. What it does give you is a trial record. Indeed, late last night, we received new evidence, long-held by the Justice Department, literally hours before these proceedings began.

The record in this case continues to change not by the week, not by the day, but by the hour. I will only submit to you that impeachment trials should not be works in progress, the subject of casual or incomplete disclosures. It's more important than that.

Indeed, we don't believe today that we've received all of the material evidence in this case. Few Senators have been called upon to fulfill this unique role that you have under our Constitution. In the end, you have to decide whether Judge Porteous warrants the extraordinary action of removal for only the eighth time in the history of

this republic.

While the Fifth Circuit sent to Congress this case to consider, four judges took the trouble to write a 49-page opinion, warning you, speaking directly to you, that this case would eradicate core constitutional standards that have protected the independence of our court.

It should not occur, as some people seem to indicate, simply because everyone is dressed up for an impeachment and it would be a disappointment not to dispatch the accused. It should not occur, as the Managers suggest, because you've decided to downgrade the constitutional standard to a type of retroactive job interview.

The impeachment standard speaks to all judges. You don't have the option of saying well, it's close enough for jacks and just remove a judge on innuendo and conflicted facts. The House case is going to be exposed in this room for the first time through a fully adversarial process. Please give us a chance.

What remains after all of the half-truths and distortions melt away will dictate not just the future of this judge but the future standard for all judges. We ask only that you, like your

predecessors, mind the constitutional line. My colleagues and I are now ready to address these allegations.

We are now ready to present the case in defense of the United States District Court Judge G. Thomas Porteous, Jr.

Thank you very much.

CHAIRMAN MC CASKILL: Counsel, we will take a 15-minute break, and when we will come back, we will look for the first witness for the House.

(Recess.)

CHAIRMAN MC CASKILL: At this point the committee will call upon the House to call their first witness.

MR. SCHIFF: Madam Chair, the House calls Jake Amato.

CHAIRMAN MC CASKILL: Mr. Amato, would you please raise your right hand so the oath can be administered.

Whereupon,

JACOB J. AMATO, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Mr. Amato, as you know, you have been granted immunity by the United

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predecessors, mind the constitutional line. My colleagues and I are now ready to address these allegations.

We are now ready to present the case in defense of the United States District Court Judge G. Thomas Porteous, Jr.

Thank you very much.

CHAIRMAN MC CASKILL: Counsel, we will take a 15-minute break, and when we will come back, we will look for the first witness for the House.

(Recess.)

CHAIRMAN MC CASKILL: At this point the committee will call upon the House to call their first witness.

MR. SCHIFF: Madam Chair, the House calls Jake Amato.

CHAIRMAN MC CASKILL: Mr. Amato, would you please raise your right hand so the oath can be administered.

Whereupon,

JACOB J. AMATO, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Mr. Amato, as you know, you have been granted immunity by the United

States District Court for the District of Columbia for your testimony before this committee. The court's order of July 27, 2010 was communicated to you at your deposition before this committee on August 2, 2010.

That order, which committee staff will hand you a copy of, covers your testimony today.

THE WITNESS: Yes, that's correct.

CHAIRMAN MC CASKILL: The House may proceed.

DIRECT EXAMINATION

BY MR. SCHIFF:

Q State your full name for the record.

A Jacob J. Amato, Jr.

Q Can you tell us a little bit about your educational background.

A Graduated from St. Paul High School in Covington, went to Southeastern University in Hammond, Louisiana, went to Loyola University in New Orleans and graduated from Loyola University law school.

Q About how long have you been practicing law?

A 40 years.

Q Where has your practice been based?

A Gretna, Louisiana.

Q Is that a part of Jefferson Parish?

A It is.

Q During your time of practicing law, was Thomas Porteous ever your law partner?

A Yes, he was.

Q About when did that begin?

A Sometime in the mid to early '70s.

Q How did you know him before he became your law partner?

A I was working in the district attorney's office in Jefferson Parish, and Judge Porteous was working for the Attorney General's Office for the State of Louisiana. Mac Gauchet and Judge Porteous were assigned to the district attorney's office, and they asked me to meet with him and show him the ropes.

Q Could you pull the microphone a little closer to you?

A Sure.

Q How long were you and then Mr. Porteous partners in your law practice?

A I would think somewhere between two and three years. I can't be any more specific than that.

Q What time period are we talking about? When was this?

A Early to mid-'70s.

Q Did you also know Bob Creely?

A Yes.

Q Was he a law partner of yours as well?

A Yes.

Q And how did you come to be partners with Mr. Creely?

A I met Bob Creely on the ferry landing going from the East Bank to the West Bank and we started talking, and we had a group, Marion Edwards, Tom Porteous and I, and we convinced Bob to come start as a law clerk, and when he finished school and passed the bar, he came to work for us. And then at some point in time, Bob and I became partners. We looked for greener pastures.

Q Were you -- at the time that you brought on Mr. Creely, were you and Mr. Porteous already partners?

A Yes, we were.

Q Do you recall that Mr. Porteous became a state judge in Jefferson Parish in 1984?

A Yes.

Q And when do you recall he became a federal

judge?

A In mid-'90s, sometime in the mid-'90s. I don't know, '95, '96.

Q So he was on the state bench for about how long?

A I think 10 years.

Q During that 10-year period when Judge Porteous was on the state bench, did you have occasion to take him out for lunch?

A We went to lunch on a regular basis, yes.

Q How regularly would you go to lunch?

A I would say a couple of times a month maybe, average twice a month maybe.

Q What kind of places did you go for lunch?

A Good restaurants. I mean, we liked to eat well. Just -- he was a friend, fun to be with, good guy, told jokes, very friendly relationship with the judge, and we went to lunch.

Q Can you tell us a little bit more about the kind of places you went to? You said they were good places?

A Well, I mean, we went to Beef Connection, we went to Red Maple, we went to Bertucci's, we went to Chris's, and we went to Antoine's a few times, Galatoire's a few times. New Orleans is full of

restaurants.

Q On the scale of things, are these more expensive restaurants? These are not fast food places we're talking about?

A I didn't get this size eating fast food. No, they were good restaurants.

Q And if you added up the number of times over the years you took him to lunch, how many would it be?

A I couldn't tell you. I really, really couldn't tell you. Sometimes we ate in the office. Sometimes we went to somebody else's office to eat over the years. It's just hard to tell. But it was a number.

Q And you would have averaged at least a couple times a month?

A Absolutely.

Q What would the average check be for lunch at one of these restaurants?

A Depends on which restaurant we went to, how much time we had and how much drinking we did.

Q How much drinking would you do?

A Well, I've had drinks in my lifetime. I don't know. Two, three, four. Just depends if I was going back to work or not going back to work or

I was going home or celebrating something. Just depended.

Q How much would Judge Porteous have to drink?

A Well, he was a better drinker than I was, no question about that. It's hard to say. Depends on what he had to do, how much time he had, was he going back to work. You know, just -- we had a good time.

Q And on average, what would you say, how much would he drink during your lunches?

A At least two drinks.

Q What kind of drinks?

A I think he drank Absolut martinis.

Q When you say "at least two drinks," were there times he drank more than that?

A There were a number of times we drank more than that. I drank more than two, too.

Q And when the check would come, and I know you can't be precise about this, but were food and the alcohol on average, can you give us a sense of what the meal would cost?

A No, I -- I couldn't tell you. I mean, I just don't know.

Q Can you give us kind of a ballpark for one

of the -- one of the restaurants when an average check might be?

A Well, I haven't bought a drink in about 10 years, so I don't know what drinks are now. But some places you could drink for $3 a drink. So if you had six drinks at $3, that's $18, and whatever the lunch was, 10, $12, $15. Hard to quantify that.

Q And over the years, would this -- are we talking about potentially hundreds of lunches?

A Yes.

Q In the course of these hundreds of lunches, how often did Judge Porteous pay the check?

A He paid a few times, and other people paid on occasions.

Q How many times would he pay?

A I couldn't tell you. You know, he paid on occasions. Rarely, but he paid.

Q Are we talking about once or twice?

A Probably. Maybe a little more.

Q Did you also take Judge Porteous on hunting trips?

A Yes, we had a tugboat we bought for $2500, and we worked weekends and converted it to a hunting camp. And he would go hunting and fishing with us on a regular basis. And on those occasions, he

would bring food sometimes, he would bring whiskey sometimes, he would bring cigars sometimes.

Q And when you would go on these hunting trips, did you pay all the other expenses?

A Yes. I say yes, but I don't know who bought the shotgun shells, whatever. Yes.

Q And your partner, Mr. Creely, would take him on hunting trips as well?

A Well, Mr. Creely would take him on the hunting trips. I would stay at the camp and guard the liquor supply and the food and cook.

Q The general expenses of these trips were paid for by either you and Mr. Creely?

A Yes.

Q Did you and Mr. Creely pay for Judge Porteous to take a hunting trip to Mexico?

A I think so. I don't know when -- I know it was before he was a federal judge, but I don't know how -- I don't know if because there was more than 10 of us there was a free ticket and he got the free ticket or how that worked out.

I -- I really -- that's 20-something years ago at least.

Q Were there additional hunting trips with Mr. Creely in Mexico with Judge Porteous?

A I think there was. I didn't go on any of them. I went on one.

Q To your knowledge, did Judge Porteous pay for any of these trips to Mexico?

A I don't -- I don't think -- I don't know. I mean, I just don't know.

Q While Judge Porteous was on the state bench, did you and Mr. Creely ever give cash to the judge?

A Yes.

Q And how did that come about?

A I don't know. I'm sitting here thinking about it, and I've thought about it for the last few years. And I think -- I think that there was a discussion that took place with Judge Porteous and Creely about, you know, sending curator cases to the office, and he was to get a percentage.

Q And did Mr. Creely come and discuss this conversation with you?

A Yes. I never discussed that with Judge Porteous at all, ever. To this day I've never discussed that with him.

Q And tell us what, as best you can recall, what Mr. Creely told you about the request for cash and the curatorships.

A That the judge was sending curator cases to him and that he would, in turn, give money to the judge.

Q And did he tell you why the judge wanted the money?

A I presume he needed it. But no, Bob didn't tell me why the judge needed the money, other than, you know, he always had some sort of family catastrophe, couldn't pay his house note, couldn't do this, couldn't do that, you know.

Q Now, the first time Mr. Creely brought this to your attention, that the judge wanted cash back from these curatorships, were you aware that Mr. Creely had been giving him money before the curator cases started coming?

A No.

Q So the first time it was brought to your attention was in connection with the curator cases?

A Yes.

Q And what, as best you can remember, did Mr. Creely say about the connection between the curators and the cash requests?

A That we would split the net difference between us and the judge. And I told him I thought it was going to turn out bad.

Q Why did you tell him you thought it would turn out bad?

A Obviously it did. I mean, I just didn't feel comfortable doing it, but I wasn't -- I wasn't strong enough to stop it.

Q Did you understand that giving the judge money back from these curatorships was wrong?

A I felt that they were probably unethical more than being, you know, some type of criminal offense.

Q I'm not going to ask you the legal definition, but did you view giving the judge back money from these curators as a form of a kickback?

A Yes.

Q Did Mr. Creely ever tell you that Judge Porteous was bugging the hell out of him for the curator fees?

A Yes.

Q What do you recall of that conversation?

A He just said Tom has called him and hounded him and, you know, where's, you know, my curator money?

Q Did you ever have any doubt in your mind that the money was coming from the curatorships?

A Did I ever -- I'm sorry, could you repeat

that?

Q Did you ever have any doubt in your mind that the money you were giving to Judge Porteous was coming out of the curatorships?

A Yes, I had no doubt.

Q Yes, you had no doubt?

A Yeah, I presume that's where it was coming from, yeah.

Q And can you tell us mechanically how this worked? The judge sent you curator cases, asked for money. How would you give him the money?

A Cash.

Q And how did you get the cash to give him?

A We'd take a draw check, each one of us would take a draw check, either for the full amount or for something less than the full amount than was our regular draw, and put it in an envelope and give it to Judge Porteous was all.

Q How did that work? You had a bookkeeper at the firm?

A Yes, we had a bookkeeper, secretaries.

Q I'm sorry, could you pull the microphone even closer?

A I think the chair keeps rolling away from me.

Q Why don't you go ahead and, if the microphone will allow you, why don't you pull the microphone closer to you.

A All right.

Q Okay. Thank you.

So your bookkeeper would do what, write a check to each of you and then you would cash it?

A That's correct.

Q And you would tell the bookkeeper to -- what the amount should be?

A Yes.

Q Why didn't you just have the bookkeeper write a check to Judge Porteous?

A I guess to avoid any kind of paper trail.

Q When Judge Porteous was named to the federal bench, was he able to send you curator cases?

A No.

Q By the way, Mr. Amato, did you ever ask for the curator cases?

A No.

Q To your knowledge, did Mr. Creely ever ask for the curator cases?

A No. I don't think I got any curator cases from Judge Porteous over the years. I might have

gotten a few, but I --

Q When you say that you didn't get them, your firm got the cases?

A Yes.

Q And the money for the curatorships went into the firm's account?

A Correct.

Q And you paid income tax on the money received from curators --

A Yes.

Q And how did you determine the amount to give back to the judge from the curator cases?

A I -- I didn't have anything to do with the actual mechanics of it, but I would presume it would be, you know, 10 curators, and he'd get half of the fee, about $200 a curator. So 10 curators, he'd get $1000.

Q And did you, before you gave him his half of the money, did you deduct your expenses, the firm expenses?

A Yes. Curators were paid by a fee plus expenses. And so the expenses we took out first and then split the difference.

Q And if you could just give us a little idea of what these curator cases were about. What

exactly --

A Absent defendants who have left either their domicile or state of Louisiana, so you advertise does anybody know the whereabouts of John Doe, please call, you know, Robert G. Creely or whatever lawyer. And then you would file a note of evidence with the court, and then you would get paid when the curator case was over with.

Q Was this work that you or Mr. Creely did or was it something that was administratively done by an assistant in your office?

A It was usually -- bulk of it is done by a secretary.

Q I'm sorry, the work was done by your secretary?

A By a secretary.

Q By a secretary.

When Judge Porteous was appointed to the federal bench, was he in a position to send you any more curator cases?

A No, he was not.

Q Did the payments to Judge Porteous come to an end at that point?

A Yes.

Q During the time when he was on the state

bench and he was sending you the curator cases and you were sending him the money, did you have occasion to appear in his courtroom?

A Not very often, but I -- I had appeared from front of him.

Q Were you troubled by the fact that at a time when you were appearing in his courtroom, he was also asking you for cash?

A No, because a couple of cases I can recall I lost in front of him. I mean, I was never a -- any relationship between the curator cases and winning the case.

Q What did you think about the mere fact, though, that you were giving money to a judge who was sitting on a case in front of you?

A I was very uncomfortable with it.

Q Over time what is your best estimate of how much cash you gave Judge Porteous when he was on the state bench?

A Over time my best, not estimate but guesstimate would be something under 20,000 or around $20,000 over a period of 10, 12 years, 15 years, I don't know.

Q And would that be based on an estimate that the value of the curator cases was about

$40,000?

A Yes.

Q Did there come a time after Judge Porteous was appointed to the federal bench that you made an appearance in a case of Lifemark versus Liljeberg?

A Yes.

Q Was that case pending before Judge Porteous?

A Yes.

Q Was it a complex case?

A Yes.

Q The record shows you entered your appearance in September of 1996. Does that sound right?

A I can't recall, but it does -- I don't have any dispute as to the date.

Q The record also reflects that a trial was scheduled to begin before Judge Porteous, nonjury, in November 1996, about six weeks later. Does that sound correct?

A I presume so. I don't have any independent recollection one way or the other.

Q What was your fee arrangement in the case?

A I had 8 percent contingency contract with the plaintiffs, the Liljeberg brothers.

Q And you were representing the Liljebergs?

A Yes.

Q If the Liljebergs were successful, you would get 8 percent?

A Yes.

Q About how much was the case worth, 8 percent of what?

A Lifemark valued it someplace between 15 and 30 million. I figured my fee would be maybe $500,000.

Q Could it have been as much as a million?

A I was hoping, it could have been.

Q And you were brought in at the same time as another counsel.

A Lenny Levenson?

Q Yes. Or did he come in earlier?

A He came in after I came in.

Q Oh, he came in after you came in?

A Yeah.

Q Was Mr. Levenson also a close friend of the judge's?

A They were friends. I don't know how to define the closeness between Porteous and Lenny Levenson.

Q Now, during the course of the Liljeberg

case and the trial, did you take any other cases in your office?

A Yes, but it was very limited because that's about all I did, was work on the Life -- Liljeberg case.

Q Was that about all you did for two years?

A It was a good portion of what I did for two years.

Q And because of the nature of your contingency fee, did you stand to recover any of that two years work if you lost the case?

A That's the perils of being a contingency fee lawyer. No cure, no pay.

Q So if you won, you stood to make 500,000 to a million; if you lost, you got nothing?

A That's right.

Q Do you recall a motion to recuse being filed in that case by Joe Mole on behalf of Lifemark?

A I know there was a motion to recuse, yes.

Q And were you present at the hearing of that recusal motion?

A I'm sure I was. I don't really -- yeah, I'm sure I was.

Q At any time during the recusal hearing,

did you reveal that you or your partner, Mr. Creely, had given cash to Judge Porteous of about $20,000?

A No.

Q Did Judge Porteous at any time reveal that he had received cash from you and Mr. Creely?

A No.

Q During the latter part of the recusal hearing, Judge Porteous took issue with Mr. Mole for not doing his homework in suggesting that you and Mr. Levenson had contributed to his election campaign when, in fact, it was a Justice for All program for all judges running.

Do you recall that?

A Vaguely, I recall that there was some discussion with the judge and Joe Mole, yeah.

MR. SCHIFF: We've stipulated to the authenticity of the transcript. At this time I'd like to move it into evidence. The transcript of the recusal hearing.

CHAIRMAN MC CASKILL: Without objection the transcript will become part of the record.

(Exhibit 56 received.)

BY MR. SCHIFF:

Q If we could pull up on the screen some of the dialogue during that recusal hearing. Here the

court says, "you haven't offended me, but don't misstate, don't come up with a document that clearly shows well in excess of $6700, $6700 was some innuendo, that that means that they gave that money to me. If you would have checked your homework, you would have found that that was the justice" --

CHAIRMAN MC CASKILL: Counsel, I hate to interrupt you, but would you mind identifying this exhibit by exhibit number so the record will be clear, which exhibit number it is?

MR. SCHIFF: Certainly. Shall we make this Exhibit Number 1?

CHAIRMAN MC CASKILL: I believe it's previously been numbered.

MR. SCHIFF: Oh, it has? I'm sorry. 56, thank you. I stand corrected.

CHAIRMAN MC CASKILL: Thank you, Counsel Schiff. The record will show this is Exhibit Number 56.

BY MR. SCHIFF:

Q "If you would have checked your homework, you would have found that that was the Justice for All program for all judges in Jefferson Parish, but go ahead, I don't dispute that I received funding from lawyers."

Do you recall that discussion at the recusal hearing?

A Yes.

MR. SCHIFF: Could we pull up the further statement in that hearing, where the judge indicates that was the only money he had received, from Justice for All program?

THE WITNESS: I'm sorry, I was looking on the screen.

BY MR. SCHIFF:

Q I'm asking counsel to pull something up.

While they look for that, let me ask you, Mr. Amato, the statement that I just read to you, "if you would have checked your homework, you would have found that that was the Justice for All program for all judges in Jefferson Parish, but go ahead, I don't dispute that I received funding from lawyers."

Wasn't it misleading for Judge Porteous to criticize the lawyers when he did not disclose he received thousands of dollars in cash from you and Mr. Creely?

A I think you'd have to direct your question to Judge Porteous as opposed to me.

Q Well, in your view, Mr. Amato, don't you think it was --

A Yes, in my view, yes.

Q Don't you think it was dishonest?

A Yes.

Q Did Judge Porteous go on to deny the motion to recuse?

A Yes, he did.

Q Now, he was aware that you and Creely had given him cash. Do you think he should have recused himself?

A Yes.

Q Do you think he should have disclosed it?

A Yes.

Q You were present at the hearing, Mr. Amato. Why didn't you disclose the facts of the payment of the cash to Judge Porteous?

A As I stated before, you know, I wasn't that strong. I just -- you know, I was there, I wasn't arguing the motion. The judge knew as much as I knew.

Q What did you think the consequences might be -- what did you think the consequences might be if it came out in public that you and Mr. Creely had for years been giving cash to Judge Porteous in connection with him assigning curatorships?

A Well, I think the consequences are

apparent. Here I am.

Q What did you think the consequences would have been at that time if you had disclosed the payment of the cash for the curators?

A That I would be disbarred, my law partner would be disbarred and that the judge would be sanctioned or defrocked, derobed by the judicial commission. At the time they were two of my best friends.

Q Have you ever given cash to other judges other than campaign contributions?

A No.

Q Directing your attention to on or about June 29, 1999, do you recall being on a fishing trip with Judge Porteous?

A Yes. But I don't know if that's the right date. I think it was in May or June of 1999 that we went fishing.

MR. SCHIFF: Could we pull up a copy of Mr. Amato's calendar. What exhibit --

THE WITNESS: I think it was miscopied someplace along the way. I think that's part May and part June, the calendar. But I recall going on a fishing trip with Mitch Martin and Ernie Alario on Mitch's boat, and it was during the week, and we

were fishing right off of Grand Isle and fished at night in that particular time of the year. Judge Porteous was on the trip.

BY MR. SCHIFF:

Q I don't know if you can see, Mr. Amato, from where you are. We pulled up on the screen a copy of your calendar.

A Right.

Q Now, it is two pages and it's marked June but you're saying that it may have been one page in June, one page from May?

A Right.

Q Both of these months in 1999, Mr. Amato?

A Yes. They were the calendar. It would have been miscopied.

Q Are you able to read on the monitor what you've written for the dates of the 29th and 30th?

A Yeah, I had breakfast with one client and I met with Tom and Mitch Martin, and we were fishing the night of the 29th and 30th. And I don't know if that was -- I know it was during the week because I went to work after we went fishing on the 30th. But I don't know if it was in May or June.

Q And was this a time when the Liljeberg case was awaiting decision by Judge Porteous?

A The case was over with. We were waiting for a decision, I think.

Q And during this fishing trip, can you discuss what happened between you and Judge Porteous regarding money?

A Yeah. We were standing on the front of Mitch Martin's boat, his rather large boat, and we were both drinking, the judge was not hysterical, but he was very upset that his son's wedding was coming up soon and that he didn't have enough money to put the kind of wedding on that he thought he should. I don't know if he was -- for the -- half the rehearsal party or whatever. But he had some -- some wedding-related reason why he needed some cash to go forward with the wedding plans.

Q What did you do as a result of that request for cash? How much did he ask for?

A A couple thousand dollars. I think I gave him $2000 within a few days of that. That's the only time he ever asked me for money.

Q And did you and Mr. Creely share the cost?

A I don't know, I really don't recall how that came about.

Q Did you put the cash in an envelope?

A Yes.

Q And do you recall whether you gave the judge the cash or whether he sent his secretary to pick it up?

A I can't recall. I wouldn't doubt that Rhonda might have picked it up, but I don't doubt that I gave it to him.

Q So one way or another, he got the cash?

A Yes.

Q Mr. Amato, did the fact that you stood to make a lot of money on the Liljeberg case influence your willingness to give Judge Porteous the money he asked for on the June fishing trip?

A No.

Q I'm sorry?

A No.

Q If I could direct your attention to your deposition testimony. During the deposition I asked you, "Did the fact that you stood to make a lot of money on this case influence your willingness to give him the 2500 or 2000 he asked for?

"Answer: Yes.

A Yes. I said that. But I think there was more to it than just that sentence.

Q Let me ask you now, Mr. Amato, did the fact that you stood to make a lot of money enter

your head when he asked you for the cash?

A It did, yes, it did.

Q At the recusal hearing, Judge Porteous stated, if we could pull this up as well, "I've always taken the position that if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off."

Do we have that?

Do you recall the judge saying that he would notify counsel and give them the opportunity to ask him to get off the case?

A I don't recall it, but I don't doubt that that's the transcript and that's what he said. I just don't recall.

Q After you gave him the 2000 or 2500 in cash while the case was under submission, did the judge notify opposing counsel?

A I don't think so. I'm --

Q I'm sorry, I can't hear you.

A I said I don't think so.

Q Let me -- we now, I think, have that other quote I wanted to refer you to from the recusal hearing, if we could pull it out on the screen as

well.

In this passage the judge in the recusal hearing states, "the first time I ran, 1984, I think is the only time when they gave me money."

In light of the fact, Mr. Amato, that you had been giving the judge thousands of dollars over the years, was that an honest statement?

A Yes. No, that was -- I'm sorry. Honest statement? No. That was probably an honest statement with regard to campaign contributions.

Q Was it misleading because he had received thousands of dollars not in campaign contributions --

A Yes.

Q -- but in secret cash?

A I would think it would be misleading, yes.

Q After Judge Porteous tried the case, how long did he keep it under advisement before he decided it?

A It was quite some period of time, a couple of years, maybe a little more.

Q During that time, did you ever advise counsel on the other side that you and Mr. Creely had given the judge a couple thousand dollars in cash during the pendency of the case?

A No.

Q I need you to speak a little louder.

A No.

Q To your knowledge, did Judge Porteous ever advise counsel for the other side about the cash while the case was awaiting a decision?

A Not that I know of.

Q And during the pendency of the case, while it was under submission, did you and Judge Porteous continue to have your lunches together?

A We continued to stay friends and have lunch, go fishing, whatever we usually did.

Q While the case was pending, the same Liljeberg case, did the firm of Amato and Creely pay for an anniversary party for Judge Porteous?

A For his law clerks, yes, we did.

Q That was his fifth anniversary on the federal bench?

A I think so. I think it was the fifth.

Q And how much did the firm contribute?

A I think it was something between 1000 and $1500.

Q Did you ever advise counsel for the other side of the fact that your firm paid $1500 for a party for Judge Porteous?

A No, I never -- I don't -- not that I know of, no.

Q To your knowledge, did Judge Porteous advise counsel for Lifemark of these facts?

A Not that I know of.

Q While the Liljeberg case was pending before Judge Porteous, do you recall a trip to Las Vegas with Judge Porteous?

A I didn't go to Las Vegas with Judge Porteous. I -- there was a bachelor party for his son in Las Vegas.

Q Did Bob Creely go on that trip?

A Yes.

Q And did Amato and Creely, as a law firm, cover Judge Porteous's expenses, hotel rooms, meals?

A I don't know how that was covered. But I wouldn't doubt that we didn't pay for some of it or all of it. I just don't know. I just -- I wasn't there. I don't know how the bills were paid. I just don't know.

Q If the records, credit card statements and others, indicate that some of the hotel rooms and meals were paid for by Mr. Creely or the firm, would you have any reason to doubt that?

A No, I wouldn't have any reason to doubt

it.

Q And this was also while the Liljeberg case was pending, was it not?

A Yes.

Q During the pendency of the Liljeberg case, did you ever have a conversation with Judge Porteous about the case outside the presence of other counsel?

A Yes.

Q And that's referred to as an ex parte contact?

A Well, I think there's ex parte contacts and there's ex parte contacts. I recall one conversation where he said you better prove your case not only to my satisfaction but to the 5th Circuit Court of Appeals' satisfaction.

And I recall a couple of occasions where we were at lunch or something, how you doing, getting ready, you better be ready.

Then after the case was over with. I asked him why we didn't get a judgment, until the judgment came, I wasn't going to get paid. He said he was working on it, he didn't have enough law clerks to go through all the records, in this not only complicated but convoluted, and it went over a

number of days and witnesses and, you know, exhibits and just -- just tons and tons of documents, I mean rooms full of documents, it seemed.

Q And did you ever disclose these conversations to the other counsel?

A I didn't feel that they were ex parte to the extent that they compromised the court in any way.

Q Why did the judge feel it was important to prove the case sufficiently for the Court of Appeals?

A Because the Liljebergs had a -- had a long line of unsuccessful litigation in federal court. Apparently, they were the spanking boys of the 5th Circuit. They had gone to the Supreme Court of the United States, on one of the federal judges and his failure to recuse himself in one of the leading cases. And they just -- they just couldn't win anything.

Q And Judge Porteous wanted to make sure that if he ruled in your favor, that the Court of Appeals would uphold his record?

A I think that was his intentions, yes.

Q And am I correct that ultimately the judge did rule in your favor?

A Yes.

Q And Lifemark appealed?

A Yes.

Q On appeal, did the Court of Appeals, in fact, overturn substantial portions of the judge's decision?

A I think they did a little of everything, affirmed some, reversed some, modified some. It's been, you know, a lot of years since I read that judgment.

Q The decision Judge Porteous made, though, in the Liljeberg case was a huge victory for you and your firm, wasn't it?

A It was a huge -- it was a victory. I mean, it was -- I worked hard on the case. I thought the case had a lot of merit. I thought the judge handled himself properly. I thought the judgment was correct. And I think to the day I die, that the 5th Circuit Court of Appeals was wrong.

Q And the 5th Circuit opinion was a big loss for your firm, wasn't it?

A Well, it didn't put us out of business, but I mean, it's like every contingency fee law firm. Feast or famine, you know. Six months out of the year, you have more money than I guess you

deserve, you pay your bills for the six months that you don't collect any fees. Yeah, it was a disappointment, but it didn't put us out of business.

Q It was more than a disappointment. It was potentially a half million to a million dollars, wasn't it?

A Yes.

Q Mr. Amato, are you currently licensed to practice law?

A No.

Q And why is that?

A I voluntarily resigned from the bar association in lieu of disciplinary action and disbarment.

MR. SCHIFF: Madam Chair, at this time I have no further questions.

CHAIRMAN MC CASKILL: Thank you, Congressman Schiff.

Professor Turley?

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good morning, Mr. Amato.

A Good morning, sir.

Q We've never met; correct?

A Correct.

Q I'm Jonathan Turley. I'm obviously representing the judge.

A Yes.

Q Mr. Amato, I'd like to ask you directly a simple question. Did Judge Porteous ever ask you directly for money when he was a state judge?

A No.

Q I'm afraid you are going to have to speak up.

A No.

Q I'm having trouble --

A No. Not as a state judge.

Q Thank you, sir.

In his 10 years as a state judge, did you ever directly and personally give him money, in your recollection?

A No.

Q I'd like to begin with your relationship with Judge Porteous. You first met when you were prosecutors; correct?

A Correct.

Q And that was around 1972?

A I would -- yeah, in that area, '72, '73.

Q So you've known him about 40 years or so?

A Getting close to it, yeah.

Q Now, as prosecutors, later private lawyers, you often had lunch with the judge; correct?

A Absolutely.

Q And when he became a state judge, you continued to have lunch with him; correct?

A Absolutely.

Q Did that -- I mean, were those basically the same lunches you always had because you were friends?

A Correct.

Q Now, isn't it true that it's common for judges and lawyers to have lunch together in Gretna?

A I think it's common every place in the United States that judges and lawyers meet for lunch either formally, at bar associations conventions, or bar luncheons, swearing-ins and informally for lunch.

Q And you've practiced outside Gretna; correct?

A I've had cases in other jurisdictions, yes.

Q And you've found the same tradition or habit of judges having lunches with lawyers?

A Yes. I can recall a time I had lunch with the judge and DA in a jail down in Plaquemines Parish, we ate at the jailhouse. They fixed lunch for us at the prison.

Q And that was -- that was a judge and a prosecutor you had a case in front of at that time or --

A That was a civil attorney.

Q Civil attorney.

Were the involved in any litigation with you at that time?

A Yeah. I mean, I was in his court, it got to be lunchtime, if you want to eat meatballs and spaghetti at the jail, Jake, come on, let's go.

Q Now, do you recall in a restaurant -- do you recall a restaurant called the Courthouse Cafe?

A Yeah, that was -- it used to be called Whitesides, but I know the Courthouse Cafe quite well.

Q Do you recall there was a table set aside for lawyers and judges at the cafe?

A Yes.

Q Was that because it was so regular that they just set aside a table?

A Yeah, everybody sat at the same table and

ate lunch for years and years and years.

Q Did they try to hide the table behind a screen or anything?

A It was the first table as you walked in the door.

Q And did you think that lawyers didn't want to be seen at the table with judges or vice versa?

A No.

Q And you often had lunch with other judges besides Judge Porteous?

A Yes, of course.

Q Judges like Judge Pitre; correct?

A Yes.

Q Judge McManus?

A Yes.

Q Judge Benge?

A Yes.

Q There were two judges named Collins, weren't there?

A There was a Walter Collins and a Lionel Collins.

Q But you had lunch with both of them; right?

A Yes. Went fishing with Judge Walter Collins.

Q Has anyone ever said to you that it was unethical for you to have lunch with those judges?

A As far as I know, it was never unethical for me to have lunch with any judge.

Q Do you know of any state rule that says you couldn't have lunch and buy lunch for a judge?

A No. But I understand that they changed some of the rules lately, so --

Q Let's talk about that. What's your understanding of the current rule, the one that they just put together about a year ago?

A That you can't spend more than $50 on lunch for any public official.

Q So as long as it's below $50, you can go ahead and have lunch?

A Yes.

Q Were most of these lunches below $50 with the judge?

A I would think so.

Q How expensive is the Courthouse Cafe?

A Courthouse Cafe was 4, 5, $6 for a plate lunch.

Q And you told Mr. Schiff that occasionally Judge Porteous would buy lunch?

A Yes.

Q And you just didn't -- you said you didn't have a clear memory, just remember occasionally he would buy lunch?

A Yeah, I mean, if -- this many years, he bought lunch. I know he brought food to the houseboat, I know he brought whiskey to the houseboat. You know, I know that.

Q Now, Mr. Schiff said once or twice, and you said, well, sure, once or twice, but it could have been more; correct?

A Sure.

Q Do you have no clear recollection?

A No, I don't.

Q You just remember sometimes he would buy lunch?

A Yeah. And sometimes we went to lunch and I didn't -- somebody else bought lunch.

Q Is this one of those things when they're at lunch, someone throws down a credit card and just says "I'll take it"?

A Yeah.

Q And it's one of those things that everyone is real slow on their wallet or people just tended to buy lunch whenever they could?

A Sometimes we took turns, sometimes it

was -- you know, somebody was slow on their reach, we kept an eye out for who is going to the bathroom when the check came and things like that.

Q I've been to those lunches.

Now, as far as you know, there was no prohibition on buying lunch; correct?

A To this day, there's no prohibition that I know of.

Q Now, try to give us an understanding about Gretna. I know that Jefferson Parish is fairly large. But the Gretna legal community, it's fairly small; correct?

A Yes.

Q And many of the lawyers and judges there know each other socially; correct?

A Of course.

Q In fact, many of them went to school together; correct?

A Of course.

Q In fact, it wasn't uncommon for lawyers to have gone to high school with judges; correct?

A Been to high school with judges, college and law school.

Q Did you go to school with some judges?

A Yes.

Q Do you remember who they were?

A Well, I went to Jesuit High School, and there's a whole bunch of New Orleans judges who went to Jesuit High School about the same time as I did. I'm sure if I sat down and thought about it, I mean off the top of my head, no.

Q Did you ever occasionally go in front of those judges?

A Of course.

Q And they didn't recuse themselves, did they?

A No, they didn't recuse themselves.

Q In fact, in Gretna, isn't it true that recusals are pretty rare in Gretna?

A I don't think I've ever seen one the whole time I was in Gretna.

Q Not one. How long were you in Gretna practicing?

A I started in 1968 in the DA's office, and I ended the practice of law in January of 2010. And I don't think I've ever saw a recusal filed, changes of venue and things like that but never a recusal.

Q In a place like Gretna, if you ever started to recuse yourself when a friend was in court, do you think a judge would get much done in

Gretna?

A I think all they would be hearing would be recusal motions.

Q And you went before some of the judges you bought lunch for; right?

A Uh-huh, yes.

Q They didn't recuse themselves but you said you didn't see a recusal; correct?

A No, right.

Q Wasn't it common for lawyers and judges to go on hunting trips together in Louisiana?

A Yes.

Q Hunting -- I didn't mean to interrupt you, I'm sorry.

A Hunting and fishing, yes.

Q And hunting and fishing are big things in Louisiana; correct?

A Yes, and football.

Q And football, yeah. But that's a main form of recreation, hunting and fishing?

A It has a lot to do with the culture in Louisiana.

Q And often judges would accompany lawyers on these trips?

A Yes.

Q And you were mentioning that on some of these trips, there was a deal that the 10th person would get a free trip; correct?

A Yeah, I have some recollection -- recollection of that, that if you had 10 people going on a hunting trip to Mexico, the 11th ticket would be free. I don't know the mechanics of how it worked, but I don't know if the judge got a free ticket or not. I just don't know.

Q So he could have been one -- he could have been the free ticket on those trips?

A Right.

Q And you talk about this trip on the houseboat, do you recall, with Mr. Schiff, I think it was a houseboat trip?

A We went on many houseboat trips.

Q How about one with Judge Porteous? Do you remember going on a houseboat trip with Judge Porteous?

A Well, it was more of a barge.

Q More a barge?

A A barge. You know, I know everybody has this view of a fancy houseboat, you know. It was an old pushboat converted into a camp. And it was moored at Delacroix Island for years.

Q So this wasn't very luxurious?

A No, it was not very luxurious at all.

Q Now, you just mentioned to Mr. Schiff that it was common for Judge Porteous to bring food or alcohol on these trips; correct?

A Correct.

Q In fact, didn't you testify previously that he would often help out, for example, on the cleanup of these trips?

A He was -- he was a good hand. He wasn't like most people who went that just thought you should wait on them hand and foot. Tom pitched in. He liked to cook, he helped clean up. He was a regular guy.

Q In fact, you said he was the only guy you could remember helping clean up?

A He was the only dependable guy, dependable.

Q To do kitchen duty?

A To do kitchen duty.

Q Would you say that you were friends with -- when you were practicing with more than half the judges in Gretna?

A I would say I was friends with all of the judges in Gretna.

Q And that you would socialize with all of them?

A Yes, to some extent.

Q Tell me, Mr. Amato, I'm going to just ask you directly. Did you buy lunches for Judge Porteous to bribe him?

A No.

Q Did you buy lunches for Judge Porteous to influence him?

A I don't think I could influence him.

Q Why not?

A Because I -- I've worked with him, I knew him. I tried cases with him. I tried cases against him. I tried cases before him. I always felt he was always going to do the right thing.

Q To this day, do you believe that?

A Yes.

Q And let me ask you, the -- do you think that he has ever given you any favors because of your friendship?

A I can remember one continuance when I was sick. That's the only thing that I can recall him going out of his way, a case that was set, and I just -- the night before I just -- just didn't feel well. And I sent somebody to the courthouse, and he

continued the case. That's the only thing I can recall.

Q And a continuance is just asking for a delay; right?

A Right.

Q In some proceeding?

A Right.

Q And most judges tend to give continuances when you're sick, don't they?

A Yes.

Q And Judge Porteous was known as a judge that was fairly solicitous for that type of thing, wasn't he?

A He was the hit of the courthouse. He had coffee, he would smoke cigarettes. You know, it was just -- it was a nice way to practice law.

Q And lawyers would often go to his office for coffee, didn't they?

A Go get coffee, go find out what was going on, go get the latest gossip, you know, how did you do on last week's hunting trip or fishing trip or golf trip or whatever you did. I mean, it was like the clubhouse.

Q And did you feel that Judge Porteous was a fair judge when he was a state judge?

A I did.

Q Did you ever know him to favor a friend in court, in a ruling?

A No.

Q You previously described him as compassionate. Why?

A Over the years I'd seen him do some stuff that -- you know, he kind of went out of his way to feel for the common folk, you know.

Q Now, you had known him you said for about 40 years; correct?

A Yes.

Q Were you a crony of his? Would you consider yourself a crony?

A I consider myself one of his best friends. He was one of my best friends. I don't consider that cronyism.

Q So the House members referred to you and Mr. Creely as cronies. Do you feel that that's a fair description of who you were?

A I sure hope not.

Q How about those people that came to his office for coffee? Did he have a lot of cronies coming to the office for coffee?

A No, it was mostly, you know, lawyers.

Q Now, you mentioned that you were friends with all of the judges in Gretna.

A Right.

Q Did you receive curatorships from other judges over a time?

A Yes.

Q And some of them being your friends?

A Yes.

Q Do you know of any rule that barred the awarding of curatorships to friends in Gretna?

A Not that I know of.

Q In fact, wasn't it very standard for judges to award curatorships to friends?

A Yes. Yes.

Q And you gave campaign contributions to many of the judges in Gretna; correct?

A I think I gave campaign contributions to every politician in Jefferson Parish.

Q So some of those people that gave you curatorships probably you gave campaign contributions to; correct?

A Absolutely.

Q There's nothing wrong with that; right?

A Not as far as I know.

Q Now, you, for example, were friends with

Judge Giacobbe; correct?

A I went to high school with George, Judge Giacobbe.

Q He's a good judge; correct?

A As far as I know, he's a good judge. I've never heard any complaints about him, never had any complaints with him.

Q And he gave you campaign contributions; correct? I'm sorry, you gave him campaign contributions; correct?

A I'm sure I did. I just don't recall. As I said, we gave campaign contributions to all the judges whenever they ran.

Q And Judge Giacobbe gave you appointments to sit ad hoc as a judge sometimes, didn't he?

A Yeah, over a period of time, about two or three times a year, he'd call me and said what are you doing next week, I'm going out of town, would you mind sitting, it's criminal week and I don't trust a lot of people with my criminal docket.

And I would go sit for a day or two, I think once or three or four days. And the Supreme Court appointed me as judge ad hoc for first parish court, which is a misdemeanor court. I would sit for him and handle his docket and go on my way.

Q And your impression, that he wanted you because he knew you were an experienced lawyer; correct?

A Yes.

Q He knew you'd do a good job; correct?

A That's what he told me.

Q And sometimes judges would give friends curatorships because they knew they would do a good job; correct?

A On -- yes.

Q Because some lawyers don't do good jobs on curatorships; correct?

A It's pretty hard to mess up a curatorship.

Q But sometimes it happens; right?

A It happens, yes, when there are domestic issues, you know, that people are -- you know, suddenly reappear after being -- disappeared for years, and saying they didn't get proper notification. Yeah, they can be a pain.

Q Because with curatorships, you have to send out a notice; isn't that right?

A You send out a notice, certified letter and ad hocs.

Q Did you ever hear of a case where lawyers sat on curatorships and didn't send out the notice?

A Many.

Q That causes a problem for the court, doesn't it?

A It does.

Q And you bought Judge Giacobbe lunches on occasions; right?

A I don't recall ever just having lunch with George, but I recall having lunches with his staff and George and I bought.

Q And you bought?

A Yeah.

Q And you would see him socially; correct?

A Would I seem social?

Q Yes.

A I hope so.

Q But there was nothing untoward or inappropriate with him assigning you as an ad hoc judge, was there?

A Not that I know of.

Q Has anyone ever suggested that?

A No.

Q And it's pretty well known you guys were friends, wasn't it?

A Yeah, for probably 50 years as opposed to only 40 we were friends.

Q Anyone ever complain about you being an ad hoc judge, and how you did?

A Not that I know of. Not that I know of.

Q Now, let's talk about these curatorships. These curatorships actually named Robert Creely, did they not?

A Yes.

Q Mr. Creely would do -- I mean, Mr. Creely and the firm would do a good job on curatorships, didn't they?

A I don't think we ever had any complaints, so I guess we did a good job.

Q Do you remember a single curatorship that was a problem coming out of your firm?

A No.

Q You have a pretty good record; is that correct?

A Yes.

Q Now, you and Mr. Creely often worked on separate things or types of cases; correct?

A Very rarely did we ever work together, if ever.

Q If I recall, during much of this period Mr. Creely was doing divorce cases; is that right?

A Our practice evolved over the years into

different areas of the law. At different times we did different types of law. At one point in time, he did a lot of domestic work. I didn't.

Q Did you ever sit down with Judge Porteous and explain how your firm was structured as a partnership?

A No.

Q Did you ever sit down with Judge Porteous and lay out how proceeds were divided in your firm?

A No.

Q Is there any reason why Judge Porteous would know what type of partnership you had?

A No, other than the obvious, it was Amato and Creely, and we were only two named partners. I mean, he could make his own deductions.

Q I know he knew you were partners, but I'm talking about the sort of nuts and bolts of the partnership.

A No.

Q Isn't it true, in your experience, that there's a lot of different types of partnerships for firms?

A As much as an evil mind can think of, there are different types of partnerships, yes.

Q And isn't it true that some partnerships,

the partners largely keep what they bring in, while others they divide them 50/50? Is that your experience?

A Well, my experience has been limited to Robert Creely. So it's fair to say that yes, I know of partnerships that exist on the named partner gets 20 percent, the nonnamed partners get something and your draw is based upon your income and things like that.

But firsthand knowledge, no, because we had a pure 50/50 partnership.

Q Is there any way, for example, the Bryan Cave attorneys over here, would there be any way for you to know how they divide up their income at Bryan Cave?

A I know the older guy is supposed to get more money, but other than that, no.

(Laughter.)

Q You just can't make assumptions about that type of thing?

A No, I can't. It depends on who is the rainmaker, too. So that might be related to somebody could bring a lot of business to the firm, I don't know.

Q And by "rainmaker," you mean there's a

partner that tends to bring in more than others?

A That's right.

Q In terms of business?

A Yeah.

Q Sometimes they will get more, correct, of the money?

A Yes.

Q Now, by the way, I did not ask, you've been talking for a while, if you need any water or anything.

A You know, I think I could use a glass of water. As long as it's not a half-hour break.

Q These lights are pretty intense.

A Thank you.

Q Now, when you were -- before this controversy, you didn't have any specific recollection of how many curatorships came through your firm, did you?

A I had no idea.

Q And you previously said that Judge Porteous occasionally called about the curatorships; correct?

A Not to me, but I know that he would call.

Q So you were not personally involved in those calls?

A No, I was not.

Q And you weren't personally present for those calls?

A No.

Q So you don't have any actual knowledge of what was discussed on the phone?

A No, I -- I was not.

Q Let me ask you, the way curatorships work, if a judge wanted to quickly find out how many curatorships were given to this lawyer as opposed to that lawyer, wouldn't the faster way just be to call the firm, in your experience?

A I don't have any experience in how to find that out. I just -- you know.

Q Fair enough. You stated today that your understanding of the relationship with this money and curatorships came from a single conversation with Bob Creely; correct?

A That's correct.

Q And that one comment is what you have recalled as the basis for that connection; correct?

A Yes.

Q And you've testified that occasionally Mr. Creely would come in and ask you for cash for Judge Porteous; is that correct?

A Yes.

Q And he would say he was going to make a gift to Judge Porteous?

A Yes.

Q But, you know, you never knew exactly why he chose a particular time for that gift; right?

A No.

Q He would just come in and say I'm going to give a little money to Judge Porteous?

A Yes.

Q And as far as you know, there's no records of how much money you two gave Judge Porteous over decades of friendship, was there?

A There's no records.

Q In fact, when you testified in the 5th Circuit, didn't you testify that you didn't have a clear memory on how much money you may have given to Judge Porteous?

A That's correct.

Q And you still don't have a clear memory; correct?

A No, I still don't have a clear recollection of how much money we gave to Judge Porteous.

Q Because this was not only a long time ago,

it was a long period of time, wasn't it?

A Yes.

Q Now, during the 5th Circuit testimony, you were given the $10,000 figure by your questioner during that testimony, weren't you? Didn't someone give you the $10,000 figure in questions?

A I don't recall.

Q And you previously said that it may have been 10,000 or less; right? Didn't you previously say that in testimony?

A I could have. I -- I -- I really just don't know.

Q When you say you don't know, you just don't know if it was 10,000, less or more?

A Right.

Q Do you recall the House giving you the figure of $20,000?

A I think that would be Deputy Agent Horner came up with how many curator cases they were and that it came up to 200 and that the curators average some number and half of that would be something around $20,000.

Q So let me get this straight. You were -- at that point, you didn't know how many curatorships your firm handled; right?

A No, I didn't know.

Q And you didn't know what the value of those curatorships were; right?

A No.

Q And so you were given this number of curatorships and told this is what their likely value is; correct?

A Yes.

Q And then you took that figure and said, you know, you probably gave back half of this; right?

A Yes.

Q And that's how this $20,000 figure came up; correct?

A Yes.

Q And you had never suggested that on your own before you were questioned; righted?

A No. I just didn't know.

Q And all of this curatorship money, I want to make sure, that is all confined to Judge Porteous's time as a state judge; correct?

A Correct.

Q Because as a federal judge, you have no role with curatorships; right?

A That's right.

Q In fact, the only money you recall ever going to Judge Porteous was this wedding gift; right?

A Correct.

Q And before I get to that, I want to go back to something that you were answering with Congressman Schiff. You mentioned that -- at one point you said this is going to turn out badly or something along those lines; right?

A Correct, I did.

Q Was that with regard to the curatorships?

A Yes.

Q But then you said something interesting. You said but I was thinking more of an ethical than a criminal issue; correct?

A Correct.

Q In fact, you were thinking that the money was connected to curatorships that would raise an ethical question; correct?

A Correct.

Q And that's because that's what you remember Bob Creely mentioning?

A Right.

Q You've given gifts to other judges in Gretna, haven't you, over the years?

A Yes.

Q In fact, many lawyers give gifts to judges; correct?

A Wedding presents, Christmas presents.

Q Let's go to that wedding gift in 2009. You originally said that you thought that that scene with you and the judge on the boat occurred June 28th, 1999; correct?

A Yeah, I know it was either May or June. It was a weekday that we went fishing.

Q It's some period in there, you're saying?

A I think my calendar was copied by somebody along the path of getting here.

Q And you two were just sitting out at night drinking as friends; right?

A We were standing up as friends drinking.

Q And it was late at night?

A Yes. And I never seen him more distraught as long as I've known him, and I don't think he would have ever asked me for anything if it wasn't of significant importance to him.

Q This was not something that you would think he would normally do?

A He never did it to me before.

Q He seemed like he was under a lot of

stress?

A He did.

Q And do you think he was talking to you to try to get this off his chest, in part?

A I'm sure he did.

Q Because this was his son's wedding; correct?

A Correct.

Q And he was having trouble paying for it?

A Or paying for his portion of it. That's what he told me.

Q Didn't he mention that the reason he was distressed is because there had been unexpected costs with his son's wedding?

A I'm sure he told me something like that.

Q Now, did you give him that money as a bribe?

A No.

Q Did you give him that money as a kickback for favors?

A No.

Q Did you think that money would influence him in the Lifemark case?

A No.

Q And you knew his son, Timmy, didn't you?

A I knew all of his children.

Q Didn't Timmy call you Uncle Jake?

A Yes, and he kissed me when he saw me on the cheek, affection.

Q Now, by the way, you gave this wedding gift three years after the recusal, it would be; is that correct?

A Correct.

Q And it was just pending for a long time for final resolution; is that correct?

A Correct.

Q And you never thought it would have an impact on that decision, did you?

A No, I didn't think it was going to have an impact on his decision one way or the other.

Q You thought he was going to decide on the basis of the law?

A And the facts, yes.

Q I'm going to be referring to Exhibit 56, which is the same exhibit we've been working off of. I'm sorry. It's 446. Congressman Schiff had put a flash -- quote on the screen, and the quote was -- and I will read it to you again, that Congressman Schiff said -- first of all, he starts off by telling you "that wasn't my question," and then you

were told:

"Question: Did the fact that you stood to make a lot of money on this case influence your willingness to give him the" --

CHAIRMAN MC CASKILL: Professor, I don't believe that exhibit is in evidence. Would you like to offer it?

MR. TURLEY: I'm sorry. I thought it was moved in. Can I have this page moved into evidence at this time?

CHAIRMAN MC CASKILL: This is not the deposition? This is a different document; correct?

MR. TURLEY: This is a page from the Senate deposition of Jake Amato.

CHAIRMAN MC CASKILL: Is there some confusion about the number of the exhibit on the Senate deposition?

MR. TURLEY: I'm not too sure if we have confusion on the numbers.

CHAIRMAN MC CASKILL: In the previous record, we indicated that was Exhibit Number 56, and now you've referred to it as Exhibit Number 446. I want to make sure for the rest of the Senate that the record is clear.

MR. TURLEY: Yes, Madam Chairman. I'm

confused as well. Exhibit 56 was the recusal hearing, and this is the deposition.

CHAIRMAN MC CASKILL: That is Exhibit Number 446?

MR. TURLEY: Yes.

CHAIRMAN MC CASKILL: Is there any objection to Exhibit 446 being admitted into evidence?

MR. SCHIFF: There is no objection, but we had moved, however, earlier to introduce the entire deposition transcript of this witness. Mr. Turley opposed that motion. We would ask that the entire transcript, not just a single page, be admitted into the record as well.

CHAIRMAN MC CASKILL: Mr. Turley?

MR. TURLEY: We have no objection to moving it in.

CHAIRMAN MC CASKILL: The entire deposition?

MR. TURLEY: Yes, ma'am.

CHAIRMAN MC CASKILL: Exhibit 446, which is the Senate deposition of Mr. Amato, will be admitted into the record.

(Exhibit 446 received.)

CHAIRMAN MC CASKILL: You may continue.

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q I'm going to go back to this page 97. Mr. Schiff had brought this up, I believe. So in the deposition, Congressman Schiff said:

"Question: That wasn't my question. Did the fact that you stood to make a lot of money on this case influence your willingness to give him the" "2,500 or the" "2,000 he asked for?"

Do you see that question?

A Yes.

Q You said "yes," but you stopped and said there is more, is that correct, when you were speaking with Mr. Schiff?

A I don't see it on the page, but I don't doubt it.

Q I'm going to direct your attention to just above it to see if this is what you might have been thinking of. If you look just a few lines above, the previous question, they asked if this was once again related to Lifemark. And you said "the case entered into my mind, and it did, I gave it a great deal of consideration not to do it, and I wish I wouldn't have" had, but -- and here's the thing I was going to ask you about -- "I did it more out of

friendship and feeling sorry for the poor, broke-down," and you were interrupted at that point; correct?

A Yes.

Q Let's just clear it up right now. You gave a wedding gift out of friendship; correct?

A Yes, and with the reservation that he was a federal judge.

Q But you had stated here that your primary reason was that you had felt sorry for him and he was a friend; correct?

A Correct.

Q Is that still your testimony?

A Yes.

Q Let's talk about the Lifemark case. Actually, I want to ask you one last question. Didn't you and Mr. Creely operate largely on a cash basis at the firm, that you would withdraw cash from the firm?

A We would take a draw and also got a check. At the end of the year, we would balance out.

Q But you would cash checks and then use that cash for your own purposes?

A Right.

Q Let me ask you about Lifemark. Were you

asked to join the Lifemark case because you were a friend of Judge Porteous?

A I don't know how I got to be asked, but I never have taken a case because of friendships with any of the judges. I only took the case because I thought it was a case that was winnable and deserved some attention to make it, to look at its shape. It had been all over the federal courthouse and battered back and forth. And I liked the Liljeberg brothers.

Q These brothers were a family of pharmacists; is that correct?

A Yes. It was husband/wife, husband/wife, children. They had a pharmacy in Gretna and got a certificate of need from the state and built a hospital pharmacy for Lifemark.

Q Did you consider this to be a David and Goliath case between your clients and this huge corporation?

A I would consider it David and Goliath plus probably every law firm in Texas.

Q Every law firm you mean representing the corporation?

A Right. The Liljebergs couldn't hire any lawyers because all the lawyers in New Orleans were

somehow connected with Tenet.

Q So the corporation went and basically scooped up most of the lawyers in the area?

A They had enough business that every big law firm had a piece. So nobody could have -- everybody had a conflict. So they couldn't get, you know -- the silk-stocking law firms, the 100-man law firms. So we put together a group of Don Richard, the former prosecutor, Doug Draper, a bankruptcy lawyer, myself, Lenny Levenson, and one other guy. It escapes me now, a senior moment.

Q That's okay.

When you took the Lifemark case, you were already an experienced lawyer, were you not?

A I sure hope so after 30-some years.

Q You had done your share of trial work, hadn't you?

A I've probably tried 150 cases, jury trials and non-jury trials.

Q Cases like this one that you're going to litigate at trial?

A I went to the Fifth Circuit Court of Appeals a number of times and was always head-slapped.

Q And you took this case on contingency;

right?

A That's correct.

Q Now, taking a case on contingency, you said, is a real risk; right?

A Yes.

Q So you both have an investment in the case not just in terms of fees but also some costs; correct?

A They were paying all the costs as we went along, but I really didn't have any costs.

Q And did it concern you in going up against this huge corporation, that they had more money and resources than you did?

A They ran us around the lawn a number of times. It was mammoth, the things that went on in that trial, not only in that trial, but I was thinking last night that they had 10 or 12 other lawsuits that they filed in state court along the way, you know, just to divert us from the main course of action.

Q So there was not just one case; there were multiple cases?

A There was one big case and multiples of cases where they fired one of the Liljeberg's daughter from the hospital, and then they tried to

get them evicted from the hospital because the nurse couldn't find the drug in the right place. It just went on and on and on.

Q And when you say they went after this daughter, the attorneys for the corporation targeted the daughter?

A Correct.

Q Why would they do something like that?

A Because they did everything they could to break the Liljebergs. They absolutely did everything in the world to break the Liljebergs, including stealing drugs, mischarting, you know, hoarding drugs, not paying them for their contract. It just went on and on and on.

Q And when you said that they did a lot of filings, that was a part of their strategy, to run you around the court a lot?

A I would think that that's a part of the strategy, yes.

Q And did they often try to delay the case in hopes that you would go away?

A Well, if you knew my clients, they were never going away. This was a -- this was their life.

Q But did you see the -- I've been saying

Lifemark, but isn't this case really about Tenet healthcare?

A Lifemark was the original owners of the hospital or the owners of the right to the hospital, and then Tenet came along and bought whatever rights Lifemark had. Lo and behold, Lifemark didn't own the hospital. It was -- the Liljebergs owned the hospital with a lease to Lifemark. So I guess that started the war with Tenet when they finally woke up one day and found out they didn't own the hospital. So from then on, it was continuous battles.

Q And the corporation wanted that hospital; correct?

A They wanted ownership of that hospital irrespective of their lease obligations, yes.

Q And there were literally hundreds of millions of dollars potentially at stake, weren't there?

A Not only the hospital, but there was real estate involved, parking lots, servitudes, you name it.

Q When you first got this case, did you immediately just take the case, or did you take time to look at it?

A I took time to look at it. I mean, I knew

it was going to be a big commitment. I knew what I had to do. I had to convince myself that it was a case that could be won and that it was worth the investment, time, and effort to win it.

Q Now, I tell you, to an outside lawyer it seemed like a pretty complex case.

Is that how you viewed it?

A Every case I handled is a complex case. It depends how much effort you want to put in and how much you want to do for your client.

Q But did this case turn on Louisiana law and how it handled these issues?

A Yes, it did.

Q And what was the specific -- I mean, the Louisiana law in this case, would you say it's different than the law you find in a lot of other states?

A I would think it was, yes.

Q Other states like Texas, for example?

A Yes.

Q I want to go back to the fact that you had mentioned that the Lifemark attorneys would file a lot of motions in your view as a strategy; correct?

A And lawsuits, not just motions but then other lawsuits in state court.

Q So they would spin off both lawsuits and motions?

A Right.

Q And was it your view that they also tried to delay things in your case through a lot of motions?

A I don't think they were in any rush to judgment.

Q Why would a big corporation as a defendant want to delay a case like yours?

A It's cheaper to pay attorney's fees than it is to pay a judgment.

Q And isn't it true sometimes the plaintiffs will go away? Not your clients, but sometimes plaintiffs will drop litigation?

A Sometimes they die. Sometimes they just have had enough.

Q Because your clients were actually paying costs. So there were costs coming from your client as it went on; right?

A Right.

Q Now, you earlier testified that you saw Lifemark as trying to, quote, steal the rights of your clients; right?

A Correct.

Q Can you explain why you viewed this as something akin to theft?

A Well, because all the executives who testified who worked for Lifemark, they said they structured the deal to eventually wind up with the hospital, because they controlled the Liljebergs' income, both from how they paid the pharmacy fees and how they paid rent for the office building that they were ride to build in order to accommodate doctors who had privileges at St. Jude.

And so when the lease came up on the building that was overbuilt and wasted millions of dollars on other foundations -- it's complicated, but these executives testified our program at Lifemark was to steal the hospital and to do whatever we could do to hurt the Liljebergs. It was never contradicted.

And one of the ways they would do it was -- Liljebergs paid per dosage of medicine, and the way they would do it is if Tenet bought an aspirin for $1, that's all they would pay the Liljebergs. The Liljebergs had inventory, had staff and had to deliver it and all the other things. They said we're only going to pay you a dollar for the aspirin, the wholesale price for the aspirin,

not the wholesale price plus the cost, we're not going to do it. So every month, they shorted the Liljebergs 50-, 80-, $100,000.

Q And these were the attorneys for the corporation were doing this?

A I think it was Deborah Keel, who was the mastermind of the whole scheme.

Q You mentioned you took a while to decide to take this case. How long do you think it took you to study the case and decide to take it?

A A couple months, because I wanted to get everybody together a couple of times. I wanted to see the smoking gun. I wanted to look at all the exhibits. I wanted to know the history. I wanted to know more than just here's a case, go to work.

Q Now, do you recollect how many judges were in the case or assigned to the case before Judge Porteous received the case?

A No, I didn't have any knowledge of that.

Q I'm going to show you a demonstrative and see if it might help you. Would it surprise you to learn that there were 13 assignments of judges?

A It wouldn't surprise me in the least.

Q Do you think this was just by accident, or do you think that was a part of the motions practice

that you were talking about?

A I can't answer that. I know one of the judges died.

Q Right. The one right before Judge Porteous; correct?

A Right. I don't think it was Judge Sear who died.

Q I know one of them died.

A Right.

Q According to your House testimony, didn't Judge Porteous make it clear that he was going to stop this case bouncing from court to court?

A I don't recall the testimony, but I think he made it clear that he was going to take the bull by the horns and end this litigation.

Q And was that consistent with your experience of the judge as a state judge, that he tended to be a judge that got cases resolved and moved the docket?

A Yeah. He was probably one of the most capable guys I've ever known.

Q He's the type of judge that wouldn't like to see something like this?

A You're going to have to ask him that. I can't answer that.

Q You had talked with Mr. Schiff about a warning the judge gave you. You had to prove your case in front of him; correct?

A Correct.

Q In your testimony in the deposition that we just moved into evidence, there came a time when Mr. Schiff asked you if that was just because you were worried about being reversed. He just asked you that question again. But in the House deposition, when he was asked "did he just tell you that because of fear of reversal," you said "no."

Do you recall saying no to that?

A No, but I wouldn't doubt that I said no.

Q Why do you think the judge was saying you better prove your case in my courtroom?

A What I think he was telling me is I better prove my case, not only to his satisfaction but also to the Fifth Circuit's satisfaction, that he wasn't going to just rule in my favor because it was me.

Q Don't count on our friendship, basically?

A Absolutely, don't count on it.

Q Mr. Schiff refers to that as an ex parte communication. Do you view a brief conversation like that as a serious ex parte communication?

A No. I considered it just general talk,

not about any specifics as to the case itself. It's not like I'm on my hands and knees begging him to rule for me without opposing counsel there.

Q You never discussed the merits in an ex parte communication with the judge, did you?

A No, I never did.

Q And he never gave you a head's up about what his decision was going to be, did he, before it came down?

A No, he never gave me a head's up, but I had the feeling he was leaning towards us.

Q That's because of how -- you mean during the trial?

A Because I knew him. I knew what he wanted to hear in the trial because of our experience together, and I knew what I was proving. Some of the witnesses for Tenet were just incredible. In the transcript, I think the judge called an expert from one of the big California schools who tried to do a review of the pharmacy, that the way he had to test to review the pharmacy, nobody could ever pass the test. He was saying it to just get the Liljebergs kicked out of the pharmacy, and I think the judge called it that way from the bench.

Q And did you feel you proved the case?

A I know I proved the case.

Q When he ruled in your favor, it also meant that he ruled against Gardner's position; correct?

A Yes.

Q So is that because you were just a better friend of his than Gardner's?

A I don't think so.

Q Your clients turned down an offer from Lifemark, didn't they?

A I don't know of any offer that they -- any reasonable offer that they made to us. All I know is that Don Gardner was running his mouth off for about -- you know, I can get you 15, $30 million or something. I said Don, we would be more than happy to talk, but here are the conditions.

And I wrote Joe Mole a letter saying that all communications with regard to settlement will be in writing, will be done through Don Richard, and we will be more than happy to discuss it, because over the years of not only prior to my term as being the attorney but in prior dealings with Lifemark and Tenet, they were not trustworthy.

So we didn't feel that we could be put in a position where he said/she said. If it's in writing, we will respond in writing. We will

consider it, you know.

Q And did you get the feeling that Gardner was sent to you to raise this possibility of a settlement?

A I don't know why he was sent to me, but probably.

Q And he said that Lifemark might be willing to settle it for as much as 30 million?

A No. It's hard for me to put a number on it, but according to him, they were talking serious numbers. I said Don, then do this in writing, get it from Joe Mole to Don Richard.

Q And ultimately, Judge Porteous wrote a 100-page decision, did he not?

A I'm sure. It was quite lengthy. I don't --

Q And he generally ruled in your favor, but he ruled against you in some parts, didn't he?

A I can't -- I'm sure he did. It's been a bad memory.

Q Well, when The Court of Appeals reversed him in part, but then they upheld him in part; correct? Do you recall that?

A I think so, yes.

Q And that panel was composed of all Texas

judges; correct?

A Yes.

Q Did you feel those judges understood Louisiana law in this case?

A I hope they did. I don't know what they -- I don't know what they did.

Q So did you feel that they got it right on the Fifth Circuit?

A No.

Q You just thought they were wrong on Louisiana law?

A Yes.

Q I'm going to talk about the recusal hearing. I promise you, I'm getting to the end. I know this is a tiring process.

Earlier, you spoke about the recusal hearing. Do you remember Mr. Mole saying that he was aware of your very, very close relationship with the judge in that hearing?

A I'm sure he said something to that effect. It was no secret that we were friends.

Q At the time of the recusal hearing, you had never yourself personally given money to the judge; correct?

A No, I never had.

Q Do you believe in that hearing that Judge Porteous felt -- truly felt that he could give a fair trial in the case?

A Yes.

Q Was there any doubt in your mind that what was motivating Judge Porteous was that he believed he could be a fair judge?

A Yes, I think he was motivated by he could be fair.

Q Because as a state judge, he would routinely have friends come in front of him in front of the state court; correct?

A Every day.

Q Now, you had mentioned that -- when Mr. Schiff was talking to you, he asked whether you thought that the judge had given an honest answer about the campaign contributions.

Do you remember that exchange with Mr. Schiff?

A Okay.

Q And you said -- well, he was responding to the allegation about the campaign contributions; correct?

A I think so, yes.

Q So Mr. Mole had made a representation

about campaign contributions, and the judge responded to the question of campaign contributions; correct?

A As far as I know, yes.

Q And he was saying that what you just said was wrong; correct?

A Correct.

Q And the judge clearly didn't want the record just to stand with a false statement about campaign contributions; right?

A I'm sure that was his intentions.

Q And he was right about that, that he got the campaign contribution thing wrong; correct?

A That Joe Mole got the campaign contribution thing wrong, right.

Q Let me ask you about Mr. Gardner. At some point Mr. Gardner came into the case on the Lifemark side; correct?

A Yes.

Q Did you ever see Mr. Gardner argue a single motion in that case?

A No.

Q Is your answer no?

A No.

Q Did you ever see him cross-examine a

single witness in the case?

A No.

Q Now, are you aware of a contract to give Mr. Gardner $100,000 for appearing in the case?

A I only learned about that fairly recently. I didn't know what his fee arrangement was before this came up and somebody pointed it out to me and the contract that he had.

Q Someone pointed it out? Did you see the contract?

A Yeah, I saw it.

Q And were you aware that Mr. Gardner was expressly promised $100,000 if he could get Judge Porteous off the case?

A After I read the contract a few weeks ago, yeah.

Q In your decades of practice, have you ever seen a contract between two lawyers to give that type of -- to give any money to force a judge off a case?

A No.

Q Would you have thought that was ethical?

A I would think it would be unethical.

Q And when the judge ruled against Lifemark, presumably Gardner lost the $100,000; correct? He

didn't succeed?

A That's correct.

Q By the way, during the case, did Mr. Mole ever come up to you and say hey, by the way, Jake, I have a contract for 100 grand to see if we could force Porteous off the case?

A No.

Q Did he ever say hey, by the way, Gardner is working for us to create a conflict of interest with the judge?

A No.

Q Did he ever come to you and say hey, I think that Gardner might have given gifts to the judge when he was in Gretna?

A No.

Q Did Mr. Mole ever reveal it to the Court that he had this side agreement?

A Not that I know of.

Q What do you think would have happened if it came out in the middle of a trial before a federal judge that a lawyer had a contract for 100 grand for another attorney to get him off a case?

A I think a whole bunch of lawyers would be in trouble, and I think the judge would take action he deemed appropriate.

Q Now, I'm going to ask you a question, because you were in this case for a long time; right? It didn't go to trial a few months after you entered it; right?

A No, it didn't go to trial.

Q How long before it went to trial after you came in?

A I couldn't tell you. I just don't know.

Q Wasn't it the following year?

A Probably.

Q Didn't Mr. Mole himself enter the case just a few -- about five months before you got into the case?

A I don't know when Joe got into the case. I really don't.

Q Do you think that a corporation like Lifemark might be a little concerned about Judge Porteous coming from the West Bank and taking this case, in the sort of David and Goliath case that you just described?

A I think that they had some concerns. I think any -- I think all large corporations have concerns about judges and justice and having it their way.

Q But didn't Judge Porteous have a

reputation for giving smaller plaintiffs a fair shake in his courtroom?

A I never knew him any other way.

Q Let me ask you, once they got Gardner to come in, wasn't Gardner even closer to the judge than you were?

A We were all friends. I don't know how much closer Don was to Tom than I was, but we were friends. We went to lunch together, Don and the judge and I and Bob and, you know, Lenny.

Q But after Mr. Mole and Lifemark gave the 100 grand to Gardner, the judge had friends on both sides of the case; right?

A Yeah.

Q But Lifemark still wanted it out of Judge Porteous's courtroom; right?

A You've got to ask Lifemark that or Tenet.

Q I only have a few more questions. I promise you.

A I know. I've been there before.

Q I'm making you earn that water, I guess. There's no free lunch in Washington.

You had testified with Mr. Schiff that you thought that you could be disbarred if it became known that you had given the judge money; correct?

A Yes.

Q But that's because you believed that the money was coming out of the curatorships; correct?

A Correct.

Q That was from what Bob Creely told you?

A Right.

Q And I just want to wrap up two questions. One is to confirm that the only time the judge ever personally asked you for money was for the wedding gift; correct?

A That's correct.

Q That was three years after the recusal hearing; correct?

A Right.

Q And from the day he became a judge to this very day, have you ever known the judge to throw a case for cash or friendship?

A No, I don't know of any cases he threw.

MR. TURLEY: Thank you, Mr. Amato. That's all of our questions right now.

CHAIRMAN MC CASKILL: Congressman Schiff, I assume you're getting up because you want to do redirect?

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: I want to make

everyone realize, what we will do in terms of housekeeping, at the close of each witness we will give both of you the time you have remaining.

According to our schedule, this witness has gone on much longer than you all anticipated, and so I want to make sure, as you all prepare your cases and decide what witnesses to call and how long to examine, that you don't get caught at the end not realizing how much time you have remaining in the time that's been allotted to you.

Mr. Schiff, if your redirect is going to be significantly longer than 15 minutes, I would break for lunch now and come back. If you can complete your redirect within 15 minutes -- let me ask this:

Does any members of the panel feel they're going to have questions of this witness?

SENATOR WICKER: I might have two questions.

CHAIRMAN MC CASKILL: How long do you anticipate your redirect will be?

MR. SCHIFF: I will probably go beyond that.

CHAIRMAN MC CASKILL: Why don't we break for lunch right now. It's 12:45.

I want to do another housekeeping matter on the record before all the Senators exit stage right. Keep in mind that we cannot proceed if we don't have seven members here. So if we don't have seven here, we're all going to sit around and wait. That time does not count against the two parties. It just delays how long we are all here hearing this important matter.

So when I say we're going to reconvene at 1:45, I mean we're going to reconvene if everyone works hard to make sure they're back at 1:45 or at least seven of us are back at 1:45.

So that's my gentle rap on the knuckles for this afternoon. I will try not to do any more knuckle wrapping this day. I may need to do more as the days go on, but we will see everyone back here at 1:45.

(Whereupon, at 12:42 p.m., the hearing was recessed, to be reconvened at 1:45 p.m. this same day.)

AFTERNOON SESSION (1:50 p.m.)

CHAIRMAN MC CASKILL: Thank you all, members of the committee, for being here on a timely basis. Let me go through the remaining time. The House has remaining 18 hours and approximately 14-1/2 minutes. And Judge Porteous has 17 hours and approximately 43 minutes left.

MR. TURLEY: May I ask a procedural question?

CHAIRMAN MC CASKILL: Sure.

MR. TURLEY: After the cross-examination of Mr. Amato, we became aware that Mr. Gardner has had a sudden accident. We're not aware of whether he'll be available or not. We were trying to figure out as we plan our time for the coming days whether it's been established whether he will appear or not.

CHAIRMAN MC CASKILL: I think we're working on it. I think Senate legal counsel is taking a look at the issue, and we'll try to get back with you by the end of the day with the best guidance we can give you at this point.

MR. TURLEY: That's all we can ask. Thank you.

I believe, Congressman Schiff, we're ready for you to begin the redirect of Mr. Amato.

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Amato, I just want to clarify at the outset, on the lunches that you had with Judge Porteous over the years, I think you said it may have amounted to hundreds of lunches; is that right?

A That's correct.

Q In any given, let's say 100 lunches, just so we have some idea of the proportion, how often would Judge Porteous pay and how often would you pay?

A Probably couple of times, two, three times out of a hundred he'd pay.

Q And the other 97 times you would pay?

A Or somebody else would pay.

Q But he wouldn't?

A Far as I know, he didn't.

Q You were asked by Mr. Turley whether it's common for judges to have lunch with lawyers. Is it common for judges to take money from lawyers?

A Not that I know of.

Q You were asked, I think, if there was a recusal every time a judge had lunch with a lawyer, whether the courts would be tied up with recusal motions. How often is it that a recusal motion is

made on the basis that a judge took cash from one of the lawyers?

A I've never seen it.

Q So that wouldn't tie up the courts if there were recusal motions based on lawyers giving cash to the judge?

A Probably not.

Q Now, you've testified, I think, on cross-examination as well that in your view, giving him the curator cash didn't affect his handling of the cases in state court; is that right?

A That's correct.

Q It did, however, handle -- affect the handling of the curator cases themselves in the sense that he sent you those cases; right?

A Yes.

Q So in terms of where the curator cases went, the cash you got back had a very direct effect on those cases, did it not?

A Yes.

Q You were asked about whether you had received curators from other judges, and I think you said that you had; is that right?

A Yes.

Q Did you ever have any of the judges in

those other curator cases ask you for cash back from the curatorships?

A No.

Q Did you ever give any of those judges cash back based on curators they sent you?

A No, no, I did not.

Q And you're going to need to pull that microphone closer again.

A I'm sorry.

Q Just pull it really close to you, and I'd move it to the center so we can hear you.

A Okay.

Q Mr. Turley asked if you thought that the judge knew that you would do a good job on the curatorships, if this was why he had sent you the curator cases, and I think you said that you thought it was hard to mess up a curator case.

A Yes.

Q What did you mean by that?

A It's -- it's law school 101, almost. I mean, it's -- you get a petition, you put an ad in the paper, you send a certified letter, you file an answer to the petition that you've done, I know, sent a certified letter on such and such a day, we're going to have a hearing for such and such a

time, you've got a certificate from the Times-Picayune that you ran the ad and you file your answer.

Q And, in fact, at your firm, this is something that neither you nor Mr. Creely did; it was something your secretaries did?

A Well, yeah. I mean, that type of curatorship. There are curatorships where you have to make court appearances and all, but there are a number of different types of curatorships. You could be appointed curator for, you know, somebody who is mentally ill, and that's a different brand of curator case. And you could -- for absent defendant in a domestic case, that you'd have to make an appearance.

Q And Mr. Amato, you wouldn't agree with the suggestion that you were sent these curator cases because the judge felt you were some kind of a curator expert?

A I'm sure there are a lot of people who do very well doing curator cases, as far as procedurally. I don't have any dispute with that.

Q But this wasn't why you were sent the curators; correct?

A No.

Q Mr. Turley asked you about whether you needed to explain how your partnership worked to Judge Porteous, and you said no, it was obvious. Why was that obvious?

A Well, let's see, we did it for a whole number of years. We had business cards that had, you know, Amato and Creely. We owned an office building that had Amato and Creely on it, you know, on the building itself. All the pleadings were filed, Amato and Creely. You know, we had Christmas parties, there were invitations, Amato and Creely Christmas party.

We had crawfish boils, Amato and Creely crawfish boils. It's kind of hard not to know that we're partners.

Q In the course of these hundreds of lunches that you had and Mr. Creely had with the judge, he knew exactly how your firm worked, didn't he?

A I'm sure he had a very good idea. I mean, "exactly" is, you know, a little out there. But I'm sure he did.

Q And, in fact, this wasn't some firm in the abstract, this wasn't --

A It was no mystery. Trust me, there was no mystery that Bob and I were 50/50 partners.

Q This wasn't some Washington law firm you're talking about; this was your own practice; right?

A Right.

Q And, in fact, this was a practice that Judge Porteous had been a part of, he'd been a partner in the practice before he left for the bench; right?

A Right. Well, he had some time where he was not a judge where he was not our partner either.

Q But we're not talking about Bryan Cave here. We're talking about Amato and Creely; right?

A Who is Bryan Cave?

Q The firm that Mr. Turley raised with you.

A See, I -- I don't --

Q With respect to the amount of the curator money, both that -- well, the amount of the curator money that went back to the judge, I want to follow up with you in terms of where that approximation came from.

If the records demonstrate that will be introduced in evidence that over the course of years, you and Mr. Creely received about $40,000, in excess of $40,000 in fees from the curator cases, what is your best estimate of how much of that you

gave back to the judge?

A Probably half.

Q And that would be about $20,000?

A Yes, sir.

Q And he got about half of the curator money back because that was your agreement with Mr. Creely; right?

A Yes.

Q And that was based on your discussions with Mr. Creely?

A Yes.

Q You were going to give him half the money back; right?

A Yes.

Q When you discussed the periodic requests for the curator money from Judge Porteous, how did you and Mr. Creely discuss it? What did you call the money?

A Curator money.

Q You mentioned earlier that before the Liljeberg case, Judge Porteous never asked you for cash. But weren't there occasions when it was you and not Creely that gave Judge Porteous the curator money?

A I think so. I just don't recall. But I

think so.

Q Do you have any doubt that Judge Porteous understood that the curator money he was getting was from both you and Mr. Creely?

A No doubt.

Q With respect to the Lifemark -- the Liljeberg case, you stated that you don't know how you got to be asked to join the litigation; is that right?

A That's correct. I don't know how I got to be asked, but I was asked.

Q And this was a complicated bankruptcy case involving a hospital?

A Well, it was a complicated case. I didn't do any bankruptcy work. Doug Draper did the bankruptcy work and Lenny Levenson did the bankruptcy work.

Q That was one of the central issues in the case; right?

A Was the bankruptcy?

Q Yes.

A I think that's how it wound up in front of Judge Porteous, was that the bankruptcy court sent it to district court to rule on this particular matter as to the return of the hospital, et cetera.

And the bankruptcy court basically handled the administrative -- you know, who got paid, when they got paid, et cetera.

Q You weren't brought in the case, I take it, because of expertise you had in bankruptcy law?

A Well, Doug Draper is probably one of the most respected bankruptcy lawyers in Louisiana and maybe in the United States. And that was his bailiwick.

Q And that was Liljeberg's bankruptcy lawyer on the case?

A Yes.

Q So you weren't brought in as a bankruptcy expert?

A No, I was brought in as a trial lawyer.

Q And this litigation that you were brought in as a trial lawyer, how long had it been going on?

A I -- three years, four years. I don't know. I just don't know. I know when I was asked to join the team, I took a good deal of time looking at it, deciding if it was worth the risk to take the case on, and reviewing all of the pleadings and all of the exhibits and testimony, et cetera.

Q And Mr. Amato, you didn't know how long the case had been going on because you hadn't been

involved in those earlier stages of the case; right?

A That's correct. I never said I was.

Q So here you have litigation worth potentially, I think you said, a couple hundred million dollars?

A I'm sorry?

Q Here you have litigation that's worth potentially a couple hundred million dollars to your client?

A Well, there's always hope, but I didn't think it was worth a couple hundred million. But, you know, I thought it was a very valuable piece of litigation, yes.

Q And had you ever done work for the Liljebergs before?

A No.

Q So in a case worth conservatively, let's say, 10s of millions of dollars, six weeks before trial, you are brought into the case. Is that -- have I got that correct?

A As correct as -- I can't dispute it, other than the fact that the Liljebergs couldn't hire any law firms in the city to represent them. There was no law firm that felt that they could represent the Liljebergs because Tenet was conflicted.

Q Now, Mr. Amato, I'm sure you're a superb trial lawyer.

A Was.

Q Was. Was there any other reason you were brought in six weeks before trial to this multimillion dollar litigation?

A I'm sure my relationship with Judge Porteous had something to do with it.

Q And, in fact, when the attorney, the main attorney for the Liljebergs brought you on, he asked you about your relationship with Judge Porteous, didn't he?

A I'm sure he did.

Q And that was part of the reason they wanted you on the case, wasn't it?

A I'm sure it was.

Q And you had a tough decision to make about whether you wanted on the case because you would be devoting a substantial period of time almost exclusively to that case; right?

A Yes. And that -- I never have in my career, the career I did have, take a case because of solely the friendship with the judge, any judge. I took cases on the basis of merit.

Q And in this case you believe the merits

were on your side; right?

A I still believe that.

Q But you also believe you had another factor in your favor, right, and that was your friendship?

A I don't think it was just friendship. I think it was my ability or my knowledge of how Judge Porteous tried cases, how he acted as a lawyer, how he acted as, you know, a referee, you know. I knew the man. I mean, it's not a crime to know the judge.

Q And part of the reason, though, that you thought you might win the case is because you had a friendship with the judge; right?

A I didn't think having a friendship with Judge Porteous would make one bit of difference, but I was glad to have a friendship with Judge Porteous, yes.

Q Let me -- let me show you a transcript, if we could pull it up on the screen.

CHAIRMAN MC CASKILL: IT? Anybody home, IT? Oh, there we go.

BY MR. SCHIFF:

Q This was --

A I can't see. You're going to have to --

Q This was from the Senate deposition that has already been introduced into evidence. I asked you a question during that deposition, "Mr. Amato, you've testified earlier that part of the reason you took the case was the merits and part was your friendship with the judge, those were the two reasons why you thought you would succeed. Am I right?"

And your answer was, "well, yes."

A Yeah, I don't think there's any difference between what I just testified and that.

Q And I went on to ask you, "and you testified earlier that part of why you thought your friendship was important is that you had shown him generosity in the cash" -- if we could go to the next page, "in the cash that you provided him; right?

"Answer: I think it went more than that, but yes."

So at least part of the decision why you thought you might be successful in litigation was you were friends and part of that friendship was your giving him cash; correct?

A I don't think those are sequential pages, Mr. Schiff. I'm not sure. I can't -- I have a hard

time seeing it, and I can't tell what you were referring to.

Q I'm referring just to those two questions and answers that I just gave you. We can try to blow that up on the screen if you're not able to read it or we can print it out for you.

(Witness reviewed the document.)

A All right, I've answered that -- the first one that you highlighted.

Q Mr. Amato, let me just ask you, part of the reason why you thought you'd be successful was your friendship. Am I right?

A "I think it went more than that but yes. And part of that generosity you showed on the fishing trip when you said you would give him the 2000 -- cash he asked for; is that correct? Right."

Well, the question is out of sequence. The question -- the second question happened 2-1/2, three years after the case was tried.

Q Mr. Amato, I think you're skipping a question. Let me just, if I could have both pages, let me just go ahead and read you the two questions again if that will simplify matters.

"Question: Mr. Amato, you testified earlier that part of the reason you took the case

was the merits and part was your friendship with the judge. Those were two of the reasons why you thought you would succeed. Am I right?

"Answer: Yes."

Was that testimony correct?

A That's absolutely correct.

Q My next question was, "and you testified earlier that part of why you thought your friendship was important is that you had shown him generosity in the cash you had," and I don't have the second page in front of me and I can't read that small print, "in the cash you had provided him; right?"

And the answer is "I think it was more than that, but yeah."

Is that accurate testimony?

A Yeah. Yes, sir. I'm sorry.

Q Now, opposing counsel, Mr. Turley, asked you whether you were familiar with a long history of recusal, with a long history of recusal in this case, and showed you, I think, this exhibit showing many times when the judge had been reassigned or the case had been reassigned.

You were not familiar with that document?

A Still not familiar with it. I can't read it from here.

Q Are you in a position to testify as to why the case was reassigned to different judges over the years?

A No.

Q Do you know whether this was on the motion of Liljeberg or Lifemark?

A No, I don't know. The only one -- only thing I know is that the judge who had it before Judge Porteous was -- passed away, the gentleman has passed away.

Q You're not suggesting that Lifemark was responsible for that change in assignment; right?

A I hope it wasn't in one of their hospitals, but no, I don't have any --

(Laughter.)

Q If there were other occasions when a judge unloaded the case to a new judge, would you have any information about that?

A I don't -- I don't know why judges do things like that.

Q During the recusal hearing -- I want to show you a couple pages of transcript as well.

And again, if I could have the copies in front of me, because I have a hard time reading from where I am the screen.

I want to ask you about the dialogue and the judge's representations during the hearing.

Let's start with Mr. Mole. If you could highlight that portion of the transcript.

MR. TURLEY: I'm sorry, do you have a page number? We're trying to find it.

MR. SCHIFF: Yes, I'm sorry, page 4. I don't know if this is the same page number. Is it? That's from a motion rather than a transcript itself. Page 56 -- no. Exhibit 56, page -- I think, looking at the front of this, this is part of the pleading, not the full transcript itself, unless I'm reviewing it incorrectly. We will provide counsel with exact pages. If there's any confusion, I'd be happy to stop. But why don't we start with Mr. Mole's statement.

BY MR. SCHIFF:

Q Mr. Mole says, "what prompted us to file the motion is the timing of what happened. This case is 10 years old, the oldest part is 10 years old. The lawyers who are in the case now are these previous to September 12 when you granted leave to add Mr. Amato and Mr. Levenson, who has been in for years. The case was set for trial and you had an emphasis about keeping the trial date. They were

added within two months of the trial date. In a case of that length, I don't know Mr. Levenson or Mr. Amato very well. I know they're fun to practice against, they have a sense of humor, and they are doing this quite literally -- other than none to my knowledge they are your friends.

"They have been given 11 percent contingency fee in a case that the Liljebergs, everybody, I disagreed, value at 140 million. At least part of this we have a percentage of. And I think that bears even more weight when you consider Mr. Liljeberg has taken the position that he doesn't give contingency fees."

He later in that same statement goes on to say, "Mr. Levenson has accused me and my client of engaging innuendo. I looked up the word. Innuendo is generally derogatory and witty way of making accusations indirectly. I don't think I have done that. I have been very direct. Mr. Levenson, and I think it is a good tactic, has tried to dare me to say what is the nature of the relationship between you and him and you and Mr. Amato that are the two gentlemen behind me.

"If they have something to contradict the statement that I made, which is that you are all --

you all are indeed very, very close friends, I would have assumed that they would have made it. I'm happy to tell the judge what the public perception is of the relationship."

The judge goes on to say, "yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes.

"Have I been going to lunch with all the members of the bar? The answer is yes."

Mr. Amato, at any time during the hearing when he says that he had never been to your house, did he describe how he would frequently go to your houseboat for fishing trips?

A He's never been in my house. He's been hunting and fishing on a houseboat, which --

Q When he was explaining to the counsel during the hearing, did he discuss about how -- well, he'd never actually been to your house, but he'd often been drinking and eating with you on the houseboat?

A That's what it says.

Q Did he discuss hunting trips during the recusal hearing?

A Not that I know of.

Q Did he discuss any of the cash that you and Mr. Creely had been giving him for the curatorships?

A Not that I -- not that I know of.

Q Don't you find it misleading to suggest that you've never been -- he'd never been to your house, when he'd had all these other social interactions with you?

A I think we had a social relationship, and as to it being misleading, I think that question really belongs to Judge Porteous.

Q I'm asking you since you knew the relationship. Don't you find that misleading?

A Well, I think the distinction was is that we never had a social life with our wives, going out to dinner, going to Christmas parties and stuff like that.

As far as hunting and fishing, I don't think that that was ever a secret to anybody.

Q And so you don't find it misleading when he says that they had never been to your house?

A That's not misleading. That's true.

Q And you don't think he should have disclosed all the rest of the nature of your

relationship?

A He probably should have.

Q Beyond he probably should have, don't you think he was obligated to disclose the cash you'd been giving him?

A Yes.

Q After you lost -- I'm sorry, after Lifemark lost the recusal motion, Don Gardner was brought in. Do you know why?

A I presume that -- to try to influence the judge.

Q Would it surprise you to learn that he was brought in basically to bring in a friend of the judge on the other side of the case?

A Would it surprise me?

Q Yes.

A No, because most big corporations shop lawyers to match judges.

Q So it wouldn't surprise you if the reason he was brought in was only because of his friendship with the judge?

A Yes.

Q As a way of offsetting your friendship with the judge?

A Yes.

Q It wouldn't surprise you?

A Wouldn't surprise me.

Q When Judge Porteous asked you for the cash on the boat trip, Mr. Turley has characterized it as a wedding gift. You've never described it that way, have you?

A No.

Q Judge Porteous wasn't asking you for something that his son was registered for at some department store, was he?

A No.

Q This wasn't the toaster oven or a bread maker?

A No.

Q He was asking you for 2- to $3000 in cash; correct?

A Correct.

Q And in fact you did give the groom a wedding present; right?

A Yes.

Q This wasn't it?

A That's right.

Q You were asked whether you'd ever given other gifts to other judges. Had you ever given cash?

A No.

Q Had they ever asked you for cash?

A They asked me for campaign contributions, but not for cash as such.

Q Did they ever ask you for pocket money or cash or --

A No.

Q -- kickbacks from curatorships?

A No.

Q Now, you said that on this boat this was the first time that he personally had asked you for cash?

A Right.

Q And that this was something of great significance, great importance to him.

A Yes.

Q And this was quite obvious from how emotional he became in his asking for the money?

A His demeanor, yes.

Q So you understood that this was something of critical importance to him?

A Yes.

Q Now, you testified on cross that you gave him the money, but influencing the judgment was not the primary reason; is that right?

A Yes, that's correct, it wasn't the primary reason, a moving reason. It was because of my friendship, and I really felt sad for him.

Now, I did consider that, you know, I had a case in front of him.

Q In the House I think I asked you to break down --

A Yes.

Q -- how you weighted this, how much of your motivation to give him the money was based on your friendship and how much was based on the fact that this was a federal judge sitting on a case worth a potential half million to a million to you. How did you break that down?

A 20 percent because he was a federal judge, the rest because of friendship and because I really felt sorry for him. I know what it's like to raise a bunch of kids, you know?

Q But 20 percent was because he had a case worth a fortune to you, wasn't it?

A Yes, and I -- biggest mistake I ever made.

Q You didn't believe it would influence the judge's decision necessarily, but you weren't willing to take the risk that it might?

A That's correct.

MR. SCHIFF: I have nothing further at this time, Madam Chair.

CHAIRMAN MC CASKILL: The committee now has an opportunity to ask the witness questions.

MR. TURLEY: We did want a recross.

CHAIRMAN MC CASKILL: Okay.

MR. TURLEY: Thank you.

RECROSS-EXAMINATION

BY MR. TURLEY:

Q Hi, Mr. Amato. I only have a few questions for you.

First of all, after your cross-examination with us, I saw that you were wheeled out by the House staff; is that correct?

A No, Ralph Capitelli, my lawyer.

Q Did you speak with the House staff after your testimony today?

A Yes.

Q Okay. And you talked about your testimony upon their redirect?

A Yes, that's correct.

Q Let me just clarify a couple of things because there's no reason for us to be ambiguous.

In your testimony with me, you said that you had never seen a recusal motion in your history

as a judge in Gretna; right?

A That's right.

Q So when Mr. Schiff said what's the percentage of the recusals that was due to cash allegations, you said zero; right?

A Right, that's correct.

Q But if you saw zero recusals, wouldn't the answer always be zero, regardless of the reason?

A Far as I know.

Q So if I asked you how many recusals were based on human cloning, you would have to say zero; correct?

A That's correct.

Q Now, also there was discussions about Judge Porteous asking you for cash back from curatorships. Did Judge Porteous ever come to you and ask you for cash back from curatorships?

A To me myself?

Q To you.

A No.

Q And did he ever -- Mr. Schiff referred to asking you for kickbacks from curatorships. Did Judge Porteous ever come to you and ask you for a kickback from curatorships?

A No.

Q Thank you. And by the way, you've given gifts to judges, like most lawyers in Gretna; correct?

A I don't know about most lawyers, but, you know, we get invitations, or we were getting invitations, to weddings and, you know, some of the judges we sent Christmas hams to and things like that. One year we gave them all cheese.

Q So hams, cheese. You ever send seafood?

A Probably.

Q And you know lawyers in Gretna will sometimes send tickets or other little gifts to judges?

A Take the judges to the game.

Q And by the way, when you said it was obvious that Creely and I were partners, you referred to the name of your firm; correct?

A Amato and Creely, right.

Q So anyone looking at that name would say Amato and Creely are partners; correct?

A Correct.

Q You weren't suggesting that anyone looking at the name would say -- would know immediately the inner workings of your firm, were you?

A I don't see how they could, but I'm sure

that, you know, two guys practicing law with a bunch of associates, it's pretty obvious that it's, you know, a two-man partnership.

Q There's lots of types of partnerships, even two-man partnerships; correct?

A Correct.

Q Now, by the way, all this business about your being asked about your relationship with the judge, I'd like to ask you a question as an experienced lawyer.

In every case that you've ever taken, didn't the client or other lawyers ask if you knew the judge you were in front of?

A Every client always asks did you have the fix in with the judge? And I always tell them no, the judge is my friend and he's going to do the right thing, no matter who the judge was.

Q But also whenever you've entered a case, wasn't it common for people to say have you ever practiced before judge X?

A Of course.

Q All right. And isn't it common for them to say, what do you -- what's judge X like in court?

A Yes.

Q Okay. And, in fact, in your deposition

testimony, you referred to a friendly judge. Do you remember that? You were talking about what a friendly judge is?

A Yes.

Q And by a friendly judge, you weren't talking about a friend judge; you were talking about a judge that would give you a fair hearing; correct?

A That's correct.

Q Now, Mr. Schiff asked you about Mr. Mole coming into the case. Would it surprise you if I was to inform you that Mr. Mole entered the case in April 1996? Does that sound about right to you?

A I have no idea when Mr. Mole entered the case.

Q Well, you entered in September 1996; correct?

A That's -- I'm sure it was.

Q Well, if Mr. Mole entered in April and you entered in September, there wasn't a big gap in time between when you entered the case; correct?

A No, there wasn't a big gap in time.

Q By the way, Mr. Schiff keeps on talking about how you entered the case with only six weeks before the trial; correct?

A Yes.

Q Did you actually -- were you actually asked to join the case and immediately joined the case?

A No.

Q So when you entered the case six weeks before the trial, that wasn't the first time you started looking at the case; correct?

A No, I'd looked at it for months before.

Q So really the relevant thing is that two or three months before you started to look at this case and consider entering; isn't that correct?

A That's correct.

MR. TURLEY: I have no more questions, Madam Chair. Thank you.

CHAIRMAN MC CASKILL: Thank you.

And does -- and let me, just so we have it on the record, any questions asked by the committee will not be counted against the time of either the House members or Judge Porteous's lawyers. So it's our time.

And I just want everyone to be as to the point as we hope the lawyers are in the questions, so that we cannot be here for three weeks instead of a week and a half, if possible.

So I will open it up to questions and

we'll go -- we'll use the same system that we use in committee hearings. We'll go back and forth by seniority.

So I would ask you, Senator Hatch, do you have any questions?

VICE CHAIRMAN HATCH: No, I'll reserve questions.

SENATOR KLOBUCHAR: I'll reserve.

CHAIRMAN MC CASKILL: Senator Barrasso?

Senator Sheldon Whitehouse?

SENATOR WICKER: Two questions.

CHAIRMAN MC CASKILL: Senator Wicker.

EXAMINATION

BY SENATOR WICKER:

Q Mr. Amato, have you calculated, had Judge Porteous's judgment been affirmed in whole by the 5th Circuit, how much your attorney fee would have been?

A No, I have never calculated it. I've never learned how to count the chickens until they hatch, Mr. Wicker.

Q Have you received any attorney fee at all in this case?

A No.

SENATOR WICKER: That's all I have.

CHAIRMAN MC CASKILL: No questions?

I have just a couple of questions.

EXAMINATION

BY CHAIRMAN MC CASKILL:

Q Mr. Amato, it has been stipulated for the record that in 1988, your firm got 18 conservatorships from Judge Porteous and in 1989 you got 21 of them. In 1990, you got 33. In 1991, you got 28. In 1992, you got 44. In 1993, you got 28. And in 1994, you got 20.

My question to you is, how frequently did your partner come to you and ask you to cash a draw in order to give Judge Porteous cash? How often did that happen during the year?

A Probably a couple -- two or three times a year.

Q And generally speaking, was that a fairly large amount that you were asked to draw in terms of these numbers of conservatorships?

A No.

Q Do you know how -- typically how long these conservatorships lasted?

A It usually took about 90 to 120 days to six months for them to go from inception to conclusion.

Q But the pattern here is because you didn't want a paper trail, you, in fact, year after year, numerous times during the year, would, in fact, cash out to send an envelope to Judge Porteous?

A Correct.

Q And typically, you would be reminded when and how much to do by your partner?

A Right. Correct.

Q And it's my understanding these conservatorships, it's an administrative function for a lawyer; correct?

A Basically, yes.

Q There's no advocacy, no litigation. This is a matter of filing some kind of public notice and doing what could be fairly characterized as a ministerial type of duty for a lawyer?

A In most cases, that's correct.

CHAIRMAN MC CASKILL: Thank you.

House may call its next witness.

MR. SCHIFF: Thank you, Madam Chair.

The House calls Robert Creely.

THE WITNESS: Am I excused?

CHAIRMAN MC CASKILL: You are excused, Mr. Amato. Thank you for your cooperation.

THE WITNESS: Thank you all very much for

the courtesies that have been extended to me.

SENATOR WHITEHOUSE: Madam Chair, while the next witness is coming up, I wonder if it would be appropriate to request from the House to indicate whether evidence was developed during the course of the House investigation subsequent to the 5th Circuit decision that has been referred to.

And, if so, if it would be appropriate to ask the House to highlight what that evidence was, i.e., are we being asked to rely on evidence that was developed post the 5th Circuit decision that Mr. Turley referred to? Not immediately. At some point during the proceedings.

MR. SCHIFF: Senator, with respect to the curatorship issue itself, we were able to get records that the 5th Circuit did not have about how many curatorships were assigned to the Creely and Amato law firm, what the values of those curator cases were worth.

We also --

SENATOR WHITEHOUSE: Rather than take everybody's time at the moment, I'd prefer not to interrupt the proceedings, could this be done in writing?

MR. SCHIFF: Yes, we'll have an exhibit to

submit that will chronicle all the curatorships and the time period.

SENATOR WHITEHOUSE: Display that.

MR. SCHIFF: We also -- I don't believe the 5th Circuit had, for whatever reason, the transcript of the recusal hearing, and that, I think, is evidence that they did not consider what the judge said, the judge's recognition of what the standards were to be applied.

So all of that, I think, is evidence that the 5th Circuit did not refer to or did not seem to have.

SENATOR WHITEHOUSE: And if there's anything further, I would appreciate it if you could just prepare a list and provide it to the committee, if the chair will agree.

MR. SCHIFF: And I don't know, Senator, whether you're referring just to the situation with Amato and Creely. The Marcotte information I'm not sure the 5th Circuit had either.

CHAIRMAN MC CASKILL: What I think the Senator is asking is if you all could delineate a list of exhibits or numbers of stipulated facts that has come to the attention pursuant to the House investigation for impeachment as opposed to

information that was gleaned from the 5th Circuit disciplinary proceedings.

MR. SCHIFF: Happy to.

SENATOR WHITEHOUSE: That would be perfect, thank you.

CHAIRMAN MC CASKILL: Okay. Next witness.

Mr. Greeley -- how do I pronounce your name, Creely or Greeley?

THE WITNESS: Creely. Unlike the city. Creely.

CHAIRMAN MC CASKILL: You have been called as a witness by the House Managers for this impeachment proceeding. Would you stand and raise your right hand so the oath may be administered. Whereupon,

ROBERT G. CREELY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Please be seated.

Mr. Creely, as you know, you have been granted immunity by the United States District Court for the District of Columbia for your testimony before this committee. The court's order of July 27, 2010 was communicated to you at your deposition before this committee on August 2, 2010.

That order, which committee staff will hand you a copy of, covers your testimony today.

Congressman, you may proceed with your examination of the witness.

MR. SCHIFF: Thank you, Madam Chair.

DIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Creely, I want to say at the outset, I know you sometimes have difficulty hearing. If I ask you a question or my colleagues do that you can't hear, let us know and we'll make sure you can hear everything that's said.

A Thank you.

Q Please just begin by stating your full name for the record.

A Robert G. Creely.

Q And Mr. Creely, will you tell us a little bit about your educational background?

A Yeah. I went to Cor Jesu High School, Loyola -- UNO College, University of New Orleans, Loyola law school, and then practiced law.

Q And how long have you been practicing law?

A 35 years.

Q At some point, did you begin practicing law with Jake Amato?

A With Jake Amato?

Q Yes.

A Yes, sir, I did.

Q When did that come about? Did you know him beforehand? How did that come about?

A I had a job as a law clerk with his sister and his brother-in-law. And that is how I knew who Jake was. I didn't know Jake, but I knew who he was.

I was in law school at the time, in 1972-1973. And how I met Jake, met him on a cold day, it was one of these days in New Orleans where the streets were frozen, and I couldn't drive across the Mississippi River bridge. And I took the ferry. I drove down Jackson Avenue from law school, parked my car, got on the ferry.

And he was on the ferry in his car, and he invited me into his vehicle to get out of the cold. And we became friendly. We met each other formally, and that's the beginning of our relationship.

Q At the time that you joined him in practice, was Judge Porteous an attorney at the firm as well?

A When I became -- well, I worked for the sister and brother-in-law. Then they asked me to be

a law clerk. I believe I clerked over there as a law clerk for about six months to a year, until I graduated from law school. And then they -- somehow I became a lawyer in the firm. They asked me to work there, yes.

Q But at the time that you were clerking for the firm, later became a lawyer of the firm, was Judge Porteous then an attorney with the firm?

A Yes, sir. It was -- it was Edwards, Porteous and Amato.

Q Is that how you first met Judge Porteous or had you known him before you began to work at the firm?

A Basically that's how I first met him.

Q At some subsequent point, did you become a partner of the firm?

A No, I didn't become a partner in the firm. I was a -- I was an employee.

Q You were an employee when you initially started at the firm?

A Yes.

Q At some later point did you become one of Mr. Amato's partners?

A Yes.

Q Was that a different firm?

A Yes, sir.

Q And about when did you become a partner of Mr. Amato's?

A I believe I was practicing law -- okay, bear with me going back to '73, but I believe I was practicing law for one year with Edwards, Porteous and Amato. Around that period of time, Mr. Amato and I decided to leave Edwards, Porteous and Amato and form our own law firm, known as Amato and Creely. And we did.

We moved out of that building and into another building and began to practice as Amato and Creely.

Q And about when would that have been?

A I would say '75.

Q Would that have been after the judge was already on the bench?

A Oh, no. It would have been way before he was on the bench.

Q So while he was still practicing law, you and Mr. Amato split off for another firm and formed your own practice?

A Yes, sir.

Q The partnership that you had with Mr. Amato, was it 50/50?

A Yes, sir.

Q Split the expenses, split the profits evenly?

A Yes, sir.

Q Do you recall in 1984 that Mr. Porteous became a state judge?

A Yes, sir.

Q And after he became a state judge, did you interact with him socially?

A Yes, sir.

Q And in what way?

A Well, before and after he became a state court judge, we were social -- we were friends. We were friends. I didn't terminate my friendship with him because he became a judge. I didn't stop being his friend.

Q Tell me about that friendship. What kind of things did you do together?

A After?

Q Before, during, after.

A Before we were friends. I mean, I looked up to him at that time as -- at that time as a mentor, so to speak. He had the reputation of being an extremely aggressive attorney, district attorney, was knowledgeable in the law. And I looked to him

as a mentor. I looked to him as someone I admired.

And I liked his -- the way he did things. If I'm explaining it properly to you.

Q I want to ask you the nature of your social relationship. Did you have meals together?

A Before I was -- before he became a judge?

Q Let's focus on when he was a state judge.

A Just when he was a state judge?

Q Yes.

A I had -- I remained friends with him. It was a friendly relationship with him.

Q So while he was on the bench, you would have lunches with him?

A Yeah.

Q And you had lunches before he was on the bench?

A Absolutely, yes, sir.

Q And you had lunch with him when he was on the federal bench?

A Yes, sir. Not as often, but I did.

Q And how often -- let's focus for now on the state court tenure. How often would you have lunch with Judge Porteous?

A From 1984 to 1994, the best as I can recall, it was -- and before I was asked -- excused

from the room, I heard just a portion of Mr. Amato's testimony. And then I was sequestered. Somebody asked me to leave the room. I didn't know I was sequestered.

He said twice a month. I didn't eat with Judge Porteous as often as Mr. Amato, but my recollection was around twice a month was my recollection. But don't -- I didn't eat with Judge Porteous as often as Mr. Amato did.

Q So your recollection was that you ate with him about twice a month?

A A guesstimation, yes, sir.

Q And you think that Mr. Amato ate with him more frequently than that?

A That was my recollection, correct.

Q And over a period of years, what would you estimate, how many lunches would you have together?

A Over a period of years?

Q Yes.

A How many years?

Q During your entire relationship, how many lunches would you have together?

A I didn't hear that.

Q Let's confine it to while he was a judge in state or federal court. How many lunches

ballpark?

A While he was in state and federal court?

Q Yes.

A I couldn't tell you. I don't know. I have no idea.

When he was in federal court, I did not hang around with him. I wasn't as friendly with him as I was in state court, when he was a state court judge, because I worked in Gretna and his -- his seat was in Gretna.

When he moved to New Orleans to be a federal judge, I was extremely busy during that period of time. I didn't hang around with him a whole bunch while he was in federal court.

So my relationship petered off, so to speak, when he got into federal court. I didn't -- I didn't see him as often as I did when he was in state court.

Q When he was in state court two times a month, would that add to about 100 times or more?

A A hundred times?

Q Yes.

A I'm trying to do the math but I'm too tired. If I did twice a month times 120 months, I don't know what that -- I don't know. But it would

be pure speculation. I may not have gone to lunch with him in the month, you know, but if you want -- you know, if I'm guessing at twice a month, I will guess at twice a month.

Q And when you would go out to these lunches, who paid?

A I did. Or someone else.

Q But not Judge Porteous?

A Not Judge Porteous.

Q Did you also go hunting with Judge Porteous?

A Hunt?

Q Did you go hunting with him?

A Yes, yes. Before he was a state judge, after he was a state judge and after he was a federal judge, we hunted and fished together.

Q And tell us a little bit about the hunting trips. What were those like?

A The hunting trips?

Q Yes.

A The hunting trips. Well, I had a camp in Delacroix Island. At first we had a houseboat in Delacroix Island that we used as our home base, so to speak, for hunting and fishing.

And then we -- then we got rid of the

boat, and I bought -- I rented a house, which was about a thousand-square-foot house, a camp is what we call it in Louisiana.

And I had my boat in front of the camp. And we would -- we would go down and go into my house or the houseboat before I got the house, and we would go -- use that to -- as our base to go fishing.

And I would store my fishing boat in a very close proximity of the camp, when I had the camp, or the houseboat when I had the houseboat.

Q And did you ever go on any hunting trips outside of -- to this houseboat? Did you go on hunting trips to other locations, hunting or fishing?

A Yeah. If you're talking about the Mexico trips? Those are the only other trips that I can recall going on with him to hunt and fish.

Q And tell us about the hunting trips to Mexico.

A I think we went on, you know, three trips to Mexico.

Q And how much would those trips cost?

A It's hard to tell. The more people you got to go, the less expensive it was. And the way I

recall, the first hunting trip we did, we wrote letters to maybe 75 lawyers and different friends of ours, inviting them to go on the trip. Because the more people we would get, the less it would cost to go. And then one or two people would get a free trip, depending upon how many people you were able to accumulate to go on the trip.

So the first time around, you know, I don't remember the number of people that came with us on the trip, but there were maybe 12 or 15 people on the first trip.

I don't remember sort of vaguely about the second and third trip, how many people went. But we'd always have at least around 10 people going on the trip.

Q To your knowledge, did Judge Porteous ever pay for any of these trips?

A No, sir, he did not.

Q Did you ever pay for any of these trips?

A Yeah, probably I did. And the deal was, as I testified to, you know, patience with just a little bit of my testimony, is that you had 10 people, one person went free. I don't know how we divided up the 10th person. I don't know if he was the 10th person or we divided the 10th person up

amongst everybody, giving each of us a reduction in the total amount of the hunting trip.

Q But however it was done, Judge Porteous didn't pay?

A Porteous didn't pay, no, sir.

Q Did there come a time when Judge Porteous was a state judge, when he started asking you for cash?

A Yes, sir.

Q Tell us a little bit about how he first approached you for money.

A I mean, I would be guessing, but it would probably be at lunch or we would be hunting or fishing and he would tell me he needed small amounts of money, and I would give it to him.

Q In the beginning, what were the small amounts of money? What would he ask you for?

A 50, $100.

Q Was this money that you had on your person?

A I'm sorry? Yeah, it was money that I had in my pocket, correct.

Q And you just gave it to him?

A Yes, sir.

Q At a certain point, did you tell him you'd

had enough?

A Yeah, after a while, I did. And I believe that I may have given him cash before he was a judge also. But at a point in time, I did tell him I was tired of giving him cash, correct.

Q I take it you didn't like giving him the money?

A I felt imposed upon. I felt put upon that he continued to ask -- I thought it was an imposition on our friendship.

Q And what did you tell him when you told him that it had to stop?

A Probably sometime when he was sitting on the state bench.

Q What did you tell him?

A I'm tired of giving you money.

Q Do you remember anything else about what you told him?

A Pardon me?

Q Do you remember anything else about that conversation?

A Generally I'm tired of giving you money, something -- I'm tired of giving you money, something to that effect.

Q You mentioned in the beginning it was

small amounts of money. Did he start asking you for more money?

A Yeah, he started asking for at one occasion -- and I'm just estimating, because I'm trying to put it together over a 10-year period of time. But at one point in time he may have asked for $500.

Q And was that the point that he started asking for sums like $500, that you told him it had to stop?

A Yes, sir, a couple of times he asked for $1000.

Q And that's when you told him that's enough?

A I told him that before that. I told him a couple of times, I'm tired of that. I'm tired of giving you money. This isn't what friends are supposed to do to one another.

Q And the money you gave him up until this point, up until you told him it had to stop, was it always cash or did you ever write him a check?

A It was cash.

Q Now, after you told him that you were not willing to give him money anymore --

A Yes, sir.

Q -- did he start sending you anything?

A Yes, he started sending curators over.

Q Did you ask him for the curator cases?

A I have never asked him for a curator. A curator was like a pain in the neck to me. I did not ask him for a curator. I didn't need curators. I didn't want curators. They started showing up.

Q We've had a little testimony already about the nature of the curator cases, but can you give us just a quick nutshell on the cases that you handled, what are they like?

A It's a court appointment of a lawyer to represent an absentee defendant, a defendant that the plaintiff can't find.

Q Do you recall how much the fee was approximately for each curatorship?

A No, but I've read testimony to the effect that it was roughly $200.

Q Is that consistent with your recollection?

A Yes, sir.

Q After he began sending curatorships, did Judge Porteous begin asking you for cash again?

A I'm sorry, sir?

Q After he began sending curatorships to you, to your firm, did he start asking you for cash

again?

A Yes, he did.

Q And as a result of getting these curatorships, did the firm now send money to Judge Porteous in response to his request?

A We continued sending him money. Not sending him money. Giving him money.

Q Giving him money. Can you describe a communication for us you had with Judge Porteous regarding the relationship between assigning the curatorships and asking for cash?

A I didn't get that whole question, I'm sorry, sir.

Q Can you tell us about any communication with Judge Porteous regarding the relationship between sending the curators and getting cash? Did you confront him at some point about this?

A Did I ask him something about that?

Q Did you confront the judge about the relationship between the curators and the cash at some point?

A I always gave him cash. I didn't -- that was not a break in tradition from our friendship to -- it was always cash. I didn't -- I always gave him cash.

Q My question was, Mr. Creely, is at some point when he started sending the curatorships and you were giving him the cash, did you have a conversation with him about the curatorships and the cash? Did you have a conversation with him where you expressed your upset over something he said?

A Oh, okay. And this is testimony that we discussed last night and testimony that I've read.

He called my office one time. Is that what you're talking about?

Q I'm talking about whatever conversations you remember with the judge regarding the curatorships and the cash.

A He called my office one time and asked my secretary if I'd been getting curators, and I became upset with him about that.

Q Why were you upset about that?

A I didn't think -- I didn't put a -- I didn't put a relationship -- I didn't have a connection between the curators and the cash. And he called my office and asked my secretary if I'd been getting curators. And the reason he did that I suspect is because I began to avoid him because I -- he was -- I began to avoid him because every time -- well, not every time, but most of the time that I

was around him, he would begin to ask me for cash, so I would begin to avoid him.

So apparently, he called my office, verbalized that to my secretary. She verbalized it to me, and I had a discussion with him that I didn't think that was appropriate because I didn't put a relationship on the curators and my giving him the cash.

Q You didn't put that connection, but he did?

A I assume he did, yes, sir.

Q And that upset you?

A I'm sorry?

Q And that upset you?

A Yeah, it upset me.

Q And the conversation that was related to you was him calling about the number of curators because he wanted curator money back?

A The thing that upset me was that he called my office and made a correlation that he was giving me curators so that I would give him money back.

Q And did you discuss this -- this communication with Jake Amato?

A Oh, absolutely.

Q And what did you tell Jake Amato?

A I said this is getting out of control with a friend, I don't know how to handle this anymore. I don't know how to end this. I don't know how to control this, but it's got to stop.

Q And what did you tell him the judge was asking for with respect to the curators?

A I related the telephone call to him and told him that, you know, he called and made this request. Best I can recall, I explained my entire dissatisfaction about giving this cash to him and the fact that he's calling and making a correlation between curators and cash.

Q And what did Mr. Amato say, what did he suggest you do about this?

A Keep paying him, it doesn't cost us anything, it's not costing us any money, just if he asks for money from time to time, let's continue giving it to him.

And I said well, I'm going to try to avoid him as much as I can from now on.

Q And did you and Mr. Amato reach some kind of agreement about how much of the curator money would go back to Judge Porteous?

A There was no agreement about how much of the curator money would go back to Judge Porteous.

The agreement was, at least my agreement was, to stay away from him as best I could. And the times that he would corral me, and I use that word, and ask for cash, I would go back to Amato and say we need to go make a draw and give him some money, when I finally couldn't avoid him anymore.

Q And wasn't the amount of money you gave him about half of the value of the curatorships?

A Yes.

Q Isn't that how you and Mr. Amato calculated it?

A No. When I gave that first testimony before whatever -- this is the sixth time I've been under oath, and I'm doing the best I can to recall. First time I gave that testimony, I didn't have the benefit of the curator list, which we had.

And we told everybody about. I didn't review that list before I gave that testimony, because I didn't want to interfere with that list in any way whatsoever because I knew this investigation was going on, and I didn't want anybody to suggest that I was trying to tamper with something that may cause a problem in the future. So I didn't go to the list. That was a pure guess as to how much that I gave him.

Someone asked me to estimate about how much money I gave him, and I made that estimation. I made an estimation of I gave him $10,000.

Q Let me -- let me refer you to some of your testimony. I think you're referring to your testimony in the grand jury; is that right?

A They all blend together after a while.

Q Let me pull up some testimony from the grand jury.

Could you go ahead and pull up the grand jury or have you done that already? You've done that already.

CHAIRMAN MC CASKILL: Is this the first time we've referenced the grand jury testimony today?

MR. SCHIFF: It may -- it may be, and --

CHAIRMAN MC CASKILL: Do we have an exhibit number?

MR. SCHIFF: Yes.

MR. TURLEY: I'm sorry, I'm understanding the grand jury material was not coming in. Isn't that correct?

CHAIRMAN MC CASKILL: That's correct. But he is referring to it, and until he asks the question, and if you think that there is an

objection there about the basis of -- I'm assuming he's going to use this to either refresh his recollection or impeach him, which for that purposes it would be admissible.

MR. TURLEY: Okay.

CHAIRMAN MC CASKILL: If you don't think it's appropriate, then it's up to you to object. But in the meantime, he can't refer on the record to something without an exhibit number.

MR. TURLEY: Very well.

CHAIRMAN MC CASKILL: Congressman Schiff, the exhibit number is Exhibit Number 11?

MR. SCHIFF: Yes, Exhibit Number 11.

CHAIRMAN MC CASKILL: To help the witness and also for the record, would you make sure and refer to the page number as you go through the testimony.

MR. SCHIFF: Yes.

CHAIRMAN MC CASKILL: Thank you.

MR. SCHIFF: Thank you.

THE WITNESS: Can I see a copy of the transcript? Can I ask my lawyer to give it to me?

MR. SCHIFF: Certainly.

CHAIRMAN MC CASKILL: It should be right there in front of you, Mr. Creely.

THE WITNESS: Okay. Yes, sir.

BY MR. SCHIFF:

Q Mr. Creely, in the grand jury testimony on page 53, Exhibit 11, you testified, referring to Judge Porteous, "and he then started calling and saying, look, I've been sending you curators, you know, can you give me the money for the curators?

"I said, man. So I talked to my law partner, I said, Jake, you know, man, what do we do? He says, well, just go ahead and give it to him.

"We decided to give him the money. We would deduct the expenses, we would pay income taxes on it. And he got to a point -- and I have a whole list of this, I have a list of Bob's curators okay, and I was even afraid to run that piece of paper, okay, out of fear that it would get lost."

Do you recall that testimony?

A That's basically what I just testified to, I thought.

Q That's what I want to ask you about. So it's your recollection that the judge called you and basically asked for the money for the curators?

A He called and wanted to know if we were getting curators. Now, that exact quotation, he called and wanted to know if we were getting money

from the curators. He made a connexity between curators and cash.

Now, the exact words that I used, whenever the date of this transcript was and what I'm telling you today, I consider to be consistent. If you want to ask me about a word or two in that transcript, which may not be consistent with what I'm saying today.

That is the gist of my recollection.

Q And this grand jury testimony, this took place some years ago; right?

A I'm sorry, sir?

Q Your grand jury testimony was some years ago; correct?

A This has been going on since 2003 for me, so I don't remember when that --

Q No, I'm not asking you what year. But this was -- you testified before the grand jury actually at a time much closer to the events in question; right?

A I believe it was 2005. I don't know when it was. But that was the first -- I'm sorry, what was your question?

Q My question was you testified before the grand jury at a time when the facts were fresher in

your mind than they are today; right?

A Yeah. Yes, sir.

Q And your prior testimony was that Judge Porteous asked you, can you give me the money for the curators.

A Okay.

Q Correct?

A Okay.

Q Is that an accurate recollection, as far as you can tell, of your conversations with Judge Porteous?

A That is generally what happened, yes, sir. He made a connectsity. He told me, have you been getting the curators? All right. That's basically what he told my secretary.

And then -- and so I said, this has got to stop. So he was making a connexity is what I'm trying to tell you.

Q And you, in fact, went and confronted him over this; right?

A Yes, sir.

Q And you had a further conversation about the connection between the curators and the money?

A Yes, sir.

Q And even after that conversation, you and

Mr. Amato continued getting the curators and continued giving him back a portion of the money; right?

A After our discussion we decided to continue giving him money, yes.

Q Did the fact of getting the curatorships from Judge Porteous make it easier to give him the cash?

A Yeah.

Q Why was that?

A Because it wasn't costing me anything.

Q About how often would he ask you for the cash from the curatorships?

A I would be purely guessing, but if you -- if you take $10,000 over 10 years and you divide it by 10, it's $1000 a year. I would have no way of telling you how often he asked, other than it would not be tremendously frequent, but it would be. Because as we talk about -- I don't remember. That would be my answer to you.

Q I just want your best estimate. If the documentary evidence shows that the value of the curatorships that you received over the years was worth about 40,000, approximately how much of that would have gone back to the judge?

A I testified, approximately 10,000 from me and 10,000 from Mr. Amato is what we gave him. But that would have been during -- that would have been before, during and after he gave us curators. That's what I -- my best estimate of what I gave Judge Porteous was $10,000, while he was on the state bench.

Q And I want to ask you about the mechanics of giving him the cash. How did you do that? Did you take a draw from the firm?

A Yes, sir. What we would do is the -- all moneys earned by the firm would go into the general operating account, unless they were client funds, which would go into an escrow or a tolling account. But all earned income would go into the operating account.

And we would simply take a draw, an equal draw. We would ask the bookkeeper to give us each a check for $250, each give us a check for $500, whatever the amount may be.

Whatever the amount we may want. And she would write that check to us. And I believe early on in this investigation, I tried to go through these draws that we got, that we took, and tried to make some sense out of it but couldn't, okay.

Because every week, we'd each take a $1500 personal draw for ourselves, which would be our money that we would -- we would use for our own personal usages. And I would try to go back and look at off draws.

I believe one of the members of either the FBI or Mr. Dubester or somebody, I forget who, in us trying to cooperate, went over the next set of questions you're going to ask, to try to look at a draw for this fishing trip stuff. And we were able to try to identify that draw by -- that payment by an actual draw we took, because it was -- I'm sorry.

Q Mr. Creely, my question is really more about the mechanics of how you got the cash from the firm to give to the judge during the curatorship period. How did that work?

A Went to the bookkeeper and said give me a -- write to check to Mr. Amato for $250, write a check to Mr. Creely for $250. They would do it, and then we would endorse it and ask them to go to the bank and cash it.

Q So you didn't have your bookkeeper write a check to the judge, did you?

A To do what?

Q You didn't have your bookkeeper write a

check to the judge, did you?

A No, sir.

Q You had the bookkeeper write a check to you and to Mr. Amato and then you cashed it and gave the cash to the judge; right?

A Correct.

Q And you and Mr. Amato gave equal amounts of the cash from the curators to the judge; right?

A Yes.

Q Because your firm was benefiting equally from the curatorships you and your partner would divide equally the amount you had to pay back; right?

A Mr. Schiff, my firm didn't really benefit by those curators. At that point in time, those curators really in the whole scheme of things meant really little to the productivity of our law firm.

But the firm did benefit by the curators, if the firm made $10, it benefited by making $10. But those curators didn't really have any major benefit to our law firm.

Q Mr. Creely, I'm not asking you whether you wanted the curators. I know you've said you didn't want them to begin with. What I'm asking you is the reason that you and Mr. Amato divided the money you

gave to Judge Porteous equally is the money was coming in equally to the firm; isn't that right?

A Yeah, right, it was coming to the firm. No matter who -- yeah, it would go into the firm's operating account, correct, equally owned by Mr. Amato and myself.

Q So when you had to pay back a portion of that money, you wanted to pay it back equally, you and Mr. Amato; correct?

A When he wanted cash, we would pay it equally, correct.

Q When the curatorship stopped coming, did you and Mr. Amato stop sending or giving Judge Porteous cash?

A Yes. With one exception.

Q And that's the fishing trip?

A Fishing trip.

Q Mr. Creely, were you interviewed by the FBI in connection with Judge Porteous being considered for a federal judgeship?

A Yes, sir.

Q And do you recall responding to a question from the FBI as to whether Judge Porteous was living within his means?

A I remember vaguely some questions about

that, yes, sir. And I believe I read the summary through one of our innumerable meetings that we had, somebody gave me a summary of what I told the FBI agent. Her name is Ms. Cheyenne, and I forget her last name.

MR. SCHIFF: Could we put up on the screen Exhibit 69B, which is part of the FBI 302.

In this interview with the FBI, the report of the interview states, "Creely advised that he knows of no financial problems on the part of the candidate and the candidate appears to live within his economic means."

Do you recall that's how you answered the question?

THE WITNESS: My answer was I have no reason to doubt -- yeah, I would recall saying that. I have no reason to doubt that statement.

MR. SCHIFF: Madam Chair, at this point I'd move admission of that exhibit.

CHAIRMAN MC CASKILL: Without objection?

MR. TURLEY: We do object, Madam Chair. This is a 302. This would -- this was addressed earlier, before the trial, about this type of material not coming in. We thought it was clear the 302s would not come in. This is not being used for

impeachment. And so, you know, we would object.

This is basically a testimonial statement without chance for examination. 302s generally do not come into evidence. They are generally viewed as unreliable as evidence because it's somewhat recounting -- someone recounting what someone else said in the field. That's why we raised this earlier.

MR. SCHIFF: Madam Chair --

CHAIRMAN MC CASKILL: First, I don't believe we've had any pretrial discussions about 302s. I believe this is the first time that basis has come before us.

I believe that the testimony of the witness and the questions of the witness concerning what he said at that point in time, there was no objection before the language came into the record. In terms of the whole document coming in, we'll take your objection under advisement and then get back to both parties.

BY MR. SCHIFF:

Q Now, Mr. Creely, when you told the FBI that you knew of no financial problems on the part of the candidate, and that candidate being Judge Porteous, and that Judge Porteous appeared to live

within his economic means, that wasn't the truth, was it?

A No. May I explain?

Q Why didn't you tell the truth?

A I'm sorry?

Q Why didn't you tell the truth? You can answer.

A Well, because of the knickknack money that he asked me was the only reason that I assumed he was having problems. I had no knowledge that he was behind in his car note, I had no knowledge that he was behind in his house note.

I knew he was having some problems. He wasn't -- he was having problems getting by, he had four kids, on his salary is what I knew and didn't tell the FBI agent.

Did I know that he was being sued by a bank or anything? I still don't know if that was a fact. Do I know if he was current with his house note? I have no idea. Do I know if he was current with his car note, all those things? I had no idea.

Was he asking me for money? Yes. And if I can, before this statement was given, I began to suspect that the reason he was asking me for money wasn't for the reasons he was asking it for, it was

because he had certain vices or a vice, called gambling, that he was using my money on, not to use it for the things that he was doing.

And that's -- that's my answer.

Q Now, you said that over time you began to think that he was using it for gambling, not for the things he was telling you he needed it for. What was he telling you that he needed it for?

A Tuition expenses, you name it. I don't remember everything he asked for -- saying it was for.

He would have just things. And -- daily living expenses.

Q And so when the FBI asked you was he living within his means and able to make all these expenditures, the truthful answer would have been no, wouldn't it?

A That would have been a more accurate answer, correct, to say no, he was not living within his means.

Q My question was, why didn't you tell him that? Why didn't you tell him that the judge was constantly coming to you for money, that he wasn't living within his means? Why didn't you tell him that?

A I guess the honest and straightforward answer is I didn't want to hurt the man and hurt his appointment.

Q And you thought if you told the truth, the full truth, about his financial circumstances and the payments of cash, that would hurt his confirmation; right?

A I don't know what the FBI knew about Judge Porteous at that point in time. And quite honestly, if that would have hurt his appointment and it was something very material, I should have said it. But I didn't say it. I didn't say that. I said what I said. And it was not accurate.

Q Because you wanted to protect him?

A I'm sorry, sir?

Q Because you wanted to protect him?

A He's my friend. He was my friend, yeah, I wanted to protect him.

Q And you didn't want this to interfere with his nomination or confirmation?

A No, sir, I did not.

Q Do you know how it happened that the FBI came to interview you, who would have given your name to them?

A I have no idea. I believe Judge Porteous

gave them my name, but I'd be purely speculating if I said that. I believe he did give him my name, my guess.

Q And was it your -- the nature of your friendship with Judge Porteous that he could count on you not to talk about the cash and financial problems?

A Well, that's a hard question to go back and answer. But he was a very manipulative person, and maybe that was one of his motivations, yes.

Q Did FBI ask you whether Judge Porteous abused alcohol?

A I'm sorry?

Q Did the FBI ask you whether Judge Porteous abused alcohol?

A It says that they did, and my reply would have been --

Q If I could direct your attention again to Exhibit 69B.

A Yeah, alcohol and prescription drugs.

Q Mr. Creely, let me just repeat what it says on the 302. "Creely has never known the candidate to use illegal drugs or to abuse alcohol or prescription drugs."

Did you tell the FBI that you had never

known the judge to abuse alcohol?

A Yes.

Q Why did you tell them that?

A I guess it's like if somebody asked me if I abused alcohol. Abusing alcohol is an odd thing to ask somebody. You could abuse alcohol in a way that wouldn't affect me. I can't drink. Some people can drink well. He functioned better when he was drinking, in my opinion. I'm not trying to be offensive to anybody, but you know, I didn't -- so he drank more than -- he drank.

Q He drank more than what?

A I'm sorry?

Q He drank more than what?

A Oh, more than what? I mean, I feel compelled to give an answer. I feel like I have to give an answer to you. But drink more than what? He drank more than some people that I knew. Some people don't drink. Some people drink on a daily basis. Some people drink socially. He drank.

Q Mr. Creely, when you say you didn't know whether that constituted abusing alcohol, is that because he could drink a great deal, and as far as you could tell, he could function while drinking that much?

A Yes, sir.

Q So he could tolerate a lot of alcohol?

A Yes.

Q And during these lunches, how much alcohol would you see him drink?

A Sometimes, we would, and I would too, we would have more drinks than we should have.

Q And how many drinks are we talking about?

A Four or five drinks.

Q Each of you?

A Yes. And not necessarily eating. Like when we go fishing and have a couple cocktails together. It wouldn't just be him and me. It would be five or six other people.

Q These occasions when you had lunch, though, where he would have potentially four or five drinks, were these weekdays? Were these days during the week?

A Oh, yes. It would be weekdays most of the time.

Q And do you know whether he had to go back to the bench after these lunches?

A In 1984 to 1994, I would assume he would have to go back to the bench, maybe not. Maybe he didn't have to go back to the bench.

Q Mr. Creely, don't you think this is something the FBI would have wanted to know when they asked you about abuse of alcohol, that the judge would drink on occasion four or five glasses during lunch while on the bench?

A Do I think the FBI would want to know if the judge sometimes drank four or five glasses of alcoholic beverage at lunch?

Q Yes.

A I don't know. If they would have wanted to know that, maybe they could have given me a checklist and said have you ever seen him drink more than one drink or two drinks or three drinks or four drinks. If they wanted to know if on occasion he drank more than four drinks at lunch and that was the intent of that question, I grossly misled them.

Q Mr. Creely, isn't in part the reason you didn't tell the FBI about his drinking is that you didn't want to hurt his chance to be nominated?

A Correct; yes.

Q Did your firm, Amato Creely, play a role in Lifemark versus Liljeberg?

A I don't know what role Amato & Creely played. But Jacob Amato was involved in that case. I have never seen an employment contract. Maybe

someone one day will show it to me. I don't know who the employment contract was executed between, whether it was just Mr. Amato or Amato & Creely. I've never seen the employment contract on that. Was Jake Amato involved in that case? Yes.

Q You wouldn't have to see the employment contract to know whether what Mr. Amato got as a result of his work on that case, you would get half of it; right?

A Yeah, theoretically, I would get half of it, if anything were to come out of it and if we were still partners at that time. We didn't have a perfect marriage, and we eventually dissolved our partnership. But yeah, theoretically, I would stand to benefit if that money would be earned by that case.

Q And you understood that he was spending an extraordinary amount of time on that one case; right?

A Exclusively.

Q Did you raise a concern with him about putting all of his eggs in one basket?

A Was I concerned with him?

Q Yes.

A Yeah, yes, sir, I was concerned. Because

we had a huge overhead, and I was carrying the water for two years or however long, and I was tired of doing it.

Q If Mr. Amato was successful in getting a contingency fee of $500,000 to $1 million, that would have been a substantial recovery for your firm, wouldn't it?

A Mr. Schiff, we made million-dollar fees. I made half a million, million-dollar fees in a case, not every day, but a lot. Yeah, that's a nice fee. I would have loved to have gotten that.

Q You weren't personally involved in trying the case or any part of it?

A Not any part of that. That file wasn't even maintained in our office, from what I understand. I've never seen -- I wouldn't know Mr. Liljeberg, like I told you before, if they walked in this room.

Q But you did at least go by from time to time to get some understanding of the case or watch Mr. Amato do some questioning?

A I went by the courtroom one time because Don Gardner was telling me the case was going horribly for us, who was the lawyer on the other side, who I was very close to. And my law partner

was telling me the case was going great. And I said I've got to go see what's going on. I walked in the courtroom, and Judge Porteous is chewing out my law partner, screaming at him for asking some stupid question, and I turned around and walked out.

Q And you wanted to get to the bottom of whether Mr. Gardner was right or Mr. Amato was right because Mr. Amato was spending a lot of time and you stood to make a lot of money if he was successful; right?

A I'm sorry, sir?

Q You wanted to get to the bottom of who was right between Mr. Gardner and Mr. Amato because your firm stood to make a lot of money if Mr. Amato was right and he was spending a lot of time on the case?

A Yeah, and if he wasn't doing good, I would be able to maybe talk some sense into his head to settle the thing or get out of it or do something else. I didn't know what I would have done. I wanted to find out what was going on. I walked in the courtroom, and I didn't like what I saw.

Q What did Mr. Amato say about that?

A Mr. Amato at that time was a very condescending person and basically told me to mind my business about that case.

Q And did Mr. Amato tell you that he was pretty confident he would be successful in the case?

A Yeah, I think, yeah, he did.

Q So notwithstanding what the judge may have been showing during the trial, Mr. Amato was pretty confident he was going to win?

A I was only in that courtroom for maybe 10 minutes one day, five minutes.

Q I'm asking you based on your conversations with your partner. Notwithstanding what you saw in the courtroom, Judge Porteous's display, your partner thought he was going to win; right?

A He thought he was going to win.

Q Did he tell you why he thought he was going to win?

A Why he wanted to win?

Q Did he tell you why he thought he was going to win?

A He thought he had a good case. He thought he had a winner. He thought he had a good case.

Q Do you recall during the pendency of the Liljeberg case there was an anniversary party for Judge Porteous being on the bench for five years?

A Do I recall a party for him being on the bench for five years?

Q Yes.

A I had no knowledge of that whatsoever until these proceedings started.

Q Did the law firm of Amato Creely contribute money toward that party while the Liljeberg case was pending?

A You're asking me did we pay for it?

Q Yes.

A I've found out since this case has begun that we paid for it, yes, sir.

Q Do you know how much that was? Do you know how much that was?

A I thought I saw a record to the amount of $1,400 or something like that. But I could be -- I could be off a few hundred dollars. I don't know what the amount was. I remember looking at a transcript someplace.

Q While the case was pending before Judge Porteous, do you recall attending a bachelor party in Las Vegas for Judge Porteous's son?

A Yes, sir, along with 20 or 30 other people and Mr. Gardner.

Q And did you pay a portion of the bill for the meals at that -- on that trip?

A I paid a portion of the bachelor party

dinner, which was -- it's in the record. It was under $500. I was at a table with three other men at a steakhouse in Las Vegas, and people were drinking and eating. I think my part of the bill was about -- was between $450 and $500.

Q Did you also pay for Judge Porteous's hotel room?

A That was brought out, and I didn't realize that at the time, but you have shown me documentation that I did pay for his hotel for him.

Q And you have no reason to question the billing statement, do you?

A Not after I went over that information with the people on your staff last night did I finally understand where you were coming from with that particular issue.

Q And did looking at the documents refresh your recollection about whether you paid for the judge's room?

A They were documents that I didn't think I could dispute, but they showed that I paid, I think, a $69 hotel room, and apparently, he made some charges to his room. If I recall the bill that I looked at last night, was he made some charges to my room. I don't know whether there were charges one

day that were like a bunch of people, young people that were hanging out around the swimming pool, and we had drinks. I came across the group, and I don't know if that got charged to his room or not.

Q But it didn't surprise you to see documentary evidence that you had paid for these expenses for the judge?

A You showed me documentation last night that I paid for expenses, yes, sir.

Q And that didn't surprise you; right?

A We've been talking about this for several months, Mr. Dubester and I, and it more or less disturbed me but did not surprise me.

Q Did you also go to a strip club with Judge Porteous and his bailiff on the trip?

A I walked in the front door and out the back door. We talked about that before, yes, sir.

Q Before you walked out the back door, did you pay for any personal entertainment for the judge and the bailiff?

A I gave the man that was the bouncer, I guess you would say, $200.

Q And the $200 was for a lap dance for the judge and for the bailiff?

A Apparently so, yes, and I left the party.

I went back to another hotel.

Q During any point when you were providing cash to Judge Porteous, did Judge Porteous's secretary come to your office to pick up the cash?

A On one occasion. I believe the only time, the occasion that we're getting to, is the $1,000 fishing trip thing. I'm anticipating what you're asking me, and yes, she did come buy and pick it up. I'm told she came by and picked it up.

Q And this was the 2000 or 2500 that was referrred to earlier?

A And that was what we went through my records to determine there was $2,000, I believe, that Mr. Amato indicated to me that he wanted to contribute to the judge's son's -- originally, I thought it was tuition, and then I was led to believe it was for -- I was told it was for a wedding expense or something.

Q So the $2,000 that the judge had asked for on this boating trip, you and Mr. Amato split that evenly?

A Whatever the judge asked, Mr. Amato -- Mr. Amato told me after the fishing trip that I needed to give him $1,000 to give to Judge Porteous, and we had a conversation about that. And I avoided

doing it for a long time. Hence, I think is the reason why his secretary, from what I understand, came by, because I avoided doing it. I avoided giving my portion.

Q This would have been his federal secretary?

A I'm sorry?

Q This would have been his federal secretary while he was on the federal bench?

A Yes, sir.

Q Came over to get the cash in an envelope?

A That's what I remember, yes, sir. I was told.

Q Do you recall having any conversation with the judge about his sending his secretary to pick up cash from your office?

A I may have told him that it wasn't a good idea.

Q Why did you tell him it wasn't a good idea?

A Obviously, there was a case under advisement before the judge.

Q Did other judges besides Judge Porteous ever send you curatorships?

A Yes, sir.

Q Did any of those judges ask for cash back from the curatorships?

A No, sir.

Q Can you tell me anything further about what Mr. Amato told you when he asked you for the cash after the fishing trip?

A Do you want me to tell you the whole story that Mr. Amato related to me about the cash and the fishing trip?

Q Yes.

A There was a fishing trip that I wouldn't go on, didn't want to go on. And Judge Porteous and Mr. Amato went on this fishing trip. In general -- I don't remember word for word how it went. It was 11 years ago. But the judge and he ended up in some sort of a conversation, either on the front or the back of the boat where the judge became -- loss of words, became emotional about not being able to satisfy or pay for the obligation that he needed money for and asked Jake Amato to help him out. And that was what was related to me. Whether that, in fact, took place, I have no idea. That's what Mr. Amato told me.

Q And both of you decided that if you were going to give money to the judge, it was going to

come from you both equally?

A Yeah. That's what Mr. Amato decided, that we would give half the money to the judge, and I eventually did it.

Q Am I correct, Mr. Creely, that you have forfeited your law license as a result of the matters we've been discussing today?

A I'm very sorry, Mr. Schiff. I didn't hear that.

Q Am I correct that you have forfeited your license as a result of the matters we've been discussing today?

A Yes, sir.

MR. SCHIFF: Madam Chair, at this time I have no further questions.

CHAIRMAN MC CASKILL: Professor Turley? We will take the midafternoon break in, give or take, 20 or 25 minutes.

MR. TURLEY: I expect that this examination will be longer than that. Is it possible to take a break now so I don't have to stop my examination?

CHAIRMAN MC CASKILL: The problem is we're planning on going fairly late. And so I think we need to wait to do the break so that we kind of are

equally spacing out the time of breaks. So why don't you get started, and then you can kind of plan where would be a logical place to stop and restart after that.

MR. TURLEY: Very well. Thank you.

CHAIRMAN MC CASKILL: Thank you.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Mr. Creely, good afternoon.

A Good afternoon.

Q I also will try to speak up so you can hear me. It's sort of a large room. I'm going to start with a couple of simple questions to try to clarify some of these matters. In one of the things that came out of your deposition, did Judge Porteous ever ask you for a percentage or portion of the curator funds back?

A No.

Q You said no, sir?

A No.

Q Did you have an agreement with Judge Porteous to get half the curatorships assigned to you?

A No.

Q Thank you. Let's take a step back. You

periodically loaned money or gave money to Judge Porteous; correct?

A Correct.

Q You did that as a friend; right?

A As a friend.

Q How long were you a friend of Judge Porteous?

A Really since I first met him. I liked him, and as I indicated to Mr. Schiff -- and I will repeat myself if you would like me to -- I looked up to him. He was like my hero at one point in my life.

Q The House has referred to you as a crony of the judge. At that time were you a crony?

A A what?

Q A crony. They referred to you as a crony of the judge. Did you view yourself as a crony of the judge?

A No. I was his friend before he was a judge.

Q At any time did you become a crony of the judge?

A No, I don't believe, if -- the way I understand the word, I was not a crony. What do you mean by a crony?

Q That's what the House referred -- I want to know if that's how you viewed yourself, your relationship with the judge.

A No, I didn't view myself as a crony of the judge. I didn't have any business in front of the judge. I had very, very, very limited business in front of the judge.

Q Now, Mr. Creely, you started loaning or giving money to the judge before any curatorships came in; correct?

A I didn't lend him anything. I gave him money before the curators came in, sir.

Q And you were giving him money for a fairly long period of time before the curatorships; correct?

A Yes, sir.

Q And when you say that you estimated that, in your relationship, you may have given him about $10,000, that included the whole period of the relationship; correct?

A Generally, yes. That's my understanding, yeah.

Q So you were trying to calculate in your relationship how much money did I think I gave the judge when you agreed it might have been around

10,000; is that correct?

A Yeah. And I was trying to go back to 1984 and before then, 1979 and '80, and make a calculation in my mind. But generally say '84 on, that would be a fair assessment of what I may have given him.

Q So that figure was for money you gave before the curatorship started and money you gave after the curatorship started; correct?

A Generally, yes.

Q Did you ever give any money to the judge as a bribe?

A No indeed.

Q I'm sorry, sir?

A No.

Q Did you ever give money to the judge that you thought was a kickback?

A No, sir.

Q Did you ever think you had a quid pro quo arrangement with the judge?

A No.

Q What's your understanding of a quid pro quo arrangement?

A Getting something in return.

Q And what's your understanding of a

kickback?

A A kickback is much like a bribe, I guess. I would correlate those two together.

Q Did you ever give him money to influence him as a judge?

A No, sir.

Q Thank you. You just testified -- did you give him money in a scheme to get more curatorships?

A No, no, sir.

Q Because you don't want curatorships; right?

A No.

Q Is it your experience as an attorney that judges often give curatorships to people they know?

A Yeah, particularly from recent readings of the newspaper, the Times-Picayune newspaper in New Orleans, it happens quite regularly.

Q Do you know of any rule that existed then or now that made that unlawful?

A No, sir.

Q You believe you may have gotten some curatorships from other judges; correct?

A Yes, sir.

Q Were you friends with other judges in Gretna?

A Yes, sir. The older you get, the more people you know end up being judges. They were good friends when they were lawyers, and they remain friends when they become judges.

Q Did you have a good record in handling curatorships?

A I didn't handle curatorships, because the types of curatorships that I had were purely ministerial. I didn't have to do any kind of -- they were advertisements and filing evidence, which is purely clerical. I didn't go to court for any of these curators.

Q Have you heard of some attorneys that would not send out notices on curatorships and cause problems like that?

A I've never heard of any attorney that would have done that. It wouldn't have been something I would be particularly interested in.

Q Do you recall, before this call from the judge -- you had testified about a call with the judge coming in about curatorships. Do you remember that discussion with Mr. Schiff?

A Generally, yes, I do remember that.

Q Do you think before that call you had ever gotten curatorships from Judge Porteous?

A I'm sorry?

Q You had received curatorships before that call; correct?

A Right.

Q And do you recall when you got your first curatorship from the judge?

A No, sir.

Q Do you have any idea?

A No, sir.

Q In fact, did you keep track of how many curatorships you had at any given time?

A Yes, sir.

Q And did you get that, what, on a daily basis? Weekly basis?

A Every time we opened a file, it was generated. Before they had computers, it was manually generated. After we got computers, they became computer-generated. We had records on everything. We had records on how many asbestos cases I had. We had records on how many -- every kind of cases. Jake would devise records, lists for everything we did.

Q I'd like to ask you some questions about your work in Gretna as an attorney. You said that you knew a lot of judges in Gretna; is that true?

A Yeah.

Q Do you think you knew virtually all of them?

A Yeah.

Q Were you good friends with a lot of them?

A What do you mean by "good friends," if you don't mind?

Q Would you see them socially?

A Yeah, some of them.

Q How many judges do you think you saw socially?

A By "socially," you mean what?

Q Going out to meals, lunches, dinners, drinks.

A Pretty much most of them.

Q And you don't know of any rule that said you shouldn't see judges socially, did you?

A No.

Q Isn't that very common?

A Yeah, it's pretty common, very common.

Q Let me ask you a question about Gretna. I know that Jefferson Parish is pretty big.

A It's about 150,000 people, I think.

Q But Gretna's legal community is relatively small, isn't it?

A Is Gretna --

Q No, the Gretna legal community is relatively small?

A The lawyers practicing in Gretna?

Q I'm sorry?

A The lawyers who practice in Gretna?

Q Yes.

A Gretna is a small city, but the lawyers who practice in Gretna, it's a little city. It's probably not unlike small cities around Washington, D.C. It's a little, small city.

Q Did most of the lawyers and judges in Gretna tend to know each other?

A The lawyers in Greta knew each other. The Gretna lawyers knew the judges, but other lawyers outside of Gretna also knew the judges. It wasn't just Gretna lawyers that knew the judges. I mean, anybody that practiced in Jefferson Parish would know who the judges are and would know the judges.

Q Was it common for lawyers to go out to lunch with judges in Gretna?

A Yes.

Q Was it common for lawyers to pay for the meals of judges in Gretna?

A Yes.

Q In fact, didn't you testify that in your entire career, you only remember one judge ever buying lunch?

A I think it was dinner. I may have to correct myself.

Q A dinner?

A Yes.

Q But one time?

A One time.

Q So except for that one time, lawyers generally paid for the judges; correct?

A I don't know about what other lawyers did. I know what the lawyers that I knew about did. Sometimes we would split the bill for the judges. It wouldn't necessarily just be a lawyer and a judge. It would be a lawyer, a judge, and maybe four or five other lawyers. It would always be at public places.

Q Was it your understanding that there's any rule prohibiting you from paying for lunch of a judge?

A I don't know of any rule that would prohibit that.

Q Are you familiar with a place called the Courtroom Cafe?

A Where?

Q The Courthouse Cafe? Do you remember a place called the Courthouse Cafe?

A The Courthouse Cafe? It's been a while since I've been to -- actually practiced in Jefferson Parish, but if this has any real significance, I will think, but I don't offhand remember a Courthouse Cafe. I know there was a coffee house something or the other over there, but in the last five years of my practice, I didn't have any cases in Jefferson Parish. I haven't really tried any case in Jefferson Parish in the last 10 years.

Q It might have been called the Whiteside Cafe?

A Whiteside's, yes, sir.

Q You remember that name?

A Yes, sir.

Q Do you remember that in the Whiteside Cafe, wasn't there a table that was set aside for judges and lawyers?

A I never sat at it.

Q I'm sorry, sir?

A I didn't sit at that table. I didn't go to the restaurant very often either.

Q Did you buy lunches for other judges when you were working in Gretna?

A Yes, sir.

Q Did you sometimes appear before those judges?

A Yes, sir.

Q Did other lawyers buy lunches for judges they appeared in front of?

A Sure.

Q Do you remember many recusal motions in Gretna for judges to recuse themselves because of socializing with lawyers?

A I'm not aware of anybody that filed a motion to recuse a judge because he or she brought their lunch.

Q Do you have any memory actually of any recusal motions? Do you recall what the recusal motions were for that you recall? Do you remember any past recusal motions in Gretna?

A Yeah. I'm sorry. Forgive me. Yes, sir.

Q But none of those recusal motions that you recall were because lawyers were just friends of judges?

A Not that I recall.

Q In fact, wasn't it routine for friends of

judges to appear in front of them in Gretna?

A Yeah. Not just in Gretna, but in Orleans Parish, too.

Q I don't mean to suggest this is just Gretna. You're saying outside of Gretna, that was a very common thing, to have friends appear in front of judges?

A Outside of Gretna?

Q Yeah.

A Yeah.

Q In fact, didn't you testify that when you went to Colorado, that you found that lawyers bought meals for judges in Colorado as well?

A I've been to a few social functions at this little golf course that they have up there, and I didn't find things much different going on in Colorado than I did -- when I say "going on," socializing.

I have to tell you that -- and maybe I shouldn't -- a lot of judges that I was friendly with or have had friendships with have ruled against me on major cases, even though I was their friends. I didn't win all my cases. Even Judge Porteous caused me some substantial problems in several cases, and I had to get him reversed on one of them

in particular. But I didn't relate a lunch to getting a favor from a judge. I didn't relate that.

Q And wasn't it true that lawyers in Gretna often dropped off gifts with judges, like they do in other cities?

A Yes.

Q What types of gifts did lawyers drop off to judges?

A It changed over time. A lot of judges were starting to refuse to take gifts toward the end. But in the beginning of my practice in the '70s, lawyers would give judges things, wine at Christmas time, hams, turkeys, things of that nature. But that tapered off toward the end. It started around -- it just started tapering off.

Q Did it start to taper off around the time of the Wrinkled Robe investigation?

A Probably, yeah.

Q When Mr. Schiff --

A That would be, what, '99 roughly?

Q Yeah, I can't recall the exact date that it started.

When Mr. Schiff was asking you about drinking and the FBI, you initially said that you thought you were saying a truthful thing, that you

didn't know of the judge abusing drinks; right?

A My statement to the FBI speaks for itself. I think what Mr. Schiff was asking me is to quantify what overdrinking means in my mind. Did Judge Porteous drink more than most people? Yes. Should I have said that he did? It's a question that maybe I should have said oh, by the way, I think he drinks more than most people or he drinks too much. But I made the statement that he did drink more than most people.

Q What I'm asking you about in your answer to Mr. Schiff today is you said that sometimes he would have four or five drinks when he was fishing, for example; correct?

A Right; yes, sir.

Q And you were saying that when you would socialize sometimes with the judge, he could have four drinks or five drinks; correct?

A He could have more than that.

Q On some occasions, did he have just one drink? Let me ask you this: Did you keep tabs on how much he was drinking?

A Don't laugh at me.

MR. SCHIFF: Madam Chair, could he answer that last question?

THE WITNESS: I don't keep track but usually, he would have more than one drink.

BY MR. TURLEY:

Q Did you see any other judges have more than one drink at lunch?

A Yes. Oh, at lunch? No, not all of them. A lot of the judges I went to lunch with didn't have anything to drink. A lot of them were recovering alcoholics, one in particular, and didn't drink, or some people didn't drink at lunch. I didn't like particularly drinking at lunch because I had to go back to work and couldn't function if I drank more than one drink at lunch.

Q You mentioned just a few minutes ago that you had a few cases in front of the judge; correct?

A Yes, sir.

Q Didn't you earlier testify that you thought you had three cases? Was it three?

A That's what I recall.

Q In your entire relationship, you thought you had maybe two or three?

A I think three. Probably there's -- Tommy was in the district bench and did primarily real estate and divorce work. My trial practice was limited to divorce trial and domestic trial

practice.

On occasion, when there were separate judges that heard divorce cases, the general 24th Judicial District Court didn't handle divorce cases. I think the three or two minor judges, the most recently elected judges would get the domestic bench, and there would be some rotation when a new judge got elected. Then the most senior divorce judge would move on to the main bench.

There may have been an occasion or two where I settled a case and the divorce judge, we would call them, the divorce judge wasn't there or -- to put the settlement on the record and we would go walking around the main building of the courthouse looking for a judge just to say can we put this record on, this settlement on the record and have you bless it, so to speak, and sign this consent judgment or render a judgment. And then we would have a transcript and bring a judgment back. Maybe he did that a few times for me. But both lawyers would be there. There would be a stipulation we would put on the record.

Q So did -- in your experience, did Judge Porteous handle many divorce cases?

A He may have. I don't know. He didn't

handle any of my divorce cases that I can recall.

Q Do you recall an interdiction case proceeding before Judge Porteous?

A Yes, sir.

Q Was that a relatively simple family matter involving an elderly lady? Could you describe it? Was it a big case or small case?

A Oh, it was a big case in my mind because of what was happening to this lady, but it was not a big case compared to cases that I've handled. It was not a big case. It was an elderly woman who was being mistreated by her daughter, and we were trying to get -- if I recall correctly, her interdicted and have her live with her grandchildren.

Q Some people may not be familiar with an interdiction proceeding. How long does an interdiction proceeding usually last?

A It depends on who the other lawyer is. I don't try interdiction proceedings as a general rule. I've tried a few. But Don Gardner asked me to handle this case with him, and it took half a day, I guess, three or four hours.

Q Three or four hours?

A If I recall correctly.

Q Now, you do remember a jury case, correct

me if I'm wrong, named Serigny?

A Something like that, yes, sir. Serigny.

Q That was a construction dispute, wasn't it?

A Yeah. That was a dock failure in a fishing place called Delacroix Island, Louisiana.

Q Didn't the judge rule against you on a critical postverdict motion in that case?

A Yes, sir.

Q So in that case, the jury had ruled for you; correct?

A Correct.

Q But then Judge Porteous ruled against you in that posttrial motion; correct?

A It's not that simple. The jury ruled in my favor and rendered a verdict. It will take two seconds. At that time we had a bunch of bank failures and insurance company failures, I don't recall, maybe 15 years ago. This insurance company, I believe the name of it was Pelican Insurance Company. This was a subsequent federal trial, and I was called as a witness in that case. Be that as it may, it was rumored to be going bankrupt, and I was concerned if they were going to go bankrupt, I wouldn't collect my judgment for my people. So they

posted surety bonds so that they could take an appeal.

And I believe the surety bond, if I remember the facts correct, was a subsidiary company of the insurance company against whom the judgment was rendered. So I figured if the insurance company went broke, the bond was going to be no good. My motion was to test the solvency of the surety, and Judge Porteous ruled against me on that particular case.

Q And was that worth about $400,000?

A It was around $400,000 roughly. With the interest and everything, I can't calculate what the interest and everything was on the case sharply. I believe the jury awarded me in the neighborhood of 385, 400, something like that, I don't know. And the company went broke, and I lost my judgment.

Q You lost the 400,000?

A I lost the whole verdict.

Q Due to Judge Porteous's decision?

A I'm not saying it was due to his decision. I'm saying it was due to the fact that the company went broke. If he would have let me test the solvency of the surety, maybe he would have ruled against me, maybe the company would have been proven

solvent. I don't remember all of those details. But because I didn't -- maybe if I would have tested the solvency, they would have paid me my money. I don't know. But because of his ruling, he ruled I couldn't do it.

Q But you put in that motion, correct, because you were afraid that you would lose the judgment?

A Yes, sir.

CHAIRMAN MC CASKILL: Professor Turley, I think we're going to take a break now.

MR. TURLEY: Could I just finish this line of questioning?

CHAIRMAN MC CASKILL: Yes, you may.

MR. TURLEY: Thank you. I actually don't have many questions left.

CHAIRMAN MC CASKILL: As long as you don't wander in this line of questioning.

MR. TURLEY: In this time frame, I don't tend to wander.

BY MR. TURLEY:

Q Did you take the judge up on appeal in that case?

A I believe so.

Q You believe so, or you know so?

A If I had to guess, I would say I think I took a writ, and I was denied, I think. I'm pretty sure I did take a writ, an emergency writ, and it was denied by the state 5th Circuit.

MR. TURLEY: That's all I had on that line.

CHAIRMAN MC CASKILL: Thank you.

We're going to take a break until -- since it's almost 4:00, let's go to 4:20. I want to tell the committee members and the parties that we're going to plan on going until at least 6:30 tonight. So when we get back at 4:20, we're going to stay for two-hours-plus before we adjourn for the evening. Oh, we have a vote at 5:30. We will figure that out when the vote comes.

(Recess.)

CHAIRMAN MC CASKILL: The hearing will be back in order, and just so the members know, it is the plan of the committee to hear testimony until the vote is called, and when the vote is called, I know for a fact we can get over and vote and back in 10 minutes if you don't stop and gossip. So we're going to give everybody 10 minutes to get over and vote and back at the point in time the vote is called.

SENATOR WHITEHOUSE: The same 10 minutes?

CHAIRMAN MC CASKILL: Yes, the same 10 minutes. We have to, because we have to have seven in order to proceed.

Professor Turley, I believe you were questioning the witness.

BY MR. TURLEY:

Q Thank you, Mr. Creely. I want to say that I don't mean to be yelling, but I want to make sure that you can hear me. And so if you can't hear me, let me know, but I'm trying not to be screaming at you so that you can hear everything we're asking.

I want to get back to the cases that you had before Judge Porteous. You stated earlier that Judge Porteous has never shown favoritism towards you in court; correct?

A Not that I'm aware of.

Q That he ruled on cases that you had with him on the law, not your friendship; correct?

A The way I appreciate it.

Q Am I correct, did you have one case in front of him as a federal judge, this Union Planters Bank case?

A It wasn't in front of him. It was a removal action from state court, a class action in

state court, and it was removed by the defendants and randomly allotted to Judge Porteous in the federal court.

Q So it was randomly assigned to him? It was randomly assigned to him?

A Right. I didn't file the motion to remove on the motion that was filed. The defendants did to get it out of state court, which was in New Orleans parish, not Jefferson Parish. They moved it to federal court.

Q I'm just interested in a small part of the case. My understanding is that you needed a restraining order in the case; correct?

A No. I didn't need a restraining order in the case. That's the problem. He granted a restraining order in the case.

Q So you did not want that restraining order?

A No, I didn't want it, no, sir.

Q Thank you for that clarification.

A Do you want me to explain it to you?

Q Actually, I'm going to ask you something else, because I don't want to get into the weeds on the case because I'm more interested in your relationship with the judge. Did you ultimately

take him up in front of the 5th Circuit on his decision in that case?

A Myself and co-counsel did, yes.

Q Because he had ruled against you and your co-counsel?

A Yes.

Q And you got him reversed, did you not?

A Yes, sir.

Q Now, in your prior testimony, do you recall saying that the judge told you that you would be, quote, wasting your time on this motion?

A Something to that effect is what he told me. I don't want the panel to misunderstand. It was a temporary restraining order. It was a TRO filed by the defendants in a removal action. The TRO requires -- and I don't know what the exact rule is, but the Court has to notify opposing counsel. Defense lawyers have to notify opposing counsel. You tell them I'm going to file a temporary restraining order to enjoin the state court judge from issuing a discovery motion on what would have been a huge class action but for the ruling. I was notified by telephone, if I'm not mistaken, and he said I'm granting a temporary restraining order, and you have to set the preliminary injunction hearing

within a particular time frame. After the TRO was granted, and I don't know what that time frame is. He said you can make a record if you want but I'm ruling the same way I did as when I granted the TRO, but you can make a record.

Q Thank you for that. And he ruled the way he thought the law required him to rule; correct?

A I don't know what he thought. He ruled against me. He cost me about $1 million, too.

Q $1 million? By the way, you told Mr. Schiff that your firm would -- it was not uncommon for your firm to bring in large verdicts or fees; correct?

A That's correct.

Q And some of those would be $500,000 or $1 million?

A Some occasions, yeah.

Q You also told Mr. Schiff that at some point you simply started to see less of the judge; correct?

A A lot less.

Q That was around the time he became a federal judge; correct?

A That's when he became a federal judge, correct.

Q Isn't it true you were still in Gretna, but he was in a different office at that time as a federal judge; correct?

A It was in a different part of town at the time.

Q So you didn't see him as much physically in Gretna?

A I could have seen him as much in federal court as I did in Gretna if I cared to. I just didn't care to. I was very busy on my other cases. I didn't want to go do all that.

Q And I want to confirm something from your deposition. You never directly gave Judge Porteous any money when he was a federal judge; right?

A No.

Q And the money dealing with the wedding gift in 1999, you gave that money to Mr. Amato; correct?

A Correct.

Q And you previously testified that you gave the judge money because he was your friend; right?

A Yeah.

Q You didn't give it to him to bribe him?

A No. We've been over this. No, I didn't give him any bribes.

Q And you didn't give him the money to get curatorships; right?

A No.

Q And in fact, you testified earlier that you, on occasion, have given cash to other people; right? I believe you testified about giving $200 to a homeless man once?

A Yeah, I used to do that.

Q And are you known as a generous person in that sense?

A Yeah, I consider myself a very generous person. I used to live in the French Quarter, and I happened to cross a lot of unfortunate people from time to time that I would feel obligated to do something for, buy food or whatever.

Q And you often dealt with cash, didn't you? You carried a fair amount of cash with you?

A I don't know what you call a fair amount of cash. I would get a $1,500-a-week draw.

Q Does that mean you would carry as much as $1,500?

A Until I got home and my wife got into it and things like that. But yeah, I would leave my office with $1,500.

Q When you gave cash to Judge Porteous, was

that because you wanted to conceal anything, or you just gave him cash because you had cash?

A I didn't want to conceal anything. I mean, cash, yeah, I gave him cash.

Q In fact, you've never denied giving gifts to Judge Porteous; right? You've always admitted it; right?

A Right.

Q And you never tried to hide giving gifts to Judge Porteous; correct?

A No.

Q And in fact, you didn't see any problem with giving gifts at the time to friends, including Porteous; right?

A No, I didn't see a problem at the time, because I didn't have business in front of him.

Q Now, when you talked about this phone call that came in from the judge asking about curatorships, that was to your secretary, correct, not to you?

A Originally, it was to my secretary. I believe subsequent to that he may have called me himself.

Q Now, in your deposition testimony, you stated that you did not see a relationship between

the gifts and the curatorships; correct?

A I said that today, too.

Q Right. And you didn't stop giving him gifts just because the curatorships stopped; right? You didn't stop because you were getting no more curatorships? It was for other reasons; right?

A It was for other reasons, yeah.

Q Let me ask you a question. You said something to Mr. Schiff that -- you said that you never saw the contract in the Lifemark case; correct?

A Correct.

Q And you said that --

A To the best of my ability, I don't recall seeing a contract.

Q Understood. And you said you didn't know whether the contract was just to Amato or to Amato & Creely; correct?

A Correct.

Q Now, you said that Mr. Amato and you didn't have a perfect marriage. Can you explain that a little further?

A Yeah. We -- well, some people continued practicing law together. For whatever reason, he and I drifted apart. My practice had taken a

completely different complexion in that I began doing totally different things than I did before with other law firms, large law firms from other parts of the United States of America -- from other parts of the country. I started doing mass tort litigation, complex tort litigation issues. I began partnering up with other law firms to do various types of litigation outside of Jefferson Parish, and he and I didn't really have a relationship of any sorts.

Q Okay. And you largely handled separate cases. Was it rare for you to practice in the same case, the two of you together?

A I can't recall ever trying a case with Jake.

Q And you said you would theoretically get some of the fees from Lifemark. In order to know that, would you have to look at the contract?

A I would have to look at the whole circumstance of what would have been going on when we got paid. I didn't anticipate getting paid on Lifemark, if we ever got paid, for years and years. These cases never end. Big cases, all my big cases, they never end in a trial. They are endlessly, are on appeal forever, it seems. I'm just settling

cases that have been on appeal, but I haven't been practicing law for a year. Not me, but lawyers that work for me.

Q Mr. Creely, let me ask you, did you ever sit down with Judge Porteous and lay out for him how your partnership was structured and how you divided up proceeds?

A No. I'm sure he had a general idea. He was a very good friend. I don't know. I don't know if he knew how we divided things up. I'm sure he had a general idea. We were partners.

Q Now, isn't there a lot of different types of partnerships in law firms, that law firms differ in terms of how much partners get from any given case?

A Yes, sir. Some of them are, yeah.

Q And you never sat down with Porteous at any time and said I want to show you how the -- when we bring in money how we divide it and pay for overhead? You never did that; correct?

A I don't believe I ever did that, but I'm sure he knew that.

Q I mean, he knew that you were partners; correct?

A Yeah.

Q Now, on these trips that you took, the fishing trips and hunting trips, did you take other judges on those trips on occasion?

A Sometimes.

Q And when you were the host, did you just pay all the expenses?

A Whenever I invited somebody to go fishing, it would have been an expense that I would absorb. It's not that big of a deal to spend $10 on gasoline and $20 on live bait and to go fishing in the marsh 20 minutes away from my house. It's not something you would want to divide up. It would be like inviting somebody over for dinner and asking them to pay for the steak that they ate or something.

Q You mentioned on some of these trips there was a deal that if you had 10 people, one person could come for free; correct?

A That's basically the way I remember it. Again, we're going back 15 years ago. Okay? I'm trying to be as forthcoming and as honest --

Q I know you are. I understand entirely. So you don't have any recollection of whether the judge got one of those -- whether he got a free trip or did not get a free trip? You just don't remember?

A My testimony would be as I gave Mr. Schiff. That was my testimony. If you want me to try to repeat it, I will.

Q No, that's okay. I do want to get back, remember you were talking to Mr. Schiff about that steakhouse dinner? Do you remember he was asking you about a dinner at a steakhouse? Do you recall that, talking about that in your testimony?

A Las Vegas?

Q Yes.

A Yes, sir.

Q And you paid for a portion of that dinner; right?

A Yes, sir.

Q Now, was this a situation where various people put in their credit cards to divide up the dinner?

A Yeah. It was 20 people. I wouldn't have offered to have paid -- there were, say, 20 people eating steaks and drinking. Most of them were younger people, younger than me at that time, even at that time. Okay? They were younger than me. People have a couple of drinks when they go to Las Vegas. But everything that happens in Las Vegas apparently doesn't stay there. Whatever happened, I

ended up with $400 to $500 worth of the dinner. The dinner was probably $2,000 to 3,000. I have no idea what the dinner was.

Q Did you pay attention to who was throwing their credit cards in?

A No.

Q And that happened a lot; right? When people go out drinking, they just throw their credit cards on the table?

A No, not really. That happens a couple of times, but usually, I get stuck with the bill, if I recall correctly. I usually end up getting whacked with the bill when I go out with a bunch of people. I used to.

Q Oh, really? That was common? You used to get hit with the bill when you would go out?

A Yeah, I used to get stuck pretty good.

Q So you must have been a popular guy to go out to dinner with?

A Not really.

Q Now, you knew Judge Porteous's son Timmy; correct?

A I knew all of his children.

Q And didn't Timmy call you uncle Bob? Wasn't that something he often called you?

A On occasions, and I don't know whether he did it out of respect or out of jest, but he called me uncle Bob.

Q Now, on this fishing trip with Mr. Amato in 1999, you were not on that trip; right?

A Yeah, I wasn't on the trip. I didn't want to go on the trip.

Q It was Mr. Amato that came to you to ask you for $1,000; correct?

A For the third time, yes, sir.

Q Now, when you paid for things -- let's start with the Las Vegas dinner at the steakhouse. When you paid for things, was that your money, or was that the law firm's money?

A In '99?

Q No. In terms of paying for things like dinner at that steakhouse in Las Vegas during the -- for that wedding --

A That was in '99.

Q Well, when you paid for things like the steakhouse bill, was that your money or the law firm's money?

A It came from the Amato and Creely credit card. Do you want me to give you my opinion as to who earned that money? I think I did. But it was

an Amato & Creely credit card.

Q Did you only have one credit card?

A No. I had a personal credit card.

Q So did you -- that money was not your money, or did you use the credit card, and that was just taken from your portion of the firm proceeds?

A The firm paid for the credit card. It was an Amato & Creely credit card. I had a credit card. Jake had a credit card. And I used an Amato & Creely credit card, unless those records say something to the contrary, but I believe it was an Amato & Creely credit card.

Q You mentioned that you only went once to the Court in the Lifemark case; correct? Do you recall that testimony?

A Yeah, that's one time I remember, yeah. I believe it was just one time.

Q And I -- and you went there because you said that Mr. Gardner told you the case was not going well; correct?

A That's correct.

Q Now, did you ever -- in that case you said that Mr. Amato told you, quote, mind your own business, correct, when you raised it with him?

A Something to that effect.

Q Did you talk with Amato a lot about the Lifemark case.

A Not very much.

Q Did Amato ever tell you that he thought that the judge would rule for him because of his friendship?

A No.

Q Mr. Gardner that you mentioned is a close friend of the judge, to your knowledge, correct, or he was?

A They're very good friends. I think they still are very good friends. I don't know. Maybe not. They were very good friends at that time.

Q Now, what is your understanding of how Gardner came into that case?

A My understanding? I would just guess. He was brought into the Lifemark case through the other side. I'm guessing that's how I knew. I'm just guessing.

Q Do you have knowledge of a contract that he had to get $100,000 to appear in the case?

A I saw that contract some weeks ago for the first time.

Q Let me ask you -- you've been a lawyer a long time. Have you ever seen a contract in which a

lawyer was promised $100,000 if he could get a judge to recuse himself?

A No, sir. Well I did. I saw the Lifemark contract.

Q Sorry?

A The Lifemark contract. I never seen one other than that.

Q Now, you testified earlier that after your testimony in the grand jury, your immunized testimony was sent to the state bar; correct?

A That's the way I understand it.

Q Did you ever learn how your testimony got to the state bar?

A Secondhand.

Q And what did you learn?

A I learned that -- I was told that somebody suspected someone from that table sent it to the Louisiana Bar Association.

Q And who was that that they mentioned?

A Mr. Baron.

Q Have you ever been told that you could face a perjury charge if your testimony deviates from your prior testimony in this case?

A I haven't been told that. I assume that.

Q But you've tried as best you can to

remember accurately what has occurred?

A Yes, sir.

MR. TURLEY: That's all of our questions for now.

CHAIRMAN MC CASKILL: Thank you.

Congressman Schiff?

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Creely, at the beginning of Mr. Turley's cross-examination, he asked whether the judge asked for a specific percentage of the curator money, and you said no; is that right?

A Right.

Q And that's because the judge didn't ask for 50 percent or 75 percent? He wanted the curator money, but he never asked you for a specific percent, did he?

A No. I don't believe he knew how many curators he sent over there.

Q And in fact, he would call your office to find out how much curator money was over there; right?

A Yeah; yes, sir. That's what I testified to.

Q It was you and Mr. Amato essentially who

agreed to the 50 percent figure? That was what the two of you agreed you would send back to the judge in response to his request?

A That was an estimation of what we -- you asked me how much did we give to the judge, to the judge, and I told you $10,000 was my best estimate. And I read in transcripts that Mr. Amato said $10,000 was his best guess. That would make $20,000 total.

Q Let me direct your attention to your testimony before the Fifth Circuit. And this, I believe, Exhibit 12.

Would you pull that up on the screen?

This is at page 206. At this point, Mr. Woods is asking the questions. Mr. Woods asks you:

"Question: Did Judge Porteous make a request of you after sending you curatorships for a portion of the fees that you were being paid by the court?

"Answer: Yes, sir.

"Question: And how did he do that -- how did he do that?

"Answer: I don't recall how it came about, but it came about. And he got -- and I

can't -- and I can't tell you that he got all the curator fees that we generated, but he got a good portion of the fees that we generated from the curators."

On the following page, Judge Benavides follows up on that answer by asking:

"Judge Benavides: I have some questions I just want to get cleared up before we go on to the time period of the federal bench. One thing you said a "goodly portion." Are you talking, if we want to get more specific, was it more than 50 percent or more than 75 percent of the fee would be paid back?

"The Witness: Judge, I can't -- I didn't hear that. I am very sorry.

"Judge Benavides: Would it be more than 50 percent or more than 75 percent of the curatorship fee?

"The Witness: Be more than 50 percent."

Do you recall that testimony before the Fifth Circuit?

A Let me see it. Yeah, that's what it says. Yes, I do recall that testimony.

Q So to the best of your recollection then, would it be the same now that Judge Porteous would

receive back probably more than 50 percent of the curator fees that he sent to you?

A That testimony was an estimation of what I gave him. And as I tried to tell you last night when we got here, was that when I gave this testimony, I didn't have the list of curators. I didn't know how many curators -- I didn't go to that list that you guys had with the 200 curators on it over 10 years. I didn't have that list with me at the time.

Q What Mr. Woods and the judge asked you in the Fifth Circuit was not how many curators but what percentage of the curator money you sent back, and your testimony at the Fifth Circuit was probably more than 50 percent.

Was that accurate testimony?

A It was accurate testimony, because I didn't recall that he gave me 200 curators. I thought it was much less than that. I didn't have an exact amount of curators that Judge Porteous gave me. I didn't know how many he gave me.

Q And now that you know, assuming that the documentation is correct that you received more than 40,000 in curator fees, is it still your estimate that more than half of that 10,000 from you and

10,000 from Mr. Amato went back to Judge Porteous?

A The number is the number. If it's $20,000 and you're telling me I made 40, he got half of it.

Q Your recollection is he got half of it?

A If you tell me I earned $40,000 in curator fees and Jake and I gave him 20, then he would have gotten half of it. If you tell me I made more than that in curator fees and I gave him 20, I wouldn't have gotten half of it. If you tell me I made 40,000 in curator fees and I gave him more than $20,000, the percentages would change. I didn't know how many curators I got.

Q Mr. Creely, all I'm asking is, if the records show you got in excess of $40,000, isn't your Fifth Circuit testimony accurate when you said it was at least half of that money?

A The testimony is what it is. I didn't have a set fee of the amount of money, a percentage to give to Judge Porteous. I don't know how more to explain it to you. The $40,000 didn't come out of my records; it came out of your records. I don't doubt your records to be accurate, but that number -- you made that calculation. When I said "you," Mr. Schiff, I don't mean you, but you or someone on your staff made that calculation.

Q Mr. Creely, all we can ask for is your best estimate.

A I'm giving you my best estimate. I gave the Fifth --

Q What is the math of your best estimate? Given what the records show, about $40,000 in curator fees, what is your best estimate?

A If $40,000 is what I earned on the curators, okay -- and I don't know if that is with or without expenses, if it's after I paid expenses or whatever it is.

Q The records reflect it's after you paid expenses.

A And then I gave him -- our guesstimate is we gave him 20, 50 percent. Half of 40 is 20.

Q Mr. Turley asked you about the money you had given to Mr. Porteous before he started sending you curators. Initially, I think you said that was small amounts of money, $50, $100; is that right?

A I didn't keep track of that. Yes, sir, it was small amounts of money.

Q But then at some point, he started asking you for more substantial sums, like $500; is that right?

A Yes, sir.

Q And that's when you told him it had to stop?

A Yeah, somewhere around when he started asking for that. I told him things had to change. We had to figure something else out, because this can't go on like this.

Q And after that point, he started sending you the curatorship cases, the amounts he asked you for then were more than the $50 or $100.

A Okay. I'm sorry. I'm very sorry.

Q After he started to send you the curator cases, the amount he started asking you was more than the $50 or $100. Now it was $1,000 or $1,500, wasn't it?

A I can't say that's exactly the time frame that that started, but it was around when I started cutting him -- saying I'm not going to give you any more money that the curators started coming. I think maybe when he asked me for 250 or 500, that's when I said this has got to stop, and that's when we had the discussion that I testified to earlier. I don't think I ever complained about $50 or $75.

Q So he started sending you the curator cases, and then the amount he starts asking for is very substantial. It's $1,000 or $1,500; isn't that

right?

A Over a 10-year period of time, it amounted to $1,000 a year roughly, each, $1,000 a year. It may have been several months between requests. I don't know when it was. But it was $1,000 a year, is roughly what that mathematics comes to.

Q Weren't the amounts, though, that he would ask you for after the curators started showing up in your office more substantial than the pocket money he asked for originally?

A I can't tell you when the more substantial sums came. It probably came before the curators, and then I started complaining and started to avoid him, and then he started sending the curators.

Q And then you started giving him the money again?

A I started giving him the moneys that we're talking about. I don't know with what frequency, but it was roughly -- the math works out to $1,000 a year, if you want to do the math on it.

Q Let me turn your attention, if I could, to Exhibit 11, page 54. This is, again, the grand jury testimony. You testified: "But the practice became that he -- and it got to the point that he would call my secretary and say Dianne, how many curators

do I have over there? And then she'd come in and it was like a -- it was a bad deal. I mean, it's a bad feeling. Okay. And she would say, she'd say hey, you got four or five curators, and say, he's calling wanting the money on. And I said well, just go get two draws, one for Jake, one for me, and then I would give him the money. Either me or Jake would give him the money."

Do you recall that testimony?

A That's what I testified to.

Q Generally, you gave him the money, but there were times when Mr. Amato also gave him the money?

A Probably so, yeah.

Q And turning to page 103 of the grand jury testimony, you were asked about the spring of 1999. And you responded "I got a call. She came over to get the money," referring to Judge Porteous's secretary. "So apparently he kept calling. And you know, we both like ah, man, you know, try to avoid. I don't know the exact sequence involved. But he said I'm sending Rhonda over. I said what are you? Crazy, man? He said no. I know what you and Jake talk about but I -- he said just -- and we put the money in an envelope. She picked up a sealed

envelope. I have no way of knowing whether she knew what was in that envelope or what or anything. And I said this is absolutely crazy, you know. That's how -- that's the feeling we had as we went along. It was sort of a -- of a desperation on his part, you know, like I need this. I need that, I need the other thing. But to send your secretary."

Do you recall that testimony?

A Yes, sir.

Q Did it shock you that he would send his secretary over to pick up cash from you?

A Yeah. It was my testimony that it was shocking.

Q Mr. Creely, Mr. Turley asked you if you considered this a kickback or a bribe, and you said you didn't consider it to be a bribe or a kickback.

A Consider what?

Q The curator money that he asked for back.

You didn't consider it a bribe, Mr. Creely, if I understand your testimony, because you didn't ask him, you didn't tell him if you'll send me the cases I will send you the money? You didn't have a prearranged deal here; right?

A I didn't have no deal with him on that.

Q Is it your understanding you have to have

a prearranged deal in order to get a kickback? There has to be some agreement in advance about what percentage you would like to give back?

A I didn't have any cases in front of Judge Porteous, yeah.

Q So if a judge sends you a case, without your asking, and then says I want some of the money back from that case, that's not a kickback, in your view, because he didn't tell you he was going to do that before he sent you the case?

A If Judge Porteous would have told me I'm sending you curators and I want the money back, I would consider that a kickback. But he didn't make that statement to me. Okay? That's all I can tell you. Whether it's a case or whether it's a curator, if he says I'm giving you this but I want so much of it back, I would agree with you, that would be a kickback.

Q So you didn't have that prearranged deal, but instead, he sent you the cases, and then he said he wanted the money back; right? Is that correct?

A That's correct.

Q But that's different because there's no prearrangement in your view?

A There was no prearrangement, correct.

Q Did your firm have a particularly good record of handling curators?

A A good record of handling curators? I didn't have a reputation for handling curators, no, sir.

Q So Mr. Turley was asking you whether you were getting the curators because you were known for your handling of curatorships. As far as you know, that had nothing to do with it?

A I'm very sorry, Mr. Schiff.

Q And Mr. Turley was asking you didn't you have a good reputation for handling curators and that's why you got the curatorships. This had nothing to do with why you got the curatorships, did it?

A No, absolutely not. I don't have a reputation of doing curators.

Q Mr. Turley asked you whether it was common to have lunch with judges, and you said it was common. Was it common to get hit up for cash by judges you were having lunch with?

A Was it common for me to get hit up for cash?

Q Yes.

A No, I've never gotten hit up by cash, if

that's what you mean, paraphrasing. No, it's not common. It never happened before.

Q Was it common to have judges call your office to find out how many curators they had sent over and ask for money back?

A No, sir.

Q That wasn't a common curator practice, then?

A I didn't have a common curator practice other than the curators that Judge Porteous sent me. I didn't have a curator practice. I may have gotten a few curators. Nobody ever called me and asked me for cash. Not one judge ever did that but Judge Porteous.

Q Mr. Turley asked you about it being common to drop off gifts to a judge, hams, turkeys, and you said dropping off hams and turkeys was common; is that right?

A Different things. Some lawyers, at one point in time, wine, cookies, things of that nature, would be delivered at Christmastime to judges, yes.

Q You don't equate a ham or a turkey with $2,000 in cash in an envelope, do you?

A I'm sorry?

Q You don't equate a ham and a turkey with

$2,000 in cash in an envelope, do you?

A No. Would I hand somebody a ham or a turkey with $2,000 attached to it? Are you trying to make like I gave Porteous $2,000 -- is that unusual? I never did that with another judge. If that's what you want to ask about.

Q I'm sorry. What I'm asking you, Mr. Turley was asking you whether it was common to give a ham or a turkey or some other gift, and you said it was; right?

A It was common, yes.

Q I take it it wasn't common to give an envelope stuffed with cash to a judge?

A Of course not, Mr. Schiff.

Q Now, you mentioned that the practice, some of the lunches, the wining and dining that you described, became somewhat curtailed after the Wrinkled Robe investigation. I don't want to go into great detail at this point about Wrinkled Robe, but can you tell us a little bit about what Wrinkled Robe investigation you're referring to?

A I don't know anything about Wrinkled Robe, it's a real mystery, other than it involved bail bond stuff. It involved a series of issues involving Bail Bonds Unlimited. I am not really

acquainted. It had something to do with a bail bond scheme that was going on over at the courthouse.

Q And this investigation by the Metropolitan Crime Commission received a lot of publicity at the time?

A Yes.

Q And as a result that publicity about some of the relationships at the courthouse, that changed some of the behavior you've described?

A I don't know if it changed the behavior, but -- I'm just saying generally things started tapering off. I believe we had an amendment, if I'm not mistaken, to the Code of Professional Responsibility in the year 2000. I'm not sure about that. And they made some changes as to what you could and couldn't do. And judges, judges became very -- maybe because of the Wrinkled Robe -- suspect to accepting any kind of gift in their office around that period of time. So I think it was more on the judges' part that that came about. But Wrinkled Robe, I don't think it really affected the vast majority of lawyers because most of them didn't do criminal work. Most of them did only civil work, the ones that I knew.

Q You also were asked on cross-examination

about a case where you lost a great deal of money because one of the parties became insolvent; is that right?

A Yeah, something about an insurance company -- the case I had going insolvent?

Q Yes.

A Yeah, I remember that.

Q If they hadn't gone insolvent, you would have gotten the money your client was owed?

A Yes, I believe so.

Q Judge Porteous wasn't responsible for their becoming insolvent, was he?

A Absolutely not.

Q I want to ask you a little bit about the money that you were asked about the Amato & Creely credit card and expenditures on the Las Vegas trip.

Could we put up copies of the exhibit? Can you put them on the screen? Yes. Terrific. I would like these exhibits to be labeled -- this exhibit to be labeled 378.

If you would take a look at the right-hand portion of this exhibit, is that a statement from the corporate card member account of Jacob Amato?

A Okay. I'm looking at "Jacob J. Amato, Jr.," at the top left, "Amato & Creely." That's

what I'm looking at.

Q Can you speak into the microphone?

A I'm sorry?

CHAIRMAN MC CASKILL: Can you speak into the microphone.

THE WITNESS: That's Jacob J. Amato, Jr.

CHAIRMAN MC CASKILL: You need to move the microphone in front of your mouth. There you go. Thank you very much.

THE WITNESS: It says "Jacob J. Amato, Jr.," "Amato & Creely."

BY MR. SCHIFF:

Q If you could expand the top portion of that page. Is this the Amato & Creely credit card you were referring to?

A You know, we've been going around about this for about a year. You're asking me is this the Amato -- this right here?

MR. SCHIFF: Can you scroll down so we can see the top of that exhibit?

THE WITNESS: I don't see "Robert G. Creely." I see "Jacob" --

BY MR. SCHIFF:

Q At the very top, does it say "corporate account number"? Do you see that, Mr. Creely?

A The corporate account number is blocked out.

Q Correct. We blocked out the credit card number. But do you see at the top center where it says "corporate account number"?

A Yes, sir.

Q And do you see where it reads "corporate card member" name "Jacob J. Amato, Jr.,"?

A Yeah. And my name is Robert G. Creely.

Q Does this indicate to you this was the Amato & Creely corporate credit card?

A When we get our statements at the end of the month, if you have ever shared a card with another person -- and I can use the example of my wife. We have a credit card. It is like Robert G. Creely on it. And I get a summary of expenses for Robert G. Creely at the end of the month, which is this big. And I get a summary of expenses from my wife, and it has totals on it, at the end of the month.

Q I don't want to interrupt you, but that's not really my question. My question is, do you recognize this as the corporate credit card that you and Mr. Amato used for business expenses?

A I recognize this as Mr. -- now that we're

looking at this, is Mr. Amato's -- "previous balance," see how it is, "Jacob J. Amato, Jr.," it's got an amount, and "Robert G. Creely" has an amount. And it would have under my name, for whatever those amounts total are, those would be my charges or carryover charges from the previous month. It says "previous balance."

Q This was the credit card, Mr. Creely, you used during the Las Vegas trip; correct?

A It would have my name on it. If it was my charge, it should have my name on the top left corner. It would have my name if it was my charges.

Q I understand, Mr. Creely, but Mr. Amato was not on the trip with you; correct?

A No, he was not on the trip. His son was.

Q And you paid for the expenditures on this credit card statement, didn't you?

A What?

Q Mr. Creely, do you recognize the expenditures on this statement? Do you recognize the top item, see Caesar's hotel and casino, Las Vegas, lodging/charges, $86.11, a second night in the same amount, a fourth item, the Golden Steer, STE, Las Vegas, amount of $560? Do you recognize those charges?

A Yeah. I would have paid my brother-in-law's -- ex-brother-in-law's room. I told you this in my deposition. On many numerous past occasions, my brother-in-law came with us because he was friends with Michael Porteous. His credit card didn't work. The way I recollect it, checking into the hotel -- and it's been years of confusion with Mr. Dubester. I was checking into the hotel, and I remember getting in last, because his credit card didn't work and he was embarrassed. So he asked me if I would pay for his room, and I did. I offered my credit card to pay for my brother-in-law's room. So that would explain my room and my brother-in-law's room, is all I can tell you.

Q And do you recognize the charges for the Golden Steer of $560? Would that have been the money that you paid for the -- your share of the meal during this trip?

A That looks like the meal, yeah, 560. It would have been the next night. This was the 72-hour trip.

Q So that would have been the amount that you paid though; right?

A Yes, sir.

Q Does that indicate to you that this was a credit card you were using?

A It would have been a credit card I'm using.

Q And down below, it indicates a charge of $378.70, again for the same room as above. Would those have been the charges to Mr. Porteous's room?

A It says Caesar's hotel and casino, Las Vegas, lodging/charges. It says lodging/charges, and then Caesar's hotel and casinos. Hotel and --

Q Do you recognize item 37 as the additional charges to the room by Judge Porteous that you paid for?

A The thing -- it went away.

MR. SCHIFF: Can you try to pull it up? Let's pull up, if we could, the second page under "guest pay."

THE WITNESS: Can you go back to that first page that you just flipped off, if you don't mind?

BY MR. SCHIFF:

Q Certainly.

A This has been my confusion for the last year, and that's why we've been -- I'm just trying

to -- it says -- if you read under "summary of account," it says -- I can't really read it that well. It says something "card, Jacob J. Amato, Jr."

Q Mr. Creely, I don't want to spend too much time --

A Corporate card member name, Jacob J. Amato, Jr.

MR. TURLEY: The witness is trying to explain his testimony. This is the same issue the House raised during our testimony. I think the witness should be able to explain his testimony.

MR. SCHIFF: And I want him to explain it, but I think it would help to clarify by putting another exhibit related to this charge before the witness.

Could you pull up the document --

CHAIRMAN MC CASKILL: Let me just say, I think the testimony has been fairly clear, Mr. Creely, that he paid for a bunch of stuff in Las Vegas, including Judge Porteous's room, and he paid for it with his law firm's credit card.

Is that correct?

THE WITNESS: I'm being told I paid for his room. I'm being told this reflects my payment of his room charge.

CHAIRMAN MC CASKILL: Okay.

THE WITNESS: That's what I'm being told. I don't doubt that I paid for his room. Judge Porteous has testified that I paid for his room. I don't recall paying for his room. I recall paying for my room and my ex-brother-in-law's room, ma'am. That's what I recall.

CHAIRMAN MC CASKILL: With the law firm's credit card?

THE WITNESS: With the law firm's credit card, but it would have been Robert G. Creely's card.

CHAIRMAN MC CASKILL: I think if the witness wants to take a few more minutes to try to explain or not explain, I think the -- I want to urge the parties, both parties, to not dwell when the testimony -- there's been at least five or six times that these witnesses have said the same thing at least four or five times a piece. I just want to make sure that we all realize that this is -- what I don't want to have happen is we get to the end of the 20 hours and we hear protestations that you haven't had time to get evidence in front of the committee, because I've heard Mr. Creely repeat the same evidence three or four times in the hour and a

half he's been on the stand.

MR. TURLEY: Madam Chairman, if we could be heard on our objection, the witness has asked to see the first page of this exhibit.

CHAIRMAN MC CASKILL: What's the basis of your objection?

MR. TURLEY: That they just cut off a witness when they were trying to explain what this exhibit is. He hasn't been able to explain.

CHAIRMAN MC CASKILL: If you want to take a few minutes to try and explain, that's fine, Mr. Creely. Go ahead.

THE WITNESS: I don't have to explain.

CHAIRMAN MC CASKILL: Okay. Move on.

MR. SCHIFF: Thank you, Madam Chair. I won't delay it any further. I was only seeking to establish the amount of the payments, not the fact that he was using the corporate credit card, but I will move on.

BY MR. SCHIFF:

Q Mr. Creely, you mentioned that on other occasions your firm stood to make or made other large recoveries in other litigation.

Nonetheless, wasn't the Liljeberg case a very important case for your firm?

A It wasn't important to me, but it was an important case, of course.

Q It wasn't important to you that you might earn half a million dollars?

A Yeah, it was important to me to make a half a million dollars, but I didn't anticipate making that money for a long, long time. Whatever amount of money you keep telling me, half a million, I have no idea what that contract cost was. We had 6 percent or 4 percent, whatever. It was all, from what I remember just talking to Mr. Amato, it was the pharmacy issue, there was the hospital foreclosure issue.

Q Mr. Creely, because I have limited time --

A You're telling me would I like to make half a million dollars. Yes.

Q This was basically 50 percent of your partnership, your partner working for two years almost solely on that case, wasn't it?

A If we win the case on appeal, if we're still partners at the time, you name it. If this thing went through appeal, which normally, you know, two years in the U.S. 5th Circuit Court of Appeals, a year and a half is not an abnormally long period of time.

Q We will get through a lot quicker if you respond to my questions. My question is, wasn't this, your partner spending two years of his time, wasn't that a significant investment of time for the firm?

A Yes, sir.

Q And for a two-person firm, wasn't it a significant amount of money for you to make or not make?

A Would that have been a significant amount of money?

Q Yes, sir. To your firm. Not to somebody else's firm but to your firm.

A Yes, sir.

Q Mr. Turley referred or characterized the $2,000 in the envelope as a wedding gift. Have you ever called it a wedding gift?

A Did I?

Q Yes.

A No.

Q Do you consider $2,000 in cash solicited by a judge to be a wedding present?

A It wasn't a wedding present. I thought it was tuition originally. Now we evolved toward a wedding present, and now I know it's a wedding

present, and now I know that it's to pay for a limousine.

Q I'm not suggesting --

MR. TURLEY: Same objection for cutting off the witness. This is the same objection the House made to our questioning.

BY MR. SCHIFF:

Q Mr. Creely, I'm not suggesting that it was a wedding present. Those were Mr. Turley's words.

I'm saying that the cash that Judge Porteous solicited and you and your partner gave him, you didn't think this was like an item they registered for at a department store, did you?

A I'm very sorry. Would you ask -- I'm very sorry. Would you come back with it one more time?

Q You didn't feel the money you were giving him, the cash in the envelope that the secretary came to pick up, you didn't equate that with getting a piece of China for the groom, did you?

A No. A piece of China for the room?

Q For the groom.

A You mean like his son getting a piece of China?

Q Yes.

A I equated it with what my law partner told

me it was at the time. I thought it was tuition. I later found out it was, I think, to pay for a limousine service. It wouldn't have been for China. It would have been for what he told me. It could have been for anything. He told me -- originally, I thought it was tuition. Through reading all of this, I found out it was for transportation. If you're telling me it was a piece of China, I can't argue with you.

Q I'm not suggesting it was a piece of China, Mr. Creely.

Let me ask you about the draws that you took to pay the judge the curator money. Why didn't you have the firm write him a check? Why did you pay him cash?

A It was a -- it's what we talked about before. We paid him in cash. Cash, if I denied cash, it's bad. I would have lied. I would have committed perjury. If I had written him a check 25 years ago, I would never have been able to locate the check, and we would have been back to the same thing, did you give him more checks or did you give him less checks.

I don't know what to tell you, but the cash is not traceable, and I'm admitting to the

cash. If it was 2,000, if it was 1,500, it wasn't right. I did it. Now, I'm admitting to it. So if I gave him a check 25, 30 years ago, I could never have found that check, and you would have been beating on me, saying where's the checks, and I would be saying I don't know where the checks are.

Q When Mr. Turley asked you whether you ever tried to hide it, the fact is part of the reason you gave him cash is it didn't leave a paper trail; is that right?

A It did not leave a paper trail, and if I had given him a check, it wouldn't have left a paper trail. If I had written a check for cash or something like that -- I can surmise a million things. The fact that I'm admitting to it, I'm admitting to it. I don't want to be here. I didn't want any of this to happen. I would have been glad to be able to not testify and take the Fifth Amendment, but because of this piece of paper, I've got to come in here and tell you the truth. I'm telling you the truth. I stopped practicing law because of this. I'm not here lying to you.

Q Mr. Creely, if your firm had written him a check for the curator fees, wouldn't that leave a paper trail?

A If I wrote him a check?

Q If the firm had written him a check for the curator fees, wouldn't that leave a paper trail?

A Probably would have, but --

Q Isn't that part of the reason you didn't do that?

A He didn't want checks. He wanted cash. But what I'm saying is, I've admitted I gave him cash. What are you -- if I didn't admit to giving him cash and you found out I gave him cash, then I'm doing something terrible. I'm admitting to it.

MR. SCHIFF: Madam Chair, no further questions.

MR. TURLEY: Recross?

CHAIRMAN MC CASKILL: Okay.

SENATOR WHITEHOUSE: Madam Chair, I'd like to suggest the notion that we -- at some point perhaps reconsider whether or not recross is helpful. I, for one, found the last recross to be unilluminating in any respect. But if you allow recross and you make a pattern of it then there's going to be a lot of recross. Then both sides get it, and no lawyer who has an opportunity for recross wants to turn down that opportunity, and on we go. I just think that there perhaps should come a time

where we consider as this body whether to allow recross, and I don't want to prejudice the House by having Mr. Porteous do this, but I'm concerned about the issue of whether recross is a good idea.

CHAIRMAN MC CASKILL: Senator Hatch?

VICE-CHAIRMAN HATCH: I want to caution both sides to understand that you have a limited amount of time, and some of this, I think we got the picture, before and again. My personal belief is that you better shepherd your time. And I hope that neither side has to take the full time. I hope we can get through this. We have a wide range here and certainly every opportunity to present the case.

SENATOR RISCH: Madam Chairman, over here briefly.

CHAIRMAN MC CASKILL: Yes.

SENATOR RISCH: Recross is not a right. It's a discretionary for trial authority. I think with the limited time we have, I think both parties ought to be cautioned and directed that on their direct testimony and cross-examination, they need to get everything out and move on. We're not going to get through this. This stuff is pretty straightforward. We haven't hit anything yet that's rocket science that I've seen.

I'm with Senator Whitehouse. I think we've heard what we need to hear.

CHAIRMAN MC CASKILL: I think now both parties have heard the sentiment, which I think is fairly widely held by the panel, that we need to be cautious about retreading ground that's already covered. So I think what -- and I will be in consultation with the members of the committee overnight, but I'm going to go ahead and give you, Mr. Turley, a recross right now with the warning that if this recross is going over old territory, then it may be the last recross we have. In fairness, maybe we will give you one or two for their first witnesses so we will try to do this fairly on both sides. All of us are just trying to be fair to both sides. I know what it's like when you're in your case and you feel like you have to make the same point over and over and over again. But you're dealing with folks that, I think, get it the first or second time. So I would just caution you -- yes?

SENATOR KAUFMAN: We have a schedule here of how much time we're supposed to spend on each witness. Suppose we gave them a certain amount of time to use for each witness and they could decide

whether they wanted to save time for recross or not?

CHAIRMAN MC CASKILL: I'm reluctant to micromanage their cases in that regard. I think they're very aware. I'm going to try to give them their time at every break. They are very aware of what they have left in terms in their witness list, and what they have left in terms of cross and redirect and if you get to the end and you don't have time to put on a witness, then you're not going to be able to put on that witness. If you get to the end and you're not going to be able to cross-examine at all, you're not going to be able to cross-examine at all.

So I think with those warnings, Mr. Turley, go ahead with your recross. The plan right now, evidently there's a number of my minority committee members that have a meeting that you feel like you have to go to at 6:00; is that correct?

SENATOR RISCH: That's correct, Madam Chair.

CHAIRMAN MC CASKILL: We will go until probably 10 minutes after they call the vote and we will reconvene at a time when I hope we can get seven members. Keep in mind, if it's between the hours of 8:00 and 6:30 at a minimum for tomorrow and

Wednesday and Thursday, with the exception of the breaks that we have in the schedule, if we don't have seven members, we can't proceed, and that is a terrible inconvenience to all the lawyers, to the parties, and to the witnesses that have been called to come on various days that are traveling long distances. So everyone, try to work your schedules. I understand what an inconvenience this is and how difficult it is for Senators to block this much time when we're used to running from one place to the other all day long. But it's going to be really important that we get the cooperation of this committee, or we really will be here until past the time the Senate adjourns for the next work period, and that's in four weeks.

Senator Hatch?

VICE CHAIRMAN HATCH: Madam Chair, I want to be as broad as I can. This is a very serious issue involving a federal judge. Both sides ought to have whatever time they want to take to present their case. On the other hand, again, I caution counsel, you're going to run out of time, and I would hope that you can get your witnesses up and on without using all your time. But I'm very loathe to interfere with the way they want to try their

respective parts of this case, and this is not a trial in the sense of a court trial.

We're building a record for the trial before the Senate. It's important for both counsel to be able to put their best case in, and however they decide to do that is fine with me, but I caution them that we've spent an awful lot of time going over some things that I'm not sure add that much to the case one way or the other.

CHAIRMAN MC CASKILL: A vote was just called. We're going to go for 10 minutes, and then we will adjourn until 6:00.

MR. TURLEY: Our time starts now on recross?

CHAIRMAN MC CASKILL: Right now, and we will go for 10 minutes and adjourn so everybody has enough time to make the vote, and we will come back at 6:00.

MR. TURLEY: I seriously doubt I will even go that long.

RECROSS-EXAMINATION

BY MR. TURLEY:

Q Mr. Creely, I just want to show you something from House Exhibit 445, which is your deposition, and I'm just going to put it up on the

screen for you.

This is page 47 for opposing counsel.

And I'm going to read it to you. It's very short, but it should pop up, and I'm going to start to read it, and you can look at it if you would like.

"Question: Did you at any time see a link between the curatorships and the gifts that you gave to Judge Porteous?

"Answer: Did I see a link?

"Question: Yes.

"Answer: There was never a link in my mind giving him money for curators."

Do you see that, sir?

A Yes, sir.

Q Is that still your testimony?

A I see it, yeah.

Q Is that still your testimony, sir?

A It's my testimony.

MR. TURLEY: Thank you. That's all of our questions.

CHAIRMAN MC CASKILL: Next witness, Mr. Schiff?

Sorry. I forgot if the panel members have questions.

EXAMINATION

BY SENATOR KLOBUCHAR:

Q I had a question. You kept saying that the curatorships, that you didn't want them. Why didn't you just turn them down?

A Ma'am, I'm sorry?

Q Why didn't you just turn down the curatorships?

A I could -- I wish I would have.

Q You could have?

A I could have turned the curators down. I did not.

Q You kept saying you wanted to turn them down, and it was in your power to turn them down?

A It was within my power to turn them down. Yes, ma'am.

Q My second question was, you said you were surprised when the judge's secretary brought the money over and that made you upset or when the judge's secretary came to pick up the money from you; is that right?

A I'm having a real hard time understanding you.

Q Okay. You said that when you sent the money over to the judge, the judge's secretary

picked it up sometimes; is that right?

A I didn't say that I sent it over. What I believe the testimony will reflect is that she came over to get the money from my office. She came to my office to get the money. To our office to get the money.

Q Right. And you said that upset you that she did that and you were shocked by that?

A Yeah.

Q If you were just giving money to a friend, why would that shock you?

A Because he was so pushy. You don't know the aggravation in giving away money. I got to a point where I didn't want to give money away anymore, and it was extremely aggravating for me to have to give that $1,000 to my law partner.

Q Why would involving the secretary make it more troublesome except for the fact you must have realized that she knew about it then?

A Kind of like a debt collector. I don't know how to explain it to you. Somebody that comes at you -- if you -- he knew I was avoiding him. He knew I was avoiding him. Everybody knew we were avoiding him. He sends his secretary over there.

Q And then did he call your secretary once

and talk to her?

A Yes, ma'am.

Q You said that upset you, too, for the same reason?

A Yeah, because he was making a connexity between curators and payments. That was the, that was the focus --

Q Were you also concerned that he had said it to her, to your secretary?

A That he suggested there was a connexity, yes, I was concerned about that, yes, ma'am.

Q Why were you concerned about that? Because somebody else knew about it?

A Because there was no connexity between the money I gave him and the curators we were sent.

Q It seems in both cases you have his secretary and your secretary finding out about something and that in both instances you are upset about that. And I just found that interesting because of the fact that now two more people knew about it. That's all.

A That's it?

SENATOR KLOBUCHAR: All right. Thank you.

CHAIRMAN MC CASKILL: Senator Wicker?

SENATOR WICKER: Yes.

EXAMINATION

BY SENATOR WICKER:

Q You testified before the grand jury under an immunity agreement; is that correct?

A Yes, sir.

Q Did you first assert your rights to remain silent under the Fifth Amendment?

A No, sir, and Mr. Capitelli, who is my lawyer, I'm very grateful for him, I've never asked for any kind of immunity. They gave me this immunity. I don't do criminal work. It's called forced immunity.

The way I understand it, if I'm called before the grand jury and I say I'm not answering your questions and take the Fifth Amendment, assume that to be the case, and then the -- whoever, the prosecutor hands you a forced immunity document, if you don't testify, they put you in jail. They hold you in contempt of court and haul you off to the jail.

So going into the grand jury room forced immunity, the way I understand it, and I don't want to misstate what it is, because I'm not going to totally understand it, forced immunity.

In other words, you don't testify, you go to jail, is the way I -- that's the basic way I understood the document. And I didn't take the Fifth Amendment. I didn't plead the Fifth Amendment. I didn't refuse to testify. I was ready to cooperate fully. They gave me forced immunity, forced immunity.

Q So this immunity agreement was not something that your attorney negotiated with the federal attorney?

A Not that I'm aware of. The forced immunity -- I was never charged with anything. I was never accused of anything. So people who bargain for immunity are bargaining for some kind of a deal, is the best I understand it. It was forced.

SENATOR WICKER: I think that answers my question, Madam Chair.

THE WITNESS: Sorry?

SENATOR WICKER: That answers my question. Thank you.

CHAIRMAN MC CASKILL: Senator Whitehouse?

EXAMINATION

BY SENATOR WHITEHOUSE:

Q Mr. Creely, I want to understand a transition. There was a stage described in your

testimony in which Judge Porteous was asking you for money. He was asking you for $50, for $100, and you were essentially just handing him the money; right? Is that correct?

A Yes, sir.

Q Then there was a later stage where he was asking you for larger amounts of money, and now instead of just handing him the money, you were going back and working with your partner, Mr. Amato.

A Right.

Q And you were paying him through the firm account, and you were having your secretaries run down and cash the checks and bring the cash back to you. And it went from being a private expenditure of yours to being a firm obligation or a firm payment.

Can you clarify for us what it was that made this transition happen between this being a Mr. Creely, here's my friend, giving him $50 or $100, to the firm being involved and using the firm accounts and establishing the 50/50 split between you and Mr. Amato? There's a difference there. What caused that difference to happen?

A And the difference being is that I -- Amato and Judge Porteous were probably closer than

Judge Porteous and me. So the difference is that I was getting tired of being leaned on and said I need some help, you know, you need to help out. And so we took -- we got taxed for the money we took. I said he's your friend, too, he's not just my friend. So we both made an equal draw to give him the money. I'm not going back over the amounts and the math, but that's what happened when it happened.

SENATOR WHITEHOUSE: Okay.

CHAIRMAN MC CASKILL: We are going to adjourn so all the members can go vote. We are going to leave at 6:00. You're not excused yet, Mr. Creely, because all of the Senators have not had an opportunity to ask their questions. So you will have to remain. We will finish up with the panel's questions when we get back. So remain, and we will come back at 6:00. It shouldn't be much longer for you, and then we will call your next witness.

(Recess.)

(6:00 p.m.)

CHAIRMAN MC CASKILL: The hearing will reconvene and Congressman Schiff, you may call your next witness. Let me say for the record the House now has 16 hours and 14 minutes and Judge Porteous has 16 hours and 48 minutes.

MR. SCHIFF: Madam Chair, the House calls Joseph Mole.

CHAIRMAN MC CASKILL: Let me also say on the record, as Mr. Mole comes to the stand, that we have released Mr. Creely, because there were no additional questions of him from the Senators on the panel.

Has someone gone to get the witness?

Mr. Mole, would you remain standing, please, and raise your right hand.

Whereupon,

JOSEPH N. MOLE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Mole, could you state your full name for the record, please.

A Joseph Nicholas Mole.

Q And what is your -- what is your profession?

A I'm an attorney, practicing law in New Orleans, Louisiana.

Q How long have you been practicing law?

A Since 1977, so 33 years.

Q What is the nature of your practice?

A I've done primarily commercial litigation for all those years, almost entirely commercial litigation, some employment law.

Q Are you familiar with a case titled Lifemark versus Liljeberg?

A Yes, I am.

Q Can you tell us a little bit about your involvement in that case and the timeframe it took place?

A I represented Lifemark in that case between 1996 and the end of the case in 2002. Lifemark had been engaged in that litigation, it was actually three consolidated lawsuits, in federal court in the Eastern District of Louisiana. Litigation was about 10 years old when it came to me.

Lifemark was looking for new lawyers, they hired me in, I believe, April of '96. We did some pretrial work and took the case to trial in the summer of 1997 and then handled the appeal.

Q Why was Lifemark looking for new attorneys at that time?

A The lawyers that had been representing them had some problems with possible malpractice in

the case and had to be disqualified on a conflict of interest because of that. And so Lifemark sought new counsel.

Q Did your litigation experience include complex business litigation?

A It did. The case involved antitrust, bankruptcy and just commercial contract, a lease. So we had to -- that was all within my experience.

Q I know this is difficult to do, but Mr. Mole, can you give us just a very brief nutshell on what this case was about?

A It's a very -- it is difficult in a nutshell, but the Liljeberg family had built the hospital that was at issue, it was known as the Kenner Regional Medical Center at the time that I took over the case.

They had been financed by Lifemark. Lifemark lent them the money and then agreed to operate the hospital, because the Liljebergs were not -- had no experience in operating hospitals.

Then over the years, that relationship went bad, the Liljebergs also as part of the deal operated the pharmacy in the hospital on the contract. It was a very lucrative contract. It paid them a lot of money.

When the litigation went to trial, there were three main issues. One was the Liljebergs had lost their hospital in a foreclosure sale with another lender. They blamed my client, Lifemark, for that, and was suing for the damages consisting of the loss of their hospital.

Lifemark was suing the Liljeberg family to try to get out of the pharmacy contract. It was a very difficult relationship, very difficult to have a pharmacy being operated by a hostile company within the hospital.

And then the Liljebergs had sued Lifemark, claiming that they were owed, if I recall, over $20 million on pharmacy payments that they had been cheated on by Lifemark. So all of those things were going on at the same time.

Q And again what -- approximately when did you enter the case?

A I believe it was April of 1996. At that time, the case was scheduled for trial in November of that year, so I had a very short time to get up to speed on a very difficult and already old litigation.

Q And it was -- that was half a year, that was a short time because of the complexity of the

case?

A Extremely, yeah. And it was also a parallel case in bankruptcy court, because the Liljebergs, at least one or two of their entities had filed Chapter 11s, and we had to deal with that as well at the same time.

Q Who was the judge in the case?

A Judge Porteous was the trial judge in the Eastern District of Louisiana.

Q And was this to be a bench trial or a jury trial?

A It was a bench trial, because of the bankruptcy jurisdiction primarily.

Q Mr. Mole, can you pull the microphone a little closer so we can hear you more clearly?

A Sure. I'll move up a little bit. Is that better?

Q When you came into the case six months before the trial date, had the firm of Amato & Creely entered an appearance yet?

A No, they had not.

Q Had Mr. Levenson entered an appearance at that time?

A No, he had not.

Q Did there come a time when the firm of

Amato & Creely and Leonard Levenson entered appearances in the case?

A In September, when trial was about six weeks away, I found out that they had signed up as counsel, they had made a motion to enroll. And I went and looked at the bankruptcy record, because they -- because of the bankruptcy the Liljebergs were in, they had to make a motion for leave to be approved by the bankruptcy court. And they were coming in the case at the last minute on a contingency fee.

Q What was the contingency fee?

A They were going to get 11 percent of the value of the hospital claim, which, as I recall at that time their expert valued at $200 million.

Q Did you have any concerns when Amato & Creely and Mr. Levenson entered their appearances for Liljeberg six weeks before trial?

A I did.

Q What were your concerns?

A I asked around my firm, I had no experience with Judge Porteous. He and I went to the same high school, and that's about all I knew of him. I knew that he had been a Jefferson Parish state court judge.

So I asked around and got some negative reactions. So I did some due diligence. I called people on the phone who I thought would know more, and developed some serious concerns that Mr. Amato and Mr. Levenson's presence in the case would be a problem that would keep the case from having a fair result.

Q Now, did the folks you spoke to, were they willing to be public about their concerns about the relationship between Mr. Amato, Mr. Levenson and the judge?

A No, they were not. Some people didn't want to talk. Some people would make sure that whatever they told me was something they would not want known.

But the word that I got basically was that the case was likely to be fixed.

Q Did this pose a particular concern, given that it was a bench trial rather than a jury trial?

A Yes, it did, because the judge would be making all the decisions of fact and law. And, you know, as it turned out, Judge Porteous is an intelligent man, and he could -- he could do us a lot of harm. My client didn't want to lose their hospital and they also wanted to get out of the

difficult relationship they had with the Liljeberg family.

Q And in discussing this with your client, what did you decide to do as a result of the concerns about this relationship that Mr. Levenson and Mr. Amato had with the judge?

A Well, the first thing we did after thinking about it was file a motion to recuse him, filed a motion based upon just what I've told you, to Judge Porteous, and said that I thought that the -- the entry of two of his closest friends into the case at that late time when the Liljebergs already had at least four law firms involved on their side who knew the case very well would create an appearance of impropriety, so I asked him to step down.

Q Were you concerned in making this motion that you were making basically a motion for a judge to remove himself to the very judge that might hear the case if he turned it down?

A Yes. I think it was probably the most careful draftsmanship that I ever did was to write the motion to recuse so that I wouldn't unduly offend the judge, because the likelihood of winning a motion to recuse is always very small.

Q What did you base your motion for recusal on given the limited information or at least the desire of those who shared it with you not to be disclosed? What did you base it on?

A Like I said, usually when you file a motion to recuse -- and it's the only one I've ever done -- you file an affidavit with some evidence. I had none. So I filed my own affidavit, basically as I understood things on hearsay that there was a close relationship between Judge Porteous and Mr. Amato and Mr. Levenson, that they were known to socialize together, that Mr. Amato and the judge had been law partners and that the timing created suspicion that it was the best thing for the judge to do, to avoid the appearance of impropriety, to step aside.

Q Were you aware at the time you filed the recusal motion that Judge Porteous, while a state judge, had assigned $40,000 worth of curator cases to the firm of Amato & Creely?

A No, that's certainly something I would have brought up in the evidence that I submitted to the judge.

Q Were you aware that the attorneys Amato & Creely were giving him back a substantial portion of

those curator fees?

A No, I only became aware of that in the years later.

Q Did you know that Amato & Creely had given him cash of any kind?

A No, I wasn't aware of that. I had nothing like that at my disposal when I filed the motion to recuse. I learned those facts only in connection with the 5th Circuit's judicial inquiry and the grand jury investigation and then with the House of Representatives hearings.

Q The committee has already heard testimony about the recusal hearing, I won't go through all of it with you. In the transcript there's no indication that he disclosed getting the money from Mr. Amato. Was there a time off the record where he disclosed to you or any of the Lifemark counsel that he had received cash from Mr. Amato?

A Certainly not, no, never did.

Q Did Mr. Amato ever reveal that to you?

A No, he did not. All I have as I sit here today is the hearsay that I've been told that.

Q Do you remember during the hearing being chided by the judge for not doing your homework better?

A Yes, I do. One of the allegations I made in my affidavit was that the judge had received campaign contributions from Mr. Amato and Mr. Levenson. I had the campaign records that are publicly available in Louisiana, and the judge basically said that, well, you didn't really understand things because the money that he got was minimal in amount, and that was true, and that it was the result of a fundraiser for a number of judges, so it wasn't even personal entirely to him.

Q In light of the fact that he had received cash from Mr. Amato, did you find that representation in the recusal hearing to be misleading?

A Certainly. You know, it was my expectation on my understanding of the law that when a judge receives a motion to recuse, it's incumbent upon him to disclose what he knows that would affect the outcome of the motion and the feeling of the parties as to whether or not he was going to be impartial. And I was hoping he would disclose just that sort of thing.

Q Let me direct your attention to page 3 of the transcript of the recusal hearing.

A Is this what I'm supposed to look at here?

Q And specifically to the section where Judge Porteous says, "this is the motion filed with respect to all of the particular cases to recuse. Let me dictate one thing into the record before everybody commences."

He goes on to say, "a party who believes a judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter but an independent responsibility as an officer of the court.

"Judges are not omniscient, and despite safeguards, overlook a conflict of interest. A lawyer who reasonably believes that the judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest.

"Any other course would risk undermining public confidence in our judiciary system. I cite that so that everyone understands that I recognize my duty and obligations."

Do you recall him saying that?

A Yes, that's a very good statement of how the system is supposed to work.

Q Did Judge Porteous deny your motion to recuse?

A He did.

Q Did you appeal it?

A We went to the 5th Circuit, yes, on a writ of mandamus and asked the 5th Circuit to reverse the denial.

Q Is there any question in your mind that Judge Porteous should have disclosed the financial relationship with Amato & Creely?

A No doubt in my mind, no.

Q Is there any question in your mind that had you been able to present those facts to the Court of Appeals, the Court of Appeals would have reversed his recusal decision?

A I think they would have, yes.

Q At trial did you bring an additional counsel?

A I did. I hired a gentleman named Don Gardner because he was Judge Porteous's close friend.

Q And I take it this was after the recusal motion was denied?

A After the recusal motion, you know, I predicted to my client that it wouldn't work, or there was a low likelihood that it would work. My client said, well, then we need to level the playing field and you need to hire someone who knows the

judge.

And I undertook to find out who that might be and ended up with a man named Don Gardner, whom we paid to help us with the case.

Q And how did you feel about having to bring in a friend of your own -- or a friend of Judge Porteous for your own side of the case?

A Well, I didn't want to do that. My client insisted. And I preferred to do what I ended up doing anyway, which is just make a good record and take an appeal and try to win through the system. But we did it because my client wanted to.

Q Is it fair to say that judge -- that Mr. Gardner was brought in solely because he was a friend of the judge?

A Yes.

Q Did he question any of the witnesses during the trial?

A Not that I recall. He didn't speak during the trial.

Q Did he argue any of the motions?

A No. He was there every day for every minute of the trial, but took no part.

Q What was Mr. Gardner's fee arrangement?

A We gave him $100,000 retainer, and then

there were other payments -- we had a retainer letter where Mr. Gardner would get payments contingent on the outcome. The one that stands -- the one that stands out into my mind is that if his entry into the case caused Judge Porteous to recuse him, there would be another payment, because it was my -- I felt like getting the judge to recuse himself would be the only way to get a fair outcome.

Q Why did you think his addition to the case might result in a recusal by the judge?

A I thought that having close friends on both sides of the case might induce the judge to get out, and I thought that would do it possibly.

Q And what was the fee arrangement if Judge Porteous left the case, either took himself out or left the case for some other reason?

A I believe there would be another payment of $100,000 and Mr. Gardner would have no further connection with the case. That would be the end of it.

Q So if Judge Porteous left the case, so would Mr. Gardner?

A That was the way the agreement was, yes.

Q Was there any reason to have Mr. Gardner still in the case if Judge Porteous left the case?

A Not in my mind.

Q Were there other contingencies as well in terms of the recovery where Mr. Gardner could get more money?

A Yes, there were. There were more increments of money to be paid if the -- as the result got closer to a zero and my client got out of the relationship entirely with the Liljebergs.

Q And why did you structure the fee arrangement that way?

A Well, it was a big case. You know, there's a lot at stake. I wanted Mr. Gardner to be involved, my client did, and I wanted him to stay on our side, and I wanted him to have an interest in there being success in the case. And I thought that was the way to do it.

At the time also, it was a concept amongst defense lawyers to try to offer their clients graduated fees based on outcome, and it was a way to do that. So that's why we did it.

Q And why did you want him to have an interest in the success of your side of the case?

A You know, I didn't know any of these people very well, and I wanted to make sure Don Gardner was on our side. And I just thought him

having an interest in the case being successful was important to us.

Q Did you have a concern that Mr. Gardner might do some form of double-dealing with the other side?

A You know, it was a concern at the time. I got to know Don pretty well through the trial, and I don't think that fear was well-founded at the end of things. But that was part of my thinking at the beginning when I retained him.

Q And Mr. Gardner, did he tell you that he didn't feel he would influence the judge's decision?

A Don from the very first said, look, you can pay me what you want or what we agree to, but I'm not going to be able to change any outcome, I'm not going to be able to influence the judge. But I can help you understand the way he thinks. I can tell you what I know about him as a person that might help you in the way you present your evidence in the case. And he said I can sit at counsel table, smile and look pretty, but there's not much else I can do.

So he was always very frank about that.

Q And it was nonetheless worth 100,000 initial payment and another 100,000 if he left the

case to both you and your client that your side have a friend of the judge sitting at your table?

A Yes, it was.

Q Do you recall when the trial began?

A In, I believe, mid-June of '97. I know the last day was July 31 of '97. It was spread out over six weeks, but it was only 16 of those days in trial.

Q And during the trial, did Judge Porteous get involved in the questioning of the witnesses?

A Yes. In three or four of my witnesses, typically a strong witness or an expert who had done a good job for me, I thought, on direct, the judge after the Liljeberg lawyers would question them, in my opinion never laid a glove on them, Judge Porteous would question the witnesses and, like any advocate, I didn't like that. And I thought the judge went too far in the way of cross-examining and pushing on my witnesses and changing the net result of their testimony to not so favorable.

And he did that on -- the last witness he did it to, I raised my hand when he finished and said, Judge, I'd like to follow up. And he denied that. And I said with all due respect, I'd like to object to your questioning in a way that I think was

too much like cross-examination.

And he became very angry at me.

Q What did he do?

A There were some bench books, big black binders full of papers, exhibits, in the days when we used paper a lot. And he began throwing a couple of them toward me. I was at a podium like this standing up, and he was throwing them like a soccer ball. There was no realistic chance he would hit me, but it's not something that had happened to me before in court.

Q After he threw the briefing books, what happened then?

A He stormed out, went back into chambers. And a few minutes later -- it was the end of the day, Thursday. We knew Friday would be an off day. And his clerk or one of his staff came out shortly thereafter and told us to come back on Monday and the judge would resume the trial at that time. And that's what he did.

Q What took place on Monday?

A On Monday he came back in, well prepared to address my objection. I believe he had a bench memo, and he read into the record his ruling denying my objection to questioning the witnesses, but then

gave me a chance to question -- to follow up, to ask some more questions of my witness, which I did. And then we moved on.

Q Did you consider Judge Porteous to be a smart trial judge?

A I think Judge Porteous is a very intelligent man, yes, and a very good trial judge. He has a charismatic personality, able to command the courtroom. He knew his Rules of Evidence very well, could make decisive rulings. Trial lawyers don't like a judge that's indecisive or dithers about an evidentiary ruling. And I think he has good command of the courtroom, yes.

Q Was he a good enough, smart enough judge to know how to prepare a record for appeal?

A He certainly had been doing it a long time, yes. I think so. That was one of our fears, is if he was going to write an opinion that was slanted, he knew how to do it.

Q Was it your sense that he knew how to conduct the trial so as to give himself as good a record as possible on appeal?

A You know, he certainly knew what he was doing in a courtroom. My feeling at trial was that he didn't really slant the evidence so much as

listen to it and react to it.

Q And did you feel you were going to win or lose the case?

A I always felt that we had an uphill battle and we were probably going to lose. You know, in doing a trial, it takes a lot out of you. It's very hard. It's very draining. And you have to do it some motion and involvement.

So no matter how bad your case, you fight. We certainly did the best we could and never gave up hope that we would win and hoped for the best.

But I realistically thought that because of the friendship thing with Mr. Amato and Mr. Creely and Mr. Levenson, that we didn't have much of a shot.

Q Did you feel on the merits that you had the better case?

A Absolutely. I thought we had better witnesses, a better case. I thought we did a better job of preparing and presenting the case.

Q Was there any reason other than the relationship between Mr. Amato, Mr. Levenson and the judge that you felt, notwithstanding having the merits on your side, you were likely to lose?

A Again, you're asking a trial lawyer who

always thinks he does the best job in the court. So yeah, I thought we should win and I thought we did the best job, and couldn't see any reason why we should lose other than that.

Q How long did Judge Porteous have the case under advisement before he issued a ruling?

A Almost three years. We rested and closed the record on July 31. We did some posttrial briefing and then he ruled, I believe, in late April or early May of 2000, almost three years later.

Q During the recusal hearing, Judge Porteous stated, and we can pull this up, if necessary, "I have always taken the position that if there was any -- ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity, if they wanted, to ask me to get off."

Do you recall him saying that?

A Yes.

Q Did the judge, during the course of the time when the case was under submission, notify you that he had solicited and received $2000 or $2500 from the law firm of Amato & Creely?

A No.

Q Did the judge or anyone else advise you

that while the case was under advisement, Mr. Amato paid approximately $1500 for an anniversary party for Judge Porteous?

A No, no one told me that.

Q Were you made aware by the judge or anyone else about any hunting trips the judge went on with Mr. Amato or Mr. Creely?

A No, I didn't know about that.

Q Were you ever advised about a bachelor party in Las Vegas that Amato & Creely paid for a portion of?

A No, I was never aware of that.

Q When Judge Porteous issued his ruling in April of 2000, what did he rule?

A On the hospital claim, I think when the claim went to the judge, at trial the Liljebergs' expert valued it at $70 million and the Liljebergs asked for that as damages for losing their hospital.

The judge, much to my surprise and, I believe, everyone else's, instead of giving the Liljebergs those damages, gave the hospital back to the Liljebergs, which involved undoing a federal judicial marshal sale with another party and then putting everything back into the -- it was like putting Humpty-Dumpty back together again. It was

astounding.

On the pharmacy contract, he refused and denied our request to terminate that contract for a number of reasons.

And on the pharmacy claims for accounting and for all the damages for Lifemark's allegedly cheating on the pharmacy billing, I believe the value of his award was between 15 and $20 million. So --

Q Was this a resounding loss for Lifemark?

A Yeah, he could have awarded more damages on the pharmacy claims, but the other two claims were devastating. Alone the 15 million. The 20 million was certainly a lot of money.

Q Was the loss of the hospital itself the most devastating part of the ruling?

A Absolutely. You know, when I got the opinion, I read it and it was so astounding and so, I thought, wrong that I thought well, that's good for me because when I get to the 5th Circuit, this is so crazy, we should be able to get this reversed and it should taint the rest of the opinion.

Q And did you, in fact, appeal to the Court of Appeals?

A Yes, we did. We brought in a firm that

Tenet had a relationship with in Texas to help us, Haynes and Boone, and we handled the appeal, went through. The 5th Circuit's opinion came out in October of 2002.

Q What did the Court of Appeals decide?

A They reversed most of what Judge Porteous had done. They undid -- they gave us back the hospital, terminated the contract and lowered the damages on the pharmacy claims to, I think, around less than 5 million and remanded that part of the case on the pharmacy damages back to Judge Porteous for calculation of damages and more evidence.

Q Was the appeal a significant win for Lifemark?

A It made them very happy, yes, a very good result. It was --

Q I want to go through just a couple of the comments of the 5th Circuit in their opinion reversing Judge Porteous in large part. If we could pull up the first -- this is House Exhibit 63. It's the Court of Appeals opinion.

The court stated, and without objection, I would move this into evidence.

CHAIRMAN MC CASKILL: Without objection, moved into evidence.

(Exhibit 63 received.)

BY MR. SCHIFF:

Q The Court of Appeals opinion read, in part, "the extraordinary duty the district court imposed on Lifemark, who loaned the money to build the hospital and held the mortgage on it to secure its payment, is inexplicable."

Do you recall that part of the decision?

A Yes.

Q And do you agree with that analysis?

A Yes.

Q The court went on to say, "the district court's findings of a conspiracy to wrest control of the hospital and medical office building from Liljeberg and the Liljeberg Enterprises border on the absurd."

Is that your sense as well?

A Yes, it is. Although in briefing you don't use that language to a court. Although it's pretty astounding language from a court to a judge.

Q In your experience of more than 30 years, have you seen a Court of Appeals use this kind of language reversing a district court?

A No, courts are generally very deferential even when they reverse each other.

Q Further the court says, "the district court in Liljeberg enterprises offered no statutory case law for this proposition, for the simple reason that this is not the law."

Do you recall that?

A Yes.

Q The court goes on to say, "the idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment to wit approximately $7.8 million to Travelers at any judicial sale, comes close to being nonsensical."

Do you remember that?

A It's coming back, yeah. I remember that.

Q And I assume you agreed with that conclusion as well?

A Certainly.

Q And one final quote. The court goes on to say, with respect to another part of the opinion, "this is a mere chimera existing nowhere in Louisiana law. It was apparently constructed out of whole cloth."

A I remember that one very well.

Q After the Court of Appeals ruled largely in Lifemark's favor, did the remaining issues in the

case settle?

A Yes, we settled within a month with the Liljebergs on the remaining case. My client did not want to go back to Judge Porteous on the remand, and the Liljebergs had some real estate next to the hospital that we were able to bargain for to get it over with quickly.

Q So it would have been necessary, if you wanted to pursue the case further after Court of Appeals opinion, to go back into Judge Porteous's courtroom?

A We did not want to do that, that's correct. The circuit sent us back to the trial court for that housekeeping.

MR. SCHIFF: Madam Chair, I have no further questions at this time.

CHAIRMAN MC CASKILL: Thank you, Congressman Schiff.

I'm going to ask for a vote of the committee. We had originally said we were going to adjourn at 6:30 today. It's 6:45. We can hold this witness over for the cross-examination in the morning or we can plug ahead and try to finish up this witness tonight.

And I would want to defer to the other

committee members as to their preference.

Plug? All right.

Professor Turley, cross-examination.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Mr. Mole, when were you first approached about the Lifemark case to come on as counsel?

A We opened the file in April of '96, so probably a few weeks or a month before that.

Q Was it Tenet Healthcare that approached you in seeking additional representation?

A Yeah, Tenet owned Lifemark, still does, I believe.

Q Now, at that point, the Liljeberg and Lifemark had been in litigation for a significant period of time, had they not?

A I believe the first lawsuit was filed in 1985, yeah, and had been in litigation since that time.

Q In your handling of the case, did you ever discuss with either lawyers or your client the value of delaying the case on the trial level?

A You mean in front of Judge Porteous?

Q While it was in front of Judge Porteous.

A You know, I think we probably talked about

getting a continuance, but our desire was to get the trial going. So yeah, we probably talked about it. You know, how abstract or definite I don't recall.

Q And did you -- did you have conversations with counsel that a delay in the case on the trial level would work to your advantage?

A You know, I don't recall that one way or the other, Mr. Turley. I believe when it got continued from November to June, that was on Judge Porteous's own sua sponte, after the recusal, because it shut the court down for at least a month.

Q What were the terms of your engagement by Lifemark? Was it an hourly, fixed rate, contingency?

A It was on our firm's normal hourly billing rates.

Q Now, am I correct you told Mr. Schiff that you filed a motion to appear in -- is it April 4, 1996?

A I --

Q Does that sound right to you?

A Yeah, it does. I enrolled as counsel of record in April.

Q Now, were you supplementing an existing litigation team, or were you replacing an

existent -- the previous litigation team?

A I was replacing. The two firms that had represented Lifemark previously were Jones Walker, whom Lifemark sued for malpractice in connection with another transaction, so that was a conflict, leaving behind a small real estate firm, Steeg and O'Connor, who had no real expertise in large litigation.

So I was a replacement for those two firms.

Q And isn't it true that when Judge Porteous entered the case, both sides were adding lawyers during that period?

A Well, Judge Porteous had been on the case when I arrived. I don't have any sense of how long. I think it may have been about a year. But I had -- I was not involved in what you've just described.

Q Now, Judge Porteous was assigned to the case randomly, wasn't he, to the best of your knowledge?

A Yeah, I believe a number of other Eastern District of Louisiana judges had had the case and recused themselves, or Opal Jones, who had the case immediately before him I think died, and I think then however the court gets cases like that moved to

the next judge. That's how it happened.

Q Now, do you recall previously saying that you thought it was unusual for Levenson and Amato, who were trial attorneys, to enter this bench trial case?

A I think that's one of the arguments I made in the motion to recuse, that these guys had no particular expertise in this kind of case.

Q But isn't -- isn't a bench trial still something trial attorneys do?

A Absolutely.

Q And didn't Mr. Levenson and Mr. Amato have a lot of trial experience?

A They did. I thought of them both as jury trial and less -- less complex cases. Turns out with Lenny Levenson, he had more experience, I think, with bankruptcy than I knew of at the time. I didn't know him at all.

Q Did you know then how many jury trials as opposed to bench trials these two had had?

A No idea.

Q Do you know now?

A No.

Q Now, when you filed your recusal motion for your client, did you know how long Mr. Levenson

or Mr. Amato had been working on the case before they put in their appearances?

A No.

Q Is it a common practice among litigators to work on cases for a while before they put informal appearances in cases?

A I only know what I do, which is sign up as soon as I'm able to.

Q Have you ever -- I didn't mean to interrupt.

A To answer your question, I don't know the practice on that. It's specific to the case.

Q Have you ever known lawyers who were working on a case that you knew of but then filed their appearances shortly before a hearing or trial?

A I can't think of any examples but nothing like that stands out in my mind one way or the other, Mr. Turley. I'm not an expert on timing of making your appearance.

Q Are you aware now that Mr. Amato, for example, had been working on this case for a couple of months before his appearance?

A No, I was not aware of that.

Q Were you --

A It surprised me.

Q Did you hear testimony today, I saw you in the room, did you hear previous testimony today?

A No. When I came in, I was quickly chased back out. I didn't hear that.

Q Oh, okay. Now, you had testified earlier that after Amato and Levenson's appearance in the case, you made telephone calls familiar with Levenson, Amato and Porteous; correct?

A I called people that I thought knew more about the background than I did, yeah.

Q Who did you call?

A The two I recall is I called Mr. Capitelli, who is now Mr. Amato's lawyer, because I went to high school with him as well. I think everybody in New Orleans went to high school together. And I called a man named Tommy Lane, who was on -- had involvement with Lifemark hospitals as well. Tommy may have called me, I'm not sure which. But those two I recall talking to about it.

Q Just those two?

A Yeah, I know I talked to others, but it's been 14 years, and that's what I recall.

Q Is it true you learned that Levenson was a friend of the Porteouses and they frequently went fishing together?

A Yeah, what I recall hearing about Lenny was that he was less -- he had less of a history with Judge Porteous than Jake did, but that Judge Porteous had taken them to a 5th Circuit judicial conference, maybe on more than one occasion, and that they were close friends in a social way, lunch, that sort of thing.

Q Now, when you filed your recusal motion for your client, isn't it true that you told the court that you knew that these were, quote, two of the court's closest friends?

A Those words sound familiar, yeah, I'm sure said that.

Q Didn't you also tell the court that, quote, your Honor's relationship with Mr. Amato and Levenson is well known within the legal community?

A I don't dispute that, Mr. Turley.

Q Do you recall that?

A I don't recall exactly what I said, but that sounds like what I said, yeah.

Q And do you recall saying that it needs no elaboration in this memorandum?

A Probably because I was incapable of elaborating.

Q Do you recall saying that the

relationships with Mr. Levenson and Amato were "very well known"?

A Again, I probably said that, yes. Those sound like my words. You know, I was trying to avoid saying people tell me the fix is on and I'm going to lose unless you get off the case, judges.

Q Now, do you remember stating in some of your past testimony that you were aware that the judge frequently had lunch and socialized with both of these lawyers?

A I don't recall those specific words, but certainly --

Q Do you recall testifying to that --

A That effect, yes.

Q -- effect?

A Yes.

Q Now, when Amato and Levenson entered the case, they entered in September 1996; right?

A I believe that's when they made their motion to enroll, yes.

Q And the trial was set for November 1996?

A Yes, it was.

Q Roughly two months?

A I'm trying to do the math, Mr. Turley, but I remember it being six weeks, because that's the

number of weeks that I verbalized to the judge, to the court.

Q But you had only entered the case at that time at roughly five months earlier; correct?

A That's correct.

Q Now, isn't it true that in that recusal hearing, Judge Porteous indicated that the November 4 date was probably going to be pushed back?

A I know it was his idea -- well, my recollection was that it was his idea to move it, which was a relief because we certainly needed more time. So yeah, that may have been the way he said it.

Q And do you recall that Judge Porteous indicated in the recusal hearing that this had been discussed before that hearing, of the movement of the date?

A I don't recall those words, but again, I don't have any clear recollection one way or the other how that came up.

Q But do you recall before the recusal hearing there were discussions about moving the trial date?

A You know, they may have been at a status conference, but like I said, I don't recall

precisely.

Q Isn't it true the actual trial date didn't occur until June 1997?

A Yeah, approximately mid-June '97.

Q So about nine months after they entered the case?

A Yeah, whatever -- yeah, however it adds up.

Q Mr. Mole, are you familiar with a case called Travelers Insurance versus Liljeberg Enterprises?

A Yes.

Q A 5th Circuit opinion in that case?

A Yeah, there were a number of Travelers decisions, district court and 5th Circuit. But I remember it.

Q I specifically want to ask you whether you are familiar with what the 5th Circuit said in that case, and I'm going to quote it, and you can tell me if you recollect this, that "many courts, therefore, have held that a judge need not disqualify himself just because a friend -- even a close friend -- appears as a lawyer."

Do you remember the 5th Circuit?

A Yes.

Q And that was -- that was before you filed your recusal motion; correct?

A I was aware of that when I filed my recusal motion, yes.

Q And the Liljebergs were part of that case; correct?

A Yes, they had asked the judge in the Travelers case, Judge Mentz, to recuse himself because he belonged to a social club that somebody else in the case belonged to, the Boston Club.

Q And do you recall Judge Porteous answering a specific question of whether he was friends with Amato and Levenson by saying "The answer is affirmative, yes," in the hearing?

A Yes, I recall him saying that.

Q And do you recall that you reiterated that you were aware that they were, quote, very, very close friends?

A I don't recall the exact words, Mr. Turley. You're asking me about things that have happened --

Q Or to that effect?

A Yeah, sure.

Q Do you recall Judge Porteous specifically advising you that he would stay proceedings to allow

you to appeal his decision on recusal?

A Yes. I don't think he wanted to proceed until that was resolved.

Q Do you recall in your petition to the 5th Circuit stating, "there is no doubt that Mr. Amato and Levenson had extremely close, if not best friends, with Judge Porteous"?

Do you recall a line to that effect?

A Again, those sound like they may be my words. I think I'll lose credibility here if I start telling you I remember those exact words. I don't.

Q Do you recall pointing out to the 5th Circuit that "Amato, Levenson and Judge Porteous didn't deny that fact"?

A It sounds like something I would have said, Mr. Turley.

Q Do you recall telling the 5th Circuit that "the public perception is that Mr. Amato and Levenson frequently dine with the Judge Porteous at their expense and that they travel and socialize with Judge Porteous on a frequent basis"?

A I recall that, yeah. I was working with very little information so I pushed it as hard as I could without crossing the line into making things

up.

Q Now, earlier with Mr. Schiff, you said that you were worried by the addition of a counsel that you listed as Amato, Creely and Levenson in one of your answers.

Robert Creely didn't make an appearance in the case, did he?

A Yeah. If I said that, I misspoke. I never -- I never -- I think I met Bob Creely once during the trial, and I wouldn't have known him before I saw him up here in Washington, again 15 years later.

Q Now, at some point you added -- I'm sorry, did you --

A I'm sorry, 13 years later.

Q Okay. At some point you added Don Gardner as an additional counsel to Lifemark; correct?

A Yeah, I believe we signed Don up in February or March of '97.

Q Isn't it true that Mr. Gardner told you that he didn't have much experience handling federal court litigation?

A I believe he did, yes.

Q And isn't it true that you wanted Gardner to talk to Judge Porteous about getting him to

recuse himself?

A Yeah. I don't recall that conversation. I know getting Judge Porteous to recuse himself was a priority with me, and one of the things I hoped Mr. Gardner's presence in the case would be -- would accomplish would be just that. I may have talked to Don about it.

Q So do you -- do you believe that you may have spoken to Don Gardner about approaching the judge?

A I don't think I talked to him about approaching the judge. I talked to him about it would be good if he could recuse himself, and having friends, good friends, on both sides of the case I thought would cause the judge to think, well, this looks bad, I don't want to do this, or get out of the case for some reason that he had some internal conflict with that.

Q Do you recall Gardner saying that he didn't think his presence in the case would have any effect on the outcome one way or the other?

A Don always made it clear to me that he didn't think, just as you said, that he would be able to steer the result of the case just by being in the case, and that the judge would not change his

view of the facts and the law based on his involvement in the case.

Q Do you recall if --

A Which of course I thought was a good thing.

Q I'm sorry, I didn't mean to interrupt you.

A Which I thought was a good thing, since I didn't think the judge should be doing that.

Q All right. Now, do you recall Don Gardner mentioning that he might talk to the judge outside of the courtroom?

A Don had a social relationship with the judge, and I believe -- Don likes wine, he likes to go to Napa Valley and order cases of wine, and talks about his love of wine.

And what he described to me were dinners and events where he would share that with Judge Porteous in a social way. That's -- that's what I understood their relationship to be.

Q By share, you mean the issue of recusal?

A I'm sorry?

Q To share this issue of recusal?

A No, to share wine.

Q Well, then so you're saying that you never -- that Don Gardner never spoke to you about

the chances that he might be able to talk to the judge outside the courtroom about the case?

A I don't recall that, Mr. Turley.

Q You don't recall that either way or --

A No, I mean, I don't -- I don't recall him telling me that he would talk to the judge ex parte.

Q Let me ask you, have you spoken to Don Gardner in the last month?

A No. I saw him -- last time I saw him was in Dorignac's, a supermarket we both go to to buy groceries on Sunday morning -- or Saturday morning. That was the last time I saw Don, about six months ago.

Q Are you aware that there is a bar inquiry regarding Mr. Gardner that's pending?

A You know, I have heard that rumor. I have no direct knowledge of it. Mr. Gardner did tell me when he saw me in the grocery store that he wished he had never met me.

Q I'm sorry?

A Mr. Gardner did tell me -- all he told me when he met me in the grocery store, I believe on a Saturday morning, was he wished he had never met me.

Q Did you take that as a reference to his role in the Lifemark case?

A Well, I don't think it's extremely pleasant for any of us to still be dragging through this stuff in whatever this year is, 2010.

Q Have you had an occasion to speak with Magistrate Jay Wilkinson about this case?

A No, I have never spoken with Jay Wilkinson about this case.

Q But you have spoken to his brother, Tom Wilkinson, about this case; correct?

A I have talked to Tom about it. Tom is the gentleman that I went to ultimately to ask for a recommendation that led to Mr. Gardner. But Tom is a separate person from his brother Jay. Jay Wilkinson used to be my partner, law partner.

Q Why would you go to Tom Wilkinson, the Jefferson Parish attorney, to ask him about Judge Porteous getting off the case?

A Tom was the parish attorney for Jefferson Parish. He knew -- Judge Porteous was from Jefferson Parish, he was a Jefferson Parish judge, he may well have worked with Tom Wilkinson.

Tom was somebody my partners recommended to help me solve that problem.

Q When you say "solve that problem," you mean the problem of having Judge Porteous in the

case?

A With two of his friends on the other side, yes.

Q And I -- so Tom Wilkinson was the Jefferson Parish attorney. Does that give him any relationship to your case, in terms of a civil case like Lifemark?

A I'm not sure what you mean, Mr. Turley.

Q Does the Jefferson Parish attorney have any formal relationship with the Lifemark case?

A No, no. He knew the social relationships and the professional legal scene in Jefferson Parish as well as anyone. And that was a milieu that I was seeking to deal with.

Q So is it true, then, or correct to say that you went to Mr. Wilkinson for the purpose of finding someone that would be able to get Judge Porteous off the case?

A I'm not sure I put it to Tom that way. I said, I have a problem. I have a case with Judge Porteous as the trial judge and it's worth a lot, a lot of money. And Jake Amato and Lenny Levenson have just signed up as trial lawyers with six weeks before trial, and I need to find someone who is knowledgeable and friendly with Judge Porteous to

help level that playing field. And that's what I went to him with.

I don't know that I talked to him about the recusal issue specifically.

Q And so it was Mr. Wilkinson that suggested Don Gardner?

A Yes.

Q And your testimony today is that you did not discuss how this might affect Judge Porteous in recusing himself from the case?

A I don't recall that, Mr. Turley. That -- I may have mentioned that I failed to get Judge Porteous recused, so, you know, it wouldn't hurt if he would do it, because I brought in another lawyer. But that wasn't the focus of what I talked to him about, in my recollection.

Q Did you have an occasion, then, to speak with Don Gardner about the case soon thereafter? How long did that take before you talked to him?

A Oh, I think probably less than a week.

Q Did you ask Mr. Gardner about his relationship with the judge?

A I'm sure I did.

Q How close friends he was with the judge?

A Yes. And that's where I learned what I

described about the social relationship so far.

Q Do you remember what you told Mr. Gardner you expected from him in this case?

A I think I told him I needed to hire him because I needed a friend of the judge on my side of the courtroom.

MR. TURLEY: Madam Chair, we would like to introduce into the record House Exhibit 35B, which we would like to give to the witness. This is the Gardner retainer agreement.

CHAIRMAN MC CASKILL: Without objection. Without objection, Exhibit 35 is entered into the record.

(Exhibit 35B received.)

MR. SCHWARTZ: Madam Chair, do you mind if I give a hard copy to the witness so he may look at it?

CHAIRMAN MC CASKILL: He can't see on his --

MR. TURLEY: It just may be easier for him to see.

CHAIRMAN MC CASKILL: Okay. That's fine.

BY MR. TURLEY:

Q Mr. Mole, we've handed you a House exhibit that is marked 35B. Is this the retainer agreement

that you arranged with Don Gardner?

A Yes, it appears to be. It's not signed.

Q Eventually it was signed, was it not?

A Yeah -- yeah, I don't know where it came from, but it's an unsigned copy of what I believe is the final letter.

Q Do you recall sending that retainer agreement to Don Gardner?

A I'm sure I did, yes.

Q Did you send it to Mr. Gardner or did you actually send it to Tom Wilkinson to give to Don Gardner?

A I don't recall sending it to Tim Wilkinson. My recollection is that we sent it to Don but -- but it says care of Tom Wilkinson so --

Q Why would you send a retainer agreement for Don Gardner to the office of Tom Wilkinson?

A I don't recall.

Q You can't think of any reason why you would do that?

A It may be at the time that I had met Mr. Gardner so recently I didn't know his address for sure. But I have no recollection of that.

Q Do you know whether Tom Wilkinson worked near Don Gardner's office?

A No, Don is in Harahan, which is on the East Bank, And Tom's office, to my knowledge, was by the courthouse in Gretna, across the river.

Q So they were separated by a river?

A Yes. That could explain why this is not signed because it could have been an earlier draft. But I just don't recall those details.

Q Do you recall if Don Gardner made any changes to that -- to the retainer agreement that you sent to him, in this case through Mr. Wilkinson?

A My recollection is that he did not, that he accepted it as written the first time.

Q Now, are you aware that Mr. Wilkinson told Gardner, just sit there with the people, that's all they want, they want you to sit there? Are you aware of that statement?

A No, I'm not.

Q Did you have a conversation with Mr. Wilkinson that indicated that that's basically what you wanted from Gardner?

A I don't recall that. You know, I met with Tom once in his office, in the parish attorney's office, before I met Don. He told me about Don, that I think -- the first time I met with Don was in my office alone.

So I think Tom's involvement was very brief.

Q Now, are you aware today that Gardner kicked back one-third of that 100,000 to Tom Wilkinson?

A Yeah, I've heard that in the years since, but I wasn't aware of that during the pendency of the case.

Q But -- and you testified earlier that Don Gardner didn't argue a single motion; right?

A I don't recall that he did, no.

Q Did he ever examine a single witness?

A No.

Q Indeed, didn't you testify earlier that Gardner did not work at trial, closed quote?

A I don't think I said that, no. He was there every day and stayed throughout the trial.

Q So a quote of -- that you said that he did not work at trial, that's not what your recollection is?

A He didn't do any oral arguments, he didn't do any witnesses. You know, Don was there and offered advice and insights about the judge.

Q Now, isn't it true, though, that you designated Gardner as the Lifemark representative to

meet with Judge Porteous each evening after the trial?

A No.

Q It is not true that you -- that Gardner was selected to meet with the judge in meetings after the trial to discuss outstanding issues?

A No. What I recall is Judge Porteous had a habit that I found interesting and unusual, after trial every day, he would call four of the lawyers -- there were a boatload of lawyers in the courtroom. And he would call four of us back. It was me and Don, I believe, and then on the other side it was, I believe, Doug Draper and Lenny Levenson, while he had drinks and smoked cigarettes, and we'd talk about the case, two on each side.

But nobody designated anybody. The judge would say I want Mole, Gardner, Levenson, Draper, and we'd go back in chambers and sit there for about 45 minutes while he had a couple of drinks and a bunch of cigarettes before they stopped that.

Q Now, Mr. Amato did do a lot of work at trial; correct?

A Yeah, he did.

Q He examined witnesses; correct?

A Jake did a bunch of witnesses.

Q And he also argued some motions; correct?

A Jake was very much at trial.

Q Did there come a time when you discussed a settlement of $18 million with the Liljebergs?

A Yeah.

Q And an offer was communicated that you might settle the case for 18 million?

A During trial, yes.

Q Now, did Lifemark ever discuss its willingness to settle for more than 18 million with you?

A With me?

Q Uh-huh.

A No, 18 million was the limit of my authority.

Q But they turned down that offer, didn't they?

A Out of hand.

Q Now, the trial itself lasted 16 days; correct?

A Spread out over those weeks, yes.

Q And you testified previously you thought that Judge Porteous was a good trial judge; correct?

A You heard what I said.

Q And he ultimately issued a 105-page order;

is that correct?

A I remember it as 108 but I'll take the 105.

Q I'll be happy to take your word on that as well. Let me ask you, when you arranged for this retainer agreement, did you inform opposing counsel that you had just agreed to get an attorney into the case who would receive $100,000 if the judge recused himself?

A No.

Q Did you inform opposing attorneys that Gardner had had lunches with the judge?

A No.

Q Did you inform opposing attorneys that he had a lot of socializing in his past with the judge?

A No. I think they were aware of that.

Q Did you tell them that they were very, very close friends?

A No.

Q Did you ask Gardner to make those disclosures to the court or to the other parties?

A No, I thought the judge's knowledge of all those things was what was important, and only he knew -- knew all that, to my knowledge.

Q Now, Mr. Mole, do you think it's ethical

to get a retainer agreement that offers an attorney $100,000 to get a judge to recuse himself?

A Well, the retainer agreement doesn't offer Mr. Gardner $100,000 if he gets Judge Porteous to recuse himself. It offers him $100,000 in the event that Judge Porteous withdraws. So the decision was up to the judge, not Mr. Gardner. I didn't pay Mr. Gardner or my client didn't pay him to go to the judge with that.

Q So did you actually offer $100,000 to all of the attorneys? I mean, was there an agreement with all of the attorneys that if Judge Porteous recused himself, everyone would get $100,000?

A Who do you mean by "all the attorneys"?

Q Well, he had more than just you and Gardner on the case, right, representing Lifemark?

A Those were the only two firms on the case. Mr. Gardner and my firm.

Q Yes. But you had multiple lawyers that were working on the case, didn't you?

A I had associates, yes. Yeah.

Q Did you offer all those attorneys that if he recuses himself, everyone here is going to get $100,000?

A No. They were already being paid.

Q And are you saying that there was -- that you didn't expect that Gardner's role here would be -- could be determinative in getting the judge to recuse himself in this agreement?

A I thought that -- maybe I was naive, but I thought that if the judge perceived that his relationship with Mr. Amato and Mr. Levenson and Mr. Gardner was such that people were willing to engage them, that it was obvious what was going on and that maybe he would step aside and recuse himself. That's really all I wanted him to do.

Q Mr. Mole, have you done these retainer agreements in other cases, with offering $100,000 like this tied to a recusal?

A This is the only motion for recuse I've ever been involved with.

Q No, I'm talking about the retainer agreement. Have you ever had a retainer agreement that you've been involved in where an attorney was offered $100,000, or any money, if a judge recused himself after he entered the case?

A No.

Q Have you ever even heard of any other attorney having a retainer agreement like this, where they have a contract that offers money if a

judge recuses himself from the case after he enters, as counsel?

A No, I'm not aware of any circumstance like this case.

Q And I just want to clarify one thing. Do you today believe that that retainer agreement that you signed was ethical?

A Yes, I believe it was ethical.

MR. TURLEY: That's all of our questions, Madam Chair.

CHAIRMAN MC CASKILL: How much time, Congressman, do you think you'll need on redirect?

MR. SCHIFF: Madam Chair, I think I'll be less than five minutes.

CHAIRMAN MC CASKILL: Okay.

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Mr. Mole, you were asked if you had any other cases where you had a retainer agreement like this one that had such a generous incentive if the judge withdrew from the case, and I think you said you never had; is that right?

A That's correct.

Q Did you ever have a case where you had attorneys drop in who were friends of the judges six

weeks before trial?

A No, this was the only one where that happened.

Q Did you have a case where people you went to for advice about the attorneys and the relationship with the judge told you the fix was in?

A No, I've never had that happen.

Q Did you ever have a case where your client insisted that you bring in a friend of the judge to even out the sides?

A No.

Q Did you ever have a case that was worth potentially $200 million that might depend on the friendship the lawyers had with the judge?

A No, my client was very afraid that that friendship on the other side would cause them to lose that much money, and certainly it did cause them to lose for a time their hospital.

Q Mr. Turley asked you whether you thought it was unethical to have this kind of agreement. You didn't want to bring in Mr. Gardner, did you?

A No, I didn't.

Q Let me ask you to direct your attention to Exhibit 65, which is the transcript of the 5th Circuit proceedings involving Judge Porteous when he

examined you during that proceeding, page 194.

Judge Porteous says:

"Question: Are you aware that again while this case was under advisement that your counsel, Mr. Gardner, accompanied me and my family to Las Vegas for a bachelor party?

"Answer: No, I did not know that.

"Question: So he went -- if I represent to you that he went, do you find anything wrong with that?

"Answer: You know, I find something wrong with the whole system that allows that to happen, Judge Porteous, so yeah, I do.

"Question: Okay. But if he -- should I have recused myself because I went with Gardner?

"Answer: Well, I'm not the judge here but --

"Question: I'll withdraw that question.

"Answer: Yeah, you should. I think you should.

Judge Porteous: I'll withdraw the question. I don't have any further questions now."

Do you recall that exchange with Judge Porteous?

A I recall that very well. It's the only

time I've ever been cross-examined by a sitting federal judge.

Q What did you find troubling about the whole system that allowed that to happen?

A I think lawyers meeting ex parte with judges and socializing with judges before whom they have cases presents a serious problem.

I think to the extent Judge Porteous described concerned me. You know, I clerked for a judge in the first year of my practice, a federal judge, who is an old Irish judge, very tough man. And if he had a friend who had a case in front of him, he'd stop dealing with the friend until the case was over, and certainly wouldn't allow him to come into chambers or go out with him.

And maybe I'm unique, but I think that the system breaks down if the judges break down and if something other than the facts and the law, namely their relationships, dictate how the cases turn out.

MR. SCHIFF: No further questions, Madam Chair.

MR. TURLEY: We're done with this witness, thank you.

CHAIRMAN MC CASKILL: Bless you, Professor Turley.

You are excused.

We will reconvene at 8:00 a.m. in the morning. Thank you.

THE WITNESS: So I'm finished?

CHAIRMAN MC CASKILL: You are, Mr. Mole. Thank you for your attendance here today.

And thank all the parties today for your patience. We will try to get even more done tomorrow.

(Whereupon, at 7:26 p.m., the proceedings were adjourned, to be reconvened at 8:00 a.m., on Tuesday, September 14, 2010.)

C O N T E N T S

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United States Senate

Impeachment Trial Committee

Impeachment of Judge G. Thomas Porteous, Jr.,

U.S. District Judge

For the Eastern District of Louisiana

Volume II

Tuesday, September 14, 2010

Dirksen Senate Office Building

Washington, D.C.

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-- continued --

APPEARANCES (Continued):

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P R O C E E D I N G S (8:11 a.m.)

CHAIRMAN MC CASKILL: Good morning to all. I want to thank my colleagues for being here so promptly this morning. I apologize there wasn't coffee in the back when you got here, but it should be here any minute. So as long as there's seven of us on the dais, people are free to wander back and get coffee as it arrives.

I want to thank everyone. I think we had a very long, productive day yesterday. We're going to have the same kind of day today. Let me do a little housekeeping in terms of the schedule. We are supposed to have a series of three votes beginning at 11:00.

So it is my intention to go without a break until those votes are called, wait until five or 10 minutes into the first vote, and then adjourn until approximately 11:40. So everyone will have an opportunity to go over and cast all three votes, and we won't have to run back and forth.

But as soon as the third vote is cast, I would ask all of you to come back very, very quickly so that we can get an hour in between approximately 11:40 and 12:40.

And then we will break for caucus lunches, and we will then resume -- I think we will resume at 2:30. And then we will -- it's my intention to stay if not as late, almost as late as we did yesterday, and hopefully we will

be able to get a lot more done.

There was a motion -- there was a motion by the House to admit into evidence the exhibit that was a 302. We have visited with our counsel, and Senator Hatch and I visited about it. I think the committee's inclination is to not admit the 302 as evidence for the same reasons that we did not admit the grand jury testimony in total, but even more so because it was not under oath, and so therefore, we think probably it's not appropriate for it to be admitted into evidence.

Obviously, using any method that you have to impeach or to refresh recollection is okay, but we're not going to admit the 302s as evidence in and of themselves. So I wanted to give you that decision.

Let me also give you your time. The House has 15 hours and 40 minutes remaining, and Judge Porteous has 16 hours and 13 minutes remaining.

I think there has been a request, it's my understanding, Congressman Schiff, that you have decided not to call Mr. Levenson as a witness in the House's case?

MR. SCHIFF: That is correct, Madam Chair, not at this time.

CHAIRMAN MC CASKILL: And it's my understanding, Mr. Turley, that you all do want to call Mr. Levenson as a witness in your case?

MR. TURLEY: We do, Madam Chair. We're prepared now, or he can be held over.

CHAIRMAN MC CASKILL: I'm trying to let you all try your cases, and I think it's not appropriate for us to interrupt the House's case with a witness for Judge Porteous. So I'm going to let the House finish their case, and Mr. Levenson will just have to stay over until -- I would ask, if possible, unless you have a really good argument not to -- obviously, the argument is going to pay for him to stay here until your case begins. We would ask that you put him on at the beginning of your case so that he is not held over over the weekend.

MR. TURLEY: The committee has previously instructed us, there were other cancellations by the government, including Judge Greendyke, which occurred right before the start of the trial, and we're on instructions also to put him forward. It's having a pretty disruptive impact on our case, because our bankruptcy witnesses and lawyers must leave when we start our case, we have a very short time before they all have to leave.

That's one of the reasons why I suggested that they could just pass the witness today. They could just say what's your name and say we pass the witness. If they don't do that, we need to move our bankruptcy people because they are leaving town and we're already shifting

one of their previous witnesses forward to accommodate Mr. Greendyke.

And so we will promise to try to get Mr. Levenson as early as possible, but we do need to move those witnesses out at this point.

CHAIRMAN MC CASKILL: Are the bankruptcy witnesses under subpoena?

MR. TURLEY: Several of them are paid-for experts. But like Mr. Greendyke, when their witness said I have to leave, we were told okay, call him early. So we shifted all of our witnesses. And now our witnesses have, you know, reservations and plane reservations. To knock them out -- we talked to them last night, and there was no cancellation of Mr. Levenson.

CHAIRMAN MC CASKILL: Why don't we get started, and over the break or over the lunch break, we will have an opportunity to discuss this as a matter of housekeeping when witnesses are called.

I will gently point out with a smile on my face that perhaps this can move along more quickly and we will have a chance to get to the bankruptcy lawyers and Mr. Levenson and the judge all before we finish work on Thursday.

MR. TURLEY: Madam Chair, in terms of our allotted time, just to give the Senators a heads up on

this, the main four witnesses, we've gone through two of them. We have two more that have a big chunk of time, and then the time periods become much, much shorter. So we've got two more witnesses where both sides have a large investment in.

Can I raise one more issue, Madam Chair?

CHAIRMAN MC CASKILL: Yes.

MR. TURLEY: As the committee is aware, the night before the trial, we received additional discovery, and I want to thank the committee and the staff for trying to get the Department of Justice to release that information. I know that the staff worked very, very hard against a reluctant agency.

With that information came a letter from Ronald Wright, the assistant attorney general, and he stated that the Department of Justice would not be turning over memorandum, specifically on why Judge Porteous was not charged with a crime, and that letter actually states or concedes that they did turn over that same information in prior impeachments and concedes that, indeed, in the Nixon proceedings, they turned it over and makes a curious point, but there was a trial in that case, which in our view it's even more important as evidence when there wasn't a trial in a case.

What we would like to do is two things: Once

again ask the committee again to point out to them that this is a very conflicted, and we don't see a well-based reason to not turn over that evidence that was turned over to other accused judges. And second, we would like to enter this letter into the record as evidence as Porteous Exhibit 2005 so that at a minimum the letter should be in the case.

CHAIRMAN MC CASKILL: It was turned over in Nixon because of prosecutorial misconduct, and we have a subpoena under advisement as we speak.

Is there an objection to the inclusion of this letter as an exhibit?

MR. SCHIFF: There's no objection.

CHAIRMAN MC CASKILL: The letter will be included as an exhibit, and we are working on trying to get all of the information that we can.

MR. TURLEY: And we thank you for that, Madam Chair.

(Porteous Exhibit 2005 received.)

MR. SCHIFF: The House has scheduled a series of two or three votes at 6:00. We wouldn't need to leave until well into that 15-minute period, and we could come back thereafter, but I wanted to make sure the Senate was aware of that.

CHAIRMAN MC CASKILL: We would be happy to

accommodate your schedule in that regard. Are there several in a row?

MR. SCHIFF: The first will be a 15-minute vote, and we will have, I think, one or two others after that.

CHAIRMAN MC CASKILL: We will work with you to make sure you don't miss votes.

MR. SCHIFF: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: You may call your next witness, Mr. Schiff.

MR. SCHIFF: The House calls Louis Marcotte.

Whereupon,

LOUIS MARCOTTE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOODLATTE:

Q Would you, please, state your full name.

A My name is Louis Marion Marcotte, III.

Q Mr. Marcotte, where do you live?

A I live in New Orleans, Louisiana.

Q And what do you do for a living?

A I have a clothing store called Italy Direct.

Q And what type of clothing is that?

A It's an Italian boutique that sells high-end clothing.

Q And tell the Senators a little bit about yourself. Where did you grow up?

A I grew up in a little town called Gretna, Louisiana. It's right on the other side of the river from New Orleans.

Q And what was your financial background growing up?

A We grew up pretty poor, me and my family. We had a two-room house with about six of us in it and, you know, we barely made ends meet.

Q What kind of education do you have?

A I have -- I graduated from high school, and I have one year of college.

Q And at some point in your life, did you go into the bail bonds business?

A Yes, I did, around 1979.

Q How did that come about?

A I went to work for a guy named Rock Hebert. He was a bondsman in the area. When he died, I opened up --

Q What did you do for Mr. Hebert?

A For Mr. Hebert, I was a janitor. I started there as a janitor, working cleaning his building and emptying the trash and stuff like that.

Q And at some point you came to start your own company?

A Yes. After he died, I saw an opportunity across from the Jefferson Parish Courthouse, and I opened an office there, and it was called the blue house.

Q Do you remember the approximate year?

A Probably around '82, '83.

Q And what was the name of your company?

A Bail Bonds Unlimited.

Q And did any other family members work there?

A Yes. My whole family worked there, my mom, my sister, my dad, and my other sister, Lisa, Lori and Lisa.

Q Your two sisters, Lori and Lisa?

A Yes.

Q So this was a mom-and-pop business starting out?

A Yes, it was.

Q And what did Lori do?

A Lori basically handled the controls of the business, meaning all the accounting, and she did sales as well, and basically, that's what I ran, too, the sales department.

Q Was Lori knowledgeable about the operations of the company?

A Yes, she was.

Q And did she work closely with you?

A She did, very close.

Q And by the late 1990s, what was the size of your

business?

A I was probably doing in dollars in the late '90s probably 6, 7 million in premium.

Q And by the time the business closed, what were you doing?

A Somewhere around 30 million.

Q And how many states were you operating in?

A About 34 states.

Q And how many employees did you have?

A I had 300 employees and 1,000 licensed agents in the field.

Q Describe your life in the bail bonds business. What was it like?

A In the beginning, for a very long time, I stood in front of the jail, and as the families went in to get bonds, I ran behind them.

Q So you worked long hours? Is that what you're saying?

A What's that?

Q You worked long hours?

A Yes. I slept in my car, and I slept in my office.

Q And why did you do that?

A Because when someone gets arrested, the families go to the jail first. So if you were parked out in front

of the jail and sleeping there, you will see the families walking in, and you can hustle them and bring them back to your office and write the bond.

Q Is it fair to say you were in the bail bonds business until about 2003?

A Yes, sir.

Q And were you put out of business as a result of a federal criminal investigation?

A Yes, sir, I was.

Q Let me step back here. Can you explain the bail bonds business to the Senate? In particular, can you explain how you, as a bail bondsman make money in the bail bonds business?

A Yes, I can. A bail bondsman is nothing more than an insurance agent, like a State Farm agent. We make a commission for selling a policy. The amount of money that you make determines the contract that you have with the insurance company. If you want to take all of the risk, you make 90 cents on a dollar. If you want to take half the risk, you make 50 cents on a dollar. In my case, I took all the risk and made 90 cents on a dollar.

Q So the magistrate would set a bond? Is that how it ordinarily would start?

A Yes, the magistrate would set the bonds every morning.

Q And then if the prisoner can't meet the bond, then he would work with a bondsman; is that correct?

A Yes, he would.

Q And how would that arrangement work?

A Well, you know, if I caught him at the jail at 3:00 in the morning, sat him in my office so I could get bond set before the magistrate --

Q If the magistrate set a bond for $50,000, what would your arrangement be with the prisoner?

A I would ask the defendant or the family hey, do you have the 5,000 to get him out of jail.

Q Is that a standard rate, 10 percent?

A Yes, yes, it is.

Q And so did you have an interest in how high the bond was set?

A Yes, I did.

Q And how did that work?

A Well, you know, if the family had a $50,000 bond -- I mean, if there was no bond and the guy could make a $100,000 bond and I could get a $10,000 fee out of it, I would ask for the highest bond that I could get.

Q So if the bond were set too high and the prisoner couldn't make it, did you make any money?

A No, I couldn't.

Q And if the bond were set really low or if the

prisoner were released on their own recognizance, would you make much money or any money?

A I couldn't make any money.

Q So again, as a practical matter, if a bond is set at $100,000, how much will you make?

A With my contract with the insurance company, 9,000.

Q So the bond would be 10,000, and you would make 9,000. Where would the other $1,000 go?

A To the insurance company. Now, remember, the insurance company was held harmless. I was liable for the 100,000. All they did was supply the paper for us to post at the jail. It wasn't real dollars. It's just paper.

Q In Gretna, Louisiana, in the 1990 to 1994 time frame, I want you to just walk the Senators through how bonds were typically set and what your day would be like. First, who would typically set the bond?

A The magistrate.

Q And then describe the circumstances when you would want to avoid the magistrate and go to a judge to set the bond?

A I would get the bond set before the magistrate came in in the morning, so he had no chance of getting released on a free bond.

Q If you were concerned the magistrate would

release him on his own recognizance, what would you do?

A I would go in and get a judge to set the bond so I could make the money.

Q If you thought the magistrate set the bond too high, what would you do?

A I would go tell a judge that would reduce it for me.

Q Were there times that you also needed access to a judge for competitive purposes because there were other bail bondsmen in the courthouse?

A Yes, there were plenty of times where we would go to the judge with the worksheet, "worksheet" meaning the request and the request that Bail Bonds Unlimited would ask the judge for. While the request was in the judge's office, we wouldn't have them call the bond in until we have an agent at the jail ready to Post-it so we wouldn't lose it.

Q And if you wanted to avoid the magistrate, could you go to any judge in the courthouse?

A Not any judge. At different times in those 20 years, it was different judges.

Q And when you would talk with a judge about a bond, would a prosecutor or a defense attorney be present?

A No, they wouldn't.

Q And every time a judge sets a bond for which a

prisoner could actually afford the premium, is that money in your pocket?

A Yes, it is.

Q Did there come a time that you met Judge Porteous?

A Yes sir, there was.

Q How do you recall meeting Judge Porteous?

A Well, I had a guy named Adam Barnett. His dad was a lawyer in the courthouse for a long time, and Adam had connections with a few different judges because of his father. And so Adam actually introduced me to Porteous and Rhonda, his secretary.

Q So he was another bondsman?

A He was another bondsman.

Q How did you form a relationship with Judge Porteous?

A By meeting Porteous and getting closer to him because Adam introduced me to him, then all of a sudden he started, you know -- he started spending more time with me than Adam.

Q And what kind of time was that? How would you spend that time with him?

A You know, dinners, lunches, more lunches than dinners, but lunch twice a week, something like that, several times a week.

Q Also, you started getting to know his secretary, Rhonda Danos; correct?

A I started what? I'm sorry.

Q Did you start to get to know his secretary as well?

A Yes, I did.

Q And over time, can you describe the frequency with which you took the judge to lunch?

A I would say several times a week, you know, two. I guess two would be a good guess.

Q And how would these lunches be arranged? Did you call him, or did he call you?

A In some cases he would call me. Some cases, I would call him. Some cases, we would call Rhonda, and she would set it up.

Q Was it just you and Judge Porteous?

A Not necessarily. Most of the time I had a group of people with me.

Q And who else would that be?

A I had Rhonda, I had a few people from my office. And if we can invite other judges or state reps or anybody who was connected with the criminal justice system, we would try to bring them to the table as well.

Q And did you include Rhonda?

A Yes, I did.

Q And did you let him bring or invite whoever he wanted to?

A Yes, I did.

Q And did Porteous -- Judge Porteous know that he was permitted to invite other persons?

A Well, yes. It was unspoken, but, you know, we were okay with anyone he wanted to bring.

Q And describe Judge Porteous's personality in a group situation like these lunches.

A A leader, very funny guy, very smart, too.

Q Did you want him to have a good time?

A I wanted him to have an excellent time.

Q Was it good for you to be seen with Judge Porteous?

A Yes, it was, because what it would do is, you know, it would make me look more like a businessman instead of a bail bondsman, because in the world of bail, the bail bondsman doesn't have a real good reputation.

Q And what was Judge Porteous's reputation as a former prosecutor and a judge?

A Well, he was known as a leader.

Q Describe these lunches. What happened?

A We would sit and drink and eat. We would talk about different things, but we would always talk about bail.

Q How long would they go on for?

A Sometimes an hour, sometimes two hours, sometimes five hours.

Q All afternoon sometimes?

A Yes.

Q And lots of drinking?

A Lots of drinking.

Q And where would you take him? What kind of restaurants would you take him to?

A Ruth's Chris, you know, the Beef Connection, Salvatore's.

Q What types of restaurants were these?

A I'm sorry?

Q What types of restaurants were they?

A Kind of high-end restaurants, you know.

Q Like Ruth's Chris is a steakhouse --

A Yes, sir.

Q -- that may be known outside of New Orleans. I'm familiar with Ruth's Chris steakhouse. Were the other restaurants you took him to comparable to Ruth's Chris?

A In some cases they were. I can't remember ever going to eat at a little sandwich shop, but it's been a long time, too.

Q Sure. Did you enjoy these lunches?

A I did enjoy them. And then at some point, I

wasn't enjoying them anymore because I started sending other people to go.

Q Could you take all afternoon off and do this kind of thing? Was it a problem?

A In some cases I could; in some cases I couldn't; in some cases I didn't want to.

Q Okay. Do you have any sense for when these lunches started?

A You know, it's been several years. It could have been '94, '95. Again, it's been a long time.

Q Could it have been earlier than that?

A It could have been earlier than that.

Q Do you recall when you first met Judge Porteous?

A You know, again, some time in the '90s, and it might go to '89, you know, '88, but I don't think any earlier than that.

Q And did you start taking him to lunch not long after you first met him?

A Well, it took a little while, you know, maybe six months or something.

Q Okay.

A But --

Q By the end of Judge Porteous's tenure on the state bench, how frequently would you take him and others out to lunch?

A After he was on the state bench?

Q Well, by the end of -- before he became a federal judge, at the end of the time he was on the state bench.

A Just, you know, about twice a week, which would be a good guess.

Q And who paid for these lunches?

A BBU paid, I paid.

Q BBU meaning?

A Bail Bonds Unlimited.

Q Your company?

A Yes, sir.

Q How many times did Judge Porteous pay for lunch?

A That I can recall, none. He never.

Q Never?

A Never.

Q And when you would take Judge Porteous and a group out to lunch, in your mind, was the money you spent on that meal money money that you spent on Judge Porteous?

A I kind of looked at it as an investment.

Q And you were -- for whose benefit?

A For my benefit and, in some cases, his benefit.

Q Okay. And let me turn now to the subject of automobiles. Did you have anything to do with Judge Porteous's cars in the time period prior to 1994?

A You know, it's hard to say, the time frame, was it '93, '92, yes. What I can say is I fixed cars for he and his family.

Q And what do you mean by that, fixing cars?

A Tires, radios, transmissions, body work. Every time I took one of his cars, I filled it up with gas and washed it as well.

Q All right.

A I mean, I really wanted to make a statement, you know, when I did something for him.

Q And how did that start?

A It started with Adam Barnett bringing the keys.

Q Adam Barnett was the earlier bondsman?

A The earlier bail bondsman. He would bring the cars, and he wanted to share the expense. He would pay half, and I would pay half. I didn't have the contact with Porteous, but I was paying half. And then at some point, you know, I started paying the whole thing and kind of edged Adam out of the way, probably because I had more money and Adam was not as probably trustworthy of a guy.

Q And can you describe these cars?

A Yes. They were old and kind of beat up.

Q And how many cars are we talking about?

A We're talking about three, four cars.

Q Just for the judge himself?

A No, for his kids and him and, you know, maybe I repaired his wife's car. I'm not exactly sure about that. But I can actually say right now his kids' and his car.

Q And how did it come to your attention that these cars needed repairs, needed washing, and so on?

A Well, there were different times. Like if we would be at lunch, he would say Tommy's car is broke, and I would say judge, I will take care it. There would be times Rhonda would call and say the judge's car is broke, he wants you to come get the key.

Q And how frequently did you make repairs to the cars?

A You know, it's been a long time, but I'd probably say it could have been maybe once a month or once every three months. Again, it's been a long time.

Q Do you remember the names of some of the auto repair establishments that did the repairs?

A Yes. One of them was Tony Voo. I believe I put tires on his car at Uniroyal. Delta Electronics put a stereo in his car. There was different mechanics that I got it worked on, carburetors and mechanical problems, transmissions. I think there's a transmission shop on Manhattan Boulevard. I don't remember the name, but I think we put a -- I know we put a transmission in one of his cars from that place or rebuilt one.

Q Who is Jeff Duhon?

A Jeff Duhon is my brother-in-law.

Q He was married to Lisa?

A He was.

Q Did he work for you?

A Yes, he did.

Q And who is Aubrey Wallace?

A Aubrey Wallace was another guy who worked for me.

Q And did Wallace have a nickname?

A Skeeter.

Q So did Jeff and Skeeter have anything to do with taking care of Judge Porteous's cars?

A Yes, at that point in my life Jeff and Skeeter was kinda -- I didn't ever want to leave the bail office, because I wanted to sell. So Jeff and Skeeter were kind of my runners.

Q What do you mean by "runners"?

A You know, repair the cars, fix stuff, anything that would not get me out of my office because I didn't want to lose a sale.

Q Did Judge Porteous ever tell you directly that he needed car work?

A Yes, I've been at lunch with him when he would say look, Tommy's car needs to be fixed, here's the keys.

Q Who paid for the repairs?

A I did.

Q Did Judge Porteous ever reimburse you?

A No, he never.

Q Did there ever come a time that you provided home repairs to Judge Porteous?

A Yes. A storm, some of his fence blew down, and I sent Jeff and Aubrey, which is Skeeter, to do the repairs on the fence.

Q Do you recall whether Jeff had to purchase construction materials?

A Yes, he did.

Q And I think you stated in 2004 that you thought Jeff may have paid $200 for the boards. In your mind, would Jeff have a better sense of how much he spent?

A I think Jeff would know more because I was so involved with so many other things that, you know, boards on the fence wasn't really a priority in my life at that time.

Q Did Jeff and Skeeter actually do that work?

A Yes, they did.

Q In or about 1993 or 1994, did you ever have occasion to arrange a trip to Las Vegas with Judge Porteous?

A Yes, I did.

Q Do you recall how that came about?

A Well, I kind of wanted to get closer to him, and I figured if we went on a trip together, you know, it would build a better relationship, a closer relationship.

Q And do you recall what year that was?

A You know, if you say it's '94 or '93 -- I mean, I don't know exactly, because it's been a long time, 20 years now almost.

Q Who went on that trip? Do you recall?

A Two of my buddies at the time, and still my buddies, Phillip O'Neil and Bruce Netterville, two lawyers, me, and there was a few other people. I think maybe one or two of Porteous's friends, too, and Judge Giacobbe.

Q And Judge Porteous?

A Yes.

Q And you think some of Judge Porteous's friends?

A Yes.

Q And why were the lawyers invited?

A Well, again, the stain that the bail bonds industry has at a national level, I wanted to mix some lawyers in there so it wouldn't look so bad with him going to Las Vegas with me without some lawyers.

Q And who invited the lawyers?

A I invited the lawyers, telling them look, hey, let's go to Las Vegas with Porteous, we can develop a

closer relationship with him if we, you know, wine and dine him and treat him.

Q And do you think it included Bruce Netterville?

A Yes, it did.

Q Who paid for that trip?

A Bruce, Phillip, and myself.

Q And how did you pay for the trip?

A Well, between my office and Bruce and Phillip, we rounded up enough cash to pay for his trip to Vegas, and then we gave the cash to Rhonda, who deposited it in her checking account and cut the checks for his Vegas tickets.

Q "Rhonda" being Judge Porteous's secretary, Rhonda Danos?

A Yes, sir.

Q Why was the payment for the trip arranged in that fashion?

A Because we were trying to hide it from the world.

Q And what do you remember Judge Porteous doing in Las Vegas?

A The whole time, he drank and gambled.

Q Let me turn to the real question. Why did you do all of this for Judge Porteous?

A Because I wanted to better my business and be able to get the bonds done.

Q And how did Judge Porteous help you make money?

A Several different ways. He helped me make money with bonds. He helped me make money by grooming other people to help me.

Q So let's talk about the bonds first. When you say he helped you make bonds and that helped you make money, what did he do in particular that helped you?

A He was available to me to do bonds at my request.

Q And when you say "do bonds," would this be a situation where the magistrate hadn't set the bond or had set the bond too high?

A Yes. It would be cases that the bonds were too high, cases that the bonds weren't set at all.

Q So you could go to him to set bonds?

A Yes, I could.

Q Did you go to him for anything else with regard to bonds?

A Just to reduce and set.

Q And describe to the members how you would have Judge Porteous set bonds?

A We had some worksheets, and what we would do is the worksheet would have the request of what the defendant could make in a bond. We would get the bond set to the amount that the defendant could make.

Q And would you go to his chambers, or how would you do this?

A There would be different ways. We would go to his chambers. We would drop him off with Rhonda. We would call at the house. Basically, sometimes at lunch, you know, he would approve the worksheet, and Rhonda would take the worksheet back to the Court and call the bond in.

Q Did you ever need to get in touch with him when the court was not in session, like at night or over the weekend?

A Yes, I did.

Q And how did you do that?

A Call him.

Q Call him on the phone?

A Yes, sir.

Q And describe how that would happen.

A Hey, Judge, I've got this bond, if you could see fit in setting it, this guy could make 100,000.

Q Was Rhonda Danos important to you in dealing with Judge Porteous?

A Yes, she was the gatekeeper.

Q Describe what the conversation was like between you and Judge Porteous about setting bonds. What would you tell him?

A If I didn't have a worksheet or if I had a

worksheet, I would say Judge, this is the kind of bond that the defendant can make.

Q Was it important to you to tell him this was the amount of money that the defendant could afford?

A Yes, it was, because the bond that I would ask for would maximize the profits of my company.

Q And when you went to him to set the bond, you would have the amount in mind to set?

A Yes, I would.

Q And how would you know what the person could afford?

A There was a few ways that we would know. We would qualify, take an application, run credit reports to see if he was financially able to pay a certain amount of bond.

Q The most important thing to you was how much they could afford to pay, not how much it would be likely they would have to put up for a particular crime? You were looking to maximize your return, and that was based upon what?

A Profits for our company.

Q Right. And what's the maximum profit you could make from an individual prisoner?

A By being able to post a bond and get 10 percent.

Q And what would be the maximum amount that you

would pay?

A I don't know if I understand the question. 10 percent.

Q Okay. The information you gathered from the credit records, from the interviews, from talking to family members, allowed you to ascertain how much money they had?

A Yes, sir.

Q How would you utilize that information in setting the bond?

A Well, as far as the credit report, you get the history of someone's credit.

Q Once you had all that information and you knew how much money they could gather --

A Absolutely.

Q -- what would you do with that?

A I would set the bond -- either reduce the bond or set it to the amount that the defendant could make.

Q In your conversation with Judge Porteous, did you ever specifically tell him what the prisoner could afford?

A Yes, I could. I would always say hey, judge, if you could see fit in setting this bond, this is what I would like to have it set.

Q Just to be clear, you would on occasion tell Judge Porteous, Judge, he can only make a $5,000 bond or a

$10,000 bond or whatever?

A Yes.

Q Was Judge Porteous aware that when he set bonds at your request that he made money?

A Anyone that didn't, they would have to be an idiot not to know.

Q So you went to all the judges to set bonds; correct?

A Yes -- not all of them, most of them.

Q Were there particular bonds that you went to Judge Porteous to set for you?

A Yes.

Q What were they?

A Fugitive bonds, probation bonds. Probation bonds that other judges didn't want to set them, that it wasn't their case. A fugitive bond, do you want me to explain --

Q Explain why you would go to Judge Porteous when you were having another judge that was handling the case.

A On some cases -- I would go because I could get it done with him. There were some judges I knew I couldn't get it done. So what I would do, if somebody had a fugitive bond or extradition bond and was wanted in Washington on a burglary, I would set a fugitive bond for them in New Orleans, and the guy could get released in

Jefferson, and then they would have a hearing in Jefferson to determine whether he has to come back here or not. But it would actually get the defendant out.

Q You -- sorry. Tell the Senators what split bonds are.

A A split bond is -- let's say the judge sets a $200,000 bond on a guy. The family -- we do credit reports. We see what they can make. If they can make 100, well, the bond's 200. Well, if we only get 10,000 on a 200, we don't make any money because -- there's other fees that are at the jail. On bail, they've got a 40 percent tax at the jail. So by the time I paid the insurance company and by the time I paid the surety company, I wouldn't have any money, and I would have the liability.

So what I would do is get a family member to come in. It's called unsecured surety. I would have a family member come in. He could be Joe Blow worth zip. But as long as he has a valid ID, he signs for 100,000 on his name, and then we post a 100,000 commercial bond.

Q So if he only had $10,000 you could maximize that 100,000, and the other 100,000 would be on somebody's surety?

A Yeah, unsecured surety, basically a promissory note that in most cases was worth nothing. And then 100,000 commercial was worth 100 grand.

Q Was it helpful for you that Judge Porteous was willing to split and reduce bonds that other judges weren't?

A It was very helpful, because there was hardly anyone that we couldn't get out of jail.

Q Did you ever talk about bond setting on the days that you took him to lunch?

A Yes, I did.

Q Before, during, and after lunch?

A Yes. We showed up with worksheets for lunch, you know. Not in the beginning, but as our relationship grew, then we started bringing the worksheets to the table. And Rhonda would be there. He wouldn't call them in from the lunch table, but he would approve them, and then when Rhonda would get back with five, six, 10 worksheets, then she would call the jail.

Q And would you go back to his chambers after lunch?

A Yes, I would go back to his chambers. If I didn't see him, I would see Rhonda and see if he did the bonds, and most of the times, they were done.

Q So let me be clear. Let's say you would drop $100 or $200 for lunch. Right there at the lunch, you could talk to the judge about bonds or go back to his chambers after lunch --

A Yes.

Q -- and get him to sign bonds?

A Yes.

Q Did any of the conversations concerning repairs to his car occur in his chambers when he was setting bonds?

A I think more at the lunch table, you know, here's Tommy's keys or the car's broken again or Rhonda would call. But after she called, maybe 10 minutes later, we would call and say hey, judge, can you do this bond. He was a little more apt to do things when I was fixing cars and we was going to lunch together.

Q I previously asked you about Jeff Duhon. When he first started working for you, what did he do?

A He kind of started like I did in the bail bond business as a janitor, cleaning up, running all my errands, you know. I only had so many errands to run, but I did have a lot. So it wasn't a full-time job, so I wanted to work him in the bail office. So at some point he started answering the phones and waiting on people to roll out of jail. When someone rolls out of jail, we have to bring them back to the office and take a picture and everything like that. So it became advantageous to me to get him licensed.

Q When Jeff first worked for you, could he write bonds?

A No, he could not.

Q Why not?

A Because he had a conviction --

Q What was the conviction?

A I believe it was a burglary.

Q It was a felony conviction?

A Yes.

Q Why would that prevent him from writing bonds?

A Unless the commission insurance approves it, you cant be convicted of anything, and I knew that I couldn't get the commissioner to waive it. So we thought it would be easier to get the conviction set aside and have his record expunged.

Q Is there anything did you to help Jeff and to help your business deal with the felony conviction?

A Yes. What I did was -- I can remember clearly, Jeff's case was not allotted to Porteous. It was allotted to another judge. So another judge had Jeff on probation. So I wanted to get Porteous to talk to that judge to see if he would expunge and set aside Jeff's conviction so he could become a bondsman.

Q And do you know whether Judge Porteous did that? Did he expunge it himself?

A He said he asked the judge. I don't know, because I wasn't there. But at some point, he set aside

the conviction --

Q Judge Porteous did?

A Yes, he did, and he expunged his record.

Q And did you personally have a conversation with Judge Porteous concerning that request?

A Yes. To be honest with you, I rode hard on him, you know, for maybe a couple months, hey, when are you going to do it, when are you going to do it, when are you going to do it, and at some point he did it.

Q How certain are you that Judge Porteous expunged Jeff Duhon's conviction at your request?

A Well, I was able to get him a bail license.

Q Was there anything about that action by Judge Porteous that stands out as particularly unusual?

A Yes, because he set aside a conviction and he expunged a record on another judge's case.

Q Whose case was it?

A I believe -- I think it was Richards' case, Judge Richards.

Q And why do you recall that?

A Because again -- I think it was Judge Richards, but it was definitely another judge's case.

Q Now, let me turn to the summer of 1994. Were you ever made aware that Judge Porteous was under consideration to be nominated as a federal judge?

A Yes, I was.

Q Were you ever interviewed by the Federal Bureau of Investigation, the FBI, as a part of that background check?

A Yes, I was.

Q In connection with your testimony, has your memory been refreshed on how many times you were interviewed?

A Yes, it has.

Q And how many times were you interviewed?

A I was interviewed twice.

Q Did Judge Porteous know you were going to be interviewed?

A Yes, he did.

Q How do you know that?

A Because he told me that they were coming to interview me.

Q And you've been asked about what you said on the background check on prior occasions. First, the FBI agents' write-up of the background check reflects that you said -- and we have a slide to pull up here. So taking these sentences one at a time, the first sentence refers to alcohol, and it reports you as saying that "the candidate will have a beer or two at lunch." That's referring to Judge Porteous.

Was that a true statement?

A No, that was a false statement.

Q Why was it false?

CHAIRMAN MC CASKILL: For the record, would you indicate what exhibit it is you're referring to?

MR. GOODLATTE: I'm sorry. It is a part of Exhibit 69B.

CHAIRMAN MC CASKILL: Thank you.

MR. DUBESTER: Senator, if I may, 69B, there's a Bates number, too. It's PORT 472, and Exhibit 69B is the background check file.

BY MR. GOODLATTE:

Q So we were talking about why you knew the statement you made that he had a beer or two at lunch was false. How did you know that was false?

A Because I watched him drink five, six, seven Absolut straight up.

Q Why would you lie for him?

A Because through the years, he was good to me, and I wanted to see him get his federal appointment. At that point, we still had time left with him. If I would have told the truth -- I wouldn't have had any reason to tell the truth. He's been good to me, and I wanted to see him get what he wanted.

Q The second sentence states that you have "no

knowledge of the candidate's financial situation."

Was that the truth?

A No, that wasn't the truth, because you could tell by his surroundings with the cars, and they were old and they were broken, and you could see that he was having financial problems.

Q Did he have some lifestyle issues?

A Yes, he did. He gambled a lot and drank.

Q And did know that those were costly to him?

A Yes, I did.

Q Why didn't you tell the FBI that you knew Judge Porteous had financial problems?

A Because again, you know, I wanted him to be confirmed. I was trying to protect him, and I wanted him to get his lifetime appointment.

Q The third is the sentence that reports that you were "not aware of anything in the candidate's background that might be the basis of attempted influence, pressure, coercion, compromise, or that would impact negatively on the candidate's character, reputation, judgement, or discretion."

Do you see that?

A I am aware of that.

Q You were aware of everything you just testified to; correct?

A Yes, sir.

Q And you knew that your own relationship was improper, didn't you?

A Yes, I did.

Q You knew you couldn't take a judge to Las Vegas, didn't you?

A Yes, I did.

Q And during the time of those interviews, you were deliberately hiding the full extent of your relationship with Judge Porteous?

A Yes.

Q Why?

A To protect him, and to protect myself, too.

Q And then on a separate interview, you were asked about a particular case called the Keith Klein case.

Do you recall that?

A Yes, I do.

Q And that involved an allegation that Judge Porteous received money from an attorney to lower bail in that case; is that right?

A Yes.

Q And did you have firsthand knowledge of the allegations?

A Not firsthand, but yeah, the lawyer told me that Keith Klein was in his office and that he felt like he was

wired and he was asking him questions about money.

Q "The lawyer" being whose lawyer?

A The lawyer who got the bond reduced.

Q In your two interviews with the FBI, what was your motive?

A To make sure Porteous got his lifetime appointment.

Q And did you feel you were telling the FBI what Judge Porteous wanted you to tell them?

A Yes, I did.

Q Did you feel that your interview with the FBI was a part of the relationship that you described where you would do things for him and he would do things for you?

A Yes.

Q Did you have conversations with Judge Porteous after either or both of those interviews about the interviews?

A Yes, the conversation before when he told me they were going to come to see me, and two or three other times when we went to lunch, we talked about, you know, what they asked and, you know, I guess asked me two or three times just to make sure everything was clarified.

Q What did you tell him you told the FBI?

A Thumb's up.

Q Also in the summer of 1994, do you recall making

any requests of Judge Porteous regarding Aubrey Wallace?

A Yes, I did.

Q What do you recall asking Judge Porteous?

A I said Judge, could you get this guy's record expunged so he can become a licensed bail agent.

Q And do you recall having one conversation or more than one conversation on that topic?

A Again, I rode herd on him till I could finally get him to do it.

Q And do you recall Judge Porteous's response?

A He kind putting me off, putting me off. And he said look, Louis, I'm not going to let anything stand in the way of me being confirmed and my lifetime appointment, so after that's done I will do it.

Q Did he say why he wanted to put it off until after the confirmation?

A Again, he didn't want anything to get in the way of his lifetime appointment.

Q What kind of things could get in the way?

A If the government would have found out some of the things that he was doing with me, it would probably keep him from getting his appointment.

Q And would there be a public record of that?

A Yes, there would. It would come out in the newspaper or --

Q In fact, did Judge Porteous do what he said he would do?

A He did.

Q Did he set aside Wallace's burglary conviction?

A Yes, he did.

Q And was it after he was confirmed by the Senate?

A Yes, it was.

Q Did you understand this as something that he did for you or something he did for Wallace?

A It was something that he did for me.

Q Was this something that was worked out between and you Judge Porteous?

A Yes, it was.

Q Just so it's clear, if Judge Porteous could not have helped you as you testified in setting bonds, taking other judicial actions, lending prestige with others, would you have taken him out to lunch to the extent you did?

A No, I wouldn't have.

Q Would you have taken him to Las Vegas?

A No, I wouldn't have.

Q Would you have repaired his cars?

A No, I wouldn't have.

Q After Judge Porteous was confirmed as a federal judge, could he still help you in the same ways he did before as a state judge?

A No. He could help me, but not in the same way as far as reducing bonds.

Q He could not set bonds for you. Did you go to Judge Porteous and ask him to help you with the rules in U.S. District Court regarding the issuance of commercial bonds?

A Yes. There is a Magistrate Louie Moore. I asked him would you talk to Louie Moore because in federal court they were taking a lot of 10 percent deposits. That means you put up 10 percent with the courts, and you eliminate the bondsman. I asked Porteous to see if he could get Louie Moore to change the bonds from commercial bonds. He told me he went to him, but did he really, I don't know. I had that conversation with him.

Q Did you attempt to maintain a relationship with Judge Porteous even after he became a federal judge? Did you continue to have lunch with him?

A Yes, I did.

Q Why?

A Because I thought it would be important to have a federal judge sitting next to me, and if I brought people to the table, he would bring strength.

Q Did you want Judge Porteous to help you recruit a new judge?

A Yes, I did.

Q Were there times that you arranged lunches with and you Judge Porteous and other people who you wanted to impress?

A Yes, I did.

Q Did you make any requests of Judge Porteous relative to Judge Bodenheimer?

A Yes, I did.

Q What did you ask Judge Porteous about Judge Bodenheimer?

A I talked to him that I would like him to step into his shoes.

Q So Judge Porteous is now a federal judge. Judge Bodenheimer is a state court judge?

A Right.

Q To your knowledge, did Judge Porteous say anything on your behalf to Judge Bodenheimer?

A I think he did, or he told me he did.

Q After Judge Porteous told you that he spoke to Judge Bodenheimer, how did your relationship with Judge Bodenheimer develop?

A Well, it got stronger. Now, I had a relationship with Bodenheimer a little bit before Porteous, but Porteous actually made it stronger.

Q In what respect?

A Because again, he was a leader and has always

been a leader. Everyone follows a leader.

Q Did he become more helpful in setting bonds?

A Yes, he was.

Q Did you start doing things for Judge Bodenheimer?

A Yes, I did.

Q What did you do for him?

A I did some repairs on his house and basically started taking him to dinners and lunches and made one trip to the Beau Rivage with him.

Q Beau Rivage is what?

A It's a casino on the Mississippi.

Q I think we mentioned that in 2002 you were under criminal investigation; is that correct?

A Yes, sir.

Q Were you aware that you were under surveillance?

A No, sir.

Q Have you seen the FBI's surveillance tape of you entering Emeril's restaurant?

A Yes, I did.

Q Is your recollection -- when you viewed it, did you view it as being an accurate tape?

A Yes, sir, it's accurate.

Q And who went to lunch that day?

A Joan Benge.

Q And she was?

A She was a state judge.

Q Okay.

A Steve Donnes, Porteous, myself. I think Bodenheimer was there and --

Q Was Judge Benge's secretary there?

A Yes, Sadie.

Q What was the purpose of the lunch?

A Grooming.

Q Who?

A More grooming with Bodenheimer and to groom Benge.

Q And who invited Judge Porteous?

A My secretary, my administrator would have called Rhonda and invited her.

Q Again, he was a federal court judge at this time; is that right?

A Yes, sir.

Q And why did you want Judge Porteous there?

A I wanted him to talk about bail and how good it is for the system and, you know, so she would start doing bonds. After Porteous left, I needed as many people as I could to fill in that gap.

Q And what purpose did Judge Porteous fulfill in that lunch?

A Again, by being a leader and talking about bail and how good it is for the system, a state judge sitting with a federal judge, you know, it's -- it brings some power to the table.

Q Let me show you the receipt from that lunch. Do you recognize it?

A Yes, sir.

Q I'm going to blow it up here for you.

A That's my signature.

Q How much was it for?

A $414 --

MR. GOODLATTE: First of all, Madam Chairman, I would ask that this be identified as House Exhibit 375.

CHAIRMAN MC CASKILL: The exhibit will be so identified in the record.

BY MR. GOODLATTE:

Q And how much was it for?

A $414.29.

Q Do you also see the restaurant check, which I think is the other half of that?

A Yes, sir.

Q Is there anything on the check that confirms in your mind that Judge Porteous was present?

A Yes, the absolute.

Q I'm going to show you a videotape now. As I do,

I want you to simply identify who is on the screen who you can identify, and Madam Chair, this is House Exhibit 48.

(Videotape played.)

THE WITNESS: That's Joan Benge's car. That's Judge Porteous.

BY MR. GOODLATTE:

Q That's Judge Porteous on the right?

A Yeah, and that's Sadie, Judge Benge's secretary. There I am, Steve Donnes, and Bodenheimer, Judge Benge.

Q Judge Benge is the last one coming out there?

A Yes, sir.

Q Now, let me show you House Exhibit 241, which is a still photo from that videotape. Who are the four persons in that photo?

A That's Steve, me, and Bodenheimer. I really can't see who those two are to the right.

Q Is that Judge Porteous?

A Porteous, me, and Bodenheimer. I don't know. It's kind of blurry from here.

Q But you do see yourself?

A Yes, sir.

Q You do see Judge Bodenheimer?

A Yes, sir.

Q And you do see Judge Porteous?

A Yes, sir.

Q Now, in February of 2004, was it public knowledge that you were under investigation?

A Yes, sir.

Q At some point did a request come to you from Judge Porteous's lawyer?

A Yes, sir.

Q What was that request?

A He kept calling me, and he wanted me to sign a document that said that Porteous didn't take anything of value from me.

Q Let me show you House Exhibit 280. We're going to blow that up so you can -- do you recognize your signature on that document?

A Yes, sir.

Q What is that document?

A That is an affidavit saying that he didn't take anything of value for moneys or any type of quid pro quo action, and I signed that.

Q Who prepared that affidavit?

A Porteous's lawyer, Kyle Schonekas.

Q Let's go through the paragraphs briefly. Paragraph 3 says "at no time have I ever given anything of value to Judge Porteous for reducing or altering any bond."

Do you believe this to be true at the time you signed it?

A Completely false.

Q Yet, it was prepared by Judge Porteous's attorney?

A Yes, sir.

Q In what way is that not true?

A Because all of the meals and the cars and the wining and dining, the trips, all that was for him to do bonds.

Q Why did you sign this if it was not true?

A Well, I was trying to protect him.

Q And the rest of this document has to do with the Keith Klein bond case, which we referred to earlier. That was the subject of the confirmation check inquiry, wasn't it? The FBI was interested in that?

A Yes, sir.

Q Do you know why that was included?

A Because he thought maybe I knew something about that he was taking money from the lawyer. I mean, I can't read it. So --

Q Did you make this false statement to help Judge Porteous?

A Yes, I did.

Q And just like you made false statements in connection with the background check?

A Yes, sir, I did.

Q Was this simply a continuation of the same relationship you described that had its roots back in the 24th JDC in the state court where you did things for him and did he things for you?

A Yes.

Q Ultimately, did you plead guilty to a federal corruption offense?

A Yes, sir, I did.

Q Let me show you Exhibit 71A, the information that you pleaded guilty to. It charges that on or about a certain date beginning prior to 1991, you commenced in a conspiracy with certain named persons and persons known and unknown to the grand jury.

Going back to 1991, who did you have a corrupt conspiratorial relationship with?

A Porteous.

Q Just to be clear, you pleaded guilty to having a corrupt relationship with Judge Porteous, among others; is that correct?

A Yes, sir.

Q And the conspiracy charges describes not only the things you gave judges, but it also describes the conduct of the judges as follows:

"3, It was a further part of the conspiracy that in return for things of value certain judges would make

themselves available to BBU, quickly respond to the requests of BBU," Bail Bonds Unlimited, "and set, reduce, increase and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

"4, It was a further part of the conspiracy that to allow BBU to maximize profits, the conspirator judges would engage in the practice of bond splitting. At BBU's request, the conspirator judge would set the commercial portion of the bond at an amount the defendant could afford and would set the balance in some other manner. BBU would then post the commercial portion of the bond and collect a percentage of that bond as commission. This practice allowed BBU to maximize its profit and minimize its liability."

Is that a fair description of the conspiracy to which you pleaded guilty?

A Yes, it is.

Q Finally, did you go to jail for things you gave judges?

A Yes, I did.

Q What was your sentence?

A 37 months.

Q That's Exhibit 71E, page 2.

Was that reduced?

A I did the drug program, and I did 18 months in

jail.

Q Did you lose your job over this?

A Yes, I did.

Q You lost BBU over this?

A Yes, I did.

Q Let me make sure I understand this. You can no longer be in the bail bonds business because you corruptly gave things to public officials?

A Yes, sir.

Q But at least one public official who received those things remains on the bench; is that correct?

A Yes, sir.

MR. GOODLATTE: No further questions.

CHAIRMAN MC CASKILL: Mr. Turley.

MR. TURLEY: Thank you, Madam Chair.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good morning, Mr. Marcotte.

A Good morning to you.

Q We've met before. My name is Jonathan Turley, and I did your deposition earlier.

A Yes, sir.

Q Let's just start with some basic questions so that we can just clarify the record. Most of these questions are yes or no, but feel free to answer them as

you wish.

A Okay.

Q You never gave cash directly to Judge Porteous at any time, did you?

A Not directly.

Q Did you -- and you never gave a campaign contribution to Judge Porteous, did you?

A No, I did not.

Q And once Judge Porteous became a federal judge, you never -- he never set a bond for you, did he?

A No, he did not.

Q And you testified earlier that Judge Porteous never gave you a kickback -- or that you never gave Judge Porteous a kickback on bonds; isn't that correct?

A Not in cash.

Q Now, let me ask you -- you were talking about the bond process, and some of us are familiar with that process, some of us may not be.

A Yes, sir.

Q Isn't it true that, in your experience, that if a district attorney or assistant district attorney objected to a bond, that generally the judges would reject the bond?

A Yes, sir.

Q And wasn't it your experience with Judge Porteous as well?

A Yes, sir.

Q And wasn't it your experience that if a district attorney or assistant district attorney objected to an expungement, generally the judges in Gretna would deny the expungements?

A Yes, sir.

Q And wasn't it your experience with Judge Porteous as well?

A Yes, sir.

Q Now, in 1993 and 1994 -- we've been talking a lot about that period -- how many bondsmen were working in Gretna?

A I'd say maybe three, four agencies.

Q Two or three?

A Two or three.

Q And you previously testified that even if two or three bondsmen, you were handling 90 percent of the bonds or more; correct?

A You know, it's a long time ago, and, you know, I would say probably 90 percent of the bonds.

Q Now, during that period -- well, first of all, let me ask you, would it surprise you going earlier, for example in 1986, would it surprise you to learn that in that given year there were more than 3,200 bonds that passed through the Gretna courthouse?

A No, it wouldn't surprise me.

MR. TURLEY: Madam Chair, I would like to introduce a CD of bonds that we previously gave to the committee, previously gave to the House. This CD is marked Porteous Exhibit 2001 as evidence. We will be referring to it.

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: Madam Chair, if I could have a moment. Madam Chairman, we have no objection.

CHAIRMAN MC CASKILL: The exhibit will be received into the record.

(Porteous Exhibit 2001 received.)

BY MR. TURLEY:

Q Now, would it surprise you, Mr. Marcotte, to learn that in one of those months, September 1986, there were 51 bonds signed by Judge Porteous?

A It wouldn't surprise me.

MR. TURLEY: Madam Chair, we have separated out those bonds. We referred the committee earlier to those bonds in the opening statement. We would like to go ahead and mark those as Porteous Exhibit 2002.

CHAIRMAN MC CASKILL: Without objection.

(Porteous Exhibit 2002 received.)

BY MR. TURLEY:

Q Would it surprise you that in February of that

year Judge Porteous signed 41 bonds?

A Of what year?

Q Of 1986.

A No, it wouldn't surprise me.

MR. TURLEY: Madam Chair, we have separated out those bonds for ease of the record. We are marking that as Porteous Exhibit 2003.

CHAIRMAN MC CASKILL: The record will note.

(Porteous Exhibit 2003 received.)

BY MR. TURLEY:

Q Mr. Marcotte, would you be surprised to learn that in December of that year, 1986, that Judge Porteous signed 29 bonds?

A No, it would not surprise me.

MR. TURLEY: And that's our final exhibit in this series. We have marked that as Porteous Exhibit 2004, Madam Chair.

THE WITNESS: Could I ask, what do you mean by "signed"? Could I ask what do you mean by "signed"?

BY MR. TURLEY:

Q That he was the judge that approved those bonds.

A Released them on those bonds or just set them?

Q That he signed them, approved the bonds. He was the judge who had signed those bonds.

A And they were released on his signature?

Q Presumably, that's what's in the record.

A Okay.

Q And those have been marked Porteous Exhibit 2004, and of course, we are offering these to be introduced into evidence.

CHAIRMAN MC CASKILL: Without objection.

(Porteous Exhibit 2004 received.)

BY MR. TURLEY:

Q I'm trying to get an understanding of what the situation was like in Gretna. During this period, certainly all the period that Judge Porteous was a judge, wasn't Jefferson Parish under a court order for overcrowding?

A Yes, sir, they were.

Q Now, that was a pretty strict court order; right? Didn't it require mandatory releases of prisoners?

A Yes, sir, after the jail got to a certain capacity.

Q And it was at that capacity for most of that period, wasn't it?

A Yes, sir.

Q And isn't it true that during many parts -- many months and years, that as soon as people were brought in to the overcrowded prison, people have to be released to satisfy that court order?

A Yes, they did.

Q And this was a big concern for judges in Gretna, wasn't it?

A Some.

Q Some didn't care?

A Some didn't care. Some of them just wanted -- they didn't want to put their name on anything. So they just set the bond real high.

Q Wasn't it a problem that many of the judges discussed that many of the prisoners who were released on mandatory court orders of overcrowding disappeared?

A Yes, sir.

Q Now, isn't it your experience that the chances that a person will return to the Court after release is higher if they have a bond on them?

A Yes, it is, sir.

Q Why is that?

A Because they have someone hunting them.

Q You; right?

A Right.

Q Otherwise, if a guy like you is not looking for these guys, what usually has to happen for these bail jumpers to be caught?

A If they get pulled over at a traffic stop, then they arrest them.

Q So it's pretty much accidental; right?

A Yes, sir.

Q And the police in Gretna, like other cities, they didn't regularly go look for bail jumpers; right?

A In some cases they did, but most of the time not.

Q Most of the time not. Thank you. And would you say that the higher a bond was set, the more likely someone would be to come back to court?

A Yes, sir.

Q Now, we had talked about this idea of a magistrate judge, and I just want to clarify something, because once again people may not be familiar with it. A magistrate during that period was a judge; correct?

A Yes. An appointed -- in some cases, an appointed lawyer.

Q But during this period, wasn't the magistrate system a judge that was selected to serve for a week to handle bonds?

A Yes, sir.

Q So this was done by rotation; corrects?

A Yes, sir.

Q A lot of judges didn't like that duty, did they?

A Yes, sir, they didn't.

Q In fact, a lot of judges had reputations for not

being available, didn't they?

A Yes, sir.

Q If they weren't available as a magistrate judge, you couldn't really get anything done, could you?

A No, sir.

Q And wasn't it true that it was common for bondsmen, if they couldn't find the magistrate, to try to find another judge; isn't that true?

A Yes, it was.

Q In fact, isn't that sometimes called bond shopping?

A Yes, sir.

Q When a bondsman was bond shopping, wouldn't they go to the courthouse to try to see who was available in the courthouse?

A Yes, sir, they would.

Q And you did that; right?

A Yes, sir.

Q Isn't it true, you testified earlier, that sometimes you would go into the courthouse to see which door was open or which judges were still there?

A Which judges would, you know, be acceptable to let me in.

Q Now, didn't you testify earlier that Judge Porteous was viewed as one of the more experienced judges

in dealing with criminal platters?

A Yes, a leader.

Q Now, isn't it correct that sometimes when you went looking for a judge, you went to judges other than Judge Porteous; right?

A Yes, sir, I did.

Q Let's talk about these split bonds for a second. Was Judge Porteous the only judge to split bonds in Gretna?

A No. There were other judges as well.

Q Are split bonds illegal?

A No, sir, they're not.

Q Split bonds are pretty common, weren't they?

A Yes, sir, they are.

Q A lot of judges thought they were a good idea; right?

A Yes, they did.

Q And a lot of split bonds prosecutors didn't object to; right?

A No, they did not.

Q Now, I think part of the value of your testimony is to try to educate people like Mr. Goodlatte did on this process. Now, isn't it true that sometimes a bond is initially set too high because of the original charges in the case?

A Yes, sir. For a number of reasons, they set

them high.

Q But isn't it true that if someone -- someone could come in on a very serious charge, but the actual charge that they're being held for for trial is much lower; isn't that true?

A Yes, sir. Sometimes they throw out some charges.

Q So often, the bond is set with an original charge that may have been reduced or dropped; correct?

A Like an example, if he got three charges, the guy is charged with burglary, resisting arrest, and public intimidation, the DA might toss two of them out, and you will have one bond for 2,500, and the other two bonds may have been -- so the total bond may have been 7,500.

Q In a case like that, let's say a guy gets pulled in. He's charged with a large possession weight of drugs, and a stolen car, and the bond is set for that.

A Okay.

Q If they drop the drug and possession and just go with the stolen car, you've got a bond left that's too high; right?

A Yes, sir. Well, actually, that bond just goes away, because when they screen it, they throw that charge out, and that bond is exonerated at that point.

Q But there's a need for the bond for that guy to

be lower than the original bond, so that judges generally reduce the bond when the charges were reduced; correct?

A Yes, they would, but in most cases, the bonds were set, and then it goes through a screening process, and then they toss the bonds out.

Q Let me just ask --

A The charges out.

Q I think I can clarify with the next question. Isn't it true that some judges view split bonds as a way of dealing with artificially high bonds?

A Yes, sir.

Q Now, isn't it also true that many judges viewed split bonds as a way of getting more bonds on people so that they wouldn't just be released on their own recognizance?

A Yes, sir.

Q Because that makes it more likely that they will come back; correct?

A Yes, sir.

Q By the way, you testified earlier Judge Porteous would sometimes turn you down for bonds; right?

A He's turned me down for a few.

Q Now, isn't it true that you testified earlier that Judge Porteous's standard operating procedure was to check out the representations that were made in bonds?

A Meaning --

Q That he would call to confirm --

A He would see what the wrap sheet is, yes.

Q Isn't it true that he would also call a prosecutor or the jail to confirm the facts --

A Most of the time he would have Rhonda call the jail to see. Normally, when we went there, we would call the jail and get the wrap sheet and have that on the worksheet if he would ask. But he would also double-check in some cases.

Q Didn't you do that on a regular basis, that he would get that confirmation?

A Most of the time, but sometimes he didn't.

Q Now, you said you worked with an individual named Adam Barnett. Do you recall?

A Yes, sir.

Q Isn't it correct that prior to 1993, prior to you and your sister developing that relationship you described with judges, that you would use Adam Barnett to approach judges; correct?

A Yes, I would.

Q And isn't it correct that you used Adam Barnett to approach Judge Porteous on bonds prior to 1993?

A Yes, I did.

Q And isn't it correct that there came a point

when you stopped using Adam Barnett because you didn't think that Judge Porteous trusted Mr. Barnett?

A Yes, sir.

Q Now, you testified before the House of Representatives -- and I'm quoting -- "I met Judge Porteous through another bail agent. At some point, the bail agent faded out, and then we became close with Judge Porteous after he faded out."

Do you recall something like that?

A Yes, sir.

Q You were referring to Adam Barnett there?

A Yes, sir, I am.

Q I would like to introduce House Exhibit 119Z. Mr. Marcotte, this is an article that we showed you in deposition. This is a Times-Picayune article from September 13th, 1993. The headline of the article reads "$80,000 house is used as surety for $300,000 in bonds."

Do you see that, sir?

A Yes, sir.

Q Do you remember that article?

A Yes, sir.

Q Now, isn't it true that --

A I don't remember everything that's in there. I remember this heading right here.

Q I'm not going to quiz you on it.

A Okay, okay.

Q Isn't it true that article was about the event that led Barnett to, quote, fade out?

A Yes, sir, it is.

Q Because that was an embarrassing story for people in Gretna; correct?

A Yes, sir, it was.

Q It was after that article that you became close with Judge Porteous and began to take him out to lunches more; right?

A Yes, sir.

Q Isn't it correct that you dealt with Porteous far more often in 1994 than you did in 1991?

A Yes, sir.

Q Let's talk about the lunches. Was it your experience in that legal community in Gretna that it was a pretty close knit community, legal community?

A It was close knit for some people.

Q But for lawyers and judges, for example?

A Yes, sir.

Q And wasn't it common for lawyers and judges to go out to lunch with each other and to socialize with each other?

A They did.

Q And you testified that you went out to lunch with Judge Porteous. Did you have these lunches in undisclosed or secret locations?

A No, sir, I didn't.

Q When you went into these restaurants, did you ask for a back room so you could not be seen having lunch with any of these judges?

A No, sir, I did not.

Q So it was pretty common for lawyers and judges to see you with Judge Porteous, was it not?

A I actually wanted them to see me with him.

Q What was that?

A I actually wanted them to see me with him.

Q Judge Porteous didn't try to avoid being seen with you or other people at lunch, did he?

A No, he did not.

Q Did you ever tell Judge Porteous that you expected certain things for this lunch or for all those lunches?

A Every time that I asked him for a bond, I would ask him, Judge, if you could see fit in setting this bond. Those were my words every time.

Q But did you ever say look, judge, I'm buying you this beef for a purpose, you know, please remember I just bought you lunch? Did you ever have a conversation like

that?

A No, I don't remember a conversation like that.

Q Now, the House asked you about places you took Judge Porteous to lunch and suggested that these were incredibly expensive lunches. I'm going to show you a number of receipts that the House has produced regarding these lunches. First, we're going to take a look at House Exhibit 372B. Can you see a receipt there?

A Yes, sir.

Q It appears this is a receipt for the Beef Connection. If you take a look at the amount on that receipt, you see it says $352.43?

A Yes, sir.

Q Up in the right corner, it looks like there's a notation for the size of the group. Do you see that?

A Yes, sir.

Q How many people were at that lunch?

A 10.

Q And you testified when you were asked about when you thought the lunches started, you were thinking 1994 or 1995 when we're talking about lunches when you first testified?

A Yes, sir.

Q Let's take a look at another exhibit. This is House Exhibit 372B. If you look closely at the amount, the

amount seems to say $268.84.

Do you see that?

A Yes, sir.

Q Let's take a look at how many people attended that lunch. There's a notation for the number of people attending. Can you tell me how many people attended that lunch?

A Nine.

MR. TURLEY: Madam Chair, we would like to move these receipts, obviously, into evidence.

VICE CHAIRMAN HATCH: Without objection.

(House Exhibit 372B received.)

MR. TURLEY: Thank you.

BY MR. TURLEY:

Q I want to have you take a look at another exhibit, which is House Exhibit 373A.

I want to blow up on what people were charged for.

This is one of the exhibits that they said Judge Porteous attended -- one of the lunches that Judge Porteous attended. Do you see any charge there for Absolut vodka?

A I don't see it.

MR. TURLEY: Chairman Hatch, we would like to move that into evidence as well, sir.

VICE CHAIRMAN HATCH: Without objection.

(House Exhibit 373A received.)

BY MR. TURLEY:

Q I wanted to go back to some of the discussion about the bonds. In 1993 and 1994, you previously estimated that in a given day you might have anywhere between one and 10 bonds through the courthouse; correct?

A Yes, sir, I did.

Q And you previously testified, however, that towards the end of Judge Porteous's period as a state judge, that there was -- that you wanted to, quote, open the floodgates; correct?

A Yes, sir.

Q And that you thought that you -- this was a long time ago, but you thought that you had moved a lot of bonds that last month; correct?

A Yes, sir.

Q I'm going to show you a demonstrative, which is an exhibit that Defense has created, and summarizes bonds in the record. Now, would it surprise you that on the last day that Judge Porteous was a state judge -- if you take a look down there, it says October 28, Judge Porteous sworn into the federal bench. Did you see that?

A Yes, sir.

Q It might be easier on your screen. If you take a look at the day before, which is technically his last day

as a state judge, it shows that he just approved one bond, right?

A Yes, sir.

Q Take a look at the day before that. How many bonds does it show that he approved the day before that?

A Two.

Q The day before that, on the 26th?

A Yes, sir.

Q Shows one; correct?

A Yes, sir. And one on the --

Q And then on the -- then there's no bonds, 25th, 24th. And then on the 23rd, how many bonds did it show him signing?

A One bond. On the 23rd?

Q Yes.

A One bond.

Q Right. Now, would it surprise you that Judge Porteous signed only three bonds in his last week?

A Well, if that's what you say it is. You know, all I know is I told my staff, as he was leaving, open the floodgates, wear him out, because, you know, we'll save the other ones for later.

Q Okay. That makes sense.

So when you said -- when you talk about the floodgates, that was what you were hoping to do; correct?

A Right. Maybe it was slow that week, you know. But that was what I said, for sure, wear him out before he leaves and save the other judges until after he's gone.

Q Now, would it surprise you that in the previous 21 days, that Judge Porteous only signed 27 bonds?

A If that's what your research shows, yes, sir.

Q That it would not surprise you, you're saying?

A No, it -- no, it would not surprise me.

Q Let's talk about those home repairs a second. I just want to clarify a couple of things. In the 1980s and '90s you sort of employed a group of guys that did construction; right?

A Yes, sir.

Q Isn't it true you testified you sometimes had trouble with these guys, to make sure they were working?

A The construction guys?

Q Yeah.

A Yes, I did.

Q And isn't it true that you also were concerned because these guys would do drugs a lot?

A Yes, sir, I did.

Q And isn't it true that you and your sister were never that confident about whether these guys were working or just messing around?

A Yes, sir, I did.

Q And you -- you often tried to keep a close eye on them, correct, for that reason?

A I did.

Q Okay. And didn't you use these construction crews to assist a friend to work on their house, in your previous testimony?

A Yes, I did. An employee or some -- you know.

Q Now, in your previous testimony, you said you volunteered to have these guys fix the fence for Judge Porteous; correct?

A Yes, sir.

Q And isn't that the only occasion when he -- when Judge Porteous was a state judge that you did home repairs for him?

A Yes, sir.

Q And you testified earlier that you don't know how much repairs were needed on the fence; correct?

A I did.

Q And, in fact, you testified earlier you don't know how much it cost; correct?

A Yes, sir.

Q And, in fact, you testified earlier that you didn't personally go and buy supplies for the repairs, did you?

A I did not.

Q And didn't you testify earlier that you didn't personally hand any cash to Mr. Wallace or Mr. Duhon for the fences?

A You know, they probably could have got a check from my accounting department or the petty cash. I don't know how it was done. Remember, all I did was sell.

Q Right. You weren't in the fence -- you didn't --

A I wasn't --

Q But you don't recall --

A I wasn't in anything but selling.

Q But you don't recall either way whether check or cash, you don't recall giving the money for it?

A No, sir.

Q Okay. And, in fact, you testified earlier that you didn't -- you weren't quite sure who paid for the materials. Isn't that true?

A Yes, sir.

Q And I want to be absolutely clear. When -- Judge Porteous, from the day he became a federal judge until this very day, you have never done any home repairs for him as a federal judge; correct?

A No, sir, I did not.

Q Thank you, sir. Now, let me go to car repairs. Now, isn't it true you've testified before that you don't

have any records of receipts for the car repairs; correct?

A If they -- if the government has them -- personally, I don't have them. But, you know, maybe the government has them.

Q And you didn't -- you didn't generally go do these repairs yourself. You said that people that worked for you did this?

A Yeah, with -- I would either send Jeff or Skeeter to go drop it off somewhere.

Q And I want to be absolutely clear. From the minute that Judge Porteous became the federal judge to this very day, you have never done any car repairs for Judge Porteous, correct, when he was a federal judge?

A Not that I can recall.

Q Now, I want to talk about that Vegas trip. We had talked about that during the deposition. Isn't it true that Judge Porteous went to Las Vegas to speak at that conference?

A I don't know if it was that conference, but I think one time we went just for -- you know, when I went with Giacobbe and him. And I don't think it was a conference that he spoke at but --

Q It might have been a convention. I might be using the wrong term. But he spoke at a convention in Vegas. Isn't that what you testified to previously?

A I know I went to Vegas with him and Jacoby. I don't know if he spoke at the convention at that time. The bail bonds convention was in Vegas for 25 years, and I brought different people, insurance -- so, I mean, I know I was in Vegas with Porteous and Giacobbe, unequivocally, without a doubt.

Q Do you recall testifying under oath previously when asked did he go to Vegas to speak at this convention, and you answered, "he did"?

A Yes, I did.

Q Okay. Now, on another trip to Vegas, you were asked about paying the cost of Judge Porteous, in fact, Mr. Goodlatte, I think, went over that with you. That was a trip where -- that Bruce Netterville attended; correct?

A Yes, sir.

Q Now, you were -- you were the best man for Netterville at his weddings, weren't you?

A Yes, I was.

Q At his wedding, I should say.

A Yes, sir.

Q Yeah. Now, Mr. Netterville is married to Judge Chehardy; right?

A Yes, sir, he was.

Q And by the way, did you do bonds with Judge Chehardy?

A Yes, I did.

Q Okay. And you were friends with Mr. Netterville, weren't you?

A Yes, I was.

Q And you're still friends, aren't you?

A Yes, I am.

Q And so, you know, he was someone you wanted to go to Vegas on that trip?

A Yes.

Q And part of that was because you were friends and had a close relationship; correct?

A Yes.

Q So you didn't just ask Netterville to, quote, make things look better; he was there also as a friend; right?

A As a friend. And I also wanted him to be close with Porteous, because, you know, at some point you start wearing someone else out and you send someone else in and accomplish the same thing, except you've got to pay a little more to get it done, to the lawyer, instead of -- see where I'm going?

Q And you previously testified that you didn't give any cash to Porteous on these trips; correct?

A I did not.

Q And you previously testified you never saw

anyone else give him cash on these trips; correct?

A I did not.

Q Let's talk about the Wallace and Duhon set-asides for a bit, because Mr. Goodlatte spent a fair amount of time on that. Now, you had talked about how Judge Porteous said that he wanted to wait to deal with the Wallace matter until after his confirmation; correct?

A Yes, sir.

Q I'm going to show you House Exhibit 246. I'm going to specifically look at page 4. Oh, actually, I'm going to first start on page 1 and then we're going to go to page 4, because I want to look at the date on page 1.

A September 21, 1994.

Q Can we zero in on the date?

A Yes. September 24, 1994.

Q I thought it was 21. Let's take a closer look. September 21st, is that what you said?

A Yes, sir, 1994.

Q All right.

MR. SCHIFF: I'm sorry, Counsel, can we know what document is on the screen?

MR. TURLEY: This is House Exhibit 246, I believe.

BY MR. TURLEY:

Q Now, do you know when Judge Porteous was

confirmed?

A If you ask me right now the date, no, sir, I don't.

Q All right. Would it -- would it surprise you to learn that Judge Porteous was confirmed October 1994?

A Yes, sir.

Q So if Judge Porteous was confirmed in October 1994, doesn't that mean that he actually dealt with the Wallace matter you just saw in September?

A Yes, sir.

Q That would be before; correct?

A Yes, sir.

Q Okay. Let's take a look at -- let's take a look at page 4 for a second, at the very end. There's a statement that the judge made, this is after he set aside judge -- the judge set aside the conviction. And then he says that he thought that he could deal with expungement later; correct?

MR. SCHIFF: Madam Chairman, object. That wasn't the set-aside of the conviction, so I think counsel may be misrepresenting that.

MR. TURLEY: What are you suggesting this was?

MR. SCHIFF: There was a -- Madam Chair, there was a motion to amend the sentence that took place in September. The set-aside of the conviction, though, didn't

take place until after the confirmation, in October.

MR. TURLEY: Actually, that's what we're going to be getting to. With that note in, I'd like to proceed, so the Government can make that objection, obviously.

BY MR. TURLEY:

Q But I want to simply note that in this hearing -- unfortunately, I can't see these very well -- you can see it says, "if you want further relief, then file a petition to enforce 893 and then I'll execute that also."

Do you see that?

A Yes, sir.

Q Do you know what an 893 is?

A I think first-time offender, if you don't get in trouble in X amount of time, that you -- the probation will be terminated.

Q Does it also deal with expungements?

A Yes, sir.

Q So in September 1994, in open court, the judge is dealing with the set-aside and saying that he is willing to deal with the expungement; correct?

A Yes, sir.

Q Now, I'd like to deal with the Duhon matter. You talked about the Duhon matter with Mr. Goodlatte; correct?

A Yes, sir.

Q Okay. And you mentioned that the Duhon case -- that Judge Porteous had set aside a conviction by another judge; correct?

A Yes, sir.

Q I think you said Judge Richards; correct?

A Right.

Q And you said, you know, this was over in Judge Richards's court and it was Judge Porteous that grabbed it from Judge Richards; correct?

A Yes, sir.

Q Are you aware that Judge Richards actually set aside that conviction before Judge Porteous acted?

A No, sir, I'm not.

Q I'd like to show you House Exhibit 77C, and I'd like to highlight the date on this. Now, this is -- you can see this is a motion to set aside conviction and dismiss prosecution. I'd like to zero in on the date.

Go to the next page. They're going to blow it up for you in a sec.

A My eyes are bad too, getting old.

Q Do you see where it says June 18, 1993?

A Yes, sir.

Q Now, are you aware that this date is one month earlier than the date when Judge Porteous dealt with this matter in his courtroom?

A Yes, sir, if that's what you're saying.

Q Well, let me ask you, are you aware that Judge Richards actually signed an expungement -- signed an expungement for Duhon before Judge Porteous ever did?

A I wasn't aware of that.

Q We're going to put in a new exhibit, which we'd like to introduce for evidence. We're going to mark this as Porteous Exhibit 2006. And we previously notified the House about this exhibit.

A Okay.

MR. TURLEY: Madam Chair, can we introduce this as Porteous 2006?

CHAIRMAN MC CASKILL: Hearing no objections, it will be admitted into the record.

(Porteous Exhibit 2006 received.)

BY MR. TURLEY:

Q Now, I'd like to highlight the date on this document. And do you see where the document shows July 1992?

A Yes, sir.

Q That was two years before Judge Porteous dealt with this matter; correct?

A Yes, sir.

Q Now, I should note that this expungement -- this is one of the expungements that he received during this

period. It has a different number from the one that -- the previous exhibit. We're offering this just to show Judge Richards's previous work in this case.

By the way, with Mr. Duhon, what Judge Porteous did, which you referred to, was an expungement, correct, not a set aside?

A Either both or either/or.

Q You don't know which one?

A I'm not exactly sure.

Q Well, how about this? An expungement -- expungements are fairly routine, aren't they, in Gretna?

A Yes, sir, they are.

Q And if judges don't hear objections, they tend to grant them, don't they?

A Yes, they do.

Q And expungements are common because they tend to give people second chances; right?

A Yes, sir.

Q Okay. Now, in Mr. Duhon's case, wasn't the offense that was expunged by Judge Porteous an offense that had occurred 17 years previously?

A Yes, sir.

Q And wasn't he 17 years old at that time?

A Yes, sir.

Q So what Judge Porteous did is he expunged an

offense that a man had committed at age 17 that had occurred 17 years previous; correct?

A Yes, sir.

Q Was your sister Lori Marcotte friends with Rhonda Danos?

A Yes, they were friends.

Q They would socialize with each other?

A Yes, they would.

Q Go on trips together?

A Yes, sir.

Q And isn't it true that sometimes it was -- Ms. Danos would help you with social events?

A Yes, she would.

Q Including planning trips in Vegas, for example?

A Yes. Kind of use her as an administrator a little bit, the overflow from my girl, who was really busy.

Q Sort of like a side job of hers?

A I wouldn't call it a job, but just, you know, make arrangements.

Q Didn't you previously testify that she actually did work like this of planning as a separate job? Didn't she often do that?

A I don't remember.

Q Wasn't she associated with --

A I thought she was associated with the casinos

and did stuff like that for them. I thought she had another job doing that.

Q Okay. I want to make sure, you had testified earlier that Bail Bonds Unlimited did have some bonds that you had in federal court; correct?

A Very few, because they mainly took cash deposits. Probably -- I mean, we probably wrote two or three in a year.

Q But Judge Porteous never executed a bond for you as a federal judge?

A No, sir, he did not.

Q Not to this very day, he's never done a bond for you; right?

A No, sir, he did not.

Q I want to make sure, you had said that Judge Porteous was openly friendly with you in courthouses and restaurants; correct?

A Yes, sir.

Q And you described your relationship to Judge Porteous earlier in deposition as a friendship; correct?

A Yes, sir.

Q Now, prior to your interviews with the FBI, did Judge Porteous tell you what to say to the FBI? Did he say, okay, this is what I want you to say?

A No, he did not. I knew what I had to say.

Q But did he ever tell you to be untruthful?

A No, he did not.

Q Did he ever tell you to make sure you lie about this subject or that subject?

A No, sir, I don't think he knew what the questions were going to be.

Q Now, did Judge Porteous sit you down -- let me -- let me go back a step.

Wasn't it Judge Porteous who had suggested your name or to the best of your knowledge?

A Yes, sir.

Q Now, did he sit you down and work through likely questions and answers with you?

A No, sir, he did not.

Q Did you take notes of your interview with the FBI?

A No, sir.

Q Now, after your FBI interview, you didn't immediately call Judge Porteous, did you?

A Maybe there a few days after, we had lunch and then I told him everything that they asked.

Q Well, when you -- didn't you testify earlier that you sort of summarized what you had discussed?

A Yes, sir.

Q You didn't go question by question; right?

A No, sir.

Q And isn't it correct that even sitting here today, you don't -- you don't recall exactly what you were -- what you told Judge Porteous at that -- that lunch?

A Well, there's one -- I remember the Keith Klein matter, because in the days of Keith Klein, 25, $100,000 bond was -- I've never wrote 100 in those days. So that -- what they asked me about Keith Klein stuck out. I knew exactly, because of that reason.

Q And you recall that?

A Yeah. And then also, you know, a lawyer saying, look, a guy came in with a wire, he was asking me all kinds of questions, stay away from him.

Q Those stuck out in your mind?

A Yeah, those stuck out in my mind. And the drinks too, you know, I mean, that stuck out in my mind. But anything else other than the drinks and Keith Klein, you know, it was just generic stuff that I can remember, and it wasn't --

Q Now, did Judge Porteous ask you, did you lie to the FBI? Did he ever ask you that?

A No, sir, he did not.

Q Now, at some time, you told Judge Porteous that you had given him a clean bill of health with the FBI; correct?

A Yes, thumbs up.

Q Thumbs up. Is that the words you used, like thumbs up?

A Yeah.

Q Yeah. Now, you had testified earlier that you didn't think that you would be able to coerce the judge, correct, Judge Porteous?

A In which way?

Q In any way. When we asked you whether you thought you could coerce the judge because of your FBI interview, didn't you say no?

A No.

Q And you still don't believe it?

A No.

Q Now, Mr. Goodlatte asked you about your knowledge of his financial affairs, and you said, well, I knew what his -- his cars looked like, but that was the extent of it. You didn't know about his bank accounts or anything like that, did you?

A No, sir, I did not.

Q He sort of had crummy cars; right?

A He had crummy cars and needed help fixing them, so I kind of --

Q I just want to clarify one thing. With Mr. Goodlatte, we don't have to throw it up, but he showed

you your plea agreement. Do you remember you talked with him about your plea agreement?

A Yes, sir.

Q And he said, didn't you plead guilty to, quote, a corrupt relationship with Judge Porteous? Do you remember when he asked you that?

A Yes, sir.

Q Was Judge Porteous ever tried for any crime that you know of?

A No, sir, he was not.

Q Was Judge Porteous ever charged with any crime that you know of?

A No, sir, he was not.

Q You pleaded to them, I mean, you didn't even have a trial; right?

A No, sir, I did not.

Q Now, did you ever give cash to other judges?

A Yes, sir, I did.

Q Which judges?

A Do I have to give the names?

Q Well, we have --

A Can I say maybe three dozen, between judges and state reps and stuff like that? Do I have to give names?

MR. TURLEY: Madam Chair, instead of going through the names of these judges, which we have no need to

do, we'd like to just introduce his previous deposition. The House had indicated that they wanted to introduce prior depositions. This is Deposition 447. We'd like to introduce the whole deposition into evidence.

MR. SCHIFF: Madam Chair, we have no objection whatsoever.

CHAIRMAN MC CASKILL: That deposition will come into evidence in its entirety.

(House Exhibit 447 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q Isn't it true you testified earlier that you thought some judges took campaign contributions but then used that money for personal purposes?

A Yes, sir.

Q And, in fact, didn't you say that you thought that the percentage of judges that did that might have been 60 or 70 percent?

A Several judges, yeah.

Q Do you recall saying, when we asked you what percentage, that you thought it might be 60 or 70 percent?

A Yes, sir.

Q Thank you. Did you ever give Judge Porteous campaign contributions?

A No, sir, I did not.

Q Is it true that you did home repairs for other judges?

A Yes, sir, I did.

Q And isn't it correct that you gave shrimp to other judges?

A Yes, sir, I did.

Q And isn't it correct that you, at one point, went to New York and got a bunch of sort of fake Rolex watches? Do you remember when you did that?

A Yes, sir, I paid $10 for them.

Q Each; right?

A Right.

Q And then you came back to the courthouse and you gave them out to judges, didn't you?

A Yes, sir.

Q In fact, you went from chamber to chamber and handed those watches to judges; right?

A Yes, sir.

Q Most of them took it; right?

A Probably half took them, half of them returned them.

Q Isn't it true you testified earlier that you also gave judges hams, turkeys, cakes, gingerbread houses; right?

A Yes, sir, I did.

Q Most of them took that; right?

A Yes, sir, they did.

Q And it was pretty standard for judges to get gifts in Gretna from lawyers and other people; right?

A Yes, sir.

Q Now, after Judge Porteous was on the federal bench, did you ever leverage the information about your relationship to force him to do anything?

A No, sir, I didn't. I mean, I leaned on him. That's somewhat force but --

Q I'm sorry, we're having a flurry of pages here.

A I'm sorry.

Q Now, I want to ask you about -- Mr. Goodlatte showed you this sort of grainy videotape. Do you remember seeing that, from Emeril's?

A Yes, sir.

Q I think this was Exhibit 375. And it captured all of these pictures of people leaving Emeril's; right?

A Yes, sir.

Q At that lunch, did you go into a back room to have lunch with these judges?

A No, sir, I did not.

Q Did you try to hide the lunches -- the lunch in any way from people seeing you?

A No, sir, I did not.

Q And, in fact, isn't it true that you testified that Porteous actually didn't -- Judge Porteous didn't actually eat lunch, he came at the very end; correct?

A Yes, sir, he did.

MR. TURLEY: Madam Chair, we just wanted to be clear that we have moved in as exhibits into evidence Exhibits Porteous 2007, 2006, 373A, 372B, 372D, 276 -- 246, I'm sorry.

We've also moved in the CD and bond forms that we have marked Porteous Exhibit 2002, 2003 and 2004. And we can stop our questioning at this time.

CHAIRMAN MC CASKILL: Let me -- I want to clarify something. Did you offer into evidence the calendar that you had prepared that had the quote at the top? But did you offer into evidence the underlying bond documents that support what was on that calendar?

MR. TURLEY: We are going to be introducing those bonds, but that was just a demonstrative. We will be introducing the bonds referenced there in a later testimony.

CHAIRMAN MC CASKILL: Have the -- all the bond documents that would support that demonstrative exhibit, have they all been marked?

MR. TURLEY: I think they all have, yes, they all have been marked.

CHAIRMAN MC CASKILL: So the entire history of the judge's bond documents have been marked?

MR. TURLEY: They have all been marked, yes.

CHAIRMAN MC CASKILL: And you will be offering them into evidence at a later point?

MR. TURLEY: We most certainly will.

CHAIRMAN MC CASKILL: Okay.

MR. TURLEY: Thank you.

MR. SCHIFF: Madam Chair, could we have a few minutes? We have some demonstrative exhibits we need to prepare. It will just take us five or 10 minutes to get them queued up. That way we won't have to interrupt the questioning of the witness.

CHAIRMAN MC CASKILL: Okay. Let's try to do it in five.

MR. SCHIFF: Thank you, Madam Chair.

(Recess.)

CHAIRMAN MC CASKILL: You may proceed, Congressman.

MR. GOODLATTE: Thank you, Madam Chair.

REDIRECT EXAMINATION

BY MR. GOODLATTE:

Q Mr. Marcotte, in response to one of the questions from Mr. Turley, you said that the DAs could object. How often did they get involved?

A Hardly ever.

Q And Mr. Turley asked if Judge Porteous ever called the prosecutor. Isn't it true that he rarely, if ever, called the DAs?

A Most of the time he didn't, but there were times that he did call.

Q How often?

A They used to have a drug court, and he would ask the DA in the drug court for no objection. But, you know, that only lasted for a small window of the time that I was doing bonds.

Q So most of the time he didn't do that?

A Most of the time not.

Q Mr. Turley asked you -- Mr. Turley asked you a lot of questions about 1993 and 1994 and Adam Barnett. In your mind, is it an approximate date that these things took place with Mr. Barnett?

A I don't know if it's -- it's been a long time ago. Somewhere in the '90s, you know.

Q You said on direct -- actually, on cross-examination in response to Mr. Turley that the meals started in 1994. It's clear that there may have been meals before that time, is that not correct?

A Yes, sir, somewhere in the '90s, the early '90s.

Q Now, Mr. Turley produced a chart. Let's --

let's swing that easel around, since we don't have it on the monitors. Let's bring it over here so the Senators can see it.

Are you aware that Judge Porteous's confirmation hearing was on October 6? That's the question to you.

MR. TURLEY: If it would be easier for the Senators, we could pull up our exhibit so you could see it.

CHAIRMAN MC CASKILL: That's fine. I don't think it's necessary. We get it.

BY MR. GOODLATTE:

Q Are you aware that Judge Porteous's confirmation hearing was on October 6?

A Yes.

Q And he was confirmed by the Senate on October 7?

A Yes, sir.

Q So that would explain why that first week there aren't too many bonds. And then he came back to Louisiana, obviously, on that Saturday, and then the following week you had a --

MR. TURLEY: I'm sorry, that is not in the record, when he returned to Louisiana, that I know of. Mr. Goodlatte --

CHAIRMAN MC CASKILL: What's your objection?

MR. TURLEY: It's not in the record. I don't know where Mr. Goodlatte is getting that he returned on a

Saturday. We don't know that to be true. He just told the witness it's true and we don't know that.

MR. GOODLATTE: Let's point out --

CHAIRMAN MC CASKILL: Is this a hypothetical question or assuming facts not in evidence? I think that's the question.

MR. GOODLATTE: I'm happy to withdraw the comment about when he returned.

CHAIRMAN MC CASKILL: Why don't you reword it, Counselor.

MR. GOODLATTE: Thank you.

BY MR. GOODLATTE:

Q So after October 7, in the week following, we see a lot of bonds being set, do we not?

A Yes, sir.

Q You don't know whether these are all of the bonds or only the bonds that were found as a part of the investigation, is that not correct?

A That's not correct.

Q They're all the ones that the House could find. Is that not correct?

A Yes, sir.

Q And just so it's clear, there were two trips to Las Vegas, were there not, that Judge Porteous took?

A Yes, sir.

Q Now, have you seen the legal pleadings before you that Judge Turley showed you with regard to -- oh, my -- Mr. Turley.

MR. TURLEY: I'll accept the elevation.

BY MR. GOODLATTE:

Q You have seen the documents that Mr. Turley -- have you seen the legal proceedings -- pleadings that Mr. Turley --

A Other than today or just now?

Q Other than just now.

A Possibly.

Q Do you have personal knowledge about those documents, or are you just reading what was put on the screen?

A I have personal knowledge but not by looking at the documents, by either lawyers telling me, hey, it's done or it isn't done.

Q You have personal knowledge of the events but not of the documents?

A Yes, sir.

Q So you may be aware that Jeff Duhon had two criminal convictions?

A Yes, sir.

Q And one of those criminal convictions that Mr. Turley put up on the screen was expunged by another

judge?

A Yes, sir.

Q But there was still another criminal conviction that needed to be addressed, is that not correct?

A Yes, sir.

Q Let me call up Exhibit 77B. Do you recognize Judge Porteous's signature on that document?

A Yes, sir.

Q All right. Now, let's call up Exhibit 500, which is PowerPoint 23. Now, this is Judge Porteous's set aside -- let me point out, this earlier conviction was --

MR. TURLEY: I'm sorry, Madam Chair, we're not sure which has been produced to the Defense. Has this been produced to the Defense?

CHAIRMAN MC CASKILL: Is this a demonstrative exhibit or is this an exhibit that's being offered for evidence?

MR. GOODLATTE: It's a demonstrative exhibit.

MR. TURLEY: We were required to produce all demonstratives before trial. As far as we know, this has never been produced to the Defense, and we were told that we had to do that before trial.

CHAIRMAN MC CASKILL: Could I suggest, I think that the information that's contained on this exhibit is information that you can elicit through questioning,

Counselor.

MR. GOODLATTE: Yes.

CHAIRMAN MC CASKILL: Why don't we take the exhibit down, if Judge Porteous's lawyers have never seen it, and why don't you go through the exhibit by virtue of questioning as opposed to use of the demonstrative.

Are there any other demonstrative exhibits that you all have that Judge Porteous's lawyers have not seen?

MR. GOODLATTE: I think we can pull up the actual order, which is before the court.

CHAIRMAN MC CASKILL: I think the actual order would be fine but let me ask the question again. Does the House impeachment team believe that you have any other demonstrative exhibits that you have prepared that Judge Porteous's lawyers have not seen?

MR. DUBESTER: Senator McCaskill, Mark Dubester for the House. It's my personal belief we produced this, and if we didn't, then it's on me for not having done so.

And it's my personal belief we produced all our demonstratives, so I was a little surprised just now that he said he hadn't received it. Nonetheless --

CHAIRMAN MC CASKILL: Why don't we do this. Why don't you ask someone on your team over lunch to get with someone from Judge Porteous's team over lunch and go through them again just to make sure that we're clear.

Are you confident, Mr. Turley, that this has not ever been produced?

MR. TURLEY: None of us have seen this demonstrative, and we're fairly confident. We can also, as you suggest, we'll continue to look.

CHAIRMAN MC CASKILL: Over the -- when we are -- we're going to have a much longer lunch break today than normally. That will give you plenty of time to get something to eat and also have somebody on your teams go through this list so we don't have this again.

In the meantime, I think it would be better for you just to use the exhibit that has been marked and accepted into evidence or has been stipulated to.

MR. GOODLATTE: Agreed. We'll call that up.

CHAIRMAN MC CASKILL: I should let the team know that we have copies of it, which means it was produced. So you might double-check again before you -- before lunch and make sure, okay?

MR. TURLEY: Yes, Madam Chair.

MR. DUBESTER: Senator's indulgence, we're looking for the underlying document. I'm sorry, because we did think we had produced it.

CHAIRMAN MC CASKILL: Is the underlying document one of the orders on the expungement?

MR. DUBESTER: Yes, ma'am.

CHAIRMAN MC CASKILL: Which order? The Porteous expungement or the other expungement?

MR. DUBESTER: It's the September 22 set-aside and the October 15 order of expungement. And I believe both those documents are in the, for lack of a better word, the hot document binders that we've provided the Senate. But we just did not have those ready to call up.

MR. TURLEY: Madam Chair --

MR. SCHIFF: Madam Chair, if I could just clarify, because I think some of the terminology is perhaps not precise. In the case of Mr. Wallace, there were two steps required. Mr. Wallace pled guilty to an offense that could not legally be set aside. There was a motion made to actually change what he pled guilty to so that the record would allow a later set-aside of the conviction.

The pleadings that Mr. Turley originally showed the witness were the pleadings in the motion to change the nature of what he had pled guilty to some years before.

After that motion was granted, there was a time delay. Later the judge went and set aside the conviction.

So those are the two legal processes. That's what the demonstrative exhibit would show. We have the underlying pleadings that we can hopefully locate in time.

But that -- you know, the terms "set-aside" and "expungement" are different legally but they have been used

somewhat interchangeably.

CHAIRMAN MC CASKILL: I understand.

MR. TURLEY: Madam Chair, I was rising to say if our colleagues can't find all the underlying documents, we're not going to keep them from using the demonstrative if they're having that much trouble. We can deal with the demonstrative later if they really need it. I don't want to delay them any further, or you.

CHAIRMAN MC CASKILL: I think that would be terrific, go ahead and use the demonstrative.

Thank you, Mr. Turley. I don't think there's anything on that exhibit that should be a surprise to you, because clearly, it only references dates and documents that you are clearly aware of; is that correct?

MR. TURLEY: We have not reviewed it, but to assist the committee, we don't want to stop --

CHAIRMAN MC CASKILL: Let's do this. Let's use the demonstrative exhibit, and if there's anything on that demonstrative exhibit that you believe is incorrect, then we certainly will give you an opportunity to correct the record in that regard.

MR. TURLEY: That's fine. We just hope that the House for any further demonstratives -- to make sure they have been sent to us.

CHAIRMAN MC CASKILL: I'm depending on you all

to do that over lunch.

MR. TURLEY: Thank you very much.

CHAIRMAN MC CASKILL: Go ahead and use the demonstrative exhibit, Counselor.

MR. GOODLATTE: Thank you, Madam Chair. And thank you, Mr. Turley.

BY MR. GOODLATTE:

Q Now, looking at this exhibit that we have on the screen, Mr. Marcotte, this is the order that was entered by Judge Porteous on September 22, 2004. And I believe Mr. Turley produced this exhibit in a different format earlier.

And is it your understanding that Judge Porteous held a hearing and amended Mr. Wallace's sentence to reflect that Mr. Wallace pleaded guilty under Article 893 on that date?

A Yes, sir.

Q So he had to change the nature of what Mr. Wallace had pled guilty to earlier?

A Yes, sir, he did.

Q Because otherwise, his conviction for the earlier crime could not be expunged?

A Expunged, yes, sir.

Q All right. But he did not -- he did not enter the order of expungement on that date, did he?

A No, sir, he did not.

Q But he could have, couldn't he?

A He could have.

Q Right. Why didn't he?

A Because he was waiting to get --

Q Using the exhibit here again, I think we've all agreed, on October 6, his confirmation hearing took place. October 7 he was confirmed.

A Confirmed.

Q This took place on September 22, is that not right?

A Yes, sir.

Q Okay. Now, let me show you another document that Mr. Turley did not bring up earlier. This is PowerPoint 24, Exhibit 501.

This is the actual expungement -- I'm sorry, the actual set-aside of the conviction of Aubrey Wallace?

A Yes, sir.

Q That you had spoken to Judge Porteous about?

A Yes, sir.

Q What's the date on that? What's the signature down there?

A 14th of October.

Q October 14. So that's after the date of his confirmation hearing and the date of his confirmation by

the United States Senate?

A Yes, it is.

Q But prior to the date, which was October 28, according to their chart, that he was actually sworn in as a United States District Court judge?

A Yes, sir.

Q Now, Mr. Turley asked you about your doing home repairs and car repairs for Judge Bodenheimer?

A Yes, sir.

Q Did Judge Bodenheimer later plead guilty --

A Yes, he did.

Q -- to receiving those car repairs and home repairs?

A Yes, sir, he did.

Q And is it also true that you delivered other gifts to him and to Judge Porteous, like shrimp?

A Yes, sir.

Q Tell us about the shrimp.

A Probably --

Q This wasn't just a little bucket of shrimp, was it?

A No, sir, probably about 3- to $500 worth of shrimp. I wanted to make a statement when I did something.

Q When you answered Mr. Turley's question about if you'd ever used leverage, and you said "I leaned on him,"

what were you referring to?

A Push, force, you know, not taking no for an answer, just keep going back and back until I could get him to cave.

Q And you had occasions, didn't you, where you'd ask Judge Porteous to issue a bond and then he'd say no, and then you'd have lunch with him and spend a lot of time with him, and then he'd say yes?

A Yes.

Q And if you had a falling-out with Judge Porteous over these circumstances where he refused to do something you wanted him to do, you were in a position to destroy him, weren't you?

A Was I in a position to destroy him? I wouldn't have had a falling-out with him. I would have just let the bond go.

Q No, if you did, if you wanted to do that, were you in a position to do that?

A Yes, I was.

Q You could have told the FBI that he was on the take from you, couldn't you?

A Yes, sir.

Q So by virtue of doing that, either part of the confirmation hearing or part of the investigation that took place regarding your own criminal activities, you could

have told a very different story than what you told?

A Yes, I could have.

Q You were lying to the FBI on both occasions?

A I was lying to protect him, and myself.

MR. GOODLATTE: I have some documents I'd like to introduce for the record. First we have document 69B. I'm moving these into evidence, Madam Chairman.

CHAIRMAN MC CASKILL: Are there any objections?

MR. GOODLATTE: These are documents that we identified during the course of the testimony. Document 69B --

MR. TURLEY: Just a second, Madam Chair, if we could have a second.

MR. GOODLATTE: Let me give you all of them. 69B --

MR. TURLEY: I'm sorry, if they're moving in 69B as a whole, this is a huge document, because it's like -- I mean, it's like 300 pages.

CHAIRMAN MC CASKILL: The size is not an appropriate objection.

MR. TURLEY: No, no, but what I'm saying is that it contains a huge number of individual documents, it would not be appropriate just to move them in for this use. We've been moving in --

CHAIRMAN MC CASKILL: I don't think it's not

appropriate is an appropriate objection. What is your objection to 69B?

MR. TURLEY: There's no -- there's no foundation. They're moving in a huge document of un -- of various insular documents that have no foundation.

MR. GOODLATTE: Let me narrow it.

MR. TURLEY: By the way, this includes 302s, which the committee just said it was not going to enter into evidence.

CHAIRMAN MC CASKILL: If it contains documents which the committee has already indicated that we would not accept as documentary evidence, then I think you need to amend whatever request you're making, and the objection is sustained.

MR. GOODLATTE: We will withdraw that request.

Mr. Marcotte has testified to the pertinent language that we showed him in our exhibit.

Second would be Exhibit Number 375, the Emeril's receipt.

CHAIRMAN MC CASKILL: Any objection to Exhibit 375?

MR. TURLEY: No, no objection.

CHAIRMAN MC CASKILL: Without objection, that exhibit is part of the record.

MR. GOODLATTE: The next would be Exhibit 241,

the surveillance video.

MR. TURLEY: No objection.

MR. GOODLATTE: Next would be Exhibit 280, the affidavit that Mr. Marcotte testified -- his affidavit signed at the request of Judge Porteous's attorney.

MR. TURLEY: No objection.

MR. GOODLATTE: Exhibit 71A, the Marcotte criminal pleading.

MR. TURLEY: No objection.

MR. GOODLATTE: And 71E, the Marcotte incarceration order.

MR. TURLEY: No objection.

CHAIRMAN MC CASKILL: All of those exhibits will be entered into the record without objection.

(House Exhibits 375, 241, 280, 71A and 71E received.)

MR. GOODLATTE: Thank you.

BY MR. GOODLATTE:

Q Mr. Marcotte, you testified in response to Mr. Turley that you did things for lots of judges.

A Yes, I did.

Q And some of those judges went to prison, did they not?

A Yes, they did.

Q Of all the judges that you did things for, who

was the most important judge to you, ever?

A Thomas Porteous.

MR. GOODLATTE: I have no other questions.

MR. TURLEY: We do not need any recross, thank you.

CHAIRMAN MC CASKILL: Thank you both.

I have a question.

Anyone else have any questions? Any questions from the panel?

EXAMINATION

BY CHAIRMAN MC CASKILL:

Q Mr. Marcotte, it was interesting during your testimony, and I just want to clarify, that when you discussed the expungement of your employees' records, that you indicated that Judge Porteous referenced his not wanting to jeopardize his appointment. And you used the phrase "his lifetime appointment."

Was that particular phrase, "his lifetime appointment," was that the words of Judge Porteous or was that something you supplied in terms of the context?

A That was the words of Judge Porteous.

Q And did Judge Porteous use the word "lifetime appointment" whenever he referred to his appointment to the federal bench?

A Yes, he does.

CHAIRMAN MC CASKILL: Any other questions?

Okay. Thank you, you're excused.

THE WITNESS: Okay. Thank you.

(Witness excused.)

CHAIRMAN MC CASKILL: Next witness.

MR. SCHIFF: Madam Chair, the House calls Lori Marcotte.

CHAIRMAN MC CASKILL: Is someone getting the witness?

For purposes of your calculation, the House now has 14 hours and 19 minutes remaining, and Judge Porteous has 15 hours and 19 minutes remaining.

MR. GOODLATTE: Madam Chairman, I think we can abbreviate this, if we could have about five minutes to consult amongst counsel on the questions to be asked. It would save time.

CHAIRMAN MC CASKILL: Are we going to save more than five minutes?

MR. GOODLATTE: Yes.

(Laughter.)

CHAIRMAN MC CASKILL: If we're going to save more than five minutes, you may have five minutes.

(Recess.)

CHAIRMAN MC CASKILL: I would ask that you try to go as quickly as you can, because I expect that we're

only going to have about 15 minutes, at the most, until we have to leave for votes.

I would ask the witness to stand, raise your right hand.

Whereupon,

LORI MARIA MARCOTTE PARIGI

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: You may be seated.

THE WITNESS: Thank you.

MR. GOODLATTE: Thank you.

DIRECT EXAMINATION

BY MR. GOODLATTE:

Q Ms. Marcotte, would you state your full name for the record.

A Lori Maria Marcotte Parigi.

Q Where were you born?

A In Gretna.

Q Where did you grow up?

A In Gretna.

Q And are you related to Louis Marcotte?

A Yes, that's my brother.

Q At some point, did you go to work with him?

A Yes.

Q And what were your duties?

A I started off doing accounting work and then later doing bail and then executive work after that.

Q So you ran the business with him, is that fair to say?

A Yes, that's correct.

Q And in addition to that, you handled the books and the accounting?

A Yes.

Q We've heard from your brother, Louis. I have just a few questions to get the timing down. At some point in 1992, did you take Rhonda Danos to Las Vegas?

A Yes, that's correct.

Q Why did you do that?

A Because she was Judge Porteous's secretary, and we wanted to get some help from that office.

Q From Judge Porteous?

A Yes.

Q Who paid for that trip to Las Vegas?

A We did.

Q And at some point after that, what do you recall about a trip to Las Vegas that included Judge Porteous?

A It was either the same year or the next year, Louis took Judge Porteous with another judge and an attorney, couple of attorneys, to Las Vegas.

Q So it was your brother, some attorneys and Judge

Porteous that you know of?

A Yes, and another judge.

Q And another judge. Do you know who that was?

A Judge Giacobbe.

Q And how is the trip paid for?

A Our company paid for it.

Q Your company paid for it?

A Yes. Well, it was paid -- I think Rhonda had used a credit card, and then we reimbursed her.

Q You paid her how?

A With cash.

Q Why did you give her cash?

A Because we didn't want everyone to know that we paid for the trip.

Q And where did you give that cash to her?

A In her office in Judge Porteous's chambers.

Q Now, I have some specific questions of you concerning Judge Porteous's conduct as a federal judge. After he became a federal judge, could he set bonds anymore?

A No.

Q Not in state court?

A Sure.

Q And could he help you as much as he did when he was a state court judge?

A No.

Q But could he help you at all?

A Yes.

Q How did he help you?

A Being a federal judge is a pretty prestigious position appointed by the president. With that comes a lot of respect, along with Judge Porteous's record of being respected in the 24TH Judicial courthouse also.

So going to lunch with Judge Porteous as a federal judge, other judges in the 24th Judicial Court would view us as trusted people because we were hanging out with a federal judge.

Q Did you ever have Judge Porteous join you at a lunch with Justice of the Peace Kerner?

A Yes.

Q Can you describe what took place there?

A It's -- I think he was a mayor, mayor's court, which acts like the justice of the peace, in a little small town called Lafitte. And that's where Rhonda Danos, his secretary, was from.

And we wanted to try to get Judge Kerner at lunch so we could have Judge Porteous explain the bond process kind of to train him on setting bonds. So --

Q Did Judge Porteous do that?

A Yes, Rhonda called him, and we went to lunch at

the Beef Connection in Gretna. And we're all sitting at a table, it was a big lunch, and my brother comes in with a Louisiana law book to show Judge Kerner that he had the ability to set bonds.

And Judge Porteous was telling Judge Kerner, you know, that he could trust us, that we were good people, that, you know, we would go to lunch. And Judge Kerner got up at that lunch and left.

Q He didn't want to have anything to do with it?

A He was uncomfortable, yes.

Q Who is Norman Stotts?

A Norman Stotts was kind of our boss. We owned our own company, of course, but we worked for an insurance company. And each -- the insurance company had representatives that would come out and visit the agents.

And he would decide if -- what type of writing authority the insurance company would allow us to have. Of course, we also had collateral with the insurance company.

But by taking Norman Stotts to lunch with Judge Porteous, again to develop trust, reputation, stability on our part, that was a good way for the insurance company to give us a high writing level.

And for the Senators and other people, a bond is a piece of paper, and it's really an insurance policy. So if the insurance company can give you blank checks, so to

speak, then you can write any type -- any amount of bond that you want to write.

And the representative, Norman Stotts, would decide how much writing authority we would have.

Q So he was important to you?

A Yes.

Q Did you bring Judge Porteous to meals with Mr. Stotts?

A Yes.

Q Why did you do that?

A Again, to establish trust and stability and political connections and to make us look important to the insurance company.

Q In 1996, did you arrange for Judge Porteous to speak at a bail bonds convention in New Orleans?

A Yes.

Q Tell us what that entailed.

A We hosted the bail bond convention, I think that was the summer convention, at the Royal Sonesta Hotel, spending a lot of money is what it entailed, renting like a little jazz band and a block of rooms. And really, it was a big party.

But other bondsmen from around the country came to attend also.

Q And would you have paid for food and drinks for

Judge Porteous?

A Yes.

Q In 1999, did you arrange for Judge Porteous to speak at a bail bonds convention at the Beau Rivage?

A Yes.

Q What is the Beau Rivage?

A It's a casino in Biloxi, Mississippi. And when you say did I, the company did. So a representative from our company.

Q Bail Bonds Unlimited?

A Yes.

Q And would you have paid for drinks and food for him there as well?

A Yes.

Q Throughout the 1990s, were there additional times that you took Rhonda Danos, Judge Porteous's secretary, to Las Vegas?

A Yes.

Q Ms. Marcotte, did you ultimately plead guilty to a corruption offense arising from your giving things of value to judges and sheriff's deputies?

A Yes.

Q What was your sentence?

A Three years' probation with six months' home confinement included in the three years.

Q Did you complete your probation?

A Yes.

MR. GOODLATTE: Thank you. That's all the questions I have.

CHAIRMAN MC CASKILL: We have -- the vote has been called, and so rather than have you interrupt your cross, I think we will adjourn.

And the first vote, let me see if I can do the math here, the first vote, which would be 20 minutes, beginning at 11:20. The second one -- we are going to reconvene at 11:40. And that's assuming that the third vote has been called.

But I would just ask all the Senators to vote immediately when the third vote is called and come directly back here so we can finish at least this witness -- if we finish this witness before lunch, we're actually on schedule. So let's see if we can't get that done. Thank you. Thank you.

THE WITNESS: Thank you, Ms. Chairman.

(Recess.)

CHAIRMAN MC CASKILL: We have seven members so we will proceed.

I believe we were ready to begin cross-examination, Ms. Marcotte.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good afternoon, Ms. Marcotte.

A Good afternoon.

Q We met before. I did your deposition earlier, if you recall.

A Yes.

Q I'm going to start with some simple questions that are yes-or-no questions. If you want to answer more, feel free to do so. But let me start with you never gave cash directly to Judge Porteous; correct?

A No.

Q And you never made a campaign contribution to Judge Porteous; correct?

A No.

Q And once Judge Porteous became a federal judge, from that day to this day, he's never executed a bond for you, your company, your family; correct?

A That's correct, not as a federal judge.

Q Have you ever been to Las Vegas with Judge Porteous?

A I don't think so.

Q Now, isn't it correct that Judge Porteous never asked you for a percentage back from any bonds he set?

A That's true.

Q In fact, he never asked you for any money in

return for bonds; correct?

A Not cash, no.

Q Did he ever trade you anything for bonds? Like I'll sign this bond if you give me something of value? Did he say that to you?

A Well, there were the lunches and then the car repairs and the house repairs. But --

Q I didn't mean to interrupt.

A No, I'm -- not for cash, no.

Q But did he ever have a discussion with you about what he would get in return for bonds? Did he sit down and say let's talk about what I would get in return for bonds?

A No.

Q How many bondsmen were -- I don't know if you say bondsmen or bondspeople. How many bondsmen were working in Gretna in 1993 and 1994?

A Are you speaking about our office or --

Q Just -- just generally.

A I don't know. 10.

Q 10. And what percentage of that business in 1993 and 1994 did Bail Bonds Unlimited control in Gretna, would you say? What percentage would you put on that?

A In the '90s. But I was just asking you if you were speaking about our office. Because you were speaking of bondsmen or bondspeople, which are licensed agents.

So --

Q Let me clarify that. And you shouldn't hesitate, if I say something inaccurate, feel free to have me clarify.

I'm really talking about bond companies collectively. You know, you've got Bail Bonds Unlimited. How many competitors, I suppose if that's the way you put it, did you have in Gretna during that period of time?

A Maybe two.

Q Two. Thank you for --

A Some people from New Orleans would come to write bonds too every now and then, but mainly just two others.

Q Okay. Did you testify previously that you thought you did one or two dozen bonds a day?

A I don't recall that. I didn't think that I could put a number on it.

Q You couldn't give us an estimate of what bail bonds you did on average a day?

A Which year are you speaking, at the very beginning?

Q 1993-1994 again.

A I really don't recall. It could be that. That could be.

Q All right.

A 2000 --

Q If you don't recall something, it's fine.

A Maybe what's a little confusing, is it's not so much how many bonds that are done. It's -- how many defendants that we get out. It's how many bonds.

Because one defendant could have more than one charge, which would result in three or four bonds for one person.

Q Sure.

A So, I mean, to ask me how many bonds exactly, I really don't know.

Q Ms. Marcotte, I'm going to show you a demonstrative that we have had up in the court before. And this shows the number of bonds in the record.

MR. TURLEY: Before we do this, Madam Chair, you had raised the supporting bonds. And we would like at this time to move in House Exhibit 350, and I believe it's 350I. There's 56 bonds. And House Exhibit 351, and I believe it's I -- actually, it's 1. So it's 350(1) and 351(1). Those House exhibits contain, the first one, 56 bonds, and the second one, the 26 bonds. And those are the bonds that support this demonstrative. I'd like to move them into evidence.

CHAIRMAN MC CASKILL: Is there objection?

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: They will be received.

(House Exhibits 350(1) and 351(1) received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q If you look at this -- and you can actually see it on that screen, or if your eyes are better than mine, you can see it up here. Do you see down on October 28 it says, "Judge Porteous sworn into federal bench"?

A Yes.

Q Okay. And then the day before, do you see it says one bond signed?

A Okay. Yes.

Q And then on the 26th do you see where it says one bond signed?

A Yes.

Q Then you skip a few -- there's nothing on 25, 24. And then on the 23rd it says one bond signed.

Do you see that?

A Yes.

Q Okay. Does it surprise you to have only three bonds in that period?

A Not really. I don't know what was going on that week, I mean, if he was in the courthouse or not.

Q How about the previous week, do you see that? It says on the 18th and 19th there were two days with bonds with a total of six bonds. Would that be uncommon to have

six bonds in that week?

A A little bit. I mean, I'd have to see the bonds themselves. Some bonds we would hold that we couldn't get split or set and bring them at that time.

Q Does that seem like an unusual number of bonds for a given week, or did it just fluctuate from week to week?

A No, there were more bonds written than what's up there.

Q I mean, these are the only ones signed by Judge Porteous. So does that seem -- is it strange to you that -- I mean, does this seem like a strange number of bonds? I mean, were there weeks where he just had six bonds like that to sign?

A Sure.

Q And were there other periods where he had more bonds to sign in a given week?

A Mr. Turley, I'm just confused because you're saying that he had to sign.

Q That you brought to him to get him to sign.

A It varied, yes. Like the week -- the month -- I'm sorry, the week before, there's a lot of bonds on that week. And then the next week, there's a few bonds. And then less the last week. I mean, is that unusual? That's a lot of bonds, I think, to go get done with the judge.

Q So let's take a look at that week that you were mentioning. I think you're looking, if I'm correct, at October 10, 11, 12 and 13. And I'll quickly do the math. That looks like you've got four, five, three and five. So you've got 17 bonds that week.

Was that a lot of bonds to move in a week?

A I think in 1994, yes.

Q Okay. All right. And then the week before you have three bonds; right? So did it just -- was that part of the nature of the business, you would just fluctuate from week to week?

A Well, the business evolved over time. You know, in the late '90s, we were doing a lot -- a lot of bonds because it became more of a -- a thing that people did. But back in '94, I think that's a lot for '94.

Q So when you said that in '93 you had more bonds than '94?

A No, I said in the later '90s. And also, more people were being arrested towards the end of the '90s also.

Q I'm sorry, could you repeat that?

A Towards the end of the '90s, more people were arrested. So when you're asking me, are you just asking me specifically about 1994?

Q I'm just trying to get an idea of whether this

was an irregular number of bonds for a given month in 1994.

A I think so, yes. In '94, yes.

Q And you're saying because it's -- you would expect it to be higher or lower?

A Lower.

Q Okay. So you would -- would you expect that, then, for this month to have less than 10 bonds in '94?

A I really don't know, Mr. Turley.

Q So you're really not sure whether it would be higher or lower?

A I'm not sure what you're trying to get at.

Q I'm trying to understand your testimony. Because you said that you thought this was probably an unusual number of bonds. And so I just want to make sure that we've got 27 bonds -- actually, 29 for that month. And so I want to just make sure that I understand that -- are you saying that a normal month would have fewer bonds?

A No. If you put it like that, 29 bonds in a 30-day -- 31 day month is about one a day. So I think that's pretty normal.

Q Okay. That's --

A But on the second week, there's a lot of bonds in the second week.

Q Oh, I see. Because they're sort of jumbled up?

A Yes.

Q Okay. Now, let me ask you about these bonds and magistrates. It was your understanding that magistrate judges were judges who were selected by rotation; correct?

A That's correct.

Q And it was for a one-week rotation, you were made a magistrate judge for a week?

A Yes.

Q And isn't it true a lot of judges didn't like to do that?

A Yes.

Q They sure didn't like being magistrates?

A Sure.

Q And didn't some -- some judges have a reputation for not being available as a magistrate?

A Sure.

Q Very hard to reach?

A Yes.

Q But business didn't stop during that week; right? If a magistrate wasn't available, then you or your brother would try to find a judge who was available; correct?

A Yes.

Q Didn't you testify sometimes you'd just go to the courthouse and see who was in their chambers and try to get a judge to deal with a bond?

A Yes.

Q And weren't there also some judges that were criticized for not doing enough bond work, that they just had a reputation for not doing a lot of bonds?

A Sure, there was some judges that didn't like to do bonds.

Q Now, you testified earlier that sometimes Judge Porteous would turn down bonds from you and your company; correct?

A Sure.

Q And you also testified as to his standard operating procedure. Wasn't it common for the judge to confirm information about a bond before signing it?

A Sometimes, yes. That was standard, yes.

Q And isn't it true that either he or Rhonda would often call a jail or maybe a prosecutor or even a police officer on occasion to confirm information?

A Yes.

Q And on occasion, didn't you see Judge Porteous himself do some of that confirmation work?

A Sure. You have to call the jail. If a judge is going to split or set a bond, they have to call it into the jail anyway. So if they were calling to check out the information, they wanted to do it, then they would give the information to the jail at that time.

Q But he would confirm the information that had been given to him at that point; correct?

A Sure.

Q And didn't you state earlier in your deposition that he would at times call the arresting officer, even, to confirm information?

A Sure, yes.

Q Now, I know that district attorneys were not always involved in bonds. But was it your experience that if the district attorney did not want someone bonded and objected to a bond, that the courts -- the judges would generally yield to that and would not grant the bond?

A Well, it wasn't -- it wasn't a hearing. It really wasn't an ex parte hearing where a district attorney is in the judge's office objecting.

I mentioned to you in the past, in the deposition, about them writing VP on the jail sheet, meaning vertical prosecution, that they were multiple bail candidates, from the district attorney's office, and that was an indication usually that it's someone they wanted to multiple-bail.

Q Wasn't it true also sometimes district attorneys would just make it known to a judge they didn't want someone bonded?

A Say the question again?

Q Isn't it also true that sometimes a prosecutor would make it known to the judge or his chambers that they do not want someone bonded?

A That happens. But that's not normal.

Q Right.

A That's not the norm. Yes.

Q But it happens?

A Yes.

Q When they feel strongly about it?

A Yes.

Q And would that sometimes -- I mean, would it be uncommon, for example, for prosecutors to catch a judge in his chambers or in the hall and just say, you know -- you know, we really oppose this guy getting a bond, and just to make the judge aware of it?

A I don't know any -- anything like that.

Q That's fine.

I want to get to the subject, we talked a little bit about overcrowding in Jefferson Parish. And during the 1980s and 1990s, there were overcrowding orders that were governing releases in the jails; right?

A The jail releases were controlled by the deputies at the jail.

Q Yes. Let me -- let me break the question up. Were you aware that Jefferson Parish had mandatory court

orders on overcrowding during the period?

A Yes.

Q And wasn't it true that that -- those orders then mandatorily forced the release of a lot of prisoners?

A Yes.

Q And indeed, wasn't it true that during some periods, one prisoner in often meant one prisoner out?

A Well, the federal court order that you're speaking of applied to misdemeanor charges first, the most nonviolent people with the less serious crimes would get out first.

MR. TURLEY: Madam Chair, we would like to move into the record Porteous Exhibits 1112 and 1113. The first one is the Hamilton decision that we're talking about or making general references to in terms of overcrowding. 1113 is -- also deals with overcrowding, and it's a publication from the Bureau of Government Research.

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: Exhibits will be received.

(Porteous Exhibits 1112 and 1113 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q Now, let me ask you about those people that were mandatorily released. Isn't it true that there were a lot

of complaints among judges and prosecutors that once these people were released, they often vanished, didn't come back to court?

A I don't think that judges and prosecutors complained when people didn't come back to court in any fashion.

Q But I'm asking specifically about people who were released during that period of overcrowding, wasn't it commonly discussed how many of the people released during that period, and that is on their own recognizance, simply disappeared?

A Yes, and that was a great argument for us as bail bond people.

Q That wasn't a frivolous argument; right? Isn't it more likely for someone to be brought back to court if they have a bond on them?

A Sure.

Q And why is that?

A Because a person doesn't go to court on commercial bond, then we send bounty hunters out to pick them up.

Q So you have an incentive to go find them; right?

A Yes.

Q And if you don't have that incentive to go find a bond jumper, then how is it that they ever find

themselves back in court if they don't want to be, if they jump their bond? How would they be found out in the normal course of things?

A The police stop them or someone turns them in.

Q So it would be sort of random or accidental, like a traffic stop?

A Yes, that's correct.

Q Now, isn't it true that many judges preferred to have bonds on prisoners for that reason, because it increased the chances that they would see these people again?

A Yes.

Q And one of those was Judge Porteous; correct?

A Yes.

Q And didn't Judge Porteous often talk to other judges about the value of having bonds on prisoners for that reason?

A Yes.

Q Let me ask you about split bonds. Split bonds weren't illegal; right?

A No.

Q In fact, most judges in Gretna did split bonds; right?

A After one point, yes.

Q Now, was it your experience in the bond business

that sometimes a bond was simply set too high because of the original charge in the case?

A Any bond that we couldn't make was too high.

Q No, I understand that, and I respect it. But I'm asking more generally. Isn't it true that sometimes a bond will be set very high because of the original charges in a case --

A Yes.

Q -- but that -- I'm sorry?

A Yes.

Q But that the case can change. Those original charges can be moved down so that the person is actually facing a charge that is lower than that original charge; right?

A And that would come after screening in the district attorney's office, usually a month later.

Q And didn't judges sometimes use split bonds to take care of that problem, that if the bond was set too high, sometimes they did split bonds, they would listen to the arguments and split a bond if they thought it was too high?

A Can you rephrase the question, Mr. Turley?

Q It's no problem at all. I mean, isn't it also true that some judges would split a bond when they thought that the original bond was simply artificially too high?

A Sure, yes.

Q Now, you had spoken to us in deposition that you thought the judge was one of the more experienced judges. Do you remember our conversation about that?

A Which judge, Judge Porteous?

Q Judge Porteous.

A Yes.

Q Now, he was specifically viewed as experienced in the criminal docket, was he not?

A In our opinion, because that's all we dealt with, was criminal bonds.

Q But he had a general reputation for being a judge that was experienced in criminal matters; correct?

A Yes, Judge Porteous was a district attorney before, a great prosecutor, you know, great jurist too.

Q And he was also a judge that was known to know a lot about the bond aspect of the docket; correct?

A Yes, we spent a lot of time talking about it.

Q Now, we also talked about the judge preferring to have bonds rather than people going out on their own recognizance. In your experience, isn't it true that you believe that the chances that someone will return to court are significantly higher if they have a commercial bond on them?

A Of course. And that's what the whole bail bond

industry is about. And of course, I was an advocate for making commercial bail bonds. That's how we made money.

Q But that wasn't a lie; right? That was your real view, wasn't it, that they were more likely to come back to court if they had a bond on them?

A If I wasn't in the bail bond business, it wouldn't matter. But yes, I would think, yes.

Q I want to ask you about Rhonda Danos. She was a friend of yours; right?

A I met Rhonda through the courthouse, through Judge Porteous's office.

Q Didn't you celebrate New Year's Eve together in 1993 and 1994?

A Yes.

Q And you went to a Rolling Stones concert together?

A Yes.

Q And you went on one trip with her, and shared a room with her, wasn't that true, to Vegas?

A We went on more than one trip, but on one, the first trip, we shared a room together.

Q And that was the one in Las Vegas?

A Yes.

Q And we had talked earlier about how Bail Bonds Unlimited would sometimes use Ms. Danos to assist in

planning trips and activities; correct?

A Yes.

Q Did she also help arrange social functions back in Gretna on occasion, like lunches and one Christmas party; correct?

A Yes.

Q Now, working in Gretna as a legal community -- I know that Jefferson Parish is fairly significant in size, but the legal community in Gretna is relatively small, right, most people know each other?

A Yes, that's correct.

Q And they tended to socialize with each other; correct?

A I don't know about everyone else.

Q I mean, did you see lawyers and judges often having lunch together and seeing each other at parties, for example?

A Well, there were a lot of fundraisers where I saw judges -- I mean, lawyers and other judges at fundraisers. I may have seen a judge with another lawyer a few times.

Q Well, let's talk about specifically the lunches that you know of. You would often -- I should say Bail Bonds Unlimited would often have relatively large lunches for judges, correct, you know, five or more people at a

given lunch?

A Yes.

Q And you had testified earlier that these lunches, that there would be just a lot of casual talk, as lunches usually have; correct?

A Yes.

Q And so you would said that sometimes people would talk family, sports. These were just lunches that people would relax, eat and talk; correct?

A Well, the lunches I attended with Judge Porteous and other judges, Bail Bonds Unlimited paid for the lunches, and we thought it was rude to speak about bonds at the table. We would do that before lunch or after lunch, but normally not during lunch.

Q I understand. In fact, you previously testified that you wouldn't bring bond worksheets to lunch because you thought that was rude; right?

A Yes.

Q And you don't specifically recall any lunches, I believe from your previous testimony, with Judge Porteous after he became a federal judge; right?

A Yes, there were -- there were lunches after he was a federal judge.

Q So when we asked you that earlier, you said you didn't remember any specific lunches when he was a federal

judge, do you now remember specific lunches?

A Well, after -- you asked me that in the deposition. Then Mr. Dubester reminded me about previous testimony that, you know, when you asked a bunch of questions, I left a few things out. But there were several lunches, and they're very vivid lunches. But when asked like that, I couldn't point them out.

If you show me some other documents or pictures, I could probably think of many more, too.

Q Many more? You think there were many lunches you had after he became a federal judge?

A Well, when Mr. Dubester had, I guess, recross-examined me or questioned me again after your deposition, there was the lunch with Kerner and Santini. I remember a couple of lunches with Judge Green's staff after he was a federal judge. And then my brother had some lunches, Emeril's lunch with Judge Benge and some other people during that time.

So if I really start to look at things to make me remember, yes, I could probably remember a lot more.

But just like off the top of my head, it's a long time ago.

Q Right.

A And a lot of things have transpired since then.

Q Okay. So I -- you gave us some good -- some

lunches there that were very specific, and those are the ones right now that you recall; correct?

A Well, yes, those ones I recall, but also those are the ones that came up after I said that I didn't remember the lunches after Judge Porteous was a federal judge, that was re-brought to my attention and --

Q By Mr. Dubester?

A Yes. And you were there too.

Q Okay. Now, let me ask you, we talked about the parking lot that Bail Bonds Unlimited had.

A Yes.

Q And I asked you, this was in the mid-1990s, whether anyone could really park in that lot in the mid-'90s -- I'm sorry, did anyone pay to use the park -- to park in the lot in the mid-'90s, and you said no; correct?

A Yes. We had talked about the beginning of the '90s too.

Q Yeah. And so it was an open lot; correct?

A What timeframe?

Q We're talking about the same timeframe, during that period that there was -- we had talked about it being an open lot that people could get into, didn't have a gate or anything.

A At one point -- at one point to access the lot, you had to drive through the two buildings. We had two

houses, and cars had to drive through. So it wasn't really open where anyone could drive through it.

Maybe in the previous years -- I really don't remember. They had a building in the back; they tore the building down. I don't remember what year that was.

Q You don't recall when it had become more difficult to get into the lot?

A I do remember that there was a parking meter and we were trying to get one of the parking meters removed so we could have better access to the lot. And the city of Gretna did not let us remove the parking meter, which leads me to believe it wasn't so easy to get in and out of the lot.

Q Why would a parking meter make it more difficult to get in and out of the lot?

A Well, we owned the property behind the building, and we wanted to be able to pull in and pull out the other side. So people couldn't just drive in from the other street.

Q But you testified earlier, am I correct, that people did, in fact, sometimes park in that lot that you didn't know?

A Yes. In not just the lot. We owned the whole block across the street from the courthouse, and there's this big building with a bunch of parking spots in the

front, and people could pull up any time and park. I mean, the public wouldn't, you know, have to be the parking police, stop, you can't park there. And we were busy doing bonds, not running a parking lot at that time.

Q This was not a big part of your life?

A Right, no.

Q Let me just quickly -- I just wanted to deal with a couple of things. You never actually saw the fence repairs by -- done on Judge Porteous's house, did you?

A No.

Q And you're not aware of any records that you've seen from you or BBU paying for those repairs; correct?

A No.

Q And Judge Porteous never asked you for the repairs, to ask you to send someone to repair his fence; correct?

A No, not myself personally.

Q And after Judge Porteous became a federal judge, from that day to this day, have you or your company ever done car repairs for Judge Porteous, after he became a federal judge?

A No, not that I know of.

Q From the day he became a federal judge to this day, have you or the company ever done home repairs?

A No.

Q I want to get an idea of also not just the lunches involving Judge Porteous. Do you remember attending a lunch where former Senator John Breaux was present?

A Yes, I do.

Q Where was that lunch held at?

A Ruth's Chris on Broad Street in New Orleans.

Q Did BBU pay for that lunch?

A Yes.

Q And Ruth's Chris Steak House is pretty pricey, isn't that true?

A Yes.

Q In fact, I think one of the House managers mentioned that's sort of high end?

A Yes.

Q And did -- is it true that your company then paid for a limousine to take Senator Breaux to another location?

A Yes.

Q And BBU paid for that; correct?

A Yes. I think that was through one of our employee's company credit card.

Q Okay. Thank you. Now, when you first began the bond -- when you first got into the bonding business in the late '80s, isn't it correct that Adam Barnett had more

interactions with judges in Gretna than you or your brother; correct?

A Yes, that's correct.

Q And it's true that Adam Barnett knew Judge Porteous through that process?

A I'm not sure how Adam knew Judge Porteous. Maybe through his father was an attorney.

Q That's right, his father was -- it's a small community and his dad was one of the attorneys practicing in that city; correct?

A Yes. But I really didn't have that much dealing with Adam's father. I don't know how Adam got to know Judge Porteous.

Q Fair enough. But there came a time when you and your brother stopped relying on Adam Barnett for communications with the judge; is that correct?

A That's correct. Let me back up.

We stopped relying on Adam for what, repeat that part?

Q That you didn't rely on Adam as much for interacting with judges, there came a point when it switched where you -- you and your brother primarily interacted with judges as opposed to Adam Barnett; correct?

A That's true. But still to almost the end of our business, Adam -- every now and then, Adam would come in

and do a bond.

Q Do a bond or two?

A Yes. But not -- not as often.

Q We -- I'm sorry, did you finish?

A Not as often as before. It slowed down tremendously.

Q Fair enough. Now, we had discussed in deposition about that sort of time period. And I showed you an article regarding Adam Barnett, an article dealing with a bond where he used his home as a surety.

Do you remember our discussion?

A Yes.

Q And I'm going to introduce House Exhibit 119Z, which is already in the record. We're going to put it up on your monitor there.

This is an article from the Times-Picayune dated September 13, 1993, with the headline that reads, "$80,000 house is used as surety for $300,000 in bonds."

Do you see --

CHAIRMAN MC CASKILL: Excuse me, Counsel. I don't believe that the exhibit has been offered.

MR. TURLEY: We thought we had. We would like -- thank you, Madam Chair. We would like to move it --

CHAIRMAN MC CASKILL: Our records show it as

unoffered.

MR. TURLEY: I apologize. I would like to move it into evidence.

CHAIRMAN MC CASKILL: Is there any objection to this exhibit?

MR. SCHIFF: No objection.

CHAIRMAN MC CASKILL: It will be entered into the record.

(House Exhibit 119Z received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q Do you see that article?

A Yes.

Q And do you remember us talking about that article?

A Yes.

Q And do you recall that this was the period when you -- you all began to have more interactions with the judges, that this article was sort of embarrassing to the judges in Gretna?

A Yes. But we had more interaction with Judge Porteous before '93.

Q But isn't it true that your work with Judge Porteous increased after this article?

A Yes.

Q And isn't it also true that you stated that you had more contact generally with judges after 1993 than you did before?

A In '92, some judges were elected new to the bench, and which Judge Porteous got them at a lunch, which we paid for. And that's where I remember '92 being a lot of action with bonds.

Q I'm trying to get to your earlier discussion where you indicated that you began to rely less on Adam Barnett and started to have more interactions with judges. Do you remember our discussion of that?

A Yes. And I think that was -- that was way before '93. I think that was more '91, '92. Because at '92 is when we went to -- I took Rhonda to Las Vegas, was in 1992. So that was kind of more the turning point of starting to do bonds with Judge Porteous rather than Adam at that point. And actually, it was before that.

Q I see. You're saying that's what you would consider the starting point that you were just referring to?

A Not -- you're asking me about -- Adam never went away. Adam continued to do bonds in our office until a few years ago. So we never stopped using Adam. But it was, you know, maybe once -- once every year or -- I really don't know how to quantify that, maybe a couple times a

year.

We had offices in New Orleans, so to say how often Adam was in my life past this article, he still was around.

Q No -- and I understand that. I guess if I could rephrase it, I was trying to get towards our previous discussion that there came a time when you relied on Adam less, not that he disappeared entirely.

A Yes.

Q And that's accurate; correct?

A Yes, that's accurate.

Q And is it true that you testified previously that "after Judge Alan Green was elected, we started going to lunch with other judges, including Porteous"?

Do you remember that statement?

A Yes.

Q And I want to represent to you that Judge Alan Green was elected in November 1993. Does that sound right to you in terms of the day, around November 1993 when he was elected?

A I thought it was sooner, but --

Q But do you remember that he was elected at that -- at some point you recollected that he was elected and you started to go to lunches more often?

A Yes.

Q Now, let me -- I'm going to ask you about the things of all that lawyers and BBU and others would sometimes give judges.

Isn't it true that lawyers would often give gifts of different kinds to judges, like turkeys and cakes, in Gretna?

A I really don't know. I'm not a lawyer. I was a bail bondsman.

Q Okay. So let's stick with bail bondsman, then. It's true that you and your brother would often give cakes and turkeys and the like to judges in Gretna?

A Yes. And to the clerks and pretty much the courthouse.

Q And most judges would accept these occasional gifts that you would give, like turkeys?

A More the cakes than turkeys.

Q You did a lot of cakes?

A My brother's ex-wife owned a bakery.

Q And sometimes you would deliver shrimp to judges; correct?

A Yes.

Q Now, have you ever personally given cash to judges?

A Yes.

Q Now, in earlier testimony, you recalled that you

had given money to a Judge Cascio, for example. Do you recall saying that you gave Judge Cascio $10,000 in an envelope?

A I said it was two payments and it was to someone in his office, not to him directly.

Q Is he still on the bench?

A Yes.

Q I'm not going to get into the other judges, we don't have to. But did you assume that all of the cash you gave to judges was going into their campaign?

A No.

Q But for the record, you never gave Judge Porteous cash, did you?

A No.

MR. TURLEY: Excuse me.

Madam Chair, we want to make sure that we move at this point Ms. Marcotte's deposition, which is House Exhibit 448, into the record as evidence.

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: I'm sorry, could you repeat, Counsel?

MR. TURLEY: We're just moving her earlier deposition with us, and I believe that is 448, into evidence.

MR. SCHIFF: Madam Chair, we have no objection

to the entire deposition coming in.

CHAIRMAN MC CASKILL: No objection. So moved.

(House Exhibit 448 received.)

MR. TURLEY: That's all of our questions. Thank you, Madam Chair.

CHAIRMAN MC CASKILL: Thank you.

Are there any questions for this witness by the panel?

MR. SCHIFF: Madam Chair, we have a couple of questions on redirect.

MR. GOODLATTE: Madam Chair, if you would indulge us for just a moment, count the time against us but we'll save time by --

CHAIRMAN MC CASKILL: Okay.

REDIRECT EXAMINATION

BY MR. GOODLATTE:

Q Ms. Marcotte, Mr. Turley had shown you a calendar listing bonds signed by Judge Porteous. Do you know if those were all the bonds that Judge Porteous signed, or only the bonds that the House was able to obtain?

A I don't think that's all the bonds.

Q Let me ask you about Rhonda Danos. Was one of the reasons you took Rhonda to Las Vegas that she was helpful to you?

A Yes, very helpful.

Q Now, just to be clear, you went to Las Vegas with Ms. Danos; your brother went to Las Vegas with Judge Porteous?

A That's correct. And my brother and I both went to Las Vegas with Ms. Danos after also, on another trip, on other trips.

Q And in every instance, you paid for the trips?

A Yes.

Q BBU paid?

A That's correct.

Q Mr. Turley asked you if Judge Porteous ever called the arresting officer, and you said sure. Weren't those instances when Judge Porteous was working extra hard for you in a situation where the judge needed to look for a rationale to reduce a bond?

A Yes, that's correct.

Q In other words, some judges didn't want to work with you, but Judge Porteous would find ways to justify your requests?

A Yes, he wanted to help us make money.

Q In addition to the -- in addition to the trips to Las Vegas, who paid for the Rolling Stones concert that you went to with Ms. Danos?

A I'm not sure. I'm not sure.

Q And did you have reasons in addition to friendship for taking Rhonda Danos to Las Vegas and otherwise treating her to entertainment?

A No.

Q Would you have taken Rhonda Danos to Las Vegas if she were not Judge Porteous's secretary?

A Certainly not.

Q Let me ask you about the limousine that Senator Breaux rode in. Who else was in that limousine with Senator Breaux?

A Judge Porteous, Melinda Kring, who was an executive -- administrative assistant with our office, and Rhonda Danos.

Q So would it be fair to say this was really another gift for Judge Porteous?

A Yes. And I guess for Senator Breaux too, if you want to put it like that.

Q Co-counsel wants me to clarify something. When I asked you did you have reasons in addition to friendship for taking Rhonda Danos to Las Vegas and otherwise entertainment, were you saying that you did have other reasons or you did not, other than friendship?

A Rhonda Danos and I were friends only through the courthouse. That's how I came to know her. And after the business went down, we weren't friends after either.

So the only reason we took Rhonda Danos to Las Vegas was to have access to Judge Porteous to do bonds.

Q So you did have reasons other than friendship?

A Yes.

Q And did you ever thank Rhonda Danos for all of her help?

A Yes.

Q And did you ever thank her when you went to Las Vegas?

A Yes. At the Mirage Hotel, I remember specifically under one of those fake palm trees that they have, we were drinking a pina colada, and I told her we appreciate every -- you know, letting us aggravate you like this, and that's why we're here in Las Vegas, to say thank you.

Q Mr. Turley showed you a newspaper clipping about a particular story about a bond setting, $80,000 for a house for $300,000 bond. DO you recall that?

A Yes.

Q And that was in 1993. Were you setting bonds with Judge Porteous well before that time?

A Yes.

Q How far back would you say?

A I would say at least 1991. It could be sooner. Because the trip to Las Vegas with Rhonda was in '92. That

was the winter conference of the bail bond convention, which usually was around Mardi Gras. So it would have been February of '92. So yes, we were doing bonds way before that article, and I think sooner.

Just take -- walk up to Rhonda, take her to Las Vegas and then a relationship with bonds developed before that. She wouldn't have just accepted to come to Las Vegas in February of '92.

So that would lead me to believe it was '91, or probably '90, late '91 -- I'm sorry, late '90 and '91.

MR. GOODLATTE: Thank you. Those are all the questions I have.

CHAIRMAN MC CASKILL: Any other questions by any of the parties? Questions by the panel? Do any senators have questions of this witness?

Thank you very much, ma'am. You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. SCHIFF: Madam Chair, the House calls Jeff Duhon.

CHAIRMAN MC CASKILL: For purposes of you keeping track, the House now has 14 hours and three minutes and Judge Porteous has 14 hours and 39 minutes.

Mr. Duhon, would you raise your right hand, please.

Whereupon,

JEFFREY JOHN DUHON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: You may be seated.

MR. JOHNSON: Thank you, Madam Chair.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q My name is Hank Johnson, Mr. Duhon. Would you state your full name for the record, please.

A Jeffrey John Duhon, Jr.

Q And, sir, where were you born?

A Gretna, Louisiana.

Q Is that where you were raised as well?

A Yes, sir.

Q How old are you?

A 51.

Q Did you get in any high school?

A 10th grade, finished the 10th grade.

Q All righty. And what did you do after you left high school?

A I worked offshore, roughneck and roustabout.

Q Was that on an oil rig?

A Yes, sir.

Q And what does a roustabout or roughneck do?

A Anything, anything and everything on an oil rig.

Q General labor?

A Yes.

Q How long did you do that?

A About 10 years.

Q And at some point, you went to work for Louis Marcotte?

A Yes, sir.

Q Do you remember when that was?

A Oh, I was turning about 29 years old. No, I couldn't tell you a date.

Q Okay. How did you get to know Louis Marcotte?

A I met his younger sister, fell in love with her.

Q What's her name?

A Lisa.

Q And did you all end up getting married?

A Yes, sir.

Q Are you still married to her?

A No, sir.

Q What type of work did you do for Louis when you first started working for him?

A Was more like a janitor. I cleaned up, painted for him, opened offices that he was opening up, new offices, new businesses.

Q Did you do any construction work also?

A Yeah, a little bit. We was buying offices, he was buying offices and I was remodeling them.

Q I see. Did you ever deal with Judge Porteous?

A No, not at this time.

Q At some point you began to deal with Judge Porteous?

A Yeah, when I received my bail bonds license.

Q Now -- and prior to the time you were seeking your bail bonds license, did you have contact with prisoners or persons who had been arrested in connection with your relationship with Louis Marcotte?

A No, no, not until -- I didn't deal with that until I received my bail bonds license.

Q All righty. And so you at some point came to meet Judge Porteous?

A Yes, sir.

Q And was that in connection with your work with Louis Marcotte?

A Yes, sir.

Q And tell the panel how it came about that you met Judge Porteous.

A Well, once I received my bail bonds license, I was able to interview prisoners and do bail, post bonds.

Q Did you meet judge -- but you've testified that you met Judge Porteous prior to getting your bail bonds

license; is that correct?

A Off and on. You know, I knew who he was but I didn't really meet him, you know, like shook hands or sat down with him.

Q Well, tell me, did you -- did you ever perform any services for Judge Porteous prior to becoming a bail bondsman?

A Prior -- once I became a bail bondsman, yeah, I did a couple things for him.

Q Once you became a bail bondsman?

A Yes, sir.

Q And what kind of things would you do for Judge Porteous?

A Well, I took care of a couple vehicles he owned, brakes, air conditioning, transmission and things like that, kept them up.

Q Were these vehicles that belonged to Judge Porteous?

A Yes, sir.

Q How do you know that?

A Because I used to pick his key -- the keys up from his secretary, Rhonda, once in a while.

Q Uh-huh. Was that at the courthouse?

A Yes, sir.

Q And so you would pick the keys up from the

courthouse, from the judge's secretary. And what would you do with the car once you had them?

A I would bring them to auto parts to get them fixed.

Q How many cars did Judge Porteous have at that time?

A Three of them.

Q Were they old or late model cars?

A They was old, late model cars.

Q Did they require a lot of upkeep?

A Yes, sir, sometimes.

Q Uh-huh. How often would you have to take care of Judge Porteous's vehicles, say, on a monthly basis?

A Once in a while. Some of them -- like I said, some of them was older than others. I'd take care of, like I said, air conditioning would go out, maybe the brakes, I'd pick them up and get them fixed. Exactly I don't know how many times.

Q Now, when you went to pick up these cars from Judge Porteous, who was it that directed you to do that?

A Louis Marcotte.

Q And that was in connection with your job for Louis Marcotte?

A Yes, sir.

Q Louis Marcotte would tell you to go pick up the

car?

A Yeah.

Q Or cars?

A He would tell me to go pick up the keys and take care of the automobile.

Q Okay. Did Judge Porteous ever pay you any money for taking care of his cars?

A No, sir.

Q And you would be on the clock, so to speak, with Louis Marcotte when you would do that?

A Yes, sir.

Q And were there any other things that you would do for Judge Porteous?

A Well, fixed a fence for him one time, besides took care of his cars.

Q So in addition to taking care of his cars, you repaired a fence?

A Yes, sir.

Q Was that a chain link fence or wood fence?

A No, wooden, wooden fence.

Q And what would you have to do? What did you have to do to --

A The fence was -- the fence was caving in, the pipes was busted. So I pulled the pipes out, reset the pipes, concrete, ran some two-by-four runners and put the

light boards on it.

Q Was this a small section of fence or a long section?

A I would say about 85 feet.

Q About 85 feet. So how long did it take you to do that?

A Took me about three days.

Q About three days. Full-time?

A Yeah. Well, not the first -- once I laid the concrete, it took about 12 hours to cure.

Q Now, did you do that job by yourself or with someone else?

A No, I had help.

Q Who was it that helped you?

A A fellow named Aubrey Wallace.

Q And did -- did you have to incur cost for materials to fix that fence?

A Yes, I -- I got it.

Q What did you have to purchase to fix the fence?

A I purchased, like, eight poles, eight bags of concrete, about 16 two-by-fours, about 180 lat boards from Home Depot.

Q Did Judge Porteous pay you to obtain those materials?

A No, sir.

Q Do you know how those materials were paid for?

A Louis Marcotte.

Q Did Judge Porteous ever pay you to repair the fence on his property?

A No, sir.

Q That was on Judge Porteous's home residence?

A Yes, sir.

Q And how do you know it was his home residence?

A Because I think his wife was there, and Louis told me it was his. That was the only time I'd been there.

Q Okay. Now, did you ever see Judge Porteous talking to Louis Marcotte?

A Yes.

Q Under what circumstances would you see Judge Porteous talking with Louis?

A I had lunch a couple times with them.

Q Any other places?

A Beef Connection, restaurants on the west bank.

Q Did you ever see Louis speaking with Judge Porteous in the judge's chambers?

A Yeah, me and Louis used to stop in to see him once in a while.

Q Did you ever go back to Judge Porteous's chambers with Louis while Louis was dealing with bond matters?

A Yes, sir.

Q Describe to this panel your impressions of how Louis Marcotte was treated in Judge Porteous's chambers.

A Well, sometimes we would go see him and get bonds done. You know, I'd interview people, and sometimes they wouldn't have the money. If you had a $2000 bond and you didn't have the money, we'd get a split commercial -- cash commercial or signature bond.

Or sometimes me and Louis walked in there, they might have had 10, 12 lawyers sitting there, and we just went right by them, right straight into the back, more like open door policy.

Q And describe what would happen once you all would walk past the people waiting for Judge Porteous and get back to his chambers. What would you -- what did you observe?

A We would go in there with a couple sheets of paper that we had bonds done on them, and we would ask him, like I said, if the bonds was too high and couldn't make them, we would get them split. We would ask the judge, you know, Judge, this fella can make a $50,000 bond, the bond may be 150. We would post cash commercial on the 50 and give him a signature bond on the rest of it.

Q Would your -- would the bonding firm make any money on a signature bond?

A No.

Q But you would make your money on a commercial bond; is that correct?

A Yes, sir, uh-huh.

Q What -- how did that work? Explain it to the panel, please.

A Well, cash commercial bond, if the bond -- let's say the bond is $10,000, 12-1/2 percent, which comes to like $1300, the state would get like 2-1/2 off the top, our insurance company got two and the remaining would come to us.

Q So is it fair to say that if the number of bonds -- the more bonds that you were able to split resulted in the bonding company making more money?

A Yes.

Q Did you ever -- you mentioned lunch -- lunches. Did you ever attend lunches -- did you ever go to lunch with Judge Porteous and Louis Marcotte?

A Yes. Yes, I went to a couple.

Q Can you tell the panel what would go on during those lunches?

A Sometimes no telling who would show up there. But we would go sit down and have a nice lunch, drinks if you wanted them, and whatever you wanted to eat.

Q How many people would -- would be there?

A There's no telling. Sometimes it could be 10, 12, could be five, could be three.

Q Now, you've testified about before you received your bail bond license and after you received. After you -- how did it occur that you were able to -- well, let me ask you this question.

At the time that you first started working for Louis Marcotte, had you already suffered a conviction for a felony?

A Yes, sir.

Q What was that felony conviction?

A Burglary, a burglary charge.

Q What was the sentence that you had received on that judgment?

A Nine years suspended sentence, five years probation.

Q And at the time that you first met Louis Marcotte, had you completed your probation in that case?

A Yes, sir.

Q You were under no legal disability?

A No.

Q And that prior felony conviction, was it an impediment for you, in terms of what you wanted to do with your -- with your life, your job?

A Yes. Well, it stopped me from receiving a state

license.

Q How was that?

A Because you can't hold a state license with a felony in the state of Louisiana.

Q So you could make a lot more money if you became a bail bondsman?

A Yes.

Q So that's what you -- how did it come to pass that you decided you wanted to become a bail bondsman?

A Well, Louis. Like I said, I fell in love with his sister, we started living together, we was going to get married, and he asked me to come to work for him.

Q And did you tell him about the felony conviction?

A Yes.

Q Did you mention to him that you wanted to go into the bonding business?

A No, he asked me.

Q He asked you?

A Yeah.

Q And you decided that it sounded like a good deal?

A Uh-huh.

Q Well, how was it that you were able to become a bail bondsman?

A I told him I had a felony conviction, and he said he would take care of it.

Q And did Louis take care of it?

A Yes.

Q How did he do that?

A He had the judge expunge it, had the record expunged.

Q Now, did you hire a lawyer to have your felony burglary conviction expunged?

A No, sir.

Q Did you have a lawyer to handle that?

A No, sir.

Q Did a lawyer appear in court to handle that?

A Not that I know of.

Q Well, how do you know that Louis had anything to do with it?

A Because he told me he took care of it one day. He said, you go take the test for your license.

Q Have you ever heard of the name Wayne Walker?

A Yeah.

Q Okay. Who is Wayne Walker?

A A lawyer in Jefferson Parish.

Q Do you -- do you know whether or not Wayne Walker was involved in the obtaining of the set-aside of your burglary conviction?

A A little bit. He's the one gave me a piece of paper, said it was done.

Q You never sat down in his office and met with him about it?

A No.

Q You never paid him anything?

A No, sir.

Q Did you ever go to court to have it done?

A No, sir.

Q And so who was it that -- which judge was it that expunged your felony conviction?

A He told me Judge Porteous did.

Q And how do you know that?

A He told me that.

Q Who told you?

A Louis.

Q Was Judge Porteous the judge who sentenced you originally?

A No, sir.

Q And so did it help you once you got this felony conviction expunged from your record?

A Yes.

Q How did it help you?

A Well, I went to class, I was able to get a bail bonds license, to post bail in the state of Louisiana.

Q And so have you had any other convictions since your record for the felony conviction of burglary was expunged?

A Yes.

Q What was that?

A I got a charge five years ago, conspiracy.

Q Was that on a drug case?

A Yes, sir.

Q And you were convicted or you entered a plea of guilty?

A No, I pled, pled guilty.

Q And your sentence was what?

A Nine months, three years probation.

Q Now, have you completed that sentence?

A Yes, sir.

Q Are you now under any disabilities whatsoever as a result of that sentence?

A No, sir.

Q In other words, you're off parole?

A Yes, sir.

Q Off probation. No pending charges?

A No, sir.

MR. JOHNSON: I have no further questions, Madam Chair.

CHAIRMAN MC CASKILL: Mr. Turley.

CROSS-EXAMINATION

BY MR. MEITL:

Q Good afternoon, Mr. Duhon. My name is P.J. Meitl. I'm one of the lawyers for Judge Porteous. Previously you were speaking with the Congressman about a burglary conviction. What year did that take place?

A Oh, I would say back, I don't know exactly what year, it was back like in the '70s, '76, somewhere around there.

Q Okay. Do you know how old you were at the time of that arrest?

A Yeah, I was 18 years old.

Q Okay. And did you plead guilty to the charge?

A Yes.

Q Now, is that the crime that you've -- you were discussing with the Congressman that was expunged?

A Yes, sir.

Q Did you go to jail for that crime?

A No.

Q Were you placed on probation?

A Yes, sir.

Q And what were the term of that probation?

A It was nine years suspended sentence, five years probation.

Q And can you describe in more general terms what

the probation meant, what you had to do?

A All I did was fill out a form once a month and sent it in to my probation officer.

Q So it was a rather light sentence?

A Yes.

Q Mr. Duhon, isn't it correct that Wayne Walker, the attorney you referenced with the Congressman, filed on your behalf a motion to set aside the conviction and dismiss the prosecution for the burglary offense?

A If he did, I had no recollection of him filing.

Q Okay. Well, why don't we put up the exhibit. It's HP Exhibit 77C. You can look at the screen there, Mr. Duhon.

All right. On this page about halfway down, you'll see an order from a judge. Right beneath the order -- do you see order there in the middle of the page?

A Uh-huh, yes, sir.

Q And below that, it says "considering the foregoing motion."

Can you read the rest of that, please. Can you read it out loud, sir.

A What do you want me to do -- "forgiving the motion, Gretna, Louisiana, this 16th day of June, 1993." It's somebody's signature.

Q Above that it says "it is ordered that the State

of Louisiana show cause on the 17 day of June 1993 at 9:00 why the foregoing motion should not be granted."

Do you see that?

A Uh-huh.

Q All right. Now, up at the top of that page, do you see the case number? We're going to highlight it for you.

A Yes, 76-770, division B.

Q Okay. And back to where that order was, there was a signature that you referenced. Do you know whose signature that is?

A No, sir.

Q And do you know if that's Judge Porteous's signature?

A No, sir.

Q I'm going to represent to you that that's a signature that was referenced earlier in testimony today of Judge Richards, but we'll get back to that.

Mr. Duhon, do you know -- well, let's look at the next page of that exhibit. It's going to flip. Now, up at the top do you see the case number there?

A 76-770.

Q Okay. And that's the same case number as the previous page?

A Yes, sir.

Q Okay. And do you recognize the signature at the bottom of this order?

A It looks like the same as the last one.

Q Okay. So that's Judge Richards's signature again.

Now, I'm going to go ahead and highlight that part of the order there. It says, "it is hereby ordered, adjudged and decreed that the conviction under Docket Number 76-770," and I'll skip ahead, "is hereby set aside on this 17th day of June 1993."

Do you see that?

A Yes, sir.

Q So Judge Porteous didn't sign the order setting aside the conviction, did he?

A That's the first time I've seen this.

Q Now, even though the conviction had been set aside by Judge Richards, there was one more ministerial step that had to take place, the expungement. Are you aware of that?

A No, sir.

Q Okay. I'm going to introduce HP Exhibit 77A. Now, this appears to be another motion filed by Wayne Walker on your behalf. This motion is a motion for expungement. On the third page, if we can skip ahead, again there's an order here, and I'll read it to you.

It says, "it is hereby ordered that the Jefferson Parish sheriff's office show cause on the 15th day of July 1993 why the motion for expungement should not be granted."

Do you see that?

A Yes, sir. Yes.

Q Okay. And do you see a signature below that above the word --

A It looks like the same as the first two.

Q Excuse me?

A It looks like the same as the first two.

Q Okay. So that's Judge Richards's signature again.

Now, did you go -- you said you didn't go to court for the hearing, did you?

A No, sir.

Q All right. Let's go ahead and put up the expungement order that Judge Porteous signed that wasn't introduced before. It's HP Exhibit 77B.

Now, isn't it correct that Judge Porteous signed this expungement order but only after Judge Richards had already agreed to set aside your conviction and had asked the state to show cause why the motion for expungement shouldn't be granted?

A I have no idea.

MR. MEITL: Madam Chairman, we'd like to move into the record Exhibits 77C, 77A and 77B.

MR. JOHNSON: No objection.

CHAIRMAN MC CASKILL: Are there any objections?

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: It will be admitted.

(HP Exhibits 77A, 77B and 77C received.)

BY MR. MEITL:

Q Now, Mr. Duhon, isn't it correct that Judge Richards, the individual whose signature you saw on those previous three documents, he had also, two years before Judge Porteous had expunged your record previously expunged a different conviction?

A I said I have no idea about these expungements. All I did, I went by what Louis told me. I never seen none of this paperwork.

Q Okay.

A And I didn't hire Wayne Walker.

Q All right. In 1976 were you arrested for multiple offenses?

A On what?

Q Well, I'm asking you.

A '76.

Q Were you arrested for anything more than the burglary charge?

A Yes.

Q What were you also arrested for?

A Burglary of an automobile.

Q I'm sorry?

A I think it was burglary of an automobile.

Q You stole an automobile?

A No. It was a radio.

Q You stole a radio out of an automobile? Okay. And was that conviction expunged?

A No. I don't think I got charged. I think they dropped that. I only had one conviction, it was burglary of a business.

Q All right. Why don't we put up Porteous Exhibit 2006, which was an exhibit previously introduced earlier this morning. Mr. Duhon, this is an order signed by Judge Richards, if we turn to the second page, and you can see if you think that's the same signature. Does that look like the same signature as the previous documents?

A I don't know. It don't look like --

Q I'll represent to you that that was Judge Richards. Let's go back to the first page. Up at the top there, there's a case number.

Do you see that?

A 76-1505.

Q Yes. So, now, that indicates that the case was

from 1976. Do you think that this related to the automobile burglary of the radio?

A I don't know.

Q All right. So you don't have any recollection of Judge Richards expunging a crime that you committed in 1976?

A No, sir.

Q All right. Why don't we go ahead and pull up the caption of that case. Do you see your name there, Mr. Duhon?

A Uh-huh.

Q Okay. And then below that it says, "order. The following motion and annexed affidavit considered, let all the agencies and law enforcement offices including, but not limited to, the following," and then it lists several agencies.

And then it continues, "expunge and destroy any record of the arrest, photographs, fingerprints or other information of any and all kinds of descriptions relating to the following," and then it lists your name and a date of arrest of June 15, 1976.

Do you see that?

A Is this the -- this is the only document I received, this one right here.

Q I'm sorry, that's the only document you ever

received?

A (No verbal response.)

Q I want to make sure you're not confused between the various expungement orders. Why don't we put up Judge Porteous expungement order next to this expungement order. Judge Porteous's expungement order was 77B. It will take a second there, Mr. Duhon, but we're going to put them up next to each other.

All right. Now, these documents look very similar. Take your time and look at them if you'd like. But does this refresh your recollection as to which document you had previously seen?

A No, I know which one it was. It was the last one you showed me, because I had a couple. I mailed them off. I mailed them to the state police, Jefferson Parish.

Q Right. If you look at the one on the right there, that's the one, I believe, for Judge Porteous. That also lists various agencies that it needs to be mailed to, doesn't it?

A I can't see it from here.

Q Okay. Why don't we --

A Can you widen it?

Q We'll blow it up for you a little bit. Do you see that? Those are various agencies from the Judge Porteous expungement order?

A Yeah, I see it now.

Q Does that refresh your recollection as to which one of these you've seen before?

A No, now you confused me.

Q Okay. I understand. Now, at the time of your expungement from Judge Porteous, how old were you?

A Ooh, well, I was in my 30s. 15 years had went by.

Q So 15 years had gone by, and you were seeking expungement and Judge Porteous granted the expungement; is that correct?

A Yes, sir.

Q And Mr. Duhon, do you have any records relating to the expenses for the fence repairs that you were discussing?

A No, sir. No.

Q Mr. Duhon, how many times have you spoken to the House lawyers prior to your testimony today?

A Twice.

Q Were you ever shown these documents that I've shown you today?

A No, sir.

MR. MEITL: That's all the questions I have for you now, Mr. Duhon. Thank you.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Duhon, you don't know whether or not Judge Porteous spoke to Judge Richards about your expungement?

A No, sir.

Q Or your motion to set aside; is that correct?

A No, sir.

Q And are you aware of the fact that Judge Porteous signed the expungement of your record?

A No, sir.

Q You're not aware of that?

A No, I didn't see none of the paperwork.

Q You were simply told by --

A Yeah, I seen one piece, and it was the second-to-last one you showed me.

Q And you -- again, the only thing you know is what Louis Marcotte told you?

A Yeah, he just told me he was going to take care of it and he took care of it.

MR. JOHNSON: All right. Thank you, your Honor. No further questions.

MR. TURLEY: We have no recross, thank you.

VICE CHAIRMAN HATCH: Let's go on to the next witness. The House can call its next witness.

(Witness excused.)

MR. SCHIFF: Mr. Chairman, the House calls

Aubrey Wallace.

VICE CHAIRMAN HATCH: First of all, do any of the members have any questions that they care to ask at this point?

Without that, we'll proceed to the next witness. The next witness will be Aubrey Wallace, as I understand it.

MR. SCHIFF: That's correct, Mr. Chairman.

VICE CHAIRMAN HATCH: At this particular point the House has 13 hours and 43 minutes left and Judge Porteous's side has 14 hours and 28 minutes left, just for the record.

Whereupon,

AUBREY WALLACE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q State your full name for the record, please.

A Aubrey Wallace.

Q Sir, where were you born?

A Excuse me?

Q Where were you born?

A New Orleans.

Q Were you raised there as well?

A Yes, sir.

Q Is that where you continue to live?

A Yes, sir, still reside.

Q And, sir, how old are you?

A 51.

Q And, sir, have you ever had occasion to work for -- do you know a man named Louis Marcotte?

A Yes, sir.

Q Have you ever had an occasion to work for him?

A Yes, I worked for him a number of years.

Q And what type of work did you do for him?

A I started out with him just basically manual labor, working in his office, his bail bonds business, doing different jobs for him, cutting grass and running errands, numerous errands for him.

Q And at some point, did that employment relationship change?

A Yes, over the years, a period of time.

Q Uh-huh. How did it change?

A Well, I got more involved with the aspect of the bail bondsman business, so far as bringing paperwork to the jail, the bonds that they would write. Frequently, bringing paperworks up to different chambers, checking on bonds for him, to that degree.

Q Okay. Now, in connection with your work with

Louis Marcotte, did you have an opportunity to ever meet Judge Porteous?

A Yes, I did.

Q Tell the panel the circumstances under which you met Judge Porteous.

A Outside of being a judge at the 24th Judicial Court, he was a judge that Mr. Marcotte would frequently interact with with bonds.

Q What kind of interaction did you have with Judge Porteous?

A 90 percent of the time I would go with Mr. Marcotte, I was his personal driver, his protege, so I would go with him on mostly all the occasions that he would go up to the courthouse. And I got acquainted with Judge Porteous through Mr. Marcotte.

Q Did you at any time after you went to work for Louis Marcotte do any work for Judge Porteous?

A On some occasion I would go to the courthouse, and I would receive his automobile to take it to detail it, manual maintenance on it, to just wash it, whatever maintenance I had to do to it.

Q Was it on -- how many automobiles did Judge Porteous have?

A Well, it was only for me with one on numerous occasions, I would go and pick that automobile up. It was

a blue Cougar. But on one occasion, I think I picked an Oldsmobile up from him on one occasion.

Q Now, so how often would you go and pick Judge Porteous's car up?

A Maybe twice a month.

Q And when you picked him up, where did you pick him up from, and how would you get the keys to the vehicle?

A It was a process that they had a rear area in the courthouse that I was allowed to go into that area to redeem the car. They had a code you would hit for the gate, and I would receive the code from the secretary, and I would -- the keys would be in the car for me. I would have an understanding from Judge Porteous that the keys would be under the floor mat, and that's how I got the car.

Q And so you would take Judge Porteous's cars away from the courthouse, drive them to have some maintenance done?

A I sure wouldn't steal them. I would not enter that. It was a secure area, and you had to have passes to this area where most of the judges park. So I had permission to go get it.

Q And what services would you render on Judge Porteous's cars?

A I think on one occasion there was some audio problem with the car, and I took it to a place to get some

service. I think at that time a radio was installed, and on several occasion, I received the car, I took it to the oil change, and I would go to a detailing place, and they would do a full detail and fill it up with gas.

Q Were there ever any occasions that you would receive the car directly from Judge Porteous?

A Not directly, but he had knowledge that I was there. On one occasion or two occasion, I stood at the gate, and when I seen him pull in, I probably received the car right after that.

Q Now, did -- so who paid the bill when you would take the cars for service? Well, let me ask this question: Would you service the cars yourself, or would you take it somewhere to have its services rendered?

A No, sir, at no time did I do the service the car. I would take it to the place where I was advised to bring it.

Q The place where you were advised to bring it?

A Yes.

Q And what kind of place was that?

A It would be a mechanic's shop. It would be somewhere where some type of maintenance would be did to the car.

Q Now, who would it be that would give you instructions as to where to take the car?

A Mr. Marcotte.

Q Was that Lori Marcotte?

A No, Louis.

Q Mr. Marcotte?

A Yes, Mr. Marcotte.

Q All right. And when you would take it to have some services rendered, you would incur a bill for it, would you not?

A Well, there were prearrangement that when I brought the car there, I was understood that all I had to do was just bring the car there, and whatever that would take place with the car, I would call Mr. Marcotte and give him a understanding of what the price could be, what the nature of work they were going to do to that car, and then I was told to let it proceed.

Q Mr. Marcotte would tell you that?

A Yes, sir.

Q Do you know whether or not Mr. Marcotte paid the bills incurred for maintenance on the cars?

A Yes, he would.

Q Did Judge Porteous ever give you any money to take care of the repairs to his cars?

A No, sir.

Q Never?

A No, sir.

Q Were there any occasions where you would -- when you brought Judge Porteous's car back to the courthouse or back to some location for Judge Porteous to retrieve it, were there any times when you left additional items in the car for Judge Porteous?

A Well, there were certain occasions that we would -- they have parties, Thanksgiving or Christmas, of that nature. Some items, like shrimp would be -- ice chests full of shrimp would be put in position for me to put there or some bottles of Absolut vodka, those types of things that I would receive from the office.

Q And did that happen on more than one occasion?

A On several occasion.

Q Now, did you ever have occasion to perform any repairs on Judge Porteous's home?

A Yes, sir, I did.

Q What repairs were those?

A We went to his residence, and we dismantled a wooden fence, and we built it up. We took the pilings from under the ground, put new polling, and we did some cement work, slab work.

Q How long did that job take?

A Approximately two to three days at most.

Q And did you -- who did that work with you?

A Me and Mr. Duhon.

Q Mr. Duhon?

A Yes, sir.

Q Did you accompany Mr. Duhon to the store to purchase items to repair the fence?

A Yes, on two occasion.

Q And did Judge Porteous give you or, to your knowledge, Mr. Duhon any money to pay for the materials used for the repairs on his property?

A No, sir.

Q Do you recall how the items were paid for?

A I think they were paid by credit card. Well, I know they was paid by credit card.

Q Do you know which credit card they were paid with?

A At the time there was corporate Marcotte -- it was corporate credit cards for the company.

Q Uh-huh. What corporation were the cards --

A It was Marcotte corporation, something like that.

Q Did Judge Porteous ever pay you for performing the repairs at his home?

A Me personally?

Q Yes.

A No, sir.

Q Now, I want to take you back to around late

summer, early fall 1994. I want to ask you, during that time, did you have two convictions for felony offenses?

A Yes, I did.

Q Was one a burglary conviction?

A Yes, sir.

Q And the other was a drug conviction?

A Yes, sir.

Q Now, at some point, your relationship or your job responsibilities with Louis Marcotte changed from being the driver and doing the laboring kind of work to doing bail bonds; is that correct?

A Well, I would say my knowledge became more knowledgeable, the bail bonding business, and my desire was to be an agent.

Q How did it come to pass that you formed that desire?

A Seeing all the money that was being -- you know, it was a lucrative business, and it was something that one would want to be a part of.

Q There was a lot of money flowing through?

A A lot of money.

Q And it's fair to say that the Marcottes were just drowning in money?

A Bathing in it.

Q And you wanted to get a piece of it yourself?

A That's the American way.

Q But you had those two prior felony convictions?

A Yes, I did.

Q What was stopping you from becoming a bail bondsman and getting into that money?

A My conviction.

Q Did you discuss that at all with Louis?

A Yes. That was one of the conversation that Mr. Marcotte had. I built such a relation and rapport with Mr. Marcotte that he built and instilled such confidence in me that he would like to see me in that type of business, and I would be more of a help to him by having a license. There were areas that he was gradually growing, and he would want me to be a person that he can confide in to go in certain areas to work and establish his business a little bit more.

Q So he wanted you to get your bail bondsman license also?

A Yes. I wanted it myself.

Q You wanted it, and he wanted it?

A Certainly.

Q So you both could make some money?

A Well, certainly.

Q For him to make more money, I guess. But now, were there any plans made to proceed along so that you

could eventually become a bail bondsman?

A Of course.

Q What were those plans?

A Mr. Marcotte briefly told me that it was possible for me to get an expungement, that he had spoke to Judge Porteous in reference to my felony conviction on burglary and that it could be expunged, I believe, to where I can have a chance to obtain my license.

Q What would have to happen before your record for that conviction could be expunged?

A I mean, I guess court process. I'd have to go to court and go through whatever steps were necessary.

Q Did Louis tell you he would take care of everything?

A Yeah.

Q Did he take care of that?

A Yes, sir.

Q What did he do?

A Well, he came to the office, and he said look, this is the process, that you are supposed to report up to Judge Porteous's courtroom at such and such a time, and they're going to start the process on your expungement.

Q Okay. Now, when he told you that, when Louis Marcotte told you that, had you retained an attorney to handle that for you?

A No, sir.

Q Did you ever retain an attorney to handle that for you?

A No, sir.

Q Did an attorney handle that for you?

A Yes, sir.

Q Who was the attorney?

A On one occasion it was Mr. Robert Rees and the last process of it was Mr. Bruce Netterville.

Q And did you ever go to court?

A Yes, I did.

Q So how many times did you go to court?

A Two occasion.

Q Did you hear, see, and observe Judge Porteous do anything in connection with your motion to set aside, motion to expunge?

A Well, I mean, the first process, I just stood there, and Mr. Robert Rees really did all the interaction. I just sat there. And it was -- the first process, it was delayed, and then we had to come back.

Q And then what happened when you came back?

A On the second occasion, it was officially done.

Q Now -- so your burglary conviction was set aside by Judge Porteous?

A Yes, sir.

Q Now, you still had that little drug case floating around. What was going to happen with that?

A Well, that was another process.

Q Tell us about it. Were you aware of what the process would be in order to make that drug conviction go away?

A That would consist of a pardon, and that was the course we were going to proceed through next, but an article came out that prevented that.

Q An article came out that prevented you from seeking a pardon?

A Yes, sir.

Q That was an article in a newspaper?

A Yes.

Q Was that the New Orleans Picayune?

A Yes, it was.

Q What was the substance of the article?

A The substance of the article was the good ol' boy system is still alive and well in Jefferson Parish.

Q What did it talk about?

A It talked about me, as being a convicted felon, was expunged while I was on parole.

Q Did you feel like you were entitled to a -- to have your burglary conviction set aside?

A Not by law, but I guess I was.

Q Explain that to us. Did you feel like you were entitled to have it expunged, and if so, why? If not, why not?

A I would just say that I was fortunate.

Q You were what?

A Fortunate.

Q Did you feel like it was on the up and up, the process?

A Well, there was some courtesy there. That's all I can say.

Q Did you feel like it was a fix?

A I just had got leniency.

Q In your heart, do you feel like you deserved that?

A I just think that I was shown some compassion.

Q Sir, you mentioned this article that came out that prevented you from being able to petition for a pardon; correct?

A Yes, sir.

Q And I want you to take a look at that screen to your right, to your other right.

A I'm sorry.

Q Take a look at that and see if you can identify that.

A Let me get my glasses. I can identify it. I'm

familiar with that.

Q You're actually a little older than you look, needing the glasses.

A Yes, I'm familiar with that article.

Q And is that the article in question that prevented you from moving forward with your pardon?

A Yes, sir, it is.

Q And I turn you to what's been highlighted on the screen and ask you to read that.

A It says "United States District Judge Thomas Porteous, while serving his final weeks on the state bench in Jefferson Parish, illegally amended a convicted drug offender's burglary sentence and then removed it from the man's record, according to the Metropolitan Crime Commission."

Q Is that a factual statement that is true, or is it false?

A It's true.

MR. JOHNSON: One moment, please, Madam Chair.

MR. TURLEY: I'm sorry, Madam Chair. Was the House asking for a legal opinion as to whether that statement was true or as to whether it was in the article? I'm not sure.

MR. JOHNSON: I'm asking him whether or not the statement is true. I think it speaks for itself that it's

in the article.

THE WITNESS: I'm just telling you what the article says. I don't know the legality of it. It's just an article.

MR. JOHNSON: Madam Chair, I move for admission of House Exhibit 119A.

CHAIRMAN MC CASKILL: Is there any objection?

MR. TURLEY: No objection.

CHAIRMAN MC CASKILL: It will be entered into the record.

(House Exhibit 119A received.)

MR. JOHNSON: I have no further questions, your Honor -- or Madam Chair. Excuse me.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Reverend Wallace, good evening.

A Good evening.

Q It is Reverend Wallace now, is it not?

A Yes, it is.

Q When did you become a reverend?

A About five years ago.

Q And what church are you associated with?

A I'm associated with a church in Jefferson Parish, Heavenly Star Missionary Baptist Church.

Q And what type of work do you do as a reverend

now?

A I'm assistant.

Q What type of work do you do as an assistant? Can you give us an idea?

A My duties are to assist in baptism, to -- bible study, just basically teaching the word of God. When the pastor's not in a position or a capacity to preach, that's when I'm up. We rotate and such.

Q So basically --

A And visiting -- being a liaison for a church outside of that church, a representative.

Q Thank you, Reverend.

Reverend, I'd like to go back to what you were asked about in terms of your earlier convictions to try to clarify in our mind, maybe in your mind, as to what occurred. We're trying to put up a demonstrative exhibit here, but I think you have the same eyes I have. So you may be more fortunate using that screen.

A Okay.

Q I'm going to try to walk you through this so that the Senators understand what we're talking about here. We're really talking about two convictions; right? We had a drug conviction and a burglary conviction; correct?

A Yes, sir.

Q And they were totally separate cases; right?

A Yes, it was.

Q Okay. Now, the interesting thing about this is that if you look at that exhibit, the drug arrest occurred on December 15th, 1988.

Do you see that, that first one?

A I see that, yes, sir.

Q Okay. Now, the top of this exhibit deals with what we know about your history with regard to the drug charges, and then the bottom, the shaded portion, is what we know about the burglary charge. Now, one of the things I'm going to try to do here is sort of walk us through how this happened, because it sort of got jumbled up, and you might be able to help us.

A Okay.

Q So December 15th, 1988, you have the arrest for the drug issue; right?

A Yes, sir.

Q Okay. Now, if you go to the bottom, the next event that happens is that on May 8th, 1989, you're arrested for burglary; correct?

A Yes, sir.

Q That's your recollection today? Those are basically accurate facts?

A Yes, sir.

Q Now, if you look at the bottom of the exhibit,

there's a whole bunch of events with regard to your burglary charges where you pled not guilty and an arraignment and scheduling. What I want to point you to is under "1990," it says "6/26/90."

Do you see that?

A Yes.

Q If you look at the top of the demonstrative, nothing has happened in your drug case up until that point?

A Right.

Q It's on that occasion that it says Wallace pleads guilty, this is in the burglary case, Judge Porteous issues sentence, three years hard labor, suspension, and two years probation.

Do you see that?

A Yes, sir.

Q So at that point you actually have a conviction on burglary, but you have not been convicted or pled on the drug case; correct?

A That's right.

Q Okay. And so Judge Porteous is your judge who sentences you to probation; correct?

A Yes, sir.

MR. TURLEY: We're going to pull up House Exhibit 82. Madam Chair, House Exhibit 82 is a part of the record of Mr. Wallace. It's one of the pages in that

record. We'd like to pull it up, and I also would like to introduce this into evidence.

CHAIRMAN MC CASKILL: Is there any objection?

MR. SCHIFF: Madam Chair, there's no objection.

CHAIRMAN MC CASKILL: So admitted.

(House Exhibit 82 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q I'm going to ask my colleague to highlight the name of the judge from that case. Who was the judge that was assigned in the burglary case?

A Judge Porteous.

Q Thank you, sir. I'm also going to highlight the name of who is representing you at that time. Do you recall an attorney named Joseph Tosh?

A Yes, Joe Tosh.

Q Okay. Thank you.

MR. TURLEY: Madam Chair, we would also like to introduce House Exhibit 81, which is the rest of the case file for Mr. Wallace on these issues.

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: So admitted.

(House Exhibit 81 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q So Reverend Wallace, Judge Porteous was the judge assigned in your case, and he sentences you to probation on the burglary charge; correct?

A Yes, sir.

Q And then after that, if you take a look at the top of the exhibit, you end up pleading guilty on the drug charge; correct?

A Yes, sir.

Q But at that time when you pled guilty to the drug charge, you were already on probation, and it was for an offense that occurred before the burglary charge; correct?

A Right.

Q And do you remember your attorney telling you that this created a sort of confusion in the record, that it was sort of a complex case for that reason?

A In what way? What do you mean?

Q Did your attorney ever explain to you that these two convictions created a sort of conflict in terms of your probation versus the record in the two cases?

A Yes, sir.

Q And if you take a look down by the -- on the burglary portion, the bottom half, on December 11, 1991, it says "Wallace's probation terminated," and it says "as a result of his imprisonment" -- this is a part of your

arrest -- "he cannot complete probation."

Do you see that?

A Yeah.

Q This is what I want to ask you. When you see this laid out like this, during that time between when you were given probation by Judge Porteous, you actually hadn't committed any new crime; right? Because the drug crime was before he gave you probation; correct?

A I've got to look at it again. It's been so long, sir.

Q It's okay. Take your time, because this can be a complex demonstrative. Let me walk you through it. If you take a look at the top of this exhibit, you will see that you were arrested on December 15th.

Do you see that?

A Yes, sir.

Q And then if you go all the way to the next part, it says 2/91 where you plead guilty to that crime.

Do you see that?

A Right.

Q There's no record between those two dates of your being arrested for another crime; right? You don't recall being arrested for another crime? How about if you take a look when the judge gave you probation, if you look down at 1990 and it says 6/26/1990?

A Uh-huh.

Q That's when he gave you probation. Do you see any crime that you committed after that date?

A No, sir.

Q So you were put on probation, but you actually didn't commit a crime on probation; right? It was the crime for the earlier case; correct?

A Right.

Q And these things just moved in a different order; right?

A Right.

Q So it's sort of weird that your second crime got to sentencing before the first crime; correct?

A Right.

Q You already explained to Mr. Johnson that you wanted the burglary set aside. At some point you spoke to, you mentioned, an attorney named Robbie Rees; correct?

A Yes.

Q And you wanted to amend the sentence; correct?

A Yes.

Q Did you have any direct conversations with Judge Porteous about it?

A No, sir.

Q Now, let me ask you something about the bonds discussion that you had with Mr. Johnson. You said that

you had accompanied Louis Marcotte when you went to see judges about bonds; correct?

A Yes, I do.

Q And that was with various judges, including Judge Porteous; correct?

A Right.

Q Now, if I could just focus on when you went to Judge Porteous's chambers. Did you ever know him to turn down a bond as well as grant one?

A On some occasion, he would.

Q Why do you think -- do you have any recollection of why he would turn down a bond, give us an idea of the reasons?

A Depending on the nature. If it's a child molestation, a rape, I mean some cases like that, most judges would not want to be a part of that person, letting that person out of jail. Those are the types of bonds most judges would not want to fix.

They only had several judges that would have some judicial understanding that they were entitled to bonds, regardless of what the charge may be, and he was more of a judge that stood out so far when it came down to if he believed you were entitled to a bond, he took that into consideration.

Q So sometimes he would turn down bonds, but at

least he would listen to you in terms of why a bond was justified?

A He was a very fair and impartial judge.

Q I believe you mentioned he had a reputation for being one of the more experienced judges when it came to criminal cases; correct?

A Yes, sir.

Q Do you think it had something to do with his listening, even if the case was a violent crime, as to what the basis would be?

A Yes, he sort of was more -- would give you an opportunity to see the facts, and that's what he was about, more fact-finding than anything.

Q Thank you, Reverend. I'm going to return to that in a second. I wanted to just confirm a couple of things for the record. You never actually made payments for any of the repairs for Judge Porteous; correct?

A No, sir.

Q Okay. And in terms of how they were paid for, do you have a very clear recollection of exactly how they were paid for, all of these repairs?

A Well, they were paid most of them, on most occasion with a credit card.

Q But were you --

A On some occasion, I would receive cash, $100

from the office. If I brought the car to a detailing area, I would pay for it with cash, but I would get a receipt.

Q Now, you didn't personally know if Judge Porteous ever reimbursed for that, right, because you weren't there; right?

A No, sir. I didn't have that type of interaction.

Q Now, isn't it true that the cleaning and gassing up of these cars you mentioned was only roughly a six-month period?

A Six to eight months probably.

Q By the way, I wanted to confirm. At an earlier stage, did you tell the FBI that you thought it was one day of repairing that fence at his house?

A All I can recall, we spent two days to three days there.

Q Wasn't part of that time, didn't you and Mr. Duhon wait for the concrete to dry for 12 hours because it needed to dry?

A I think that's possible.

Q Now, do you have a good recollection of when you repaired this fence, the date?

A No, sir.

Q Now, you were incarcerated between February 1991 and August 1993. Do you remember if it was before or after

your incarceration, or you just don't remember?

A I can't remember.

Q If you don't remember, that's fine. Okay. But you do remember that this occurred when he was a state judge?

A Yes, sir.

Q And you've never done any repairs of any kind for the judge when he was a federal judge?

A No, sir.

Q And you never did any repairs inside their house; correct?

A No, sir.

Q You mentioned that Louis Marcotte would often deliver things of value to the courthouse. Wasn't it a regular practice for Bail Bonds Unlimited to give gifts to a lot of judges?

A Yes, it was, not just Judge Porteous but several judges.

Q So would you often deliver those things like shrimp, for example, or cakes?

A I would bring doberges, they call it. They had a bakery, and what I would do, I would bring little boxes of the little pastries to each division of the judges. Most of the secretaries would receive it, but there were several judges that would not allow you to bring it.

Q Now, on occasion, you would go to lunch with the Marcottes and Judge Porteous; correct?

A Yes, sir.

Q But didn't you state earlier you also would go to lunch with other judges, like Judge McCabe, Chehardy, et cetera?

A Well, one of the things, Louis as my protege, I would go to the courthouse and park the car to the side entrance of the courthouse, and we would summit some of the judges for lunch. I would go in and let them know blah, blah, blah, they're going to have lunch here. Those that didn't have a ride, I would ride to the area, to whatever designated place they was eating at, and would bring them back.

Q Thank you, Reverend. Now, I want to clear up one thing, by the way, because you mentioned it, and I wanted to make sure we understood it clearly in the record. You mentioned that you would need a pardon for that drug offense on top; correct?

A Yes, sir.

Q So the only way you could actually clear your record was to go and get a pardon from the governor; correct?

A Yes, sir.

Q So all that the expungement did on the burglary

was to allow you to try to do that, right, so that once that was removed you had the opportunity to try to get it from the governor; correct?

A Well, it gave me the opportunity to proceed to the next level.

Q Okay. I want to go back. You said you viewed Judge Porteous as a compassionate judge. Can you tell me why?

A Well, in the parish that I reside in, most of the crime that was being committed at that time, and still is probably, when you have poor, indigent, some of the black that go to jail in that parish, bonds are set high significantly. And there were not too many judges that were favorable with some of these people. And Judge Porteous was a very favorable judge. He was viewed by a lot of our people as a very sympathetic-type person that you can -- you had a fair chance with, you know. You had a chance.

Q And when you said some bonds were set too high, was he a judge that would listen if you came and said this was artificially high and would reduce the bond for that person?

A The bonds, as you know, lawyers know, that bonds are set according to your background, your criminal history and everything. Judge Porteous would take all those facts

in, but he would look more or less for the violent in your life and if there was some area of violence that he considered could be a threat to the community, and he probably wouldn't do it. But if it was someone that made mistakes the first time, he was more reluctant to work with them.

Q So as long as you weren't a violent felon, he tended to be a judge that would give people a second chance?

A Yes.

Q He would often to look to see if there was a violent crime in the record to make that determination?

A Yes, sir.

Q And in your case, you're now a productive member of society; correct?

A Yes, sir.

Q And as a reverend, do you sometimes work with former felons?

A Still do.

Q And in your experience with Judge Porteous, did he sometimes talk to you about how you were doing?

A Not really. He would just see me and -- we didn't really have a dialogue too much of a conversation, but you could see the sense of pride, you know, that you're doing something encouraging to a large extent.

Q Did a lot of judges do that for you?

A Yes. Thank God I'm fortunate that I made my mistakes in life, but for the most part I've been involved more actively in the community with a lot of stuff. So I work with a lot of judges now, interact with a lot of people from law enforcement. Thank God I had the opportunity for a chance.

Q And that opportunity came, in part, because you had an expungement of your record, at least from Judge Porteous?

A Well, it was a process.

MR. TURLEY: Thank you, Reverend Wallace. I appreciate it.

CHAIRMAN MC CASKILL: Any other questions?

MR. JOHNSON: Yes.

CHAIRMAN MC CASKILL: We haven't had a break since we came back. How long do you think you will be?

MR. JOHNSON: Very short.

CHAIRMAN MC CASKILL: I would ask all of the members that are here, when we break, we would like to have an informal meeting, just some housekeeping matters, in the back conference room before you take off to your offices. So if you would gather back there just for a minute. Thank you.

Congressman?

MR. JOHNSON: Thank you.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Wallace, you have been shown a chart here that has been explained as being somewhat complicated. Mr. Wallace, you may not be able to see the screen, but I will ask you, you were arrested for the drug case on the 15th of 1988; is that correct?

A Yes, sir.

Q The 15th of December 1998 -- or excuse me, 1988.

And the next thing to happen as far as you being arrested was in February of '91 -- excuse me, was May of '89 when you were arrested for the burglary case?

A Yes, sir.

Q And you were already out on bond for the drug case at that time?

A Yes, sir.

Q And then the first case that actually came to court was the burglary charge?

A That's right.

Q Which was the second arrest?

A Right.

Q That case was adjudicated first?

A Right.

Q It resulted in a guilty plea, and you got three

years' probation; is that correct?

A Yes, sir.

Q But then you were unable to complete your probation because in February of '91, after you had been sentenced on the burglary case, you pleaded guilty to the felony drug case and got jail time for that, five years; correct?

A Yes.

Q And it was thereafter, since you went to jail, you were not able to complete your probation; correct?

A Yes, sir.

Q And that's why your probation was terminated in December of '91, because you could not -- you were already in prison on the drug case and you could not complete the burglary probation; is that correct?

A Yes, sir.

Q Isn't it true that in order to get the pardon on the drug charge, that the drug charge had to be your first offense, not your first conviction?

A I don't understand what you mean.

Q The drug offense was your first offense, was it not?

A Yes, sir.

Q It was your second conviction, however?

A Right.

Q So you would have had to get the burglary charge set aside so that then you would have only one offense, which would be your first offense --

A Yes, sir.

Q -- to get the pardon for?

A Yes, sir.

Q And you could get a pardon for your first offense but not for your second; right?

A Right.

Q Was that your understanding?

A That's my understanding.

Q So Judge Porteous actually put you in a position to where you would have a chance of receiving a pardon on your first offense, the drug case?

A Yes, sir.

Q Now, you never asked Judge Porteous to do that for you either personally or by way of a attorney?

A No, sir.

Q Is that correct?

A Yes, sir.

Q Did Judge Porteous do that because he owed you something?

A No.

Q Would it have occurred because, perhaps, he did it for Louis Marcotte?

MR. TURLEY: I'm sorry. I object. He's asking for speculation on the motivations of Judge Porteous, something he would not know about.

CHAIRMAN MC CASKILL: Sustained.

BY MR. JOHNSON:

Q Do you know whether the set-aside of your burglary case by Judge Porteous was at the request of Louis Marcotte?

A Yes.

MR. JOHNSON: I have no further questions, your Honor.

CHAIRMAN MC CASKILL: Any other questions?

MR. TURLEY: No, Madam Chair.

CHAIRMAN MC CASKILL: Any questions by the panel?

MR. SCHIFF: Madam Chair, I have a question. I want to make sure that exhibit was not admitted into evidence, because we have an objection to an inaccuracy on the exhibit.

CHAIRMAN MC CASKILL: It was not moved into evidence.

MR. SCHIFF: Thank you.

CHAIRMAN MC CASKILL: We're going to adjourn now until about 10 after, and then we will plan on staying until 7:30.

(Recess.)

CHAIRMAN MC CASKILL: The House has 13 hours and 14 minutes remaining, and Judge Porteous has 14 hours and 8 minutes remaining.

We had a brief housekeeping matter in the back. So I can convey to you to you what we worked on, and that is trying to be really diligent about keeping track of when Senators can be here and when they cannot, so that we don't have situations where everyone is sitting around waiting as we had today. I think everyone has a renewed commitment to be working with their schedulers and with the committee to make sure that when we tell you we're going to be here, we will be here, and we will be working. It's really important that we manage our time appropriately and so that we are not inconveniencing you and being rude to you.

At the same time, I want to emphasize to you that we hope you're managing your time, because we will not be persuaded at the end of this process if, in fact, you believe there's witnesses that will need to be called. We ask you and continue to urge you to be mindful of your time management and the witnesses that you want to call and the time you want to take so that we don't get into something that would be a problem at the end of this process. It does appear that we think we do have enough members to continue until 7:30. So we're going to press on tonight.

It does not appear that we have enough members to begin at 8:00.

So in the morning, we will begin at 8:30, is what time we will begin. We have a number of members who have commitments or functions in the morning, and we have the Senate breakfast on Wednesday morning, one member who is a speaker and one member who is the chairman of the group. We're going to try to accommodate the group and begin at 8:30.

Okay. I think we're ready to go with the House's next witness.

MR. SCHIFF: The House calls Rafael Goyeneche.

Whereupon,

RAFAEL GOYENECHE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUBESTER:

Q Please introduce yourself to the members of the Senate panel.

A My name is Rafael Goyeneche, with the Metropolitan Crime Commission for New Orleans.

Q I'm going to get to what the Metropolitan Crime Commission is in a minute, but let me just ask you some background questions first.

Please describe where you grew up and your educational background.

A I grew up in the City of New Orleans, attended LSU undergraduate school, and graduated with a JD from Loyola of the south law school.

Q When did you graduate from law school?

A 1980.

Q What was your career path upon graduating from law school?

A I began as an assistant district attorney in Orleans Parish from 1980 until the beginning of 1986.

Q What sort of cases, if any, did you specialize in as a prosecutor?

A Primarily white collar, but when you work in the district attorney's office, you work in a variety of different areas. But the portion that I spent the longest time in any one particular division was the economic crime unit, which is a white collar prosecutorial unit.

Q In the course of your duties with the district attorney's office, did you have occasion to go in and out of courtrooms and handle trials, handle all the matters associated with a criminal caseload.

A Yes.

Q Did there come a time when you left the prosecutor's office?

A Yes. I left the district attorney's office in 1986 to join the Metropolitan Crime Commission.

Q What was your first position at the Metropolitan Crime Commission?

A I was a special assistant to the then-managing director handling a research project.

Q Did there come a time when your role in the Metropolitan Crime Commission grew?

A Right. In 1989, after the gentleman that hired me retired, I was promoted to the presidency.

Q Are you still the president?

A Yes, I am.

Q Now is your opportunity to tell the Senate, what does the MCC do? What is the MCC?

A The Metropolitan Crime Commission is a 58-year-old citizen's group that was created in 1952 by the business community in recognition that crime and corruption are disincentives to growth. In Louisiana in general, in New Orleans in particular, it is a very daunting challenge to report wrongdoing. The crime commission as a citizen's organization encourages the public to report instances of ethical, administrative, and criminal wrongdoing. We develop the information, to the extent that we can as private citizens, and then we make referrals to appropriate agencies.

The business community recognized that people that report wrongdoing really, in many instances, have a disincentive to report it through the normal governmental bodies, and they thought it would be -- it would facilitate the flow of more information that could be used to clean up some of the problems dealing with ethical, administrative, and criminal wrongdoing.

Q Now, in late 1994, did you have occasion to receive an allegation that related to then-state Judge Porteous?

A Yes, we did.

Q And who brought that allegation to your attention?

A The information was brought to the crime commission initially by an assistant district attorney in Jefferson Parish, Mike Reynolds.

Q And if I may lead just so we can move on a little bit, was the gist of the allegation that Judge Porteous had unlawfully set aside a conviction of a Louis Marcotte employee, Aubrey Wallace?

A Yes.

Q And when you received this allegation --

MR. TURLEY: I'm sorry to interrupt, sir.

Madam Chair, I want to point out, we have not made objections on hearsay grounds. We've been trying to

keep our objections to a minimum, given the nature of these proceedings. My understanding is that Mr. Reynolds is scheduled to testify next, and I would simply raise with the Court whether we should introduce hearsay as to what he said when he's going to be appearing next as opposed to getting it from the witness himself.

MR. SCHIFF: Madam Chair, in order to accommodate our witnesses and making sure we stay on track in terms of our time, at this point it is our intention to not call redundant witnesses, including Mr. Reynolds. We're not offering it for the truth of the matter. We are offering it to show the action that this gentleman took as a result of getting the information.

MR. TURLEY: Madam Chair, if we could make one more note. What the House Managers are saying is that they're going to have this witness give us the account of what Mr. Reynolds said and then dismiss Reynolds as opposed to asking Mr. Reynolds what he said.

CHAIRMAN MC CASKILL: If they are asking him not for the truth of the matter asserted but, rather, as a way of explaining the actions that this witness took, I'm going to allow the question. But that does not mean they've put into evidence that that is, in fact, what the witness said.

Now, they may want to offer a stipulation that that's what the witnesses said. I certainly would

encourage any of you who have redundant witnesses to work on additional stipulations. There is certainly some economy that could be realized if you know a witness is going to take the stand and say I said A, B, and C, or I said A, and you have another witness saying he acted on that, it seems to me that would be a logical place for the two of you to agree and stipulate that for the record.

I'm not telling you what to do with your time. I'm saying that is one way you could get some real economy in terms of repetition of the same sets of facts over and over again. So the question will be allowed under the understanding that it's not being offered for the truth of the matter asserted in the question.

MR. SCHIFF: Thank you, Madam Chair.

BY MR. DUBESTER:

Q So going back to that last question, did you receive the allegation that I just described?

A Yes.

Q Okay. What did you do after you received that allegation?

A After we received the allegation, we attempted to secure some documents that would corroborate the information that was represented or presented to us by Mr. Reynolds.

Q And what sort of documents did you try to get a

hold of and actually get a hold of?

A We obtained copies of the proceedings involving Aubrey Wallace's initial guilty plea with respect to the burglary charges from 1989 in Jefferson Parish. We then obtained copies of the minute entries and transcripts from the hearings that were conducted in '94 in which Judge Porteous amended the sentence of Aubrey Wallace.

Q Did you get any records related to the underlying cases of judge -- sorry, of Mr. Wallace as well?

A Yes. We researched Mr. Wallace's criminal record with respect to charges that had been brought against him in the Jefferson Parish system, arrests by the sheriff's office for narcotics violations and for the burglary, and we obtained the accompanying docket masters and bills of information and records from the court with respect to his drug charges as well.

Q Now, as a former prosecutor, were you just basically familiar with the principles of law which were at play in the set-aside --

A It was really some very basic fundamental legal principles dealing with guilty pleas in felony cases. So you had Louisiana Code of Criminal Procedure Article 893, which deals with probated sentence in felony cases.

Q You're way ahead of me. I'm just asking if you're familiar with the legal principles.

A Yes.

Q Are these principles that you dealt with on a day in, day out basis as a prosecutor?

A Yes.

Q And when you heard the allegation, did these principles resonate to you as something which suggested that you should take the investigative steps that you took?

A Right. It was very unusual based on my experience, as well as the -- from the experience of the person that brought that information as well.

MR. TURLEY: Madam Chair, I have to raise an objection. My understanding is this person is not being called as an expert witness on the meaning of 893 or the customs with regard to whether things are granted or not granted under 893. He's been called as a fact witness.

CHAIRMAN MC CASKILL: You are certainly free to try to establish this witness as an expert if you're going to have him testify about something that requires expert testimony, but you would need to establish that foundation.

MR. TURLEY: Madam Chair, we were asked to designate all experts who were going to testify in this case, and we were given a hard date to do that. We would object to the addition of another expert.

CHAIRMAN MC CASKILL: Like I say, if you want to establish -- I think there's certainly -- I honestly

believe, Mr. Turley, there's certainly been enough notice about what this witness would testify to, and this would not be beyond the purview of his testimony.

MR. TURLEY: I can represent to the chair that at no time in the process of this case has anyone suggested this individual would testify as an expert on these questions. In fact, they specified him for 15 minutes. But putting that aside, it was to address what the MCC did. There was never even a hint that they would be asking him about, you know, what the customs are under 1983, and the reason this is even more serious is they just said they weren't going to call Mr. Reynolds. And so we once again have to renew our objection.

SENATOR RISCH: Madam Chairman, does customs require establishment as an expert witness? It's just a factual question from his observations.

SENATOR WHITEHOUSE: And it explains why he pursued what he did. I don't see the expert angle to it at this point.

CHAIRMAN MC CASKILL: I think what you should do is continue to question this witness with the understanding that you need to question him about his observations but not as to his legal opinions as to various statutes or how they are applied. Rephrase your question.

BY MR. DUBESTER:

Q After you received the allegations and based on your experience and based on your sort of initial take on the allegations, in addition to what you've just described doing, did you yourself research the law as well?

A Yes, I did.

Q And -- with the permission of the Senate, I would ask that Mr. Goyeneche be allowed to walk through the applicable article and applicable statutes that are at play, and I will not be asking him to render an expert opinion.

MR. TURLEY: Madam Chair, if I can read to you what we were given as to the scope of his testimony, which I believe is controlling in this regard. The government said "Mr. Goyeneche, president of New Orleans Metropolitan Crime Commission, will testify that he interviewed Judge Porteous while Judge Porteous was a federal judge and that Judge Porteous admitted to going to New Orleans with Louis Marcotte and denied that Louis Marcotte paid for him. Anticipated time, 15 minutes."

That is what we prepared for. What they're trying to do now is not have Reynolds testify and expand on that, and we would suggest that is unfair, and we were given very clear rules and told we would not be able to go outside those rules.

MR. SCHIFF: Madam Chair, we have tried to keep

our objections to a minimum. When Mr. Turley went way beyond the scope of our examination of Lori Marcotte and went into whole new areas, we did not object. If Mr. Turley decides to use his time that way, it is okay with us. We want to ask this witness his understanding of the law and why that caused him to follow up with his investigation. Mr. Turley can take issue with whether he's understood it correctly, he can have his own people testify, he can call Mr. Reynolds, if he wants. It's hard to get from this witness why he took the steps he did without understanding what the law was, why it applied, why he felt concerned about what Judge Porteous did.

CHAIRMAN MC CASKILL: I think this witness can be allowed to testify to whatever steps he took, as it relates to his interaction with Judge Porteous, as it relates to the articles. And so I think that to the extent -- I don't think it's necessary for him to talk about his -- I think he can testify about what he did and the questions he asked. I don't think -- that doesn't get into any expert testimony, and I think it falls loosely within the notice that you've given the other side.

So you may proceed with your questioning with that understanding.

MR. DUBESTER: Thank you very much.

BY MR. DUBESTER:

Q I'd like to now proceed. Roughly when was it that Mr. Reynolds came to you with the allegations that we have just discussed?

A In early October of 1994.

Q And did you have more than one conversation with him throughout October of 1994?

A Yes.

Q And as a result of those conversations, did you ultimately ever go to interview Judge Porteous?

A Yes, we did.

Q And where was it that you went to interview Judge Porteous?

A In the federal courthouse in New Orleans on Camp Street.

Q Who did you go with?

A I went with my vice president, Mr. Anthony Radosti.

Q And what do you recall about the physical setting of where you were when you interviewed Judge Porteous?

A I remember that the judge was just in the process of moving into his chambers. There were still boxes that he was in the process of unpacking, and his staff was getting situated.

Q Now, in preparation for your testimony today,

have you -- strike that.

After you interviewed him, did you do a write-up of some sort of the contents of that interview?

A Yes, I did.

Q Have you read that interview in preparation for your testimony today?

A Yes, I did.

Q Does that refresh your memory about the contents of that interview?

A Yes, it did.

Q Putting aside how your memory has been refreshed, is there anything in particular that you remember about that interview as of today, and --

A I think what was most striking about that interview that I would recall six months ago before I ever heard from you or six years from now is that we went in to explain to the judge what the purpose of our meeting was, to question him about the amended sentence for Aubrey Wallace, and he began by saying well, you're the guys that think I'm dirty, let's not sugarcoat anything.

Q Now, after did you your interview with Mr. Radosti, did you or Mr. Radosti prepare a memorandum or a write-up of that interview?

A Mr. Radosti would have prepared the memorandum, and I would have reviewed it and edited it.

Q When in relationship to that interview was that write-up actually prepared?

A Within a 24-hour period of time.

Q Who worked on that write-up?

A Mr. Radosti would have prepared it, and I would have, as I said, edited it.

Q In preparation for your testimony today, have you reviewed that document?

A Yes.

Q And do you recognize some of your own language or some of the --

A There's some phrasing in there that would be something I would do. Additionally, some of the other references to the codal articles would also be something that I would have probably phrased.

MR. DUBESTER: Your Honors or Senators, I would like to move into evidence Government's -- sorry, House Exhibit 69D, Bates numbers PRT 594 to 597. I'd like to show it to the witness first and have him identify it, but it would be my intention to admit it at that time.

MR. TURLEY: No objection.

CHAIRMAN MC CASKILL: So admitted.

(House Exhibit 69D received.)

MR. TURLEY: Once again, that's like a 300-page document. We're just agreeing to these pages that they're

introducing here.

CHAIRMAN MC CASKILL: Understood.

MR. DUBESTER: I believe we need IT to put the document up.

CHAIRMAN MC CASKILL: Okay. IT?

BY MR. DUBESTER:

Q Mr. Goyeneche, do you recognize the front page of this document?

A Yes, I do.

Q How is it that you recognize that?

A It is the document that was prepared. We entitled it "intelligence report," dated November the 9th, 1994.

Q And I think I've asked this a hundred different ways, but does this document fairly and accurately record what happened at that interview?

A Yes, it does.

Q I want to ask a couple of questions about what Judge Porteous said and what you asked.

First, did Judge Porteous -- did you ask Judge Porteous any questions as to whether or not Louis Marcotte in any way was behind the set-aside?

A Yes, we did.

Q And what was Judge Porteous's answer?

A The judge adamantly denied that he amended

Mr. Wallace's conviction out of friendship for Mr. Marcotte, and he was adamant that he didn't do it out of friendship.

Q Going now to the bottom of page 2 and on to page 3 of this document, did you ever ask Judge Porteous questions to illuminate Judge Porteous's relationship with Louis Marcotte?

A Yes.

Q That's a yes-or-no question.

A Yes.

Q Did you write down exactly as you recalled it soon after that interview what Judge Porteous said in response to those questions?

A Yes, we did.

Q Would you start reading from the bottom of page 2, the paragraph that begins with "the judge freely admitted."

A Okay. "The judge freely admitted that he has known Mr. Marcotte for a number of years and considers him to be a friend. We asked the judge if he frequently ate lunch with Mr. Marcotte and provided him with the name of two restaurants they frequent. He admitted that he had several lunches with Mr. Marcotte, but he didn't know if he would term his lunches with Mr. Marcotte as 'frequent.'

"Additionally, we asked if he had traveled to

Las Vegas with Mr. Marcotte, and he confirmed that he had. The judge stated that six or seven people went as a group to Vegas and Marcotte was a member of the group. The judge, when asked did Marcotte pay his way, he quickly changed the subject. Porteous when asked again a second time advised that Marcotte did not pay his way to Vegas."

Q The fact that you wrote about Judge Porteous's two different statements about Las Vegas, were those statements significant to you?

A Yes, they were. Everything that we asked the judge was prepared in advance based upon the research and witnesses that we had interviews prior to that meeting.

Q Okay. Did you have a specific legal issue that you raised with Judge Porteous concerning his set-aside of Mr. Wallace's conviction?

A Yes. I questioned him about the way that he imposed Article 881, Code of Criminal Procedure Article 881 in amending the sentence of Mr. Wallace.

Q Okay. And when you were talking about Article 881, did you have an understanding of the contents of Article 881?

A Yes, I did.

Q And did Judge Porteous appear to you, in response to your questions about Article 881, appear to have an understanding of the contents of 881?

A Yes, he did.

Q Okay. With that -- and what provision of law does Article 881 refer to?

A It refers to amending of a sentence.

Q And does it set forth time limits which relate to when sentences may be amended?

A Right. It basically says that a sentence --

Q I'm not --

A Yes.

Q Try to stay with me and answer the question, sir. I'd like to show on the screen now the following document, Exhibit 69D, PORT 0672. Just listen to the question. Do you recognize what's in front of you?

A If it's blown up, I probably can. That's better. Yes.

Q And what is that that you read in front of you?

A It's the Code of Criminal Procedure Article 881.

Q And is this the Code of Criminal Procedure about which you were asking Judge Porteous?

A Yes, it is.

Q And what does this Code of Criminal Procedure relate to generally, without describing its contents?

A It relates to under what circumstances a court can amend a defendant's sentence.

Q And what understanding -- I'd like to move this

page of 69D into evidence.

MR. DUBESTER: It's PORT 0672, Exhibit 69D.

CHAIRMAN MC CASKILL: The panel will take notice of the sentencing statutes of the state of Louisiana.

BY MR. DUBESTER:

Q I would ask you to just read out loud Article 881, the first paragraph A.

A Okay. "Although the sentence imposed is legal in every respect, the Court may amend or" charge "the sentence, within the legal limits of its discretion, prior to the beginning of execution of the sentence."

Q I believe you used the word "charge." Could that word possibly be "change"?

A Change, I apologize, yes.

Q Okay. And what was your understanding of what this meant at the time you spoke and asked questions of Judge Porteous on this statute?

MR. TURLEY: Same objection, Madam Chair. That is an expert opinion that is being requested.

CHAIRMAN MC CASKILL: Overruled.

THE WITNESS: The context of my inquiry with the judge is that this codal article is very basic and very clear in saying that a sentence cannot be amended prior to -- or subsequent to someone commencing their sentence. And in the case that we researched with Mr. Wallace that

the judge -- we discussed a little earlier on in our memorandum, it was clear to us, it was the opinion of the crime commission that Article 881 was not followed by the judge. So we asked the judge --

BY MR. DUBESTER:

Q The question was, what was your understanding of this provision. So let me move on. So was it your understanding, as you asked Judge Porteous about this provision, that a sentence may be amended, as this states, only prior to the beginning of the execution of the sentence?

A That's what the statute says.

Q Now, as far as Mr. Wallace was concerned, do the records show that Judge Porteous amended that sentence prior to the beginning of the execution of sentence or some time after that?

A It was some time after that.

Q In fact, based on your review of the records, did Judge Porteous amend Mr. Wallace's sentence, not only after the execution of the sentence had commenced but after it had actually already been completed?

A Absolutely.

Q So is that why you brought these concerns to your interview of Judge Porteous?

A Yes.

Q And when you asked Judge Porteous about this provision, would you read out loud exactly what Judge Porteous said. I'd like to now start at the top of page 4 of PORT 597. I'm sorry. That's the prior exhibit. Yes. Would you start reading out loud with the phrase "we informed."

A "We informed the judge in our opinion his actions were improper under Louisiana Code of Criminal Procedure Article 881, re amendment of sentence. We pointed out that the article limits the courts discretion to amend sentences to instances prior to the beginning of the execution of the sentence. Wallace's sentence was amended after completion of his jail term for a narcotics conviction and while he was on supervised parole. The judge admitted that his actions were contrary to Article 881 but defended his actions by stating that the assistant district attorney who was present in the Court should have objected to the amendment of Wallace's sentence."

Q Okay. You go on there to discuss -- to relate what Judge Porteous replied regarding the suggestion that he amended the sentence out of friendship for Mr. Marcotte; is that correct?

A That's right.

Q Overall, how long was this interview?

A It was about 35 minutes.

Q And on the very first page, did you indicate that you get there at 3:25 p.m.?

A Yes.

Q And at the last page, the one that we just had on the screen, do you indicate --

A When we terminated it?

Q Yes.

A It was about 4:00 p.m.

Q And when you left that interview with Judge Porteous, did he say anything which you then put down in your memorandum of that interview?

A Right. He said -- he basically said do what you all think you have to do.

Q Did you write that statement down?

A Yes, I did.

Q This is on page 4, the very last page.

A Okay. "The judge stated that he felt he had done nothing criminal but stated that the assistant district attorney had the authority to appeal his ruling if it was improper. The judge ended the meeting by telling us to do what you think you have to do. We thanked him for his time and we left his chambers at approximately 4:00 p.m."

Q If you had in the past received a complaint about a state judge, could you have taken it to the state

ethics commission or something like that?

A We could have brought it to the Louisiana judiciary commission.

Q Was that an option for you regarding your concerns with this act of misconduct by Judge Porteous?

A No, sir, it wasn't, because Judge Porteous had been basically elevated to the federal bench, and the Louisiana judiciary commission had no authority to sanction the judge for what he did.

MR. DUBESTER: Thank you, Mr. Goyeneche. We have no further questions.

CHAIRMAN MC CASKILL: Mr. Turley?

CROSS-EXAMINATION

BY MR. MEITL:

Q Good afternoon, Mr. Goyeneche. My name is P.J. Meitl. I'm one of the attorneys for Judge Porteous.

You're the president of the MCC; is that correct?

A Yes, I am.

Q Who is the vice president?

A Mr. Anthony Radosti.

Q I've spoken to Mr. Radosti. Do you consider him to be a trustworthy employee?

A Yes, I do.

Q Do you consider him to be honest?

A Yes, I do.

Q Have you ever known him to lie or to submit false information?

A No.

Q Now, the MCC, is it a privately funded nongovermental organization?

A Yes, it is.

Q Does the MCC have subpoena power?

A No, we don't.

Q Does it have the ability to force citizens or state officials to speak to it?

A No.

Q As a part of your duties as president of the MCC, do you sometimes make statements to the press?

A Yes, we do.

Q Do you ever leak information to the press without attributing the source as the MCC?

A Maybe occasionally I have in the past. I can't recall off the top of my head, but maybe.

Q Okay. I'd like to now introduce Porteous Exhibit 1033, which is a Times-Picayune article dated June 25th, 2006, titled "Embattled Judge Thomas Porteous known for wit, charm." It should be on your screen there, sir.

Have you read this article before?

A I can't recall.

Q Okay. Feel free to take a minute if you want to look through it.

A Could you blow it up for me, please?

Q Sure.

A I still can't read it. I'm sorry.

Q I can direct your attention to the part of the story where you're quoted, which is towards the end of the article.

A Okay.

Q Which is on page 5, Bates labeled DEF 01151.

Do you remember being interviewed for this article?

A No, I don't.

Q Okay. As I said, towards the end of the article, there's a discussion of and you Mr. Radosti's meeting with the judge that you just discussed with Mr. Dubester. It states "a few weeks later, Goyeneche nonetheless requested a meeting with the newest federal judge. Goyeneche and Commission Vice President Anthony Radosti entered Porteous's chambers at the scheduled time but didn't have a chance to sit down before the conversation was over."

Do you see that?

A Yes, I do.

Q Do you remember telling the reporters that you

had entered at the scheduled time but didn't have a chance to sit down before the conversation was over?

A No, I don't recall saying that. But when was that article written?

Q The article was dated June 25th, 2006.

A Okay.

Q Now, it then states that "Porteous said I don't have to explain anything to you. I'm a federal judge."

Do you see that?

A Uh-huh.

Q Do you remember telling the reporters that Judge Porteous stated "I don't have to explain anything to you, I'm a federal judge"?

A I think I do. I think I do.

Q Okay. Now, previously, you discussed your interview with Mr. Dubester that you had with Mr. Porteous in 1994. I'm going to put up Exhibit 85, which has been put up several times, but this is a less redacted version.

You've seen Exhibit 85 before today, haven't you?

A This is the November 9th memo that I was just questioned about. Yes, I have.

Q And you reviewed this before coming here today?

A Yes.

Q Did Mr. Radosti draft the notes of this

interview?

A Yes.

Q That's indicated by the "prepared by" on the first page; correct?

A This memo on this page, yes.

Q Now, on the first page -- and you discussed this with Mr. Dubester. It says you arrived at 3:35, and then on the last page, it states that you left at 4:00 p.m.

A Right.

Q Do you recall that?

A Yes.

Q So it appears that, based on you and Mr. Radosti's notes, you were there for 35 minutes?

A That's correct.

Q And during this time you discussed a number of topics, including the Wallace set-aside, lunch with the Marcottes, various state statutes, all these things; correct?

A That's correct.

Q But in your statements to the press you stated you didn't even have a chance to sit down?

A Right. And my explanation would be that in 2006, when this article was written, what is often the case, I may be called sometimes by the media and asked about a matter. I did not go back into the file and review

the memorandum that I was just questioned about. So that would have been my memory from 1994 when we interviewed the judge, and that was my recollection without looking at my notes.

Q All right. At the end on page 4 of this report it says "the judge ended the meeting by telling us do what you think you have to do"; right?

A That's right.

Q Isn't it correct that Judge Porteous never stated, as you put in the press, "I don't have to explain anything to you, I'm a federal judge"?

A Apparently, based on our memorandum, yes, he didn't say that. That was my recollection looking back at it from 2006.

Q But it's not in your detailed four-page report, is it?

A No, it is not. So I was incorrect with what was said in the newspaper.

Q Okay. So your notes would have been the more contemporaneous and more accurate statements, wouldn't they?

A That's correct.

Q So you just made inaccurate statements to the press about Judge Porteous?

A Not intentionally, but yes.

Q Okay. Isn't it correct that during your interview you asked Judge Porteous whether he had lunch with Louis Marcotte and that he openly admitted not only that he had several lunches with the Marcottes, but that he considered Louis Marcotte to be a friend?

A Yes.

Q In fact, Mr. Radosti even added in his typing, and maybe that's your word, as you said you reviewed this, that the judge freely admitted it; isn't that correct?

A Yes.

Q So Judge Porteous wasn't hiding his relationship with the Marcottes?

A No.

Q He wasn't hiding the fact that he was having these lunches?

A No.

Q Now, Mr. Dubester asked you about certain questions you put to Judge Porteous about traveling to Las Vegas with Louis Marcotte; isn't that correct?

A I'm sorry. Repeat that.

Q Mr. Dubester asked you questions about you asking questions to Judge Porteous about trips to Las Vegas?

A Right.

Q During your interview with Judge Porteous, did

you make it clear which trip you were referring to?

A No. I wasn't sure how many trips he had taken, and the reason I questioned him about Las Vegas is because some of the individuals that we had interviewed prior to going to see the judge had indicated that he had been on a trip to Las Vegas with Louis Marcotte.

Q Are you aware that Judge Porteous was, on several occasions, a speaker at a bail bonds convention in Las Vegas?

A No, I was not.

Q Were you aware that Judge Porteous on those occasions had his trip paid for by the bail bonds convention?

A No, I was not. That's why I asked the questions.

Q So you didn't make it clear in your interview or questions of Judge Porteous what you were referring to?

A I made it clear if he went to Las Vegas, if Louis Marcotte paid for his trips to Las Vegas, and his response was no.

Q You didn't state at any time he went to Las Vegas. You asked about a trip to Las Vegas, didn't you?

A Yeah.

Q So Judge Porteous could have been talking

about -- in responding to your questions, he could have been thinking about trips where the bail bonds commission paid for his trip; right?

A The judge could have clarified, I've been to Las Vegas as a part of a bail bonds commission.

Q But you didn't ask the question? Or you could have asked the question?

A If I'd have known, I would have, but I was unaware of that.

Q Now, Mr. Goyeneche, isn't it correct that the MCC uses confidential informants in the course of its investigations?

A Sometimes.

Q Now, these confidential informants, do they often include people in the police department or the district attorney's office?

A Sometimes.

Q In fact, the use of confidential informants like Mr. Reynolds, who you mentioned, was a large factor in you starting the MCC investigation of Judge Porteous, wasn't it?

A Well, I think that the fact that he called and provided very detailed information certainly helped us make a decision to move forward with this investigation, and before we did anything publicly, we obtained copies of the

court records that confirmed what Mr. Reynolds had -- had presented to us.

Q Okay. Would it be fair to say that the MCC relies on the use of confidential informants to perform its work?

A Well, we don't self-initiate any investigations that we undertake. Because we are a private organization and we don't have subpoena power, we're pretty much dependent upon people picking up the phone and reporting wrongdoing to us.

So with that respect, I mean, whether it's a Mike Reynolds as an assistant district attorney, a police officer or a private citizen, you know, it usually starts with a phone call to the Metropolitan Crime Commission.

Q And, in fact, the MCC pays confidential informants, doesn't it?

A It says -- we do from time to time. You can count on one hand over the course of my tenure with the Crime Commission how many times an informant has actually requested to be paid.

Q But on your Web site, for example, it specifically states citizens can provide information in the strictest confidence and may be eligible for rewards; correct?

A That's correct.

Q So an individual who brings you information might think they are doing -- if they bring you information, they might think that they might get a reward out of it; isn't that correct?

A Apparently some people do because some people have asked for it.

Q And on a different part of the Web site, it states that the Metropolitan Crime Commission will pay a reward of up to $500 for information leading to an arrest, isn't that correct?

A Now, that's for information about street crime. That's related to a different program. That's not our antipublic corruption initiative.

That is a wanted by the law column, where law enforcement submits pictures of wanted subjects. So that is separate and apart from the initiative that you were referring to initially.

Q All right. Well, so how much do you pay confidential informants on public corruption issues?

A I think we have publicly stated we would pay a reward of up to $100,000.

(6:00 p.m.)

Q How much did the MCC pay Mike Reynolds for his information that he provided to you?

A Zero.

Q Finally, also on your Web site, don't you tell the public that the MCC is a nonprofit -- nonprofit, privately funded citizens organization?

A Yes.

Q Okay. But isn't it correct that the MCC receives considerable federal funding, including half million dollars last year, from federal appropriations?

A We receive a grant. And at the time that information was written, we weren't receiving any federal grants. So, you know, we occasionally do get grants, and it's in support of what we do from an antipublic corruption effort.

I can say in 1994, when all of this was going down, we weren't receiving any federal funding.

Q I'm --

A The funding that we've received from the federal government, I think, began in the 2000s.

Q Okay. But I'm talking about your Web site right now. It says it's a nonprofit, privately funded organization. And yet in 2010 you received half million dollars in federal appropriations.

A You know, when you receive a grant, it's a federal grant. I mean, it's still not, you know -- it's not funding that, you know, we are actively going out and soliciting, something that is provided to us in conformity

with what we've been doing over the past 58 years.

MR. MEITL: All right. Those are all the questions we have for you right now, Mr. Goyeneche.

REDIRECT EXAMINATION

BY MR. DUBESTER:

Q Okay. Mr. Goyeneche, the article speaks for itself, but this article does relate several aspects of the conversation you had with Judge Porteous. And would those be -- if that is the case, would that be inconsistent with the literal representation that you got there and stood up and left?

A I'm sorry. Repeat the question?

Q I'm sorry. If the article relates several aspects of your conversation with Judge Porteous on -- that is the subject of your testimony today, that would, of course, be literally -- that would be inconsistent with the most literal and strict interpretation of your statement that you're quoted in this article as saying, that you got there and left; correct?

A Right.

Q Okay. And in that article, for example, it does mention that when you got there, he said words to the effect of -- well, let me move on. Strike that.

In this article, you did say, did you not, you did tell the reporter or you're quoted as saying "he said

'you're the guys that think I'm dirty,'" and that is a recollection you had in 2006 from your interview in 1994?

A Right. As I said during my direct examination with you, that comment was something that was striking to me that I took out as a memory. And, quite frankly, I would not have been able to recollect all of the facts that were presented in that memorandum, had I not reviewed it. And I did not review it for this interview.

Q Okay. Mr. Meitl has asked you a bunch of questions about what you knew about the trips of Mr. -- of Judge Porteous. Are you aware of whether or not he ever took trips to Las Vegas in connection with bail bonds conventions?

A I was -- this is the first time hearing of that.

Q And I think the parties have stipulated that he took a trip to Las Vegas in 1996 with a bail bonds convention, but your interview with Judge Porteous was in 1994; is that correct?

A That's correct.

Q And on that one, he indicated he went with six or seven people and denied that it was paid for by the Marcottes; correct?

A That's correct.

Q So it was a trip he took with the Marcottes in or about 1994, that's --

A He admitted Louis Marcotte was a member of the group that went with him, and he said that it was not paid for by Mr. Marcotte.

Q And that was -- and there was -- and that was the clear thrust of your question, and that was the clear thrust of his answer; correct?

A Yes, sir.

Q Okay. Now, this whole business about rewards that your company -- or sorry, your organization offers. Did -- are you aware of whether or not Mr. Radosti and Mr. Reynolds knew each other, had a preexisting relationship, prior to Mr. Reynolds coming to the MCC?

A Yes.

Q And do you know where that relationship came from?

A They would have worked together in the New Orleans district attorneys office. Mr. Reynolds was employed or working within the white collar crime unit, the economic crime unit, and Mr. Radosti was an investigator in that unit.

Q And your organization receives a grant from the federal government?

A Yes.

Q And you -- is that a secret that you don't let the world know about?

A No, we publicized it, there have been press releases about it. Just haven't updated our Web site. There's nothing sinister about it.

Q And finally, and let's get -- I think I went a little quickly through this one statement when I was asking you at the outset of your testimony about your inquiry as to the circumstances which led to the set-aside of the Wallace conviction.

And I'd like to go now to page 4 of the document at 597 in the middle.

I believe in your opening testimony, you indicated that the judge vehemently denied that he amended the sentence out of friendship with Mr. Marcotte.

A Or at the request of Mr. Marcotte.

Q I'm sorry. In fact, did he go further than simply saying it wasn't out of friendship?

A Yes. It went further. Represented in that memorandum, is what we memorialized shortly after our interview with the judge.

Q Just read out loud what Judge Porteous told you.

A "The judge vehemently denied that he amended the sentence out of friendship for, at the request of Louis Marcotte."

MR. DUBESTER: Okay. Thank you very much, Mr. Goyeneche.

CHAIRMAN MC CASKILL: Any other questions of this witness?

MR. TURLEY: We have no recross, Madam Chair.

CHAIRMAN MC CASKILL: Any questions from the panel?

SENATOR KAUFMAN: Yes, ma'am.

CHAIRMAN MC CASKILL: Senator Kaufman?

EXAMINATION

BY SENATOR KAUFMAN:

Q I'd like to know if there was nothing you could do about this, as you said, he was a federal judge, why did you go to the interview?

A I'm sorry?

Q You admit there was nothing you could do because he was now a federal judge. Why did you do the interview?

A Well, at the time we weren't aware that he had been con -- when we started this investigation, we weren't aware that he had been confirmed. Now, our interest in this went beyond Judge Porteous. Our interest in this matter included Mr. Marcotte's relationship with judges of the 24th JDC of Jefferson Parish.

In -- there was a story written about this in early 1995 in which this whole matter was publicly disclosed via the newspaper.

The purpose of that story was not so much about

Judge Porteous but to expose the fact that Mr. Marcotte used his relationship with a judge to obtain privileges in the court.

We were receiving information that Mr. Marcotte had basically begun to monopolize the bail bonding system in Jefferson Parish, was writing about 95-plus percent of the $44 million worth of bail bonds that were being issued in Jefferson Parish.

And that story was devised to try and elicit additional information about Mr. Marcotte in some of his other dealings with judges in Jefferson Parish.

So we were looking at this beyond just an ethics breach or a favor done by Judge Porteous; we were trying to see if we could develop additional information about other instances of corruption involving Mr. Marcotte in the judiciary.

And ultimately, five years later, a federal corruption investigation commenced in 2000, called Operation Wrinkled Robe.

SENATOR KAUFMAN: Thank you.

CHAIRMAN MC CASKILL: Any other questions from the panel? Okay. Thank you.

Just one minute. I want to confer with staff for a minute about scheduling issues.

(Witness excused.)

CHAIRMAN MC CASKILL: We're trying to manage this, and I have vivid recollections of judges telling me that I have to be ready for any witness that's listed at any time.

And so I -- and I'm reluctant to interfere with the order of either side's cases they want to put on, but we've evidently reached an impasse on scheduling witnesses.

It's my understanding the House now wants to call Judge Geyh?

MR. SCHIFF: Professor Geyh.

CHAIRMAN MC CASKILL: And Judge Porteous's team is objecting to the calling of Professor Geyh.

MR. TURLEY: Yes, Madam Chair. Professor Geyh was listed -- we were asked to give the order of our witnesses so each side could prepare, we're shipping boxes back and forth with documents that we're going to be using, trying to get exhibits so they're seamless for the committee.

We were told that Geyh would actually be the last witness. And we haven't raised this objection before. The House has been not informing us in advance of their dropping witnesses, taking them out of order. We have gone ahead, scrambled, dealt with it.

But on this occasion, the witnesses that are still on their list are here, but what they're trying to do

is to say, but we're going to go to the very end, call Geyh, who is going to be the last witness.

CHAIRMAN MC CASKILL: First, was there any representation made to anyone that the order of witnesses that you submitted was binding on you?

MR. TURLEY: We were actually --

MR. SCHIFF: Not in our opinion.

CHAIRMAN MC CASKILL: Let me ask first the House team. Was there any representation by Staff or anyone else that once you submitted a list of witnesses, that you were required to give some kind of notice to the other side as related to the change of order or a decision not to call a witness?

MR. SCHIFF: No, no, Madam Chair.

CHAIRMAN MC CASKILL: Was there any indication given to you by Staff, Mr. Turley, that you had some duty to notify the other side if you decided to change your witnesses or change the order?

MR. TURLEY: We were told to actually inform the committee of changes of the order, because part of this, the purpose of the order, was not just the order of witnesses but the time allocation, which both sides have also been dealing with the schedule.

We were told any changes should be raised with the committee. And we've had a series of these changes.

We haven't tried to stop --

CHAIRMAN MC CASKILL: Mr. Turley, they have the right not to call witnesses, there is nothing here -- I mean, this is their case. They have the right not to call witnesses. I think they have the right to rearrange the order of witnesses.

I think the reason the Staff wanted to know the order of witnesses is because the United States government is footing the tab for all of this. It's footing the tab for airplane tickets and hotel rooms, so we're trying to minimize the cost to the government by not paying for too many hotel rooms if we can keep from it in terms of understanding the order of witnesses.

But we're not going to get that get in the way of how you all want to present your cases.

So I guess what I need to understand is how are you prejudiced by their desire to call a witness now that they were going to call tomorrow?

MR. TURLEY: Madam Chair, I'm just going to have to raise --

MR. SCHIFF: Madam Chair, can I object?

MR. TURLEY: Can I just finish?

CHAIRMAN MC CASKILL: Let Mr. Turley finish.

MR. SCHIFF: Madam Chair, we have votes going on and I'm worried we're going to miss the votes. Can we at

least suspend the argument until we can vote and run back?

CHAIRMAN MC CASKILL: Yes, you may.

MR. SCHIFF: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: How many votes do you have?

MR. SCHIFF: We have only two. I will go there and come straight back.

CHAIRMAN MC CASKILL: And I will ask all Senators not to leave the area.

(Laughter.)

CHAIRMAN MC CASKILL: We're going to post armed guards. I'm going to instruct the Capitol police to not let Senators leave this area, as I know I will not get all the Senators back.

(Laughter.)

(Recess.)

CHAIRMAN MC CASKILL: It's my understanding that Judge Porteous's counsel has a motion on an exhibit that you want to make before we begin? No?

MR. SCHWARTZ: Madam Chair, with regard to the exhibits, previously we discussed moving in House Exhibit 351(1), and we just wanted to clarify we were hoping to move in House Exhibit 351(1) through (56). These are the bond forms that underlie the demonstrative. We'd also like to move in House Exhibit 351(1) through (26), again

additional bond forms underlying the demonstrative.

CHAIRMAN MC CASKILL: Any objection to moving in the underlying bond forms for the demonstrative exhibit Judge Porteous's counsel used?

MR. SCHIFF: No, Madam Chair.

CHAIRMAN MC CASKILL: Those will be accepted into evidence, thank you.

(House Exhibits 351(1) through (56) and House Exhibit 351(1) through (26) received.)

CHAIRMAN MC CASKILL: We're wrestling with scheduling things. Let me say a few things about scheduling things.

We are trying, as I indicated before, to manage the schedule as it relates to witnesses' travel and the expenses surrounding their travel and their lodging.

You all have the right not to call witnesses, and I -- that is your prerogative.

But I do want to give a warning, that if there is any witness listed on the schedule anywhere, you should be prepared to handle that witness. You should not assume just because a witness is listed for Thursday, that you're not going to end up having to direct or cross on Wednesday. Or if it's listed for next Tuesday, I think you should just -- clearly we're not going to fly people in for

Thursday that aren't scheduled to be here until Tuesday or Wednesday.

But I just want you to keep in mind that flexibility is going to be important here, because we're trying to let you put your cases on in the order you want, but we're also trying to weigh that against the public interest of making sure that this is going as expeditiously as possible. So we're going to try to be fair in that regard.

Professor Geyh is the next witness, I understand, that the House wants to call?

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: What we're going to do, since it's 7:00, is we're going to allow you to go ahead and call Professor Geyh but we will only do direct.

That way we can accommodate your need to prepare for cross-examination overnight.

MR. TURLEY: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: And if there are any other questions about the order of witnesses for tomorrow or who is going to be called or who isn't, these folks have planes to catch, there's expenses involved with them not getting a plane that they're scheduled to be on.

I sure hope that you all will make your decisions about your witnesses tomorrow. It's my hope that

you will make that before you leave tonight so that we will have some idea of who you, in fact, are going to end up calling as you finish up your case tomorrow.

MR. SCHIFF: Thank you, Madam Chair. And I would also say, it's our expectation, I hope events don't prove me wrong, that we're going to finish our case tomorrow and maybe earlier in the day than later in the day. Obviously if there's any witness we don't call, defense wants to call, they will be starting their case and they can put them at the top of their list.

CHAIRMAN MC CASKILL: But if you know you're not going to call them, it would be very important for the defense to know as soon as possible, because I think they would want to know to prepare that they have got to do a direct, so forth and so on.

So if you know before you leave tonight that there are witnesses you have listed as your witness and you are not going to call them as a witness, it would be very helpful if you would let Judge Porteous's team know that tonight before you leave.

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: Okay. Professor Geyh.

Professor, if you would stand to take the oath.

Whereupon,

CHARLES GARDNER GEYH

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARON:

Q Good afternoon, Professor Geyh. My name is Alan Baron. I'm Special Impeachment Counsel for the House, and I would like to begin by asking you to state your full name for the record, please.

A Charles Gardner Geyh.

Q And, Professor Geyh, are you employed, and by whom and in what capacity?

A I am the John F. Kimberling professor of law and the associate dean for research at the Indiana University Maurer School of Law.

Q Do you have any specific or particular expertise in any areas of the law?

A Yeah, I -- my writing and some teaching interests. But my scholarship focuses in areas of judicial conduct, judicial ethics, judicial administration, judicial independence, judicial accountability, judges and their oversight, essentially.

Q And have you published in this area?

A I have. I've published, by last count, several books and a total of close now to 50 articles, books and book chapters on the subjects that I just listed.

Q Could you give us the titles of some of the books that are relevant to the topic that we're discussing here?

A Sure. In terms of the books that I have published, I'm one of the co-authors of, as far as I know, the only treatise on judicial conduct and ethics out there, which I've got -- won't wave around, but I'm also the author of the forthcoming monograph on federal judicial disqualification that I was commissioned to write for the Federal Judicial Center.

In addition, I have written the reporters notes to the model code of judicial conduct in its recent revision in 2007.

Q Thanks. Have you held any positions relevant to this issue of judicial conduct?

A Sure. I was coreporter to the American Bar Association Commission that revised the model code of judicial conduct in 2007. I have served also for the ABA in the capacity as director and consultant to the ABA judicial disqualification project.

I have previously served as a special counsel to the state House of Representatives in the impeachment of Pennsylvania Supreme Court Justice Rolf Larson, and I was also a consultant to the National Commission on Judicial Discipline and Removal.

MR. BARON: Madam Chair, members of the committee, I believe we've previously submitted Professor Geyh's CV as part of our pretrial statement, and I offer him as an expert on the topic of judicial ethics.

CHAIRMAN MC CASKILL: Any objection?

MR. TURLEY: There is no objection.

CHAIRMAN MC CASKILL: The witness shall be considered, for the record, as an expert in judicial ethics.

BY MR. BARON:

Q Professor Geyh, in anticipation of your testifying, what did you do in terms of preparation?

A I have read the judicial conference report and surrounding testimony. I have read the House report in this case. I have read the depositions of the Marcottes and Amato and Creely in connection with this proceeding. And there may be other documents that I've looked at, but those are the principal ones.

Q I would like first to turn to what I'll call the Liljeberg case and its antecedents. Have you formed an opinion as to Judge Porteous's conduct in light of the relevant ethical standards for judges?

A I have.

Q And what is that opinion?

A I think in each of the four articles, we are

talking about some serious ethical lapses. When it comes to the Liljeberg case, the first two, the Liljeberg case and the Marcottes case, we're talking about a fairly significant amount of information. So it's going to take me a little longer to explain my views on those than the latter two.

But when it comes to Liljeberg, you really need to think about it in terms of four chapters to the episode. And it begins with Judge Porteous accepting free meals and all-expense-paid trips from local lawyers.

Now, I want to be clear that there's nothing wrong with lawyers and judges socializing. It's a normal part of a healthy legal community. And I'm not suggesting otherwise.

It is possible, however -- and to that extent, by the way, buying each other lunch, no problem. Going on vacation occasionally, no problem.

But there is a point where it become -- where, you know, a line can be crossed, where what the judge is, in effect, doing is exceeding the bounds of normal hospitality and is trading on his position as a judge for private gain.

And there is evidence in the record and in the House report to suggest that that's what's been -- what went on here.

In other words, you had a judge being taken not just on occasional lunches where you take friends out and sometimes the judge pays and sometime the lawyers pay, but what are described as countless lunches, at expensive restaurants in which there are four, five and sometimes six rounds of drinks being served, coupled with all-expense-paid trips to Mexico and hunt -- for hunting.

And you have a judge in this context who is reporting to a colleague that once you become a judge, he said, you never have to buy lunch again.

In other words, this is not a judge who is engaging in hospitality in the normal sense, as I understand it. This is a judge who sees an opportunity here and is describing it as such, an opportunity to trade on his status as a judge in order to subsidize his lifestyle.

Now, I don't want to linger too long on this, because there really are other chapters to the episode, and each one I think becomes increasingly more serious and more significant.

The second one, and the one that I think is certainly very, very troubling to me, is when we start talking about cash payments to two particular lawyers, Amato and Creely. And it gets even worse when those cash payments, you know, on demand by Judge Porteous, are

pursuant to a scheme in which Judge Porteous appoints them as curators or appoints and creates curatorships, which entitle the lawyers to fees that they then are asked to give back to Judge Porteous.

This is in the nature of a classic form of corruption, by which I mean a kickback scheme. And it raises any number of serious ethical problems.

For example, it is more or less a universal across the states and federal system that a judge should not lend the prestige of his office to advance the private interests of others, and that includes the judge.

And I think we also have, you know, a separate ethical principle saying all appointment should be made on an impartial basis. And it goes on to say -- the rule goes on to say we should avoid appointments which tend to create suspicion of impropriety.

If in this case we have a judge who was appointing Amato & Creely to curatorships not on the basis of merit but because they are friends who will give him back a portion of the money he has -- you know, that he can then spend, it strikes me as being a per se violation of that important ethical principle.

Q Excuse me. You made reference in your comments to a rule. What rule? Is there any particular rule you're looking at?

A Sure, in this case there is -- we are referring here -- my familiarity with it has to do with the model code of judicial conduct. And the code of conduct in Louisiana during this time frame was modeled after the 1972 ABA model code.

And the rule I'm referring to here is Canon 3(b)(4), all appointments should be made on an impartial basis, says the rule.

And it really embodies a larger principle that I'm really focusing on here, but that's the specific rule.

In addition to this notion of judges, you shouldn't -- you shouldn't lend the prestige of your office to advance your own interests, and that you should make appointments on an impartial basis, judges should respect and comply with the law, is another principle embedded in codes, and that's also -- the point being judges are supposed to apply the law, they had better follow it too.

And when we have a situation involving a kickback, which is illegal, we have a question concerning -- or a serious issue concerning whether the judge is indeed complying with the law.

More broadly -- and this becomes almost a mantra over the course of my testimony -- there is an overarching principle here, which is that a judge should conduct himself at all times in a manner that promotes public

confidence in the integrity and impartiality of the judiciary. That's Canon 2(a) of the code in Louisiana at the time.

It's a principle embedded in the 1972 code, model code, in the 1990 model code and the 2007 model code, each one of which is basically saying you need to behave yourself in a manner that avoids precisely the kind of problem that he's creating by creating this kickback scheme.

The next chapter requires us to fast-forward to the time when Judge Porteous is a federal judge. Thus far, we're talking about activities going on during his tour of duty as a state judge.

We now have the Liljeberg case in place. A lot of money on the line. And at the 11th hour, in comes the very lawyer with respect to whom Judge Porteous was involved all those many years, involving kickback schemes and cash payments and innumerable lunches and so forth.

Opposing counsel is understandably alarmed and moves for disqualification and the judge declines to do so, saying there is nothing wrong with a friend who happens to be a lawyer, I don't need to disqualify myself on that basis.

To evaluate the ethics of this claim, you need to look at really it comes from two different directions.

Title 28 has Section 455, which is really the procedural disqualification rule. And Canon 3 in the code of conduct for the United States judges has the ethical rule involving -- involving disqualification. So it's ethics and procedure, and they both have the same standard, which is has the judge engaged in conduct that a reasonable person might -- might question.

In other words -- in other words, the standard is a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

In this case it doesn't answer the question to say if you're just a good friend, that's not going to disqualify you, because that's perfectly true, but this Amato was more than a friend. He was a friend with benefits.

He was a friend who was providing kickbacks. He was a friend who was providing innumerable lunches. He was a friend who was providing cash payments.

Now, it also needs to be understood that a lot of judges are out there, they're asked to disqualify themselves and they don't. And sometimes they make mistakes, and that by itself isn't an ethical lapse.

It's only an ethical lapse if they know that they should disqualify and don't. And in this case, there's evidence in the record to suggest that Judge

Porteous knew he should have disqualified himself.

MR. TURLEY: Excuse me, Madam Chair. I have to object. This is becoming less question and answer as much as a lecture. And the witness is giving his account of facts, as opposed to responding to questions as to legal standards.

I just was wondering at what point there was going to be a question to try to present information of an expert as opposed to hearing an argument why the judge is guilty of various factual acts.

CHAIRMAN MC CASKILL: I think that the House is entitled to elicit this information one way or the other. If you want them -- you know, it's up to you to object and ask them to ask more questions, if you want them to do that.

MR. TURLEY: I've just lost track of what question is being asked. I mean, this was about 20 minutes of an account of what the facts in the case are.

CHAIRMAN MC CASKILL: As I say, I think the same information will get elicited after questions. But if you want him to ask the questions, Mr. Baron, ask more questions.

MR. BARON: I'm happy to ask questions.

BY MR. BARON:

Q Professor Geyh, you've recounted the basis --

the factual basis on which you reached your various conclusions concerning the ethical conduct of Judge Porteous.

A Right.

Q Was there anything -- another event in connection with the Liljeberg case which concerned you in that regard?

A Well, I think the point, to me, is that when we're talking about where the disqualification is going to be an ethical lapse, the relevant concern is is it willfully knowing that he has disqualified himself.

In some ways the ethical standards I'm applying have to be applied in a factual context, that's all I'm able to do.

So in this case where he is -- the information suggests the judge is well aware of this kickback scheme and it is -- you know, which to me is clearly information that a reasonable person is aware of that, disqualification follows.

Moreover, there is an indication here of knowledge based upon the evasiveness of the response of Judge Porteous in his disqualification proceeding, where he's asked by -- innocently by the lawyer seeking disqualification, what about the possibility that Amato gave you campaign contributions, and he tells -- he reports

that the only campaign contributions I -- the only money I ever gave him was in my first election.

I mean, there's a negative -- there's an omission there. He'd been getting money from Amato for years over the course of these various kickback schemes. He was well aware of that, and if that were told, it would clearly indicate the need to disqualify.

So that really is -- is what makes, I think, the disqualification matter more than simply a matter of simple error and something more significant.

Q Was there another event in connection with the Liljeberg case, and specifically I'm thinking while the case is under advisement, in which there's an interaction between Mr. Amato and Judge Porteous relative to a fishing trip they were on.

A Yes. I mean, at this point what we see is the case has ended, and -- or the trial is over, and we're waiting for a decision. And at this point, Judge Porteous and Mr. Amato meet, and Judge Porteous asks him for $2000.

At this juncture, smoke detectors ought to be going off all over the building or the lake, wherever it was that they were meeting at the time.

The point is that under both the code of conduct and relevant ethics -- relevant gift rules, a judge should not solicit anything of value from anyone seeking official

action or doing business with the court.

And it makes these rules, the severity -- the seriousness of these rules are manifest just in the context of this case.

Put yourself in the position of Mr. Amato in this case. You are a lawyer with a lot hanging in the balance for your client and a half-million-dollar legal fee for yourself hanging in the balance.

And it all rides on this particular judge, and this particular judge happens to be alone with you in a boat, asking you for $2000. We're not talking here about well, can you be bought for $2000, but would any lawyer in his right mind think it's worth risking alienating a judge at the point of decision over something like $2000.

It's that kind of pressure, it's that kind of, you know, abuse of the judicial office to advance your own personal gain that is why we have these rules in the first place, and what makes it doubly problematic.

And it also cycles us back to this notion of should he have disqualified himself. This makes doubly clear that he needs to get off this case, that this judge is actively involved in soliciting money from a lawyer in a pending matter.

And the judge understands, there's evidence to suggest the judge understands that this is a problem. This

is money going under the table. This is money that's not being reported as a gift.

I mean, and so the idea does the judge understand that this information ought logically disqualify himself? Of course it does. So it's the nondisqualification, coupled with the gift violations, that to me makes this a very serious ethical lapse.

Q And did you understand that the money that went to Judge Porteous, both earlier and on the fishing boat episode, was in cash?

A Yes, that was my understanding, in an envelope delivered anonymously, which I think contributes to the conclusion that the judge understood this was not something that was on the up and up.

Q I'd like now to turn to Judge Porteous's relationship with Louis and Lori Marcotte and their bail bond business.

Have you formed an opinion as to Judge Porteous's conduct with regard to the Marcottes and their bail bond business in light of relevant ethical standards for judges?

A Yes. I think there's some -- some of the most significant problems that we confront in this entire impeachment arise out of this episode. And again, it has bite-sized pieces, and I can take the first piece and then

follow up from there.

Q Let's cut it into a few pieces anyway.

A Sure.

Q First of all, what is your opinion in broad terms?

A Well, I think certainly what we're dealing with here is a very traditional and -- form of corruption, a quid pro quo in which Judge Porteous is receiving various favors -- meals, trips, services -- and what Judge Porteous is providing are various services. He is setting bonds the way the Marcottes want them set, and he is providing various services otherwise, like expunging criminal record in a couple of -- in a couple of cases.

And to me, that quid pro quo raises several serious ethical problems.

First, again, it's a recurrent problem. The judge is lending the prestige of his office, he's abuse the prestige of his office, this time to favor the Marcottes' interests.

The judge should not accept, you know, under the code at the time, the judge should not accept any gifts or favors which might reasonably appear designed to affect his judgment or influence his conduct.

And in this case, Mr. Marcotte is quite clear, he thought of Judge Porteous as being on commission. I

mean, these gifts are designed to affect the judge's conduct.

Q Let me interrupt you for a moment. At this point with the Marcottes, the interaction is -- you understand that Judge Porteous is a state court judge?

A Yes, yes.

Q And the --

A And I'm referring to -- I'm referring to the model code and its -- and its corollary in Louisiana. I'm not referring to him in this first chapter as a federal judge.

Q Thank you.

A Furthermore, the judge needs to respect and comply with the law. And again, several judges were sent to prison for this. This is unlawful conduct, this kind of quid pro quo.

And a judge finally should act at all times in a manner that promotes public confidence in the integrity of the judiciary. That's not happening when judges are engaging in this kind of quid pro quo relationship.

Q I'd like now to turn to Judge Porteous's conduct in connection with his bankruptcy proceedings after he was a federal judge.

A Could I just add one thing? Because I think I'd like to talk about his -- when he is -- when he is a -- I'd

like to talk a little bit about his role as a federal judge.

Q I'm sorry, please.

A I wanted to mention something. This pattern of conduct continues when the judge serves on the federal bench, and I think that is part of the problem. It continues on, that we have two different events.

One is the judge expunging a record in -- on behalf of the Marcottes at a point where he has been confirmed but hasn't been sworn in. And it's certainly -- there is testimony to suggest that that was a calculated act.

The judge understood that this continuing effort to do favors for the Marcottes in exchange for favors for them required him to do another favor or called upon him to do another favor that he was willing to do but not at the expense of risking his confirmation with this body.

MR. TURLEY: Madam Chair, once again the witness is commenting on the evidence and saying what he believed happened in the case, as opposed to giving his legal expert opinion on what the rules are. He's holding court, this is argument on what he believes happened in the the case.

MR. BARON: May I respond?

CHAIRMAN MC CASKILL: Yes, you may.

MR. BARON: I was just going to say an expert

always gives the factual basis on which he's basing his opinion. Mr. Turley can cross-examine if he believes that factual basis is incorrect. But he actually has to set forward what he's basing his opinion on.

CHAIRMAN MC CASKILL: I agree. And the objection will be sustained.

MR. BARON: Sustained?

CHAIRMAN MC CASKILL: Excuse me. Overruled. I'm trying to turn off my colleague's BlackBerry alarm.

(Laughter.)

SENATOR KLOBUCHAR: My daughter, sorry.

THE WITNESS: The final point on this score is as to the meeting with new state judges while he is a sitting federal judge, we have a continuing quid pro quo relationship, and this seems to be another stage in it, which perpetuates my concern that this is a judge who is trading on his status as a judge, who is lending the prestige of judicial office to help out the Marcottes, or as Mr. Marcotte said, to bring strength to the table.

And to me, that is the factual predicate that gives rise to my concern that the judge is lending the prestige of office to advance his interests.

BY MR. BARON:

Q Let's now turn to Judge Porteous's conduct in connection with the bankruptcy proceedings. Have you

formed an opinion as to Judge Porteous's conduct in his bankruptcy proceedings in light of relevant ethical standards for judges?

A I have.

Q And what is that opinion?

A In my view, again, the ethical problems are pretty significant. But fortunately I think for this body, given the lateness of the hour, it is going to be very easy for me to explain this fairly briefly.

That should not imply that I think these are less than very serious concerns. It's just there's not as much -- you know, there's not as much facts to explain to -- it as predicate to my -- to the opinions that I'm expressing.

In the -- in the House report, it speaks in terms of, you know, numerous false statements and materials omissions on the official forms that he signed under penalty of perjury that were filed with the court.

These numerous statements -- you know, as perjury, the ethical problems that they create are twofold. One is a judge is under an obligation to follow the law, to comply with the law. That's the ethical duty.

This judge is perjuring himself. He is not following that ethical duty.

Moreover, it is made all the worse by the fact

that it is not just -- there's -- you know, there are different kinds of crimes. The ones that reflect on the judge's honesty are among the worst, because they not only qualify as a failure to comply with the law, but also with a failure of the judge to act at all times in a manner that promotes the integrity of the judiciary. They reflect badly on his honesty.

To make it even worse still, this is occurring in the context of a judicial proceeding. Public confidence in the courts is necessarily going to be undermined. To the extent that a judge is not only breaking the rules but breaking the rules in the context of a judicial proceeding. So for that reason, I think the lapse is serious.

Q In your view concerning the ethical issues, does it make a difference how much money the creditors got back out of the plan that was approved?

A No. The point is did he tell the truth when he was under oath, did he raise his right hand, as I have, and tell the truth.

If the answer is no, he's committed perjury, he has violated the law, end of that story, and it reflects badly on the integrity of the judiciary insofar as it goes to his honesty and character.

Q Now, are you aware that in the course of the bankruptcy proceeding, the judge entered a confirmation

order which, in effect, said that you're not -- you, the debtor, Judge Porteous, are not to incur additional debt without the written permission of the court once his plan had been confirmed? Do you recall that?

A Yes, uh-huh.

Q Are you aware of any activity, based on your reading and review, that Judge Porteous engaged in which might have violated that order?

A Am I aware of any activity which might have violated that order?

Q Yes.

A Only what's written in the House report, which suggests in the affirmative.

Q Are you talking about the gambling markers?

A Yeah.

Q Is it okay for anyone, much less a judge, if they disagree with a court order, to violate that order and ignore it?

A No. I think that the duty to follow the law includes the duty to -- to obey court orders, and the ethical issues implicated in deliberately violating the court order fall in the same category.

Q I want now to turn finally to Judge Porteous's conduct during the confirmation process. Have you formed an opinion as to Judge Porteous's conduct during

confirmation process? And there I want to include his responses to the FBI when he was interviewed, the questionnaires he filled out as part of the process and with regard to relevant ethical standards for judges.

A I have.

Q And what is that opinion?

A My opinion is that many of the same problems that we saw in the bankruptcy proceeding apply equally here, that we are looking at statements that were made under oath, we are looking at statements where, if to the extent the facts reveal that the judge did, indeed, perjure himself, we have a judge who is violating both the law and who is acting in a way that is -- that is not in the best interests of the judiciary, that reflects adversely on his impartiality -- on his integrity.

And I think the point here is it's a trickier question insofar as the questions are generally working, I mean the questions are is there anything in your personal life that could be used by someone to coerce or blackmail you, or alternatively, is there any unfavorable information that might affect your nomination.

In a lot of cases there's weasel room there, wiggle room there. But in a case where we have, you know, evidence of -- of curatorships with kickbacks, in cases where we have, in effect, a quid pro quo, which is very

close to a polite way of saying bribery, it's pretty clear that these are cases where -- these are subjects that could affect his nomination. Anyone in Judge Porteous's position would know that.

And they are also potentially the subjects of blackmail, that someone -- that doesn't mean that these people would blackmail him. They were friends of his. But could they, is what the question is, and could they -- could Judge Porteous be embarrassed or blackmailed by knowledge that he had been engaging in corrupt schemes.

And I think the answers certainly would seem to be yes. To the extent, therefore, answer -- "no" answers qualify as perjury, we have the same problem here that we had in the bankruptcy proceedings.

Q I'd like to go back for a moment to some of the earlier areas you covered. In your view, did Judge Porteous have a continuing obligation after the recusal hearing in the Liljeberg case, if conduct occurred that might affect or reflect on his impartiality or any dealings that he might have had with counsel in the case, did he have, in your view, a continuing duty to disclose any such activity to counsel in the case?

A I regard that continuing duty to disclose as part and parcel of his duty to disqualify. In other words, the point is that once -- that his duty to disqualify

himself on the grounds that his impartiality might reasonably be questioned was continuous.

And so when the gift is made, that, as I testified before, is all the more reason for why he needed to step aside.

Now, as to whether he needed to affirmatively disclose that fact, certainly the preferred practice, whenever you have doubts, is to err on the side of disclosure.

But to me the more serious ethical lapse is not that -- you know, there's so many other more serious things going on here that he has engaged in, an improper gift, that he's failed to disqualify himself, that he's failed to reveal it simply manifests to me the knowingness of the conduct.

Q Let me finally turn to the bankruptcy petition. Are you familiar that -- do you recall the fact concerning the name that he used when he initially filed the bankruptcy petition?

A Yes, that it was -- that was -- right, that he filed it under a different name than his own.

Q Ortous. Do you recall that?

A Yes.

Q That was amended within about a week and a half, 10 days, something like that, before the notice went out to

the creditors whom he listed on his bankruptcy petition.

Does that make a difference to you ethically that he -- that he signed -- that he filed the original petition in a false name and signed under penalty of perjury?

A No, no. I think that the -- when he is signing under penalty of perjury and he signs it, the fact that he is essentially signing under the wrong name strikes me as still being a problem.

MR. BARON: Thank you very much. I have no further questions.

CHAIRMAN MC CASKILL: It is 7:20, so we will break for the evening. And as I said, I hope you all will convey to each other your plans for calling witnesses tomorrow, and we will begin bright and early at 8:30 in the morning.

(Whereupon, at 7:21 p.m., the proceedings were adjourned, to be reconvened at 8:30 a.m., on Wednesday, September 15, 2010.)

C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
LOUIS MARCOTTE				
by Mr. Goodlatte	502		591	
by Mr. Turley		549		
by Chair McCaskill	608			
LORI M. MARCOTTE PARIGI				
by Mr. Goodlatte	610		650	
by Mr. Turley		617		
JEFFREY J. DUHON				
by Mr. Johnson	655		679	
by Mr. Meitl		669		
AUBREY WALLACE				
by Mr. Johnson	681		711	
by Mr. Turley		696		
RAFAEL GOYENECHE				
by Mr. Dubester	717		751	
by Mr. Meitl		739		
by Senator Kaufman	755			
CHARLES GARDNER GEYH				
by Mr. Baron	764			

-- continued --

E X H I B I T S

NUMBER DESCRIPTION	RECEIVED
Porteous Exhibit 2005	501
Porteous Exhibit 2001	552
Porteous Exhibit 2002	552
Porteous Exhibit 2003	553
Porteous Exhibit 2004	554
House Exhibit 372B	566
House Exhibit 373A	566
Porteous Exhibit 2006	579
House Exhibit 447	587
House Exhibits 375, 241, 280, 71A and 71E	607
House Exhibits 350(1) and 351(1)	621
Porteous Exhibits 1112 and 1113	630
House Exhibit 119Z	645
House Exhibit 448	650
HP Exhibits 77A, 77B and 77C	675
House Exhibit 119A	696
House Exhibit 82	700
House Exhibit 81	700
House Exhibit 69D	730
House Exhibits 351(1) through (56) and House Exhibit 351(1) through (26)	761

United States Senate

Impeachment Trial Committee

Impeachment of Judge G. Thomas Porteous, Jr.,

U.S. District Judge

For the Eastern District of Louisiana

Volume III

Wednesday, September 15, 2010

Dirksen Senate Office Building

Washington, D.C.

APPEARANCES:

SENATE IMPEACHMENT TRIAL COMMITTEE:

Senator Claire McCaskill (D-MO) - Chairman

Senator Orrin Hatch (R-UT) - Vice Chairman

Senator John Barrasso (R-WY)

Senator James DeMint (R-SC)

Senator Michael Johanns (R-IA)

Senator Edward Kaufman (D-DE)

Senator Amy Klobuchar (D-MN)

Senator James E. Risch (R-ID)

Senator Jeanne Shaheen (D-NH)

Senator Thomas Udall (D-NM)

Senator Sheldon Whitehouse (D-RI)

Senator Roger Wicker (R-MS)

SENATE LEGAL COUNSEL:

Morgan Frankel, Senate Legal Counsel

Pat Bryan, Senate Legal Counsel

Thomas Caballero, Assistant Senate Legal Counsel

Grant Vinik, Assistant Senate Legal Counsel

-- continued --

APPEARANCES (Continued):

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Representative Adam B. Schiff (D-CA)

Representative Robert W. Goodlatte (R-VA)

Representative Zoe Lofgren (D-CA)

Representative Henry C. Johnson (D-GA)

Representative James Sensenbrenner, Jr. (R-WI)

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Kirsten Konar, Special Impeachment Counsel

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RESPONDENT'S COUNSEL:

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Keith Aurzada, Esq.

P.J. Meitl, Esq.

Daniel O'Connor, Esq.

Brian Walsh, Esq.

Daniel Schwartz, Esq.

P R O C E E D I N G S (8:38 a.m.)

CHAIRMAN MC CASKILL: The hearing will commence. I apologize that we're starting a few minutes late.

The House has 12 hours and 38 minutes remaining in their case, and Judge Porteous has 13 hours 56 minutes remaining in their case.

And I believe we are ready for the cross-examination of Professor Geyh.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good morning, Professor.

A Hi, Mr. Turley.

Q I want to make sure -- it's Professor Geyh, not gay; correct?

A That's correct.

Q Professor, as the House did yesterday with its own witnesses, I'm going to be asking you to be somewhat brief today. I'm going to be asking you some yes-or-no questions, but some I'll be asking for your opinion.

I don't want you to think that I'm rude if I cut you off. It's just that because you were taken out of order, we have witnesses that are trying to catch flights and so --

A I understand.

Q Thanks. Now, first of all, I wanted to get an idea of how you approached your testimony. Is it correct to say that in preparing for your review and your final analysis, you just assumed that all of the facts alleged were true?

A No. What I did do, however -- that's close to true. In other words, I don't perceive myself as a fact witness. I looked at the House report and based my analysis of the ethics on the facts as found in the House report and looked at additional deposition testimony to conclude that in my judgment, there were no findings that were outlandish or crazy.

But for the most part, I simply looked at the allegations and looked at the conclusions reached and made assessments of the ethics based on those.

Q Fair enough. Were there any facts that when you finished that process, you rejected and said, okay, this is a fact that's not true or --

A No.

Q Okay. Did you -- did you observe any of the testimony in the case?

A Live? No.

Q When you say "live," you mean the deposition?

A In person, in person I did not. The only testimony I was privy to was of other professors on the House side when we were testifying as ex- -- on the house sides.

Q Oh, I see. I'm speaking of the Senate proceeding.

A Correct, I didn't. I have not seen them live.

Q Okay. Thank you, sir. Let me also ask you, yesterday you spoke about the unethical aspects of one of the allegations, which is the amending of two sentences. Do you recall this business with Duhon and Wallace?

A Correct.

Q Okay. Now, are you aware of the testimony yesterday that it was Judge Richards, not Judge Porteous, that set aside the offense for Mr. Duhon?

A I am not. I was not privy to that.

Q Now, in the case of Aubrey Wallace, did you take a look at Section 893 that's the basis of the Government's argument that --

A I didn't read it, but I read of it in the materials.

Q So you didn't look at the -- you didn't --

A I didn't read the statutory section itself, no.

Q How about Section 88.1, which is also raised as to the Government's argument that it was unlawful?

A No.

Q That's fine. That's fine.

Now, I'm going to be asking you a couple of questions about your background. And as you know, we didn't object to your being an expert --

A Uh-huh.

Q -- on ethics. We certainly commend your record. I'm just trying to isolate what your background is.

A Sure.

Q It's fair to say that you're not an expert in Louisiana legal ethics?

A That's correct.

Q And I understand you made a very good point, you said that, you know, a lot of states model on the -- on the model code itself; correct?

A Including Louisiana.

Q Including Louisiana. And I understood that.

Did you review any Louisiana judicial misconduct opinions?

A I did not review misconduct opinions. I reviewed the model code -- excuse me, some of the code materials from Louisiana.

Q Did you review the code -- the codes going back to 1984 that were relevant for the period?

A I did.

MR. TURLEY: Okay. Madam Chair, I'd like to move in at this time those -- those codes. There were some changes, but we've put them all together as Porteous Exhibits 1001A to 1001Y, and we'd like to move them into evidence.

CHAIRMAN MC CASKILL: Are these all published codes by the State of Louisiana?

MR. TURLEY: Yes, they are.

CHAIRMAN MC CASKILL: Then the committee will take notice of any statutes or published legal codes as evidence.

MR. TURLEY: That's very helpful, Madam Chair. Should I -- just to clarify, then, we don't have to, for example, put into the record any published opinions either?

CHAIRMAN MC CASKILL: I think that anything that is a statute or a published opinion, I

think, I don't want to use the term "judicial notice," because this is not -- we are not a judge. But the same legal principle should apply, and we would -- the committee would take notice of any published statutes, published ethical codes or published legal opinions.

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q I think I know this answer already, but you're not a member of the Louisiana bar, are you?

A Correct.

Q Okay. And you've never taught at a Louisiana law school?

A Correct.

Q Now, you're aware, of course, that many of these ethical allegations occurred when Judge Porteous was a state judge; correct?

A Yes.

Q Okay. Now, I'd like to -- maybe you can help educate us a little bit on a few of these questions, that -- is it correct to say that -- first of all, did you -- you said you didn't review any opinions. Did you review any of the material from the Louisiana Judiciary Commission?

A No.

Q Okay. Well, let me ask you this, then. When a judge is accused of misconduct, and just as a general principle, aren't most of the responses when judges are accused of judicial misconduct is generally a written opinion as opposed to a formal sanction? Isn't most of these cases handled in sort of written reprimands through opinions?

A It will vary dramatically, anything from private admonitions, you know, to off-the-record discussions all the way up to disbarment, or not disbarment, removal from office.

And in some cases it will culminate in a formal opinion of censure or something less.

Q Fair enough. Would you say, from your review of these cases, that the majority of questions that come up every year with regard to judicial misconduct, the majority of them, are generally handled by those types of private or public, I forgot how you described it, reprimands or recriminations?

A You know, I'm not prepared to -- to speculate about that.

Q Okay.

A I -- complaints are filed, they're investigated, and they go in different directions,

depending upon what is discovered at that point in the process.

Q Fair enough. And so you mentioned that you could -- there's a reprimand, I think you mentioned censure. Can --

A Private reprimand, public reprimand, suspension for a period of time, to removal from office. It's a continuum.

Q And, in fact, Judge Porteous was suspended; correct?

A I'm un -- I mean, I don't know.

Q Okay.

A That could be. I mean, I don't know.

Q Now, did the -- did the House give you ethics opinions that we had marked as an exhibit before trial that -- on judicial ethics cases?

A No.

MR. TURLEY: Madam Chair, those opinions, as opposed to our earlier discussion, may not be -- we believe that they are publicly available. But for the ease of the Senate, as opposed to the other ones, we would suggest putting these in the record as Exhibit 1111A through L. And we'd like to move those into evidence.

CHAIRMAN MC CASKILL: Is there any

objection?

MR. SCHIFF: Madam Chair, we would need to take a look at these. Could we perhaps have a chance to discuss it with counsel?

MR. TURLEY: They were produced and marked with all of our exhibits.

MR. SCHIFF: If we could get a chance to discuss with counsel, perhaps after this witness. We probably don't have any problem with it, but I want to make sure what we're agreeing to have introduced.

CHAIRMAN MC CASKILL: What are these, Counselor?

MR. TURLEY: Specific judicial opinions on how these types of ethics questions are handled.

CHAIRMAN MC CASKILL: But they're not published opinions?

MR. TURLEY: Yeah, they are published but they're not readily available. That is, you can't just pick them up off of some standard sites that's --

CHAIRMAN MC CASKILL: I don't know how it could be published if they're not readily available.

MR. TURLEY: They're published but not readily available, in terms of other opinions where

you could just go on LEXIS-NEXIS and pull them up.

CHAIRMAN MC CASKILL: With the objection without -- I need to look at them.

MR. TURLEY: Sure.

CHAIRMAN MC CASKILL: And I think we need to look at them. I think that we will hold off on entering them into evidence until we have a chance to see what they are and make sure that there is not an objection. Even if there is objection, they may fully well be admitted into the record.

MR. TURLEY: Understood.

CHAIRMAN MC CASKILL: I think you can feel free to use them to pose hypotheticals to this expert witness, however.

MR. TURLEY: Yes, that's fine. And your staff had -- we submitted it a few weeks ago. But I understand entirely, I thank the chair.

CHAIRMAN MC CASKILL: Thank you.

MR. SCHIFF: Thank you.

BY MR. TURLEY:

Q Well, let me ask, you had talked about perjury. One of the reasons I was raising some of the cases that we submitted earlier and marked as that exhibit deal with perjury, and you talked about that yesterday.

Is perjury something generally that judicial counsels deal with when committed by a judge?

A It's certainly within the zone of -- of conduct that would be subject to a judicial discipline, yes.

Q Now, let me ask you about -- I understand that you haven't looked at those cases, which is fair enough. I'm not going to, you know, force you to talk about cases you haven't read.

One of the cases that we put in -- and feel free -- if you feel you don't want to comment on it, I can understand. But one of the cases that we put in was with a bankruptcy judge. And I just want to read you a sentence from the opinion to see if you agree with it.

A Uh-huh.

Q The opinion -- and this is Case Number 91-8500. The court said, "perjury is an extremely sensitive problem for the judicial system, but an allegation that a judge gave perjurious testimony in a matter unrelated to his own judicial duties and unrelated to activities occurring while he is a judge falls outside the statute authorizing disciplinary action."

Would you generally agree with that statement?

A No.

Q Okay. Fair enough. Let's look at just your view on the perjury thing.

A Let me just add one small point, which is that to me, there's also a difference between construing what behavior may fall specifically within the confines of a disciplinary statute, however written, and the larger question of whether the behavior itself is ethical, which was the scope of my -- of my testimony.

Q Fair enough. I think that's a fair point. As a professor, I don't want to do the Socratic method with you. If I'm being unfair, tell me and I can move on. Although since we're both trained as to speak in 50-minute increments, this could be a disaster; right?

A It's hard, yes.

Q Now, with the false statements, have you reviewed a lot of cases involving judges accused of making false statements, for example, in the Senate Judiciary Committee?

A A lot of cases, no. I have -- I mean, in the course of writing the judicial ethics treatise,

we are involved with judges who are accused of fraud and, in some cases, false swearing.

Q False swearing. Do you remember what the false statement cases were?

A I'd have to look them up.

Q Don't worry about it. It's fine.

A It's in --

Q But from those cases, did you -- was it your conclusion that generally, they required not just a false statement but a showing of an intentional false statement?

A I think the -- well, the starting point really is that you tether these things to the relevant code, which speaks in terms of judges having to comply with the law.

And if you are talking about false swearing or perjury, the operative issue is have they violated the law, have they committed perjury. And the more willful the action, certainly the more -- generally, the more egregious the violation in those terms.

But it's a relatively cut and dried proposition, I think most of the time, is have they violated the law, does it reflect badly on their honesty. And that's where it would --

Q So have they violated the law and does it reflect badly on their honesty.

A Right.

Q Okay. I'm not going to ask you about the cases again, but I would like to give you another quote, see if you agree with it, a very short quote. This is actually from a case marked JC 04-35 and 5-16. Just as a background, this involved a federal judge who took a case of a former client and was accused of being involved in a cabal and accused of making false statements to the Senate Judiciary Committee.

A Uh-huh.

Q And the judicial counsel wrote, "even if the alleged inconsistencies in testimony and submissions to the Senate Judiciary Committee were a proper subject for a complaint, dismissal would be required."

He went on to say, "there's no evidence that respondent intentionally mislead or knowingly made false statements to the Senate."

And so do you agree with generally that, in your review of cases, that that's the standard that is often applied?

A Certainly, I think the knowing nature of

the wrong is a relevant consideration. I mean, whether -- whether the judge was -- and I think -- it's important to recognize that it's got to be from an objective standpoint, in other words, that you look at it from the perspective of an objective person, knowing what the judge would have known, would he have, you know, been aware of information that would have made the misstatement intentional, rather than just relying on the judge saying well, I didn't know.

But taking that, I think that intent is one of the things one would look at, yeah.

Q Thank you for that, Professor. Now, you talked briefly in your conversations with the House about the use of a pseudonym for a few days.

A Yes.

Q Which the judge is accused of using his correct Social Security number but using a pseudonym. Are you familiar with the prior statements of Mr. Claude Lightfoot?

A As to what?

Q As to that issue.

A I'm aware of him saying that he was responsible for the idea.

Q That it was based on his legal advice?

A That it was -- that it was his idea. I'm not sure that it's legal advice to tell someone to use a false name.

Q You think that Mr. Lightfoot acted unethically?

A Yes. That said, I think that Judge Porteous, being a lawyer and a judge, was able to exercise independent legal judgment, and he did not.

Q Let me ask you just this. Have you seen judicial opinions dealing with the so-called advice of counsel defense?

A Some. I haven't reviewed them for my testimony today.

Q Okay. That's fine. Are you aware that other judges, in fact, many judges, have been accused of lying or omitting material and embarrassing issues from their questionnaires and background statements before the Senate Judiciary Committee?

A I'm not aware of a lot. Let me put it -- I am not aware of this issue arising. It's discussed. I mean, it's discussed in the abstract by academics saying that it should be -- should happen. But that's a different question entirely from does it happen. And I'm unaware of other -- of

other cases.

Q Did you review any of those -- you haven't reviewed those cases?

A No, I'm not aware of those -- I'm not aware of other cases of that sort.

Q Let me ask you about one case. This is JC Number 97-80629, which is also in these cases. And this involves a judge, James Ware, United States District Court judge. Are you familiar with Judge Ware, James Ware?

A No.

Q Because he's still a judge, a district court judge. Now, he was accused of lying to the Senate Judiciary Committee. And in this case, it was a -- it got a lot of national attention because he was accused of lying about his brother being shot while they were bicycling in a very famous case, the same day as a group of children died in a fire bombing. And this was a very big part of his statement and his public statement.

And it turned out that that was all untrue. Do you remember that case?

A No.

Q So you're not familiar with the fact that he was never charged or disciplined for that?

A I'm not. But by itself, that doesn't surprise me, honestly.

Q Why wouldn't he be -- why wouldn't he be disciplined if he lied to the Senate Judiciary Committee?

A I think the point is that there is a context to all cases. I would like to learn more about the context of that case. And where you have the culmination of a long history of misconduct with a dozen different tendrils, culminating in lies to the Senate at the point of decisionmaking as to confirmation, that strikes me as being a reasonable thing to talk about in this larger context.

When you're looking at isolated inquiries in isolated cases, I would like to look at the context of why this was raised, by whom it was raised, what the circumstances were, before I would say I'm surprised they didn't pursue it.

Q I understand. And feel free, if -- I think I'm only going to give you one more example, and if you don't feel like you can comment on it, that's fine.

A Yeah.

Q This one actually is a pretty famous one you may have heard about, involving Hugo Black. Are

you familiar with the Hugo Black accusation from his Senate confirmation hearing?

A It's ringing a vague bell. You can proceed. I'm -- I'm trying to contextualize it, but go ahead.

Q Can you give me your general idea of what happened in Hugo Black?

A No, I'm trying to recall, whether this has to do with clan ties and so forth, or if this is something else.

Q No, you're absolutely correct. The allegation was that Hugo Black, who was obviously, as you know, was nominated for being a United States justice, that he was asked whether he was -- had been a member of the KKK, and he was accused by a Senator of lying. This came up during the confirmation.

Then on the Senate floor, there was open debate as to whether he was a KKK member. And he came out later after he was confirmed and admitted that indeed he was.

Are you familiar with any disciplinary action that was taken against Hugo Black?

A No, I am not. You know, again, when -- putting the Senate in the role of -- or the House

and Senate in the role of prosecutor in this, the fact that there are examples where prosecutors exercise their discretion not to go forward doesn't mean all that much to me.

Q Sure.

A Could they have gone forward and if they had, would they have been warranted? Again, I'd ask context-dependent questions about that.

Q Understood, understood. I'm going to ask you a couple of general questions. I understood your testimony yesterday, and in fairness to you, you did -- you acknowledged that Senate -- you've acknowledged, excuse me, that judges will often have social relationships, but that you viewed this case as different. And I understand that.

I'd like to talk generally, though, about -- about something that you wrote. You've previously written that in small towns, it's particularly more common, that this problem comes up more often in small legal communities where judges know lawyers; correct?

A That's true. This is in the context of disqualification, yes, was when I was writing this.

Q And, in fact, I was struck by one of your quotes. You said, "to some extent, a judge's

familiarity with the parties and lawyers represents less of an appearance problem in a small town than in an urban setting."

A I think that's a fair point, yes. I made it. I hope that would be a fair point as far as I'm concerned. But yes, I agree.

Q You had mentioned, you talked about bankruptcy yesterday, some of the bankruptcy issues, you were sort of running through the articles.

Do you believe that the underlying rules and practices of the bankruptcy code are relevant in determining -- in making up your mind about the ethical questions?

A Not particular -- well, it depends. But I think not -- for the most part, probably not, that I would look at what the rules of bankruptcy proceedings are on the one hand and would look at ethics separately. Willful violation of the bankruptcy rules would be of concern to me, but I think that -- I mean, in the same way -- in the same way that I think that disqualification has a procedural dimension and an ethical dimension, I segregate in my own mind what the rules of bankruptcy are as distinct from what the ethical -- what the ethical implications of conduct is.

Q I understand. And I must tell you, I know nothing about bankruptcy, but I -- did you review any of the bankruptcy -- the underlying bankruptcy rules in part -- as part of your analysis?

A I didn't review the substantive rules, no. I reviewed the testimony and the materials that -- that the House produced. But I did not review -- I'm not a bankruptcy lawyer either, and so I did not review the bankruptcy rules.

Q So you reviewed the material that the House gave you and the House report?

A And the -- and the testimony of several of the witnesses. But yeah.

Q From those proceedings?

A Yeah.

MR. TURLEY: Thank you very much, Professor.

THE WITNESS: Thank you.

MR. TURLEY: We will pass the witness, thank you.

MR. SCHIFF: Madam Chair, we have a few questions. Can I have one moment, please?

CHAIRMAN MC CASKILL: Sure.

REDIRECT EXAMINATION

BY MR. BARON:

Q Good morning, Professor Geyh.

A Good morning.

Q Professor Geyh, Mr. Turley presented you with the fact that Judge Richards had participated in setting aside Mr. Duhon's conviction and you weren't familiar with that fact.

Do you recall that?

A That's correct.

Q But were you aware that Judge Porteous was the person who expunged Mr. Duhon's conviction, even though he took the case away from Judge Richards to do it?

A Yes.

Q And the testimony has been that this was done as a favor specifically at Mr. Marcotte's request?

A Right.

Q Would you regard that as an ethical act?

A No.

Q And why not?

A That it returns us to the core principle that a judge should not lend or abuse the prestige of office for the -- to advance the interests of others, and in this case, the Marcottes' interests were being advanced by the expungement, by the

judicial act.

Q Now, you talked about it made a difference, it was important whether a false statement was intentional as a matter of -- considering the ethical implications.

A On the sliding scale, yes, uh-huh.

Q There's been testimony that Judge Porteous took a trip to Las Vegas and that the Marcottes or their company paid for it, but there's also been testimony that when Judge Porteous was asked about that from something called the Metropolitan Crime Commission, which is sort of a citizens good government group in New Orleans, he denied that the trip had been paid for by the Marcottes.

A Uh-huh.

Q Do you regard that as having an ethical implication with regard to Judge Porteous?

A I think that it -- that we have an overarching ethical principle that a judge shall act at all times in a manner that promotes public confidence and the integrity of the judiciary.

If we are dealing with a judge who, I think, would pretty clearly have to know that he went to -- you know, on a trip, if he did, that lying to the --

Q Lying about who paid for it?

A Lying about who paid for it would be -- would have -- would impact adversely on his -- on his integrity.

Q You're familiar with the fact that when Judge Porteous filed his initial bankruptcy petition, he did it in the name of G.T. Ortous, O-r-t-o-u-s? Do you recall that?

A Correct, uh-huh.

Q And the testimony is that that wasn't a mistake; that was something that he -- that his bankruptcy counsel suggested and that he agreed to and proceeded to use that name, sign beneath it under penalty of perjury and also to obtain a post office box which was put on that initial bankruptcy petition instead of his actual residential address. The post office box was also at the suggestion of his counsel, Judge Porteous went out and got it and brought it.

Are you familiar with all that evidence?

A Yes.

Q And virtually uncontested. Do you find in that context that the advice of counsel obviates the ethical implications of Judge Porteous signing his initial bankruptcy petition in a false name under

penalty of perjury?

A It does not. In my -- in my -- the cross-examination, I quarrel with even the notion that it's advice of counsel in the traditional sense. It's a strategic choice designed to avoid embarrassment.

And it seems to me that in situations where you're dealing with a layperson, an undereducated person, a person who is unfamiliar with the legal process, when a lawyer who is all -- who is by that perspective all knowing comes to you and says, this is the way we should proceed, I'm likely to be a bit sympathetic.

But in the context of a judge, where I think, as was put in the record someplace, you expect the judge to cut square corners, that in that context, the judge knows that if a lawyer comes to him and says, I've got it, let's perjure ourselves, that that simply isn't acceptable, that a judge knows that that is a -- that that is an unacceptable thing, particularly for a judge with respect to whom integrity ought to matter.

Q Now, in Judge Porteous's bankruptcy, it appears that he completed the plan that was confirmed by paying his creditors roughly, I don't

know, 50 cents on the dollar, something like that.

Do you accept that it's okay, from an ethical perspective, to complete the bankruptcy aspect of this but, in the course of having done so, having lied under oath, having misrepresented facts with regard to assets, payments to creditors, et cetera, do you see those as two separate questions?

A I do. All is well that ends well is a perfectly fine adage when you are focused on the bankruptcy proceeding itself and trying to resolve matters equitably for the parties involved.

But it's a distinct matter to me as to whether the judge, in the course of that, is -- is perjuring himself, lying under oath.

Q And, finally, is there anything that Mr. Turley raised with you in his questioning, does any of that cause you to change your mind concerning any of the testimony you gave yesterday concerning the ethical implications of Judge Porteous's conduct?

A No.

MR. BARON: Thank you. I have no further questions.

CHAIRMAN MC CASKILL: Are there any

questions -- further questions by Judge Porteous's counsel? Any questions by the panel?

EXAMINATION

BY CHAIRMAN MC CASKILL:

Q I have one area of questioning I'd like to ask you, Professor, on the issue of disqualification.

A Yes.

Q When a judge has been asked to be recused -- there has been a significant amount of discussion in this proceeding about small towns versus large towns and the ability of a judge to do his or her work in small towns without having friends appear in the courtroom.

I'd ask you to drill down for a moment in terms of ethics of the situation and ask you about a judge bench-tried case versus a jury case and any distinction you might find between a state trial court that throughout this country we could find many in small towns and a federal district court.

I believe the facts before us, the allegations, are about a judge-tried case in a federal district court. Knowing that is the environment in which these allegations have been made, would you comment on the issue of

disqualification --

A Sure.

Q -- in terms of those situations?

A Sure. It's a question -- it's a compound question, and if I don't answer all --

Q I've always wanted to ask a professor a compound question.

(Laughter.)

A I deserve it.

First of all, I think it is true to say that one has to accept that everybody knows everybody in a small town. And, therefore, the notion that a lawyer will appear before a judge or a party will appear before the judge who the judge knows is something that goes with the territory of small-town practice.

And so I think that anyone who would tell you that merely because a lawyer appears before a judge because they are friends and that that's somehow disqualifying would be -- would be mistaken.

And to be clear, I think to me what makes this different is the presence of not just innumerable lunches but, more fundamentally, cash payments and ultimately kickbacks that makes a model situation uniquely difficult, and highly

problematic.

When you get into the business of bench trials versus jury trials, the cases go different directions, but I think there is a general sense that we are especially mindful of the need to disqualify when it is the judge who is hearing a case without a jury.

Because then the judge is not only the law concluder, but the factfinder. And so we are all the more sensitive.

I think that the cases that cut the other way basically say we still have the same standard, must -- can the judge's impartiality reasonably be questioned. And that, I think, is a -- you know, the same standard.

But I think we're especially mindful of that when the judge's job is going to be the assess the facts of the case, and it's all the more worrisome in those -- in those contexts.

As to the distinction between federal and state courts, I think it is true to say that the -- the tenure that comes with a lifetime appointment removes the judge a bit more from the setting, that judges at the trial level who are running for reelection are going to be more engaged in the

process.

But, again, I come back to the point that the standard for disqualification is the same, and that really is a point to reemphasize, that, you know, I don't profess to be an expert on Louisiana. But one of the -- the good things, I think, about the way our system has worked out is that the model code, which first came into being in '72, is essentially the rule in every state in the federal government, with the possible exception of Montana, I think. I think that virtually all states use some form of it.

And so the same kind of ethical guidance that would apply to a federal judge would apply to a state, even though I think the dynamic is a little different in federal court.

CHAIRMAN MC CASKILL: Thank you.

Senator Hatch?

EXAMINATION

BY VICE CHAIRMAN HATCH:

Q Professor, there's some indication in this matter that matters that occurred before elevation to the federal court should not be considered or at least should not be disqualifying with regard to -- with regard to service after being on the -- being

confirmed to the federal district court.

Do you have any opinion with regard to that?

A I do. I am not here as an expert on impeachment, and I will leave that to you, as far as what an impeachable offense would -- would cover.

As an ethical matter, it's pretty well understood that if a judge misbehaves in a prior judicial office or in private practice, that that can, indeed, bear on his discipline now.

And it makes perfect sense. If you are asking yourself whether a judge is acting at all times in a manner that promotes public confidence in the integrity of the judiciary and 15 minutes before the judge raised his right hand, that judge did something so grossly unethical that public trust in that judge is crushed, the idea that you would be somehow hamstrung and unable to take into account that information, as an ethical matter, and certainly in state proceedings, no, of course we can do that.

If a judge -- you can take the obvious case, right. The judge goes out and quietly murders half a dozen people before assuming office. Who would suppose that, well, once the judge assumes

office, we can't deal with that, you know, that behavior prior to office? It just is a matter of degree. Okay, if we can accept that, how far do we go with that?

VICE CHAIRMAN HATCH: Thank you so much.

CHAIRMAN MC CASKILL: Thank you, Professor Geyh. You are excused.

SENATOR UDALL: Madam Chair?

CHAIRMAN MC CASKILL: I'm sorry. We started a trend here. Senator Udall?

EXAMINATION

BY SENATOR UDALL:

Q Professor, could you -- there seems to be the thought out there, the indication out there, that there's one ethical standard in Louisiana and another standard in the rest of the country. Could you -- could you address that in terms of your thinking on that, some questions on that area?

A On the one hand, one needs to be somewhat sensitive to the fact that every state can adopt the rules that it wants to adopt, and that Louisiana -- there will be some state-to-state variations in ethics.

On the other hand, I think -- I was referring to this before -- there is -- the code of

conduct is a national document. And while there may be, you know, some variations, it is -- the ethics of judicial conduct are, within fairly limited limits, uniform.

And I think one also -- when we're talking about that's not how we do things in Louisiana or that's not how we do things in Gretna, on the one hand, as I say, we need to be somewhat sensitive on those variations.

On the other hand, when we can say, it seems to me, well, everybody is doing it or lots of people are doing it can be a slippery slope to hell.

But in some cases, the fact that a lot of people are doing something, as in the Marcottes' episode, which resulted in multiple people being sent to jail, the fact that multiple people were doing it by itself doesn't make it ethical. So I think that needs to be kept in mind.

But more fundamentally, my overriding reaction is to say when we're talking about kickbacks, when we're talking about quid pro quo, when we're talking about gifts, to say that's not how they do it in Louisiana is unfair to Louisiana, honestly. I think that it impugns the -- it creates the implication that in Louisiana we're not

concerned about ethics, if that's the message being given. And I think that's an inappropriate take-away.

SENATOR UDALL: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: Any others?

You are excused, Professor Geyh. Thank you very much.

(Witness excused.)

CHAIRMAN MC CASKILL: House can call its next witness, please.

MR. SCHIFF: Madam Chair, the House calls Rhonda Danos.

CHAIRMAN MC CASKILL: Ms. Danos, I would need you to stand, please.

Whereupon,

RHONDA F. DANOS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Please be seated. Ms. Danos, the committee has been advised by the House managers that it may be your intention to assert your constitutional right against self-incrimination in response to all substantive questioning in these proceedings. Is it your intent to assert your right against self-incrimination

today?

THE WITNESS: No, ma'am.

CHAIRMAN MC CASKILL: Okay. Thank you. You may proceed.

MR. SCHIFF: Thank you.

DIRECT EXAMINATION

BY MR. SCHIFF:

Q Ms. Danos, can you state your full name for the record, please.

A Rhonda F. Danos.

Q Ms. Danos, where are you from?

A Marrero, Louisiana.

Q Can you tell us a little about your educational background.

A High school.

Q What type of work have you done over the years?

A Mostly secretarial.

Q At some point, did you become a legal secretary for a judge?

A Yes.

Q And who was the first judge that you became a secretary for?

A The first judge was Judge Roy Price.

Q And how long did you serve as his

secretary?

A It was a very short time. It was only a few months.

Q And what took place then?

A He was indicted and left the bench.

Q Shortly thereafter, did you go work -- go to work for another judge?

A Judge Magee filled in until Judge Porteous came on.

Q About how long did you serve as a legal secretary or as a secretary for Judge Porteous?

A Nearly 24 years.

Q Tell us a little bit about your job responsibilities as Judge Porteous's secretary.

A Pretty basic. Answering the phone, filing, scheduling his appointments, routing the -- the documents to the law clerks that they were assigned to. I think I said making appointments already. Doing status conferences and preparing the forms for Washington. That's about it.

Q Were they mostly administrative tasks as opposed to legal research or legal work?

A Administrative.

Q Did you serve as his secretary during his entire tenure on the state bench?

A Yes, I did.

Q As well his entire tenure on the federal bench?

A Yes.

Q During the course of your work for him, did you get to know some of the attorneys that were close friends of his?

A Yes, sir.

Q Would you describe Jake Amato and Bob Creely as close friends of his?

A Yes.

Q How often would he get together with them?

A When they were in the building, they usually stopped by and say hello.

Q Did they have lunches together?

A Yes, they did.

Q And about how often would you say that took place?

A Oh, gosh, it's hard to tell. Maybe once every couple of weeks.

Q Would he have lunch with both of them at the same time or have separate lunches?

A It wasn't always together.

Q During the time that the judge was on the federal bench, do you recall a case called the

Liljeberg case?

A Yes, sir.

Q Was that a case that, to your knowledge, was under advisement for a long time, where the attorneys were waiting for an opinion?

A Yes.

Q Was it a period of years?

A Yes.

Q At some point during the pendency of that case, did the judge ask you to pick up an envelope from Jake Amato?

A I don't know if it was during that case, but I did pick up an envelope.

Q And what were the circumstances in which you were asked to pick up the envelope?

A I was just asked to go run by the office and pick up something from Jake.

Q And who asked you to do that?

A The judge.

Q Did he ask you to pick up an envelope more than once?

A Not that I recall.

Q And on this occasion when he asked you to pick up the envelope, what did you do?

A I drove over to the West Bank, and when I

got on the street where the office was, I called Mr. Amato's secretary, told her I was in front of the building and if she would please hand it to me.

Q And what happened after that?

A She came to the car and handed it to me.

Q Were you curious about what was in the envelope?

A I just said, what's this? And she didn't respond, she just kind of rolled her eyes back. And I said, never mind, I don't want to know.

Q And did you say never mind, I don't want to know, or did she say you don't want to know?

A She didn't say anything.

Q And you said never mind, I don't want to know?

A Yes.

Q When the judge had been on the federal bench for five years, was there a party for him?

A An anniversary party, yes.

Q I'm sorry, what kind of party?

A An anniversary party, five-year anniversary on the bench.

Q And how was that party paid for?

A Amato & Creely paid for it.

Q Do you recall about what that cost?

A Oh, no. I don't recall.

Q Was there also an investiture party when the judge took office?

A Yes.

Q Did Amato & Creely help pay for that as well?

A Yes.

Q And about how much would they have contributed to that?

A I don't know. A group of his friends got together and contributed.

Q Do you know about how much each lawyer put in?

A I can't say for sure. I'm -- I'd say approximately maybe $500 each.

Q Was there a time when one of the judge's sons, Timmy, had an externship that you recall?

A Yes.

Q Did the judge ask you to raise some money for his son's externship?

A To get some sponsors to help out with his trip.

Q And what did he mean by sponsors?

A Just ones that were willing to put up some money to help with his costs, with Timmy's costs.

Q These would have been his son's costs of traveling to Washington, D.C.?

A His expenses traveling while he was there.

Q Would they have also been his expenses while he was living in Washington, D.C.?

A I would assume so.

Q And he asked you to call -- call some people to ask them to be sponsors?

A Sponsors.

Q And you understood that to mean call them and ask them for money?

A Sponsorships to help with his trip, yes.

Q Well, he wasn't asking for them to contribute a place to stay or anything of that nature; it was money he wanted; right?

A Yes.

Q Who did he call to see if they would be sponsors?

A Jake and -- Jake Amato, Bob Creely, Lenny Levenson, I think Chip Forestal, Louis Marcotte. That's the ones off the top of my head that I can recall right now.

Q And you called them because you knew they were people likely to give him money?

A Well, when -- they were the ones that came

in the office that I knew well.

Q And based on their contributing to these other costs, you knew if you called them, you had a pretty good chance of them being a sponsor?

A Yes.

Q You mentioned that Louis Marcotte was one of the people you called. What was the judge's relationship with the Marcottes?

A They were bondsmen that would come into the office to have bonds set.

Q And they came into the office frequently?

A Yes.

Q Would you say they were in the office at one time or another every week?

A Probably. It depended on the business and how -- you know, what was the need.

Q When they would come to the office, you would tell the judge they were there. Would he basically have them sent right in?

A No, sometimes they had to wait. It was dependent on how busy he was.

Q But he would always see them?

A Not always. I mean, there were times when he had to turn them away if he had to go into court and they would just have to wait, come back another

time.

Q Would you say most of the time when they came, he would see them?

A Yes.

Q Did the judge also socialize with the Marcottes?

A Yes.

Q Go out to lunch with them?

A Yes.

Q Would you also say that was frequently in occasion?

A Yes.

Q And would you also go to lunch with the Marcottes?

A Yes.

Q Sometimes with the judge, sometimes without the judge?

A Yes.

Q Did you and the judge, either separately or together, also go on trips with the Marcottes?

A Yes.

Q And some of the trips that you went on, Ms. Danos, were to places like Las Vegas?

A Yes.

Q Did you go to Las Vegas multiple times

with the Marcottes?

A I did.

Q Do you recall whether some of these were while he was on the state bench and some were while he was on the federal bench?

A Both.

Q When you would go on these trips to Vegas, who paid?

A The Marcottes.

Q Was there one trip where you used your credit card to pay for your travel expenses and then were reimbursed by the Marcottes?

A Yes.

Q And when you were reimbursed by the Marcottes, did Lori or Louis Marcotte give you the money for the trip?

A I don't recall which one it was.

Q Did they come by and give you cash or a check for it?

A They reimbursed me. I don't remember if it was cash or a check. That's a long time ago.

Q Do you recall them ever giving you a check?

A For other things, for, you know, like raffle tickets that the kids had or hole

sponsorships for St. Clement of Rome Church, which the judge was president of the men's association, and every year there was an annual golf tournament, and I would get hole sponsors for the holes of golf.

Q But for the trips, they usually paid for it directly; right?

A Yes.

Q Any reason to think that they didn't pay you in cash when they reimbursed you for the trip?

A No, there's no reason. I'm just not sure.

Q Were there times when you paid -- or wrote checks for the judge's credit card bill?

A Yes.

Q Do you recall in particular writing a check for a credit card -- a fleet credit card of Mrs. Porteous?

A Yes.

Q About how much was that check that you wrote?

A I think it was 1000, $1000.

Q Do you know how it came about that you wrote this check for Mrs. Porteous's credit card?

A I was just asked if I'd go ahead and write it.

Q Asked by Judge Porteous?

A Yes.

Q Were you aware he was about to file bankruptcy?

A No.

Q How soon before the bankruptcy did you become aware that he was filing bankruptcy?

A It was like right at the time when it hit the newspaper.

Q So he didn't tell you in advance?

A I knew nothing about it.

Q Periodically, the judge would have to fill out federal judicial disclosure forms. How did that work?

A It was something that had to be done annually, and I prepared part of it, he prepared part.

Q And the part you prepared, would that be if you knew he went on a trip somewhere, that you would include it and the rest of the information you would get from him?

A Yes, the part that I filled out was just the main part insofar as his name, address and everything. And then the parts with the seminars that he attended or the conventions, and the dates, that's the parts I filled out.

Q But other trips and other information, credit card debts, that's information you get from him?

A Yes, sir.

Q Do you recall on the judicial disclosure form there is a section or liabilities, debts?

A Yes.

Q In that section where you list credit card debts, do you recall also there's a column where you have to list the code for the amount of the debt?

A Yes.

Q And the code might be a letter J if the debt is 15,000 or less?

A Yes.

Q And the code might be a different letter if it's 15,000 to 50,000, et cetera?

A Yes.

Q Did the judge supply you with the codes that went with each credit card?

A Yes.

Q And he would handwrite that and you would type it up?

A Yes, he'd fill out that portion and I'd just copy it.

Q And if the judge wrote a code J, 15,000 or

less, for a credit card, but, in fact, the debt was for greater than that code, would you have any way of knowing that?

A No, I'd just copy what he gave me.

Q If the judge gave you only two credit cards and, in fact, there were debts on five credit cards, would you have any way of knowing that?

A I'd just put exactly what was given to me.

MR. SCHIFF: I have no further questions, Madam Chair.

CHAIRMAN MC CASKILL: Cross-examination?

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Ms. Danos, good morning.

A Good morning.

Q Let me just go through some of the issues that you went through in your direct testimony.

How well do you know the Porteous family?

A Very well.

Q And do you know the children as well?

A Yes.

Q How do you -- are they like your children? How do you treat them?

A Yeah, like my kids.

Q And did you know Mrs. Porteous while she

was alive?

A Very well.

Q While you were working in Judge Porteous's office, did you carry on some other activities, some other businesses?

A Yes, I did.

Q What were those?

A For a while I did outside sales for a travel agency, and then I had a company where I -- I booked entertainment, bands.

Q And did that bring significant income to you?

A Not overly so, no.

Q What would you estimate on an annual basis?

A For this year, okay, I'd say I'm about at 30,000.

Q For this year so far?

A For this year so far.

Q Okay. And you did that in addition to your duties in the -- in the judge's office?

A Yes, I did.

Q Was there any concern about interference with your duties in the office?

A No.

Q You cleared that with the judge?

A Yes.

Q You were asked about paying some of the judge's bills.

A Yes.

Q How did that process start?

A Well, it didn't happen right away. I mean, I was with him for a few years and he didn't have his checkbook and it had to be paid, so I went ahead and I paid it for him.

Q And did you -- did that become more common? Did you start paying many of his bills?

A As time went on, yes.

Q Why were you paying them?

A Well, if he'd ask me to, I would. And then as time went on, I just went ahead and took it upon myself and paid them for him and just would tell him how much he owed me.

Q And you would tell him how much to reimburse you for?

A Yes.

Q Did he always reimburse you for that?

A Yes, always.

Q And did he do so quickly?

A Yes.

Q Was there ever a time in which you weren't reimbursed?

A No. The only thing would have been -- if it would have been something minor that I even would have forgotten to ask him about, you know, like postage or the linen account for the office, which was a minimal amount. And that would have been my fault, because I would have forgotten to ask him about it.

Q Did you also pay bills for other people?

A Yes.

Q Who?

A My sons.

Q Tell us a little bit about them. How old were they then and what kind of transactions did you carry on for them?

A Then they didn't have a checkbook, a checking account at that time. And all their car notes went through me, their car insurance, their student loans, their cell phone bills, anything that they had to pay came to the house, and I'd pay it and they would reimburse me.

Q They had just graduated from college; is that correct?

A I didn't say.

Q And they would pay you out of their income and then --

A Yes.

Q Very good. And reimburse you for -- for your checks that you had written?

A Yes.

Q Thank you.

Did there come a time when you paid a marker for Judge Porteous?

A Yes.

Q Tell us about that.

A Are you talking about Beau Rivage?

Q Yes, yes.

A I was going to Beau Rivage, and he knew that, so he just asked me if I would mind paying it, which there's no problem, I was going there anyway.

Q Do you recall, did he give you a check endorsed over to Beau Rivage? How was it done?

A I think I wrote mine, if I'm not mistaken.

Q But you were on your way over there anyway, he didn't ask you to make a special trip?

A Oh, no. I was going over there.

Q Had that happened any other time?

A I may have done one or two for Casino Magic in Bay St. Louis, but it was because I was

going there.

Q And he knew you were going there and asked you to do a favor for him?

A Yes.

Q Did you go to the law offices of Amato & Creely very often?

A Debby and I were friends, so Debby and I would go to lunch, and sometimes --

Q Who is Debby?

A Debby Mull, is Jake Amato's secretary.

Q How often do you think you were over at that office?

A I mean, not very often. Lots of times I didn't even go in, I'd just pick her up.

Q And did you also have some legal work being done in that office for you?

A Yes, an attorney by the name of Gary Rafael handled something for me for my aunt and uncle.

Q While you were over in that office, did you ever pick up cash?

A No.

Q Did you ever pick up envelopes that you thought contained cash?

A No.

Q When you were over there, did you ever act like a bill collector?

A No.

Q So if somebody said you were over there acting like a bill collector, frequently picking up cash, that would be incorrect?

A That's not true.

Q The question was raised with regard to an envelope that you picked up from Debby, I think you were on the street and she brought the envelope to you?

A Yes.

Q Do you recall when that was?

A It would have been -- I went before the grand jury, I think that was in '06, and it was -- 2006. And it was within a five-year period of that time. I don't remember exactly what year.

Q So no earlier than the year 2000 or 2001?

A Right.

Q Did it ever occur to you that there might be cash in that envelope?

A Didn't even enter my mind.

Q And that's because you didn't think of it or it just didn't feel like cash?

A Like I said, it didn't enter my mind that

it would be that.

Q And what did you do with that envelope when you got it?

A I brought it back to the office and sat it on his desk.

Q Was the judge there at the time?

A I don't think he was there. I think he was at lunch at the time.

Q Did you have any role in dealing with requests that came to the judge regarding adjusting bail?

A In state court?

Q Yes.

A Yes.

Q What was your role?

A If there was a bond that needed to be set, I'd call the jail and see if they had any priors, and I'd let him know what they told me.

Q You'd let who know?

A The judge.

Q Why would you do that?

A Because he had to set the bond.

Q But did he ask you to check on priors?

A Well, routinely, that's what I would do. If someone came in, no matter who it was, we always

had to call and check and see if they had any priors. He needed that information before he could even determine what he was going to do.

Q Did the judge ever express to you any concerns about the truthfulness of bail bondsmen?

A He always said don't ever believe a bail bondsman. They all lie. Don't take their word for it. Always call the jail and check and see. Get it straight from the jail. Don't believe any bondsman that ever comes in.

Q Was that true about the Marcottes as well?

A Oh, I always checked. I never, ever took their word for what -- and not just the Marcottes. Anybody that came in relative to a bond. That was something he insisted on.

Q Did the Marcottes have any special access to the judge's office?

A No more than anybody else.

Q It was kind of an open door policy?

A Had an open door policy. Anybody that was in the building could come in and get a cup of coffee. You know, it was open door to anybody.

Q Now, your desk was outside the judge's chambers; correct?

A Right in -- right outside of his.

Q And if somebody wanted to come in and see the judge, what was your role?

A They had to go through me. That was my job, to tell him who was there to see him.

Q And did you have instructions not to let certain people in, or could you -- did you influence who would come and not come into the judge's chambers?

A No, I didn't have any influence on that. My job was to let him know who was there to see him.

Q And he would see most people if he was free?

A If he was free, yes.

Q That was true of the Marcottes?

A That was true of anybody.

Q And the Marcottes didn't receive any special treatment in that regard?

A Not as far as I'm concerned.

Q But you saw the Marcottes fairly frequently; right?

A Yes.

Q Why is that?

A Lori and I were friends.

Q Tell us about that. How do you know you were friends?

A Well, we did some outside-of-the-office things together, went to a concert, and I went to Vegas with them. You know, she and I sometimes -- just she and I would go to lunch.

Q Did she ever come and talk to you in the office about life and personal problems?

A Oh, gosh. Yes, she'd just sit there and I think just wanted somebody to listen to her problems.

Q Did that happen fairly frequently?

A Yes.

Q Did you see the Marcottes or representatives of that company frequently because they were a fairly substantial bail bondsman in the Gretna area?

A They were like the major ones in that area. They didn't have very many besides them.

Q Do you have a sense of how -- how much of the business they had?

A In my opinion, Louis Marcotte had a monopoly on that area.

Q Now, it's been testified to that you took a trip to Las Vegas with Lori Marcotte?

A Yes.

Q Did you have any concerns about that the

first time it happened?

A The first time I was asked, I asked the judge if it was okay if I'd go, and he said that what I did with my vacation time was my business.

Q And how did it come about that you were invited? Did Lori --

A Lori just came into the office and asked me if I wanted to go.

Q And did you express any concern?

A She just told me that her brother allowed her to take a guest whenever they went for their conventions.

Q So this trip that you went to was a convention?

A Yes.

Q And had you -- did you go some additional times throughout the years?

A I went several times.

Q With the Marcottes?

A Yes.

Q Did it -- did it occur over time that you began to play a role in planning the conventions?

A Yes, I used to make their flight arrangements for them.

Q And did you take any role while the

convention was going on arranging dinners or anything of that sort?

A If they went out to dinner, they always took me with them, unless it was something they were doing with the heads of the convention. I wouldn't go to that.

Q Did you occasionally have lunch with the Marcottes?

A Yes.

Q In Gretna?

A Yes.

Q About how frequently?

A A few times a month.

Q Two times a few?

A A few times.

Q A few times a month.

A Uh-huh.

Q And was the judge sometimes in those lunches as well?

A Yes.

Q During those lunches, did you ever talk about or did you overhear the judge and the Marcottes talking about individual bails, bail bonds?

A Not so much individual bails. They talked

to him several times about stuff that they were trying to get passed through the legislature, bills that, you know, they were trying to get passed. They would want his opinion on it.

Q On legislative --

A Legislative things.

Q Okay. But did they, for example, ever bring bail worksheets to lunch and ask you to go back after lunch and do something with them?

A I don't recall that.

Q Did they ever talk about specific bail applications?

A I mean, they may have, but I don't recall them ever bringing any paperwork or anything.

Q But in your presence at lunch, you never saw that?

A No, not really.

Q After the judge became a federal judge, went to the federal bench, did he continue to socialize with the Marcottes?

A At the beginning he may have gone to lunch with them a few times, but that gradually stopped.

Q Over what period of time did it stop?

A We were there a short time when that ceased. I mean, once in a great while maybe, but

like eventually, that just stopped altogether.

Q You say "once in a great while." Is that once a month, once every six months? What are you conceiving of?

A Maybe once every couple of months. It really didn't happen frequently at all once we got into the federal court.

MR. SCHWARTZ: Thank you, Ms. Danos. Thank you.

CHAIRMAN MC CASKILL: Redirect?

REDIRECT EXAMINATION

BY MR. SCHIFF:

Q Ms. Danos, the judge at times asked you to, when you were at casinos, pay markers that he had at those casinos?

A Yes.

Q So he had debts at the casino that he wanted you to write a check for?

A Yes.

Q And this was while you were his federal secretary?

A Yes, it happened while we were on federal bench as well, uh-huh.

Q And on the -- opposing counsel asked if you were ever sent to pick up cash from Mr. Amato or

Mr. Creely. And I think you said no; is that right?

A No, uh-huh.

Q You don't know what was in the envelope, do you?

A I have no idea.

Q So if the judge sent you to pick up an envelope with cash, you may have done exactly that, if cash was in that envelope; right?

A If it was in it, but I have no idea whether it was in it.

Q At the same time when you picked up the envelope, you didn't want to know what was in the envelope, did you?

A No.

Q And you testified that you and Lori Marcotte were friends. Part of the relationship was friendship; right?

A Pardon me?

Q Part of the relationship was friendship?

A Yes.

Q And part of it was business; right?

A Yes.

Q At some point, Lori invited you to go to Las Vegas, and you asked the judge whether it was okay if you went?

A Right.

Q Did you also ask the judge if it was okay if the Marcottes paid for your trip to Las Vegas?

A No, I don't think I asked him that.

Q And you didn't need to ask that because they had already been paying for the judge's trips; right?

A Well, I went on trips with them before he did.

Q And then Marcottes had always paid for those?

A Yes.

Q So there was no reason for you to have to ask again or at all whether it was okay if they paid for the trips?

A Right.

Q You understood that was okay?

A Right.

Q Now, after Judge Porteous was appointed to the federal bench, you continued to go on at least some trips, you've testified, to Vegas at the Marcottes' expense; right?

A I think I went on two.

Q And you continued to have some lunches with the Marcottes; correct?

A Yes.

Q But eventually, that started tapering off; right?

A Right.

Q Is it fair to say that while the friendship with Lori Marcotte may have continued, the business relationship, now that the judge was on the federal court and couldn't set bonds anymore, was coming to an end?

A Yes.

MR. SCHIFF: No further questions, Madam Chair.

CHAIRMAN MC CASKILL: Any other questions by counsel?

MR. TURLEY: Could we just have one second, Madam Chair?

No further questions from the defense.

CHAIRMAN MC CASKILL: Any questions by the panel?

SENATOR SHAHEEN: Madam Chair?

EXAMINATION

BY SENATOR SHAHEEN:

Q I understood you to say that the judge told you to always call over at the jail when the Marcottes came in to set a bail bond?

A Any bondsman.

Q And I'm not clear -- my understanding was that the judge actually set the amount of the bail bonds. So why would you call the jail to find out about that?

A To get the information for him to see if they had any priors.

SENATOR SHAHEEN: Okay. Thank you.

CHAIRMAN MC CASKILL: Any other questions by the panel?

SENATOR WHITEHOUSE: Yes.

CHAIRMAN MC CASKILL: Senator Whitehouse?

EXAMINATION

BY SENATOR WHITEHOUSE:

Q Let me take you back to the visit where you drove over to Amato & Creely to pick up the envelope.

A Okay.

Q You were at that time a federal employee?

A Yes.

Q And Judge Porteous was at that time a federal judge?

A Yes, sir.

Q Did he have any legal business that you were aware of with Amato & Creely at the time? Did

they represent him in any matter?

A Not that I recall.

Q Would you know that -- were you enough involved in the judge's life that you would know if Amato & Creely were representing him in a legal matter?

A I would think I would, but I didn't -- I didn't know about the bankruptcy, so there's a possibility I wouldn't have known.

Q But you would have expected to have known --

A Yes.

Q -- if there was a legal client relationship between Judge Porteous and Amato & Creely?

A I would expect to, yes.

Q And at the time you were not aware of any such relationship?

A No.

Q So you went over to, at the judge's request, pick up an envelope from Amato & Creely?

A Yes.

Q And when you picked up the envelope, was it Debby Mull who came down?

A Yes.

Q And you knew her?

A Yes.

Q You were friends with her?

A Yes.

Q And you asked her, what's in the envelope?

A Yes, sir.

Q And she rolled her eyes?

A She just kind of rolled her eyes back, so I figured it was something that her boss didn't want me to know.

Q And you said, never mind, I don't want to know?

A Right.

Q Did you have any thought at the time as to whether --

A I thought maybe it was something for her boss that was personal that they didn't want me to know about.

Q All right.

A So I didn't press it.

SENATOR WHITEHOUSE: Thank you very much.

CHAIRMAN MC CASKILL: Any other questions by Senators?

Thank you, ma'am, you are released.

THE WITNESS: Thank you.

(Witness excused.)

CHAIRMAN MC CASKILL: Next witness by the House.

MR. SCHIFF: The House calls Bobby Hamil.

Whereupon,

BOBBY PHILIP HAMIL, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAMELIN:

Q Good morning, Mr. Hamil.

A Good morning.

Q My name is Harold Damelin, I'm special impeachment counsel.

Could you please state for the record your full name.

A Bobby Philip Hamil, Jr.

Q Where do you currently reside, sir?

A Currently reside in Fayetteville, Georgia.

Q Could you briefly state your educational background.

A Yes, sir. I graduated from the University of Alabama undergraduate school, Birmingham School of Law law school and went -- grew up in Alabama, so my primary and secondary education was in Alabama

also.

Q Are you currently a member of the Alabama bar?

A Yes, I am.

Q And what is your current occupation, sir?

A I'm currently the chief of police at Clayton State University in Morrow, Georgia.

Q How long have you been in that position?

A 2-1/2 years.

Q Prior to that, were you employed by the FBI?

A Yes, I was.

Q During what period of time?

A From 1983 to 2008.

Q Okay. Did you retire from the FBI?

A Yes, sir, I did.

Q While with the FBI in the period of 1994, did you have occasion to participate in the background investigation or background check of Judge Thomas Porteous?

A Yes, I did.

Q Were you the lead agent in that assignment?

A No, I was not.

Q What was your role?

A My role was initially to interview the candidate, Judge Porteous, and then I was also assigned several other interviews throughout the investigation.

Q But did you report to a lead agent who assembled the --

A Yes.

Q -- entire work product?

A Yes, sir.

Q Now, could you just take a minute and explain to the committee how background investigations are conducted and how they are different, if they are, from a criminal investigation.

A The distinction from a criminal investigation, these are administrative investigations or administrative inquiries as they are called.

And the -- the guidance that comes from headquarters, they send out the information to the respective field offices where the background information -- background will be conducted and assigned -- the leads are then assigned to various personnel in the office to gather the information, report it back up through the chain to FBI

headquarters for review and any further guidance or additional leads that may be necessary.

Q Now, is there a standard or a general format that the FBI follows or the agents follow in conducting a background investigation?

A As far as questioning?

Q Yes, sir.

A There is a general format that we follow. It doesn't mean we can't also allow for additional input. But if you're talking about the acronyms, it's CARLABFAD that's generally used. It covers traits of the candidate. Would you like for me to explain each of those?

Q Yes, would you explain that please?

A They gave it an acronym so we would make sure that we cover all of the essential questions when we conduct interviews, whether it's a reference, whether it's an associate or a neighborhood.

And the C stands for character. You're asking about is there anything that you know of in the candidate's background that would adversely influence his character.

The A is associates, do you know of anything in the background that would show that

associates would be -- would adversely impact his ability to perform the job.

The R is responsible, is the person responsible in the position that he currently holds and would you expect him to be responsible if he's appointed to the position being considered.

The L is loyalty to the United States. And the second A is ability, based on your knowledge, is he able to do the job.

And then the B is bias or prejudice, any known biases or prejudices that might adversely impact this appointment, and then the last -- the FAD, F is financial responsibility, do you know of any issues that might impact the financial responsibility of the candidate, and the last A and D are alcohol and drugs, any known abuse of alcohol, any known abuse of illegal drugs or abuse of prescription drugs. So it's abuse of alcohol, abuse of prescription drugs, use of illegal drugs, and that covers the basic background questions.

Q And then is there another terminology referred to as compromise or coercion, compromise and coercion, questions that are part of the background investigation?

A Yes, that's generally the last question

which you will see in most of the interviews, do you know -- do you know of anything in the candidate's background that might subject him or her to coercion, compromise, undue influence or negatively impact their reputation or character.

Q Now, was that a question that is also asked of the candidate when he or she is interviewed?

A Yes, it is.

Q Now, prior to starting the commencement of a background investigation, and using this example of Judge Porteous, what would you do to prepare for an initial interview with Judge Porteous?

A You would review the SF 86, standard form 86, that is the application filled out by all candidates, goes from everywhere they have lived, places they have been to school or the places they have worked, lists references and associates.

You review that, as well as the set of instructions that will come from FBI headquarters for specific questioning of the candidate, him or herself.

Q Now, one other just general background question. When you do the interviews in connection with a background investigation, is there a

timeframe within which you are required to prepare the FBI 302 or interview memorandum?

A Yes, there's always a strict time -- timeline. The background investigation will come out with an established bureau deadline within which the entire report must be submitted.

Q Now, Mr. Hamil, you had indicated that you're retired from the FBI, three years ago. And this -- this particular investigation was conducted in 1994.

Let me ask you whether you have an independent recollection of what you did during the course of the background investigation regarding Judge Porteous.

A No, I do not.

Q Prior to testifying today, have you had an opportunity to review the background investigation file to refresh your recollection with respect to those aspects of the investigation that you participated in?

A Yes, I have.

Q And based on that review, can you tell me how many times during the course of the background investigation of Judge Porteous did you interview him and/or speak with him in connection with his

background investigation?

A Three times.

Q How many were in person?

A Two.

Q And was there a telephone conversation also?

A Yes.

Q Why don't we start to go through those. Let me first ask that you take a look at or put up on the screen exhibit -- what we'll refer to as Exhibit 69(i). That is a five-page --

MR. TURLEY: Chairman Hatch, the Defense would like to know if this 302 is being used for impeachment or to refresh the memory of the witness. He is being shown the 302. We have been under rather strict rules as to when 302s could be used. I just was wondering if they're impeaching the witness or refreshing his memory.

MR. DAMELIN: Senator, this is going to involve statements by Judge Porteous himself, which Mr. Hamil will testify to as to the accuracy of the statement of Judge Porteous and will admit -- we would move to admit the 302 for -- to establish a statement made by Judge Porteous in connection with the background investigation.

VICE CHAIRMAN HATCH: We will permit that.

MR. DAMELIN: Excuse me?

VICE CHAIRMAN HATCH: We will permit that.

MR. DAMELIN: Thank you, sir.

BY MR. DAMELIN:

Q First of all, taking a look at this 302, you have reviewed this before you've taken the witness stand today, have you not?

A Yes, I have.

Q Okay. Now, in connection with this 302, were you one of two agents that were involved in the interview of Judge Porteous that took place on July 6 and July 8, 1994?

A Yes, sir.

Q Who was the other agent that participated in the interview with you?

A Cheyenne Tackett.

Q Does this represent your first interview of Judge Porteous?

A Yes, it does.

Q Can you briefly describe the procedure that you followed, including during the interview, with respect to who interviewed Judge Porteous and who might have taken notes? How was that done?

A When two persons are involved in an

interview such as this, one generally would ask the questions and the other would take the notes.

At the end of the interview, we would get together to make sure that we're -- we're totally in agreement with all of the content of the interview and then we would have it transcribed, review again.

If we have any corrections that are made, and if not, we initial it and it becomes the official document.

Q Does this document that's before you, Exhibit 69(a), reflect a combined work product of you and Agent Tackett and to the best of your recollection accurately reflect what took place during the course of that interview?

A Yes, it does.

Q I want to direct your attention to page 3 of this interview, the first paragraph which we'll put up on the board.

Could you please read that paragraph?

A "Porteous said he is not concealing any activity or conduct that could be used to influence, pressure, coerce or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgment or discretion."

Q Was this based on the procedures --

MR. TURLEY: I'm sorry, Mr. Damelin, if I could make another objection.

Madam Chair, the defense position on this, you know we've gone back and forth on the 302s. My understanding -- and I want to be corrected if I'm wrong -- is that his testimony can come in, not the document itself.

What I don't understand is why the witness is not being asked whether he recalls the statement, and instead they're going straight to the 302 and having him read the 302. That seems to be different from the normal course of things.

The witness should first be asked if he remembers a statement, they can use the 302 to refresh it. But we would object, and this has been the rule so far with both sides, of the 302 coming in as evidence.

CHAIRMAN MC CASKILL: Well, I believe that the Vice Chairman admitted this 302 into evidence. Am I correct?

MR. TURLEY: I thought Mr. Damelin said he was going to move it into evidence. We would have objected to that.

MR. SCHIFF: Madam Chairman, may I?

CHAIRMAN MC CASKILL: I think you did

object and the Vice Chair made a ruling.

VICE CHAIRMAN HATCH: I allowed him to pursue this line of inquiry.

MR. TURLEY: We understood he's pursuing the testimony.

MR. SCHIFF: If I could be --

CHAIRMAN MC CASKILL: Let me just take a moment.

MR. TURLEY: Of course.

CHAIRMAN MC CASKILL: This 302 -- let me just say for the record that while we are trying to be very fair to both sides, there should be no misunderstanding that this is not a civil trial and this is not a criminal trial.

And the Senators, each Senator, will have the ability to judge the evidence, each Senator will have the ability to reject or accept any type of evidence that this record develops.

This is a -- this is a different animal than a typical trial.

It is the ruling of this committee that the 302 of the interview of the judge, with the FBI agent on the stand who can be cross-examined about every word that's in that document, is appropriate for this committee to consider.

And on that basis, this 302 will be admitted into the record.

(HP Exhibit 69(i) received.)

MR. SCHIFF: Madam Chair, if I can just add on this, there are three 302s that this witness will testify, he's already said he does not have an independent recollection because of the time that has taken place.

We're not offering the judge's statements in these 302s for the truth of the matter. In fact, we don't think they're true. So because we're not offering them for the truth, they're not hearsay. And we will be asking the Chair at the conclusion of the testimony to admit all three of the 302s.

MR. TURLEY: Can we be heard, Madam Chair?

We're now talking about three 302s. We're not objecting on hearsay grounds. We had been told that 302s would not come in, and they are now trying to move in three 302s.

And we've been structuring our case to deal with evidence based on the ruling earlier that 302s wouldn't come in. I understand this one has come in, but now they're saying we're going to move three 302s in.

CHAIRMAN MC CASKILL: We will ask the

House to offer each 302 they would like to be part of the record individually, and we will make the ruling individually on each 302.

The 302 that delineates the interview with Judge Porteous we believe is important for the Senate to have an opportunity to review. And on that basis, this 302 will come in. And we'll consider each 302 on its individual merit, if either side wants to offer a 302.

And I understand that we can -- I mean, whether it's being offered for the truth of it or whether it's hearsay, those Rules of Evidence are not -- do not strictly guide this committee.

What guides this committee is an effort to make the record as complete and full as possible, because we are here representing the entire Senate. We are here trying to develop a very complete record so individual members of the Senate can make an independent judgment as to whether or not to convict Judge Porteous in these impeachment proceedings.

So I just -- for both sides, you should take that into account that this is not someplace where the Rules of Evidence that we learn in law school are going to be strictly applied. It's going to be more a test, is this something that we believe

the Senate at large should have an opportunity to review.

Thank you both.

MR. SCHIFF: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: Would you identify the specific label on this particular 302?

MR. DAMELIN: Yes, this document is labeled as Exhibit 69(i).

I will be giving you on the other documents, Madam Chair, a specific reference. This one is a stand-alone 69(i).

CHAIRMAN MC CASKILL: Thank you. We just have to keep track of the documents, what's there and what isn't.

MR. DAMELIN: The following documents will also have some subnumbers, which I will also make reference, and we can't find them, we'll go back and double-check.

BY MR. DAMELIN:

Q Going back to the statement that you just read, based on the procedures that you followed as a standard practice, does that statement accurately reflect what Judge Porteous said to you during the course of the interview?

A Yes, it does.

Q Now, I want to also turn your attention, if I could, to page 5 of the same 302 and direct your attention to the first sentence of the first -- second paragraph, which states that Judge Porteous "provided the supplement to his SF-86 with attachments 1 and 2 to the interviewing agents."

Let me show you Exhibit 69(b) at PORT297. If we could put that up on the screen.

Based on your review of the file, Mr. Hamil, is that the document that Judge Porteous gave you that is referred to in your 302?

A Yes, it is.

Q Had you, do you know, had a copy of that prior to the interview of Judge Porteous?

A No, sir, it was provided at the time of the interview.

Q Okay. And with respect to that document, I want to direct your attention to the second page, which is PORT298, question 10S, and ask you to read the question and the answer to that document.

A Okay. "Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the president if publicly known? If so, please provide

full details."

The answer, "No."

Q Okay. And was that document signed and dated on -- at the time that Judge Porteous gave that to you?

A It was previously signed and dated prior to giving it to us.

Q What's the date on that document?

A April 27, 1994.

MR. DAMELIN: I believe -- and if it's not correct, I will move both of these documents into -- into evidence or ask that they be moved into evidence. Are they -- have you already ruled, Madam Chair, that they are? This is the 302 and the attached supplement to the SF-86, which is referenced in the 302.

CHAIRMAN MC CASKILL: We -- the ruling was that the 302 and any attached supplements provided by Judge Porteous will be admitted into the record.

MR. DAMELIN: That document is --

MR. TURLEY: Madam Chair, just to clarify one thing, obviously, we have a standing objection. But the -- we're just introducing these pages, because 69(b) is about 300 pages long. So I just want to make sure we're just introducing these

pages.

CHAIRMAN MC CASKILL: 297, 298. Correct?

MR. DAMELIN: Yes, 297, 298. Actually, 299, 300 and 301 were attachments to the supplement, so they should come in as a -- as a full document.

CHAIRMAN MC CASKILL: Let's make sure that, if you will check with this -- are you good, in terms of identifying for the record what it is that we've admitted? Okay.

This is really important, because the most important task of this committee, so all of you know, is preparing a record for the full Senate. So that's why we have to be very careful about these exhibits, and they're numbered in ways that are very hard to follow. So the most important person, in terms of making sure you have the right exhibit numbers once we have admitted an exhibit, is this nice young man sitting down here with his laptop who is keeping track of every exhibit so that we are sure we are accurate in terms of this record.

So if you would follow up with him and make sure that we have exact numbers on the record.

MR. DAMELIN: If there's a question.

CHAIRMAN MC CASKILL: Just so the record is clear, from the ruling of the committee, is that

Judge Porteous's 302 and all relevant attachments provided by Judge Porteous come into the record.

(Exhibit 69(b), Pages 297 through 301 received.)

BY MR. DAMELIN:

Q Mr. Hamil, before we leave that document, let me go back to page 3 of that document and direct your attention to a paragraph -- the fifth paragraph down on page 3, which states that Judge Porteous said that he has not abused alcohol, and goes on, "during his entire adult life."

Would that have been a question you would have asked him in connection with his initial interview?

A Yes, it would.

Q Okay. And would that accurately reflect what his answer would have been during the course of that interview?

A Yes, it would.

Q Did there come a time, Mr. Hamil, when you had occasion to interview Judge Porteous a second time?

A Yes, sir.

Q What caused you to re-interview Judge Porteous a second time?

A A teletype was received by our office from FBI headquarters, requesting that he be re-interviewed, along with several other people, in response to some information that had been reported about the investigation.

Q Let me ask that Exhibit 69(b) be shown on the screen. And if I could direct your attention to that document, Mr. Hamil, is that -- is that the document that made reference to the fact that you were to re-interview judge --

CHAIRMAN MC CASKILL: If you would pause for a moment, Counselor, the document is no longer on the screen.

THE WITNESS: That was not the document.

MR. DAMELIN: Judge, 69(b), PORT478. I apologize for the miscommunication.

BY MR. DAMELIN:

Q Is that the document, Mr. Hamil, that caused you to re-interview Judge Porteous, along with certain other people?

A Yes, sir, it is.

Q And I direct your attention to page 3 of that document and ask you to read that first paragraph.

A "Judge Porteous should also be

re-interviewed to provide him an opportunity to address the general allegations."

Q And what were those -- if you recall, based on your review of the file, what were those general allegations?

A The general allegations that there were some alleged payoff in exchange for reduction of bonds in two cases, I believe, was on the previous page.

Q Now, prior to re-interviewing Judge Porteous a second time, did he contact you before you had an opportunity to contact him?

A Yes, sir.

Q Can you explain what happened?

A Well, in response to this teletype, you know, I was assigned the responsibility of interviewing these -- these persons, a couple -- two of them were re-interviews, one Judge Porteous and the other was Louis Marcotte. I had not conducted the previous interview, but nonetheless, he was assigned -- the assignment was to re-interview him.

And I had -- and the conduct of these -- these interviews, Judge Porteous contacted me by telephone before I could reach out to him and schedule an official appointment to interview him on

all of the allegations.

Q Let me direct your attention to Exhibit 69(b), PORT491. Does that document reflect the conversation you had with Judge Porteous when he called you?

A Yes, it does.

Q Okay. Does this document -- was this document prepared by you?

A Yes, it was.

Q Was it prepared by you shortly after you had the conversation with Judge Porteous?

A Yes, sir.

Q Does it accurately reflect the conversation you had with Judge Porteous?

A Yes, sir.

Q Can you just describe what -- reviewing that document, can you briefly describe what Judge Porteous was calling you about specifically?

A All right. Jolene Acy, the civil court clerk, had already been interviewed, she was one of the persons we were directed to interview in the teletype about the allegations of inappropriate bond matters, she had already been interviewed and Judge Porteous was apparently out of the office and called in for messages.

In doing so, he was advised that she had been interviewed by us earlier, and according to the 302 she was noticeably unnerved. He had been advised of the nature of the interview and he provided some initial comments about the allegations in this telephone interview.

Q Did you fully discuss the allegations with Judge Porteous during that phone call?

A No, sir.

Q Now, based on your experience as an FBI agent, did you find the call from Judge Porteous in any way unusual?

A It's out of the ordinary for a candidate to reach out to us unless it was something like, I left out something in my application.

MR. DAMELIN: Madam Chair, we would ask that Exhibit 69(b), PORT491, the memo reflecting the telephone call from Judge Porteous with Agent Hamil, be admitted into evidence.

MR. TURLEY: Same objection, Madam Chair.

CHAIRMAN MC CASKILL: Overruled. The objection will be received -- I mean the exhibit will be received.

(HP Exhibit 69(b) received.)

BY MR. DAMELIN:

Q Now, Agent Hamil, let me show you Exhibit 69(b), PORTA492, which is a three-page FBI 302 prepared by -- an FBI 302. Can you review that document?

Does this 302 reflect your second in-person interview with Judge Porteous?

A Yes, it does.

Q Okay. The first interview with Judge Porteous that we talked about earlier was done by you and Agent Tackett. Based on your review of this memo, did you do this one alone?

A Yes, sir.

Q Okay. And what procedure, being alone, would you have followed in prepare -- in doing this interview?

A Oh, I would have conducted the interview as well as taking notes simultaneously.

Q And based on your standard procedure and the way you operated, does this memo accurately reflect the questions asked and the answers given by Judge Porteous during that interview?

A Yes, it does.

Q Okay. And what was the date that that interview took place?

A August 18, 1994.

Q Now, according to this 302, did you discuss the specific allegations that you were looking into with Judge Porteous?

A Yes, sir.

Q Let me direct -- and with respect to those, how many allegations were you looking into as a follow-up, one or two?

A Two.

Q With respect to the first allegation, did you and Judge Porteous have a discussion about that, based on your review of the memo?

A Yes, we did.

Q Okay. And let me direct your attention to the page 1, last line carrying over to page 2, where it states that "Furthermore, Judge Porteous categorically denied that he was paid a sum of $10,000, or for that matter, any sum in exchange for an agreement to reduce the bond for Keith Kline."

Does that accurately reflect what Judge Porteous had told you in connection with that investigation -- in connection with that allegation?

A Yes, it does.

Q And then there was a separate investigation, was there not, involving a separate issue with respect to a Miss Ireland? Is that

correct?

A Yes, sir.

Q And in connection with that allegation, did you have an occasion to discuss that with Judge Porteous?

A Yes, I did.

Q And did Judge Porteous -- in connection with that allegation, reading the last two lines of that particular paragraph on page 2, did Judge Porteous again -- "Porteous again categorically denied that he had been given $1500 or any amount of money to reduce the bond for Tracy Ireland."

Does that accurately reflect a statement made by Judge Porteous?

A Yes, it does.

Q Then also, Agent Hamil, in reviewing this -- in reviewing this memo, did you ask Judge Porteous again that question in connection with any potential compromise or coercion?

A Yes, I did.

Q Okay. And did he, in fact, respond to that question based on your review of that memo?

A Yes, he did.

Q Let me direct your attention to the last paragraph on page 2, carrying over to page 3. Could

you please read that?

A Okay. The last paragraph begins as follows: "Lastly, Judge Porteous denied that he had ever signed any bail bonds in blank and stated that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgment or discretion."

Q And does that accurately reflect a statement made by Judge Porteous in connection with that interview?

A Yes, it does.

MR. DAMELIN: Okay. We would ask that this exhibit also be moved into evidence. This is Porteous Exhibit 69(b), A492.

CHAIRMAN MC CASKILL: I think we have to have the page number, because it's 69(b) is a large --

MR. DAMELIN: I believe it was PORTA 492, 3 and 4. No A, excuse me. PORT492 through 494.

CHAIRMAN MC CASKILL: 492, 493 and 494.

MR. DAMELIN: Yes.

MR. TURLEY: Same objection, Madam Chair.

CHAIRMAN MC CASKILL: Overruled. They

will be admitted.

(Exhibit 69(b), Pages PORT492, PORT493 and PORT 494, received.)

MR. DAMELIN: May I ask a moment, please?

BY MR. DAMELIN:

Q Mr. Hamil, in reviewing your memos and looking to see back the discussions you had with Judge Porteous, was there ever a time where he made any reference whatsoever that he had received cash from the firm of Amato & Creely or Mr. Creely or Mr. Amato?

A No, sir.

Q Okay. If he had, would you have included that in your 302 interview of Judge Porteous either in the first or second interview?

A Yes, I would have.

Q Okay. And also with respect to the interviews you had with Judge Porteous, did he ever make reference to the fact that he had sent curatorships to Mr. Creely and his law firm and requested and received cash back in return for those curatorships?

A No, sir.

Q If he had made such statements to you, would you have included those in your 302?

A Yes.

Q Did Judge Porteous ever make reference to the fact that he had received numerous lunches, home repairs and car repairs from bail bondsmen appearing before him or asking him to set bonds?

A No.

Q If he had made such a statement, would those have been included in your 302s?

A Yes.

Q Did he tell you at any point in time that he had expunged the convictions of Jeff Duhon at the request of Louis Marcotte?

A No.

Q If he had told you that, would that have been included in your 302?

A Yes.

Q Did he tell you in any conversation with him that he had changed or granted a motion to change or amend the sentence of an individual by the name of Aubrey Wallace?

A No.

Q If he had told you that, would that have been included in your 302?

A Yes.

Q And did he tell you that he planned to set

aside the conviction of Aubrey Wallace after he had been confirmed or if he was confirmed by the Senate?

A No.

Q If he had told you that, would that have been included in your 302?

A Yes.

MR. DAMELIN: With that, I have no further questions at this time.

CHAIRMAN MC CASKILL: Let's take a 10-minute break at this point, and we will come back at 10:40. And we will then go until 1:00.

(Recess.)

(Closed session follows.)

OPEN SESSION CONTINUED

CHAIRMAN MC CASKILL: We are ready for the cross-examination of Mr. Hamil.

CROSS-EXAMINATION

BY MR. MEITL:

Q Good morning, Mr. Hamil. My name is P.J. Meitl. We've met before.

A Yes, good morning.

Q How long were you an FBI agent?

A Approximately 25 years.

Q Over the course of your career, how many individuals did you interview as part of an FBI background check?

A I would say a hundred would probably be a conservative estimate, ranging from neighborhoods to candidates.

Q So could be more than a hundred?

A Could be.

Q When you did these interviews, I think you previously testified to this but I just want to make sure I'm clear, were you provided by the FBI a list of questions you were supposed to ask each of the interviewees?

A Not a specific list of questions, but they previously referenced the CARLABFAD. When we're

interviewing, you know, employment references or associates or social acquaintances, we generally follow that standard format for most all interviews.

Q So you were trained to follow a format?

A Yes, sir.

Q All right. Now, do you have a specific recollection of your interviews of Judge Porteous in 1994?

A No, I do not.

Q Would it be fair to say that your memory of those interviews is fuzzy?

A Yes, sir.

Q Do you have any memory of those interviews?

A You know, I remember the name. And looking back at the report, I remember some of the -- you know, the last names of some of the people that were interviewed. But I can't recall the contextual situation of any of the interviews, no.

Q Okay. So you can't visualize the interview?

A No, sir. I've tried.

Q So you're relying upon the interview summaries that were provided to you for your

testimony today?

A Yes, I am.

Q Okay. Now, in relation to those interview summaries -- and they're referred to as 302s, correct?

A Yes, they are. Well, some are inserts. The 302s are the ones that have the names at the bottom.

Q I see.

A A lot of the interviews, as you notice, have just initials at the top, and those are called -- candidates were required to be transcribed to a 302.

Q All right. Now, when you're interviewing a candidate or an interviewee, are those individuals under oath?

A No.

Q And are they asked to review the 302 or the interview summary before it's submitted?

A No.

Q Are they even given a copy of it?

A No.

Q And you didn't ask Judge Porteous to look at any of this information before it was submitted, did you?

A No, I did not.

Q Did you make an audiotape of the interview?

A No. That's against bureau policy at that time.

Q There was no videotape of the interview?

A No, sir.

Q Why was there no audiotape or videotape of the candidate?

A Bureau policy did not allow for audiotapes or videotapes at that time for interviews.

Q All right. Now, in relation to those interviews, first, you referenced some of the things that you might include or might not include in these interview summaries. Is it true that if you learned that Judge Porteous had lunch with other attorneys in his legal community, that you would have necessarily included that in your interview summary?

A Not necessarily, unless there was some connection with one of the -- one of the questions that I asked.

Q Okay. And is it true that if you found out that he had lunch with a bail bondsman, you necessarily would have included that?

A No, sir.

Q In fact, you previously testified about Louis Marcotte and interviews with him; correct?

A Yes.

Q And, in fact, in one of those interviews, you were even told that Louis Marcotte even told the FBI that he had lunch with Judge Porteous quite often; isn't that correct?

A I don't recall. But if it's in -- I interviewed him in the follow-up interview. I was not involved in the initial interview with him.

Q All right. Well, why don't we pull up that document and see if it helps refresh your recollection.

A Sure.

Q It's in 69(b), and it's PORT471, which I believe is page 250 of the .pdf, if that's of assistance to putting it up.

Now, in the first paragraph, the first full paragraph there, there's a line, and it will get blown up for you here, it said, "Marcotte said he sometimes goes to lunch with the candidate and attorneys in the area since Marcotte's office is across the street from the courthouse."

Do you see that?

A Right. But those are not my initials at

the top of that communication.

Q But you do see that that's in the FBI materials?

A Yes, I see that's in there.

Q So the FBI was aware of it?

A I can't attest to the FBI being aware of it, because I did not conduct that interview.

Q Well, this is an FBI form; correct?

A It's an FBI form, right.

Q So at least someone in the background check was aware that Louis Marcotte had made that statement?

A This interview was conducted by a colleague, yeah, because I recognize the initials at the top.

Q And then above this, if we can pull out there a little bit, there's the date of this interview. And it -- I believe it says August 1, 1994; is that correct? Do you see that?

A Yes, sir, I see it.

Q Okay. And you did an interview of Judge Porteous after this, on August 18; isn't that right?

A Yes, I did.

Q And you didn't ask him during that interview whether he had lunch with Louis Marcotte?

A No, because I was not necessarily aware of this interview. We -- we conduct these interviews independently and submit them to the coordinator, the case agent.

Q Sure. Now, based on your experience in the FBI, you're a 25-year member, would you have, had you read that, necessarily asked Judge Porteous about that? Was that an alarming statement to you?

A Could you pull it up again, let me see?

Q Sure. It says, "Marcotte said he sometimes goes to lunch with the candidate" --

A No.

Q -- "and attorneys in the area."

A Not necessarily.

Q All right. Now, would one of the questions that you often asked or was in this training that you received on what kind of questions to ask be whether the interviewee knew of anything in the candidate's background that could be used to influence, pressure, coerce, compromise a candidate or whether there was anything in the candidate's background that would negatively impact the candidate's character, reputation, judgment or discretion?

A That's correct.

Q And that was a compound question, and I didn't mean to make it so. But I believe that's how it's asked; isn't that right?

A That's how it's asked, yes, sir.

Q Okay. So there's quite a number of things to that question, but that's how you would put it to an interviewee?

A Yes.

Q And that was part of the script or the training that you received?

A Part of the instructions that come from headquarters.

Q And would you always ask this question?

A Should.

Q Would it surprise you that if this question and answers to this question appear in over 60 interviews in Judge Porteous's FBI background check?

A Would you repeat the question?

Q Well, in Judge Porteous's background check -- and I could show you all of the pages -- but there was interviews of dozens of witnesses.

A Right.

Q And I've gone through and counted them up, and this question and answers to it came up in over

60. Would that surprise you?

A No, not at all.

Q And would it surprise you that if not one of the individuals interviewed by the FBI and asked this question noted anything affirmatively in response to that question?

A No.

Q In your experience, in all the interviews you've ever conducted where this question was asked, how often would an individual respond with an affirmative response to that question?

A In my recollection, none.

Q That was over 25 years, over hundreds of interviews?

A That's correct.

Q Can you specifically recall any instance ever where an interviewee or an interview that you performed, one of the interviewees noted something that they thought could be used to influence, pressure, coerce or compromise a candidate?

A No, I can't recall any.

Q Now, would one of the other questions that you might ask be whether the interviewee knew of anything about the candidate that was embarrassing or would embarrass the President?

A No, we did not ask that question.

Q Okay. And again, it's a compound question, but I'm putting it to you because I believe that's how you put it to your interviewees; isn't that right?

A Yes, but we did not ask that question that you just posed.

Q Well, would you ask that to candidates?

A No.

Q That would only be on the SF-86?

A Yes, sir.

Q So it's on the form, the SF-86; correct?

A Yes, it is.

Q And any candidate would have to fill out that form; right?

A Yes, sir.

Q And you, in your experience at the FBI, would you review SF-86s in preparation for interviews?

A Yes, we review them before we interview.

Q How often, in your experience, would an individual respond with an affirmative response to that question?

A To my recollection, none.

Q Can you specifically recall any instance

in any interview that you performed or SF-86 that you reviewed where someone noted something that would be embarrassing to them or the President?

A No, I can't recall any.

Q Now, as an FBI agent, you were trained in investigating people and talked to a lot of people over all those years. Did that make sense? Doesn't everyone have something embarrassing in their past?

A We didn't draft the question. We just -- we just asked the interviews. We have to follow the instructions that come from FBI headquarters, not to create our own questions.

Q I see. So when you got a response of no to that question or you read a response, you didn't dig deeper and say, are you sure there's nothing embarrassing?

A No, we did not.

Q And that's because you were just told to do that by the FBI?

A We're told to ask the questions and submit the results to headquarters. If any additional follow-up is required, they will advise us accordingly.

Q Okay. Now, do you recall the dates on which you interviewed Judge Porteous?

A I can look at the forms.

Q Please do.

A First interview was July 6 and 8, 1994. The second was the telephonic contact on August 17, 1994, followed the next day, August 18, 1994, by -- of an interview in his office.

Q All right. Now, do you know how many times the FBI interviewed Louis Marcotte in relation to Judge Porteous's background?

A In reading the file, it's two.

Q Do you know the dates on those?

A I only know the date that I interviewed him, which was the re-interview on August 17, 1994. I don't know the date of the initial interview.

Q Okay. Now, we previously had a document up there, and we can pull it back up, but that was the first interview, I believe, of Louis Marcotte, it was PORT471 in 69(b), page 250 of the .pdf. We were talking about that date. Maybe we can just blow it up for you and show it to you again.

A Uh-huh.

Q Do you see the date there?

A August 1, 1994.

Q Now, during your second interview with Judge Porteous -- well, prior to your second

interview with Judge Porteous, you discussed a little bit of this with Mr. Damelin, but were you made aware of allegations that Judge Porteous had improperly set bonds?

A Yes.

Q And were you also made aware of allegations that Judge Porteous had received cash in exchange for bonds he had set?

A Yes.

Q And were you also aware that there were allegations that Judge Porteous had signed bonds in blank?

A Yes.

Q And did the FBI do any investigation of these allegations?

A The only investigation was the request for the interviews of specific people that came out in the teletype. And those interviews were conducted, the questions were asked, the results submitted to the FBI. And no further tasking came from headquarters.

Q I see. So the FBI went and interviewed additional people, talked to people that might be witnesses to this alleged conduct, and then made a determination not to take it any further?

A Apparently.

Q Are you aware whether Judge Porteous was ever charged with any crime or raised on any --

A I'm unaware of any.

Q Now, during the FBI's background check of Judge Porteous, did you or the FBI become aware that Louis Marcotte had known the judge for approximately 10 years?

A I don't -- I don't recall a recollection of their relationship.

Q On that same document that's up on the screen, in that first paragraph, it's going to say Louis Marcotte advised that he has known the candidate for approximately 10 years.

Do you see that?

A Yes, I see it.

Q So based on your experience, was the FBI made aware of that at least on August 1, 1994?

A Again, I can only speak from documents that I drafted. This was not drafted by me.

Q I'm not asking for your personal observation. I'm asking based on your experience, was the FBI made aware of it by looking at this document?

A Based on my experience, the FBI should

have been made aware of it, yes.

Q They were aware of it because it was in this document; right?

A This should -- this should and was -- have been included in the report that went to FBI headquarters for review, yes.

Q This was actually an FBI document?

A Yes.

Q That was drafted by FBI agents?

A Right.

Q During the FBI's background check of Judge Porteous, was the FBI aware that Louis Marcotte sometimes went to lunch with Judge Porteous?

A Well, I'm not personally aware that the bureau was --

Q FBI.

A But based on -- if it was included in this document, this document was included in the report that went to headquarters, then they would have been made aware.

Q Okay. And are you aware whether the FBI was aware that Judge Porteous worked with Louis and Lori Marcotte in writing bonds prior to Judge Porteous's confirmation?

A No, I'm not aware. I was not aware at

that time.

Q Okay. We're going to pull up another document in the same exhibit. It's PORT526, which was page 305 of the .pdf.

In this document --

MR. SCHIFF: Madam Chair, I don't want to make an objection, but this is a 302 not prepared by this witness that concerns an interview he wasn't present for. And I think the relevance of what he knows about an interview he wasn't present for is of fairly marginal character.

MR. MEITL: Madam Chair, I think what we're trying to do here is, I believe the chair had earlier stated they're just trying to gather facts on this. You have facts about what Judge Porteous was aware based on his interviews. We're just trying to complete the record here. There's a couple of additional questions that are coming out of these 302s.

This witness had 25 years of experience in the FBI. He can state not what necessarily he observed but based on his experience, what the FBI was aware of.

CHAIRMAN MC CASKILL: I think, Counselor, what you're trying to do is bootstrap here, and I

think if you have something in this document that you want to impeach this witness with, or if you have something in this document that --

MR. MEITL: It's to refresh his recollection whether the FBI was aware of this.

CHAIRMAN MC CASKILL: Then you need to ask those foundational questions as to whether or not a report prepared by someone else in an interview that he didn't conduct is going to refresh his recollection on anything.

Now, if you establish a foundation, this report is going to refresh his recollection that then allows him to testify to something, then I think it's fine.

But I don't think that -- I think the objection should be sustained on that basis.

BY MR. MEITL:

Q Mr. Hamil, prior to your second interview with Judge Porteous, what did you do to prepare for that interview?

A Reviewed the information from the confidential source.

Q Okay. Now, on this document, I believe -- how did the FBI designate confidential informants in their interview summaries? Would they be given a

moniker or --

A Given T symbols.

Q T-something?

A T-1, T-2, et cetera.

Q Now, are you aware whether the FBI -- were you ever made aware that Judge Porteous worked with Louis and Lori Marcotte in writing bonds?

A No, I was not aware of that.

Q All right. I'm going to use PORT526. This page, Mr. Hamil, refers to a T-6. Now, is that the type of anonymous source or confidential informant?

A Yes.

Q All right. Now, let me find the page here. All right. Now, let me ask you another question before we move on, Mr. Hamil.

Was the FBI aware that Louis -- that there had been allegations that Louis Marcotte had given kickbacks to Judge Porteous?

A If they received this T symbol -- this T-6 302, they would have been made aware of the allegations.

Q All right.

A And since a teletype came out asking us to interview a number of people as a result of this, I

would presume that it -- they had read this 302 before.

Q All right. And were you aware that there had been allegations that Judge Porteous had made kickbacks to Louis Marcotte?

A Only after reading the 302.

Q All right. Now, during the FBI's background check of Judge Porteous, were you made aware that there were allegations that Judge Porteous had transferred a case from another division to his division to help certain individuals?

A No, sir.

Q All right. I'm going to show you page 526 and see if that -- same page, see if that refreshes your recollection.

A Okay.

Q There is the third full paragraph there, it says, and I think it means number, but it says "no T-6 advised that he/she had also heard that Porteous had transferred a case from another division to his, Porteous's, to help."

Do you see that?

A Yes.

Q Does that refresh your recollection

whether you knew that at the time of your second interview of Judge Porteous?

A Yes, this is embedded in the same 302, yes. Looking at that -- all the information in that 302 would have been brought to my attention before conducting the interview.

Q So the FBI was aware of this prior to Judge Porteous's confirmation?

A I think it's safe to say they -- they would have been.

Q Okay. Now, during the FBI's background check of Judge Porteous, did the FBI send a separate background note to the Department of Justice on August 19, 1994, notifying the department of these allegations, including the kickback allegations?

A What was the date?

Q The date of the memo or document, I guess it was called a background note --

A Right.

Q -- was August 19, 1994?

A I recall seeing that in the file.

Q Okay. And why would you send that to the Department of Justice?

A Well, the process is that the field conducts investigation, we send our results to FBI

headquarters. FBI headquarters then reports both positive and negative to -- information to the Department of Justice.

Q And do you know why the Department of Justice needs that information?

A The initial -- initial background investigation comes from the Department of Justice to the FBI, so it just -- everything reports right back up the chain.

Q So it was just part of the process --

A Part of the process.

Q -- that you would give this back to the Department of Justice?

A I mean, that's my opinion, because I did not send it to the Department of Justice. But that's the logical course of the conduct and reporting of the background investigation.

Q You are aware that this note was sent to the Department of Justice?

A It's in the file, I saw it, yes.

Q Why don't we just reference -- put that up on the screen. It's PORT524, which is also part of 69(b), and that's page 303 of the .pdf, if that's of assistance. I don't believe that's the one. It should be page 303 of the .pdf. We're having a

little trouble with the .pdf, Madam Chair, but we would like to move the document Bates labeled PORT524, which is not a 302, this is a background note from the FBI to the Department of Justice with these allegations, into evidence.

MR. SCHIFF: Madam Chair, I need to take a look at the document and the purpose for which it's being introduced. Is this a document that this witness reviewed or was present for the interview?

CHAIRMAN MC CASKILL: Are you objecting?

MR. SCHIFF: Yes.

CHAIRMAN MC CASKILL: Sustained.

MR. MEITL: I'm sorry? It's not being admitted into evidence? All right. Those are all the questions we have right now, your Honor.

MR. SCHIFF: Madam Chair, if I could just have a moment.

MR. TURLEY: I'm sorry, Madam Chair, we just needed an explanation of why this non-302 is not admitted.

CHAIRMAN MC CASKILL: It was not prepared by him. He testified that he reviewed it and he was aware of it. I think the information that you wanted as part of the record is part of the record, and that is that there was an allegation that caused

the FBI to go out and do another interview, and that clearly is in the FBI file. It's part of the record, the testimony you elicited from this witness. But the document itself was not prepared by this witness, the witness that prepared the document is not here to be cross-examined or examined by any parties, and it is completely -- you know, it is definitely hearsay.

So for what purpose would you offer the document?

MR. TURLEY: Well, there's been a great deal of hearsay brought into the record.

CHAIRMAN MC CASKILL: My question is, for what purpose are you offering the document?

MR. TURLEY: The witness just explained that he does -- he was aware of the content, and we thought that the committee itself, in having a complete record that you referred to earlier, would want the document itself.

There's --

CHAIRMAN MC CASKILL: I think what's relevant, Counselor, is that this witness has testified that he was aware of this document. So what you want in the record is in the record, that an allegation was made and the FBI knew about it.

But we're not going to go down the path of admitting every 302 that either side thinks might be helpful to --

MR. TURLEY: This isn't a 302, Madam Chair. That's what our concern is, is that this is the first non-302 --

CHAIRMAN MC CASKILL: If you want to bring it up again later -- I want to move on with witnesses now. If you want to bring it up later for further discussion, I'm happy to consider it, the committee is happy to consider it. But for now the objection is sustained and that piece of evidence will not be part of the record.

MR. TURLEY: Thank you, Madam Chair.

REDIRECT EXAMINATION

BY MR. DAMELIN:

Q Mr. Hamil, with respect to Mr. Meitl's question regarding whether the witness was under oath in connection with the interview, these were interviews being conducted by a federal agent in connection with an inquiry, an official inquiry, so they would be subject, based on your experience, would they not, to the penalties of 1001 for making a known false statement?

A That's -- that's highly possible, sir,

yes.

Q Excuse me?

A Yes, that's possible.

Q Okay. Now, based on your experience as an agent, would a -- in connection with the question of whether somebody is subject to coercion, blackmail, exposure, would an individual participating in a kickback scheme that could be exposed at any point in time be subject to those kind of pressures, blackmail and things of that nature?

A In my opinion, yes.

Q Would an individual who set aside a conviction at the request of a bail bondsman for whom he had been taking favors, would that individual, in your opinion, be subject to potential blackmail or exposure at a subsequent point in time?

A Again, yes.

Q And when Mr. Meitl was going through the issue of background checks, and I just want to clarify something, you had said, I think, in response to some of his questions, people that you had interviewed over the years had not offered up adverse information in connection with background checks.

Are you talking more about the candidate,

or are you talking about individuals that you went out and interviewed in connection with the background checks?

A Primarily, the candidate. But for the most part, when asked that direct question, you would rarely get a positive response.

Q But in connection with even this case, you had people who were coming forward, were you not, with adverse information about Judge Porteous?

A None of my interviews resulted in adverse --

Q Right. But you had seen as an example the person that precipitated the follow-up interview?

A Right, right. The T symbol source?

Q Yes.

A Yes. No, it's not uncommon for -- for people to bring adverse information. But I was talking about the specific question, when asked, rarely comes back with -- results in a negative -- or a positive response. It's just about always no.

Q Right. The specific question. But -- but in the real world, you go out and you start to spread out from the people that you interview in connection with the FS-86 -- the SF-86, the fact is people will provide, on occasion, adverse

information, not necessarily in response to that particular question?

A Yes.

Q But the interview will reveal --

A That's true.

Q -- adverse information?

A Sure.

Q Okay. And also based on your review of the file, is there anything in the file that states that Judge Porteous received cash for curatorships that he sent to the Creely & Amato law firm?

A I don't recall seeing anything about that.

Q Okay. And is there anything in the file, the background file, that states that Judge Porteous received things of value from the Marcottes in connection with the setting of bonds?

A I don't recall seeing anything to reflect that either.

MR. DAMELIN: I have no further questions.

CHAIRMAN MC CASKILL: Any further questions?

MR. TURLEY: Not from the defense, Madam Chair.

CHAIRMAN MC CASKILL: Any questions from the panel?

This witness is excused. The House should call its next witness.

(Witness excused.)

MR. SCHIFF: Madam Chair, the House calls DeWayne Horner.

CHAIRMAN MC CASKILL: While we're waiting for that witness to arrive, the House has 11 hours and 10 minutes remaining in its case, and Judge Porteous's team has 12 hours and 57 minutes remaining.

MR. MEITL: Madam Chair, just to correct the record, I had mistakenly said 527 for the document we were discussing. It was 530.

CHAIRMAN MC CASKILL: 530.

MR. MEITL: Yes.

Whereupon,

DE WAYNE G. HORNER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUBESTER:

Q Sir, in a nice loud clear voice, introduce yourself to the Senate panel.

A I'm Special Agent DeWayne G. Horner, FBI agent in New Orleans.

Q Can you spell the first name, indicating whether the W is capitalized or not.

A It's D-e-W-a-y-n-e.

Q How long have you been an FBI agent?

A It will be 15 years in November.

Q Where did you say you were assigned?

A In New Orleans.

Q I'm going to ask you a little bit about your background with the FBI, but before I do that, let me just ask some other questions. First, where did you grow up?

A I grew up in North Dakota.

Q Did you go to college?

A I did.

Q Where did you go?

A At the University of North Dakota.

Q Did you do anything as far as your education after you graduated at UND?

A I went to law school at UND, took the bar and practiced law.

Q How long did you practice law?

A About 3-1/2 years.

Q Did you go to the FBI directly from law school?

A No. I practiced law for about 3-1/2 years

and then I was hired by the bureau.

Q And roughly when was it that you started with the FBI?

A November of '95.

Q And have you been in New Orleans the entire time?

A Yes.

Q And just briefly describe what you've done in the New Orleans field office.

A When I first arrived in New Orleans, I was assigned to a bomb crime squad for about six months and then I was moved over to public corruption. So I've been working public corruption for almost 15 years.

Q Now, my questions today are going to involve solely financial matters involving Judge Porteous. Were you involved in the FBI's investigation of Judge Porteous relating to matters arising from his bankruptcy in 2001?

A I was.

Q And as part of that investigation, were any financial or casino records obtained?

A We obtained a number of financial, credit card and casino records.

Q And are you familiar with those records?

A I am familiar with the records.

Q Have you looked through them?

A I have looked through them.

Q And did you look through them in connection with the DOJ investigation, the Fifth Circuit proceedings and, once again, in preparation of your testimony today?

A I have.

Q Now, I'm going to show you a series of charts, documents and forms to try to synthesize some of the records from disparate sources into one place for the members of the panel here.

A Okay.

Q Have you reviewed those charts and the underlying records in connection with your testimony today?

A I have.

Q That's both the face of the charts and the underlying records?

A That's correct.

Q And you came here with your own binders. Does that include a lot of those underlying records?

A It does.

Q And you studied those?

A I've studied them.

Q Just down the hallway were you looking at them?

A Yes, I was.

Q Okay. And are you familiar with the specific financial activities of Judge Porteous surrounding his bankruptcy?

A I am.

Q Now, in addition, as part of the documents that you're familiar with, are you familiar with the financial disclosure reports that Judge Porteous filed with the executive office of the courts in the years immediately preceding his bankruptcy?

A Yes, I am.

Q And were those obtained and have you looked at those?

A Yes.

Q And are you aware that they are the subject of some charts that you're going to see today?

A I am aware of that.

MR. DUBESTER: Okay. I'd like to -- Madam Chair, some of the issues that you've talked about, about document numbers and page numbers, are also associated with these charts. I believe what we're going to do is make an introduction of all our

documentary evidence at one point instead of trying to go page by page as we show things today. The documents, of course, have been stipulated to as authentic. I don't believe that will create an obstacle to going forward and, in fact, it might help us go forward efficiently.

CHAIRMAN MC CASKILL: Keep in mind, if the documents have not been entered into evidence, they can only be utilized for proper purposes.

MR. DUBESTER: We understand that.

CHAIRMAN MC CASKILL: I don't want to lecture you about what would be the proper purposes to use documents if they have not been admitted into evidence.

What I would really suggest going forward is if you all know what documents you're going to be offering into evidence during the direct of any witness, that you check with the other side so that we can -- we could really expedite this, in terms of moving evidence into the record, so we can at least highlight when we have differences of opinion and get to those issues and get rulings on those issues.

So I -- if there is an objection, I'm not going to let you carte blanche let the witness start reading from the objection or anything like that,

unless they have been admitted into evidence. Because, you know, he's got to have an opportunity to object.

Yes, Mr. Turley?

MR. TURLEY: Madam Chair, I thank you for that concern and that statement. One of the concerns that we have is to make sure that there was a dispute about judicial financial disclosure forms that we believe are not relevant, they're not part of the case.

I'm going to assume that that's not in these groups of documents. But we do object to just throwing the documents in without allowing us a chance to at least look at them.

MR. SCHIFF: Madam Chair, the financial disclosures have already been the subject of testimony from Rhonda Danos. They're highly relevant to the judge's intent. There is a pattern here that we are establishing of the judge deliberately not disclosing facts, concealing them, misstating them and, in particular here, the judicial disclosure forms corroborate his intent to hide those same debts in his bankruptcy proceeding.

The fact that the judge is aware, for example, that he has five credit card debts in

excess of 25,000 each and only discloses some of them in his judicial disclosure forms is also pertinent to his hiding debts in the bankruptcy, so it's highly pertinent to his state of mind.

MR. TURLEY: Madam Chair, may we be heard on that point since they explained their position?

As we stated earlier with the Staff, there is no allegation in the articles of impeachment that he lied on these disclosure forms. These are many years before these events, and we raise serious objections to their relevancy.

This is part of our problem of sort of mission creep, where they're bringing in a whole bunch of collateral allegations and material and saying let's throw it in here. They're not directly related to the bankruptcy, they're not directly related to these articles.

And the result is if they're allowed to keep on doing this, they just run us around with every possible document. They're not relevant. They're not connected to the articles.

MR. SCHIFF: Madam Chair, if I could be heard, counsel is incorrect. These documents are not old documents. These are federal judicial disclosure forms, while he's on the federal bench,

both preceding and during the course of the bankruptcy. They couldn't be more contemporaneous in terms of his state of mind about hiding debts.

CHAIRMAN MC CASKILL: I'm assuming that when -- are you offering those documents right now? Are you asking me for a ruling right now?

MR. SCHIFF: At some point during the course of the testimony, we will be offering them in evidence.

CHAIRMAN MC CASKILL: If these are documents -- let me just say, if these are documents that were prepared by the judge and signed by the judge concerning his financial situation while he was a federal judge, I certainly believe they're relevant.

MR. TURLEY: Some of these are for -- these are periods, as was just acknowledged, before the period of bankruptcy. It is -- it doesn't have a connection to the bankruptcy.

CHAIRMAN MC CASKILL: If they are documents -- representations made by the judge while he was a federal judge, I think they're relevant.

MR. SCHIFF: Thank you, Madam Chair.

MR. DUBESTER: Thank you, Madam Chair.

BY MR. DUBESTER:

Q I'd like to first show you, Agent Horner, just what a typical -- or what one of the forms looks like. And I'm going to choose the one for -- so if I could call on the screen Exhibit 103(a), which is SC 0227. Is this the front page of a financial disclosure report in this case for calendar year 1997 for Judge Porteous?

A Yes, it is.

Q And frankly, have you seen this document before?

MR. TURLEY: I'm sorry to interrupt, but we'll have a standing objection. This is from 1998 and we have a standing objection to the relevancy. This is long before the bankruptcy.

CHAIRMAN MC CASKILL: That objection is overruled.

BY MR. DUBESTER:

Q Okay. Is there a blank on this form, going now to page 2, SC 0228, block 6, for where liabilities are to be listed?

A Yes.

Q Okay. And on this particular form, is there any liability listed?

A No.

Q In fact, is there a box checked on this

form?

A The box representing "none" is checked.

Q And then finally, on this form, is there a place at the conclusion of the form where the judge signs?

A Yes.

Q That would be on SC page 230; is that correct?

A That's correct.

Q Is there a certification above the signature -- just read out loud the middle paragraph of the three paragraphs of the certification.

A It says, "I certify that all information given above, including information pertaining to my spouse and minor and dependent children, if any, is accurate, true and complete to the best of my knowledge and belief and that any information not reported was withheld because it was" -- I can't -- make it smaller.

Q "Because it met applicable statutory provisions permitting nondisclosure"?

A That's correct.

Q And accompanying the forms, are you aware if the candidates or applicants -- sorry, the judges have to get a -- some instructions? Is there a

judicial -- is there instructions which go along with that?

A Yes.

Q Okay. I'd like to show Exhibit 103(b). Is that first -- is that the cover of the pamphlet which would go with the instructions?

A That's correct.

Q And that's the first page of 103(b). And within the instruction book, is there a page which describes the -- how the liabilities are to be reported?

A There is.

Q Okay. And is that in front of you, and it's under title VI, liabilities, which corresponds to block VI of the form; correct?

A That's correct.

Q Now, what I'd like to do now is -- before we go through the different reports, and we'll be able to do it very quickly with this background, I'd like to just go over what liabilities are supposed to be reported. With that, I have chart 34, which is a copy of that same page with some text highlighted. So if we can go to chart 34, I think it will facilitate looking at that.

Are there two parts of this section which

relate to liabilities or how liabilities should be reported which are sort of bracketed in the box there?

A Yes.

Q Okay. And the first one describes which universe of liabilities are to be reported and at the top which liabilities should be reported?

A Any -- any liability the judge has to any creditor except for family members which at any time during the year exceeded $10,000.

Q Okay. So -- and also liabilities of the spouse too; correct?

A That's correct.

Q Okay. So we -- the first criteria is that it's the liabilities which exceed -- of in this case the judge and the spouse which exceeded $10,000; is that correct?

A Yes.

Q Okay. That at any point in the year exceeded $10,000; correct?

A That's correct.

Q Okay. And at what -- in terms of what number is to be reported, going to the bottom, what is the number that should be reported or reflected on the form?

A He's supposed to break out the liabilities in -- in categories of either 15,000 or less, then 15,001 to 50,000, and so on.

Q Okay. But at the very bottom, it says to report the value of that liability as of the year end; correct?

A That's correct.

Q Okay. So if it's -- okay. So now with that understanding, let's go just through the years, and we should be able to do this quickly.

I'd like to go to chart 30 now. Okay. Chart 30. Let's just go through the three boxes of text, which are reflected here. First of all, what are those three boxes of text?

A Well, the first box is where he would have stated whether he had any liabilities, and he said he had none because he checked the box "none."

Q Let's be clear. Was this for calendar year 1996?

A Right, 1996.

Q And he would have filed it roughly in May of '97; correct?

A It's due by May of '97.

Q Have you looked at his credit card records that you obtained?

A Yes.

Q Was there a credit card that should have been reported?

A He had a Citibank credit card, which had a balance in excess of 14,000.

Q And that was at year-end '96; correct?

A That was year-end '96.

Q As you see at the bottom, this was signed under the same sort of legend you just read; correct?

A That's correct, by Judge Porteous.

Q Okay. I'd like to now go to chart 31.

I'm sorry, I think we need some IT help. There we go?

On chart 31, does this have the same categories of information?

A It does.

Q Okay. And what was -- that's the box -- this is the form that we just showed the originals of to the committee; is that correct?

A That's correct.

Q And what did Judge Porteous indicate as far as his creditors were concerned?

A Well, for year 1997, he reported no credit card debt.

Q Okay. And have you found credit cards which, at least in your reading of the instructions, should have been reported for that year?

A Yes.

Q And just go through those credit cards and explain why you think they should have been reported.

A First, he had an MBNA credit card, which had a balance in excess of, I believe it's, $10,000. Then he had another MBNA credit card which --

Q Will you look more carefully? I believe -- see if that's 18,000.

A Is that an 8? 18,000. It's hard to read.

Q Okay. And then next?

A He had another MBNA credit card which had a balance in excess of 15,000, there you go, and then he had a Citibank card, which in November of '97 had a balance in excess of 16,000, but at the end of the year had a balance of $424. But since it, you know, hit $10,000 during the year, he was obligated to report it.

And then he had a Travelers credit card which had a balance in December of 11,400, and then the next statement reflected a balance of about 9300.

Q Actually, would that have been a November balance due in December of 11,000 and then --

A Right. And then a December balance due in January.

Q Let's move on to chart 32. Is this the same information for calendar year 1998 which he filed in 1999?

A Yes.

Q And under this -- what did he report as far as his liabilities in '98?

A In 1998, he reported that he had one MBNA credit card with a balance of $15,000 or less, and then he reported one Citibank card with a balance of $15,000 or less.

Q Actually, in terms of the balance -- the balance could have been as low as zero if as December it was zero, so long as it had been above 10,000 at one point in the year; correct?

A Right.

Q So those code Js really mean anywhere from zero to 15,000?

A At -- right.

Q Okay. And have you -- in fact, did he have at year-end '98, did he have debt, credit card debt, that was in excess of those codes?

A He had three credit cards. He had an MBNA credit card balance of in excess of 16,000. He had another MBNA credit card with a balance in excess of 17,000, and then he had a Travelers card that had a balance of $10,545.

Q And did he also sign that form?

A Yes.

Q And also, those two -- first two you read, each one of those was in excess of 15,000, so that would have been a different letter code as well?

A Right.

Q Okay. Now I want to go to calendar year 1999, which he filed May of 2000. And is this -- first of all, just to get the committee back to where we are in his life, 1999 is the year that he got money from -- asked for money from -- at least if the testimony is to be credited, the issue on the boat occurred, the issue -- the matters in Las Vegas occurred --

MR. TURLEY: Objection. Counsel is giving testimony here that's not coming from the witness.

MR. DUBESTER: I'll strike that and move on.

CHAIRMAN MC CASKILL: Rephrase your question and ask it -- yes, just strike it and start

over.

MR. DUBESTER: Thank you. That's what I'll do.

BY MR. DUBESTER:

Q On the top again, what credit cards did he report and what codes did he use?

A He reported, again, one MBNA credit card with a balance of J, $15,000 or less, and one Citibank card with the same letter code, J.

Q And, in fact, what do the credit card balances at year-end 1999 actually reveal?

A He had a Citibank card balance in excess of 22,000, an MBNA card with a balance in excess of 24,000, a Travelers card balance in excess of 15,000, another MBNA card with a balance in excess of 25,000 and another Citibank card with a balance in excess of 20,000.

Q And if we add those up, is that over $100,000 in credit card debt at that point?

A Yes.

Q And he reported two cards -- by the way, each of those cards should have been at code K; correct?

A Yes.

Q And he reported two cards at code J?

A Code J.

Q Which was zero to 15,000?

A That's correct. And he signed the form.

Q Now I'd like to move on to the discussion of the events surrounding his -- the financial activities surrounding his filing for bankruptcy.

First I'd like to ask you, are you generally aware from your own study of the records and looking at them of a series of financial acts that Judge Porteous took in roughly the 30 days before he filed for bankruptcy?

A Yes.

Q And just to get that day firm, what was the date that he filed for bankruptcy?

A March 28, 2001.

Q And what I'm going to do here, I'd like to show you chart 15 and ask if -- first of all, ask if you had a chance to review this chart.

A Yes, I have.

Q And there's a series of activities here. I'm going to go briefly through them and then we're going to go through the records which relate to each of these.

A Okay.

Q So first on February 27, from your review

of the records, what happened?

A Judge Porteous gambled at the Grand Casino and left owing $2000.

Q Okay. And on March 2, 2000, what happened?

A Judge Porteous gambled at the Treasure Chest Casino, he borrowed on a marker and left owing 1500.

Q Okay. So on March 2, he owes $3500 to two different casinos?

A He's got a $2000 outstanding marker -- or two $1000 markers at Grand Casino and 1500 at Treasure Chest.

Q Okay. On March 20, what do the records show Judge Porteous did?

A He obtained a P.O. Box.

Q And on March 23, what did Judge Porteous do?

A He filed an income tax return where he requested a refund in excess of 4000.

Q The 4000 here is an approximation?

A Right.

Q In fact, it's over 4100; correct?

A Right.

Q And on March 23, 2001, what did Judge

Porteous do?

A He had his secretary, Rhonda Danos, pay off a Fleet credit card.

Q Now, he still owes $3500 at that time to the two casinos; correct?

A That's correct.

Q Okay. And on March 27, what does Judge Porteous do regarding the Treasure Chest?

A He goes to the Treasure Chest casino and he pays off the three markers with $1500 in cash.

Q Did the FBI ever figure out where the cash came from?

A No.

Q Okay. Now, is there something he did March 27 of 2001 which appears to relate to the $2000 outstanding at the Grand Casino?

A Yes, he deposited $2000 into his Bank One account, 1960 of which was cash and a $40 check that was written off a Fidelity account.

Q Why is there a belief that that had something to do with the $2000 that he would have owed to Grand Casino at that time?

A Because those markers from Grand Casino would have been deposited or were going to be deposited and run through his account, so his

account was short and he needed the 2000 to cover the markers.

Q In addition, that amount was exactly $2000; correct?

A Right, the markers were 2000, so he deposited the 2000 to cover the markers.

Q And the 2000 that he deposited include a $40 check from another account to make it exactly 2000?

A That's correct.

Q And so there's another $1960 cash there, you don't know where that came from, do you?

A No.

Q So in the day before bankruptcy, Judge Porteous used -- had at least, sorry, approximately $3500 in cash on him that he used in the ways you've just described; correct?

A That's correct.

Q Okay. March 28, you've already indicated that Judge Porteous filed for bankruptcy; is that correct?

A That's correct.

Q And we'll hear more about this. Was there anything unusual about his bankruptcy forms?

A He filed it in a false name, G.T. Ortous,

with a P.O. Box listed as the address.

Q And on -- whatever happened to that outstanding $2000 he owed Grand Casino?

A On April 4 and 5, the $2000 marker cleared his checking account.

Q Okay. Now, the records of these various transactions, they come from all different places, casino records, bank statements, bank accounts from his various bank accounts; is that correct?

A That's correct.

Q Okay. I'd like to now just cover these in turn. I'd like to go to chart 6.

Is it fair to say, Agent Horner, you've looked at a lot of different casino records which are in a lot of different formats?

A Yes.

Q Okay. Sorry, chart 6 is described as undisclosed creditor, Grand Casino, Gulfport. Would you just take the committee through the various images which are on that chart.

A Well, first of all, he gambled --

MR. O'CONNOR: Madam Chair, we have an objection with regard to this demonstrative. It's misleading in that it selectively excerpts pieces of information from the underlying document.

MR. DUBESTER: I believe that would be a fair subject for cross. There's nothing inflammatory about this. The agent has described his -- what he's able to do with this.

MR. O'CONNOR: I think by selectively cutting out the portions that they want to ask about, they are omitting a key piece of information to which the House has specifically stipulated in the agreed stipulations of fact, specifically numbers 198 and 199, which specifically address these markers and the fact that they were not outstanding during the period of time during which the bankruptcy was filed.

CHAIRMAN MC CASKILL: I think you have every opportunity to prepare a demonstrative exhibit that highlights stipulation number, what was it?

MR. O'CONNOR: The stipulations are 198 and 199. Madam Chair, we would request that the House use the underlying document as opposed to the demonstrative, which is misleading.

MR. SCHIFF: Madam Chair, if I may, we provided all these demonstratives to counsel. They have had them. They have raised no objection with us to them.

CHAIRMAN MC CASKILL: I understand the

point you're making, and I think it's important you made the point. If you want to prepare a demonstrative to show the stipulations that you think correct the impression that this exhibit leaves, I think that if there's nothing on this that's inaccurate, I would not keep it from the record, simply because it may make things go more quickly.

You are certainly welcome to highlight the stipulations that you referenced that you think present another view of this set of facts.

Is there anything factually incorrect on the demonstrative?

MR. O'CONNOR: No, Madam Chair, we'll go ahead and right it on cross.

CHAIRMAN MC CASKILL: Then I would overrule your objection.

BY MR. DUBESTER:

Q I think the last question was, go through the three different graphic images which are part of this chart.

A First of all, on February 27, 2001, Judge Porteous went to the Grand Casino Gulfport and drew a couple markers or borrowed against a couple markers. He played and he left owing the casino

$2000.

Q And just to be -- just to help the committee here, there is a legend which appears to say credit marker, then there's marker numbers, one of them at the bottom is MK 131402, it's for $1000. And the reason the one above it is $2000 is because that's the balance at that time; correct?

A That's correct.

Q And then on March 27, there was a deposit?

A Right.

Q And is that the $2000 cash deposit that you've previously described?

A Well, it's a deposit for $1960 in cash, and then you can see under the deposit slip is the check that he wrote from the Fidelity account for the remaining $40 to reach the 2000.

Q And, by the way, there is a little bit more to the story with Grand Casino, and we're going to get to it further in our questions. Is that correct?

A That's correct.

Q Okay. For our purposes, let's leave it as we are now, and then we'll get to a wrinkle with it later.

Was Grand Casino ever made whole and/or

was that debt outstanding until those markers actually cleared Judge Porteous's bank account? Maybe one of those asked for a positive and one a negative.

A Right.

Q When did those markers actually clear Judge Porteous's account?

A On April 5 and 6 of 2001.

Q Now, on the bankruptcy forms, is there a place where unsecured creditors are supposed to be listed by the debtor?

A Yes.

Q Is that actually several pages of, in Judge Porteous's case, several pages of creditors?

A Yes.

Q Okay. I'm not going to -- if I -- and were those filed on April 9?

A Yes.

Q And were they -- were those schedules of creditors supposed to be those which were outstanding on March 28?

A Yes.

Q Okay. I'd like to show you Exhibit 127, House Porteous Exhibit 127. Is this -- is this the cover page to the Chapter 13 schedules and plan?

A Yes.

Q And at some point, we're going to be introducing the entire document, but I'd like to now, for demonstrative purposes, bring your attention to schedule F. And is this the layout of schedule F?

A That's where he would have listed creditors holding unsecured claims.

Q And he had several pages of this, so it doesn't really lend itself to be including in the chart; correct?

A Right.

Q At any point in these pages is Grand Casino Gulfport listed as a creditor to whom Judge Porteous owed $2000 on March 28, the day he filed?

A No.

Q Okay. Now I want to go to chart 2, and we're going to return to Grand Casino shortly. On chart 2, which is coming up, you've previously described that Judge Porteous took out markers at -- took out debt at the Treasure Chest Casino in the form of markers on March 3 of 2001; is that correct?

A March 2.

Q Okay. And can you just describe the Treasure Chest records and indicate how they're

listed, how they're laid off, and the reference to the date that three of them were repaid and how they were repaid?

A On March 2, he left Treasure Chest Casino with three outstanding $500 markers, so he owed them 1500. And then on March 27 of 2001, Judge Porteous went to the Treasure Chest Casino with $1500 in cash and paid off the three markers.

Q Okay. Now, thereafter on April 9, 2001, when Judge Porteous filed his schedules and forms, is there a place on those schedules where payments to unsecured creditors made within 90 days were to be listed?

A Yes.

Q I'm sorry, if I may, the Senate's indulgence for one second. I believe we have that page from the schedule, so I wanted to get that in front of -- in front of you.

Okay. Agent Horner, in front of you do you see the place on the schedules where -- which call for the disclosure of payments to unsecured creditors within 90 days?

A I do.

Q Okay. And can you just read what's supposed to be reported in that box?

A It says, "list all payments on loans, installment purchases of goods or services and other debts aggregating more than $600 to any creditor made within 90 days immediately preceding the commencement of this case."

Q And what was the answer on Judge Porteous's form?

A Judge Porteous listed "normal installments."

Q He didn't list the repayment to Treasure Chest the day before he filed bankruptcy?

A No, he didn't.

Q And the phrase -- the phrase "normal installments" was used; is that correct?

A That's correct.

Q And what was -- what is your understanding of what that phrase meant?

A That would be like your mortgage payment, car payment, your normal monthly bills.

Q Okay. I'd like to go now to chart 4 -- sorry, chart 7. Okay. Now, on March 20, you've indicated that Judge Porteous went and applied for and obtained a post office box?

A That is correct.

Q Is the application for that post office

box depicted on the chart 7 in front of you?

A Yes.

Q And that's in the upper right-hand corner?

A That's correct.

Q And ultimately on March 28, when Judge Porteous filed, did he use his real name?

A No. He used a false name, G.T. Ortous.

Q And the name he -- his address, was that his real -- was that an address which goes to any street that you know?

A No.

Q What address was used on the petition?

A The P.O. Box 1723, Harvey, Louisiana.

Q And there were two places on that petition that he had to file -- had to sign. Was it signed in two different places?

A Yes.

Q And one of them was it over the initials G.T. Ortous, debtor?

A Yes, he signed over the false name.

Q And in the other place, in the other location where it says "signatures of debtors," is that over the legend that the document is filed under penalty of perjury that the information provided in the petition is true and correct?

A Yes.

Q Okay. I'd like to go now to chart 3. You indicated, I think, that on March 20 now, just eight days before filing, Judge Porteous filed a tax refund, for a tax refund; is that correct?

A That's correct.

Q And are the pertinent copies of his tax return depicted in front of you on this chart?

A Yes.

Q And the schedule from his bankruptcy schedules isn't well set forth here. I'd like to go back to Exhibit 197 -- sorry, 127. And it would be at SC0096 if we can blow up box 17, is there a place on the bankruptcy schedules which specifically asked the debtor to disclose if he has a tax refund pending?

A Yes. Question 17 of schedule B asks for other liquidated debts on the debtor, and it specifically asks for tax refunds.

Q Okay. And what does that form indicate the answer to that was?

A He said none.

Q The box is checked which says none?

A Right, the box is checked representing none.

Q Okay. I'd like to go now to chart 1.

You previously indicated on March 23 now, five days before bankruptcy, Ms. Danos paid off or wrote a check on his behalf; is that correct?

A That's correct.

Q And is that depicted on chart 1?

A Yes.

Q At the top, do you see the credit card -- reference from the credit card as to when the check was due?

A Yes, it reflects that the payment is due April 15, 2001.

Q Of what amount?

A $1088.41.

Q Below that, is that a copy of the check that has been obtained?

A That's a copy of Ms. Danos's check she wrote.

Q What's the name of the creditor, by the way?

A Fleet Credit Card Company.

Q Okay. Now, we previously saw this in connection with the Treasure Chest markers. In the place on the bankruptcy forms where it says have you made any payments to any unsecured creditors within

90 days, is this Fleet payment listed?

A No.

Q Let me ask you this. Is the way that this Fleet credit card payment was handled in the five days before bankruptcy consistent with how that credit card had been handled in the prior months?

A No.

Q I'd like to now show you chart 14. And can you just describe what this chart reflects and just walk the members through this chart?

A Well, it shows that Judge Porteous's January Fleet statement had a due date of February 15, 2001, and he made a payment February 1, 2001 in the amount of $100.

Q Okay. That's actually -- let's just be clear here. Whose credit card was this?

A This was Carmella's.

Q That was his wife?

A That was his wife.

Q How much was paid on the balance of $1144 on the January statement?

A $100.

Q From what account was that payment written?

A From the Bank One account.

Q The Bank One account meaning Judge Porteous's personal account?

A Yes.

Q Okay. On the February statement, tell the members how that credit card payment was handled.

A Well, the due date was March 19, 2001, and Judge Porteous made a payment of March 1 -- on March 1, 2001 in the amount of $315.

Q And what was the -- out of how much of the amount?

A It was $1251 balance.

Q Again, which account did that come from?

A The Bank One account.

Q So in both those prior months, there were small amounts on big balances out of Judge Porteous's personal account; is that correct?

A That's correct.

Q And both of those payments occurred two or three weeks after the statement was logically received?

A That's correct.

Q Didn't seem to be a rush to pay it off or anything?

A No.

Q Okay. Let's see how the March -- how the

Fleet statement was handled. First of all, what was the date of the statement?

A March 15, 2001.

Q And what was the date of Ms. Danos's check?

A March 23, 2001.

Q How long before that check was due was it written?

A Well, approximately three weeks.

Q Okay. And was that a partial payment or was it paid in full?

A It was paid in full.

Q Was it paid out of Judge Porteous's checking account?

A No.

Q What account was it paid out of?

A Rhonda Danos.

Q Okay. I'd like now -- I'd like to now go to chart 5. We've previously discussed that on the day before filing for bankruptcy, Judge Porteous deposited $2000 into his personal account. Do you see that referenced on this screen for chart 5?

A Yes.

Q You've previously described it but just do it again. What is the source of that $2000?

A $1960 is cash, and a $40 check out of his Fidelity account.

Q On the bankruptcy forms and schedules, is there a place where an individual is supposed to disclose their checking account balances?

A Yes.

Q And on the -- just so it's clear, on March 27, Judge Porteous put $2000 into that account; correct?

A That's correct.

Q And what did Judge Porteous disclose as his checking account balance on that account on the day he filed?

A $100.

Q Now, did Judge Porteous also have another account in addition to that Bank One checking account?

A Yes.

Q And what was that other account?

A It was a Fidelity money market account.

Q Have you reviewed the records of that account?

A Yes.

Q And among the purposes, what, among others, was a purpose for which that account was

used?

A He would -- he'd write checks out of the account for various expenses. He would have his federal travel expense checks would be deposited into that account occasionally. He'd, you know, pay his insurance, like State Farm insurance, out of the account. I mean, it's just used generally for, you know, some bills.

He would also make gambling payments out of the account, and he would deposit cash into the account.

Q I'd like to show you chart 16. Okay. And what's the title of chart 16?

A "Judge Porteous's use of the Fidelity account prebankruptcy to pay gaming debts."

Q And does this chart indicate six different checks from 1998 to November of 2000 drawn on that account to establishments that you know to be gambling establishments?

A Yes.

Q Is Beau Rivage a gambling establishment?

A Yes.

Q Boomtown?

A Yes.

Q And Casino Magic, I take it?

A Right. Treasure Chest.

Q And the amounts speak for themselves. But there are -- at least three of them are -- well, one of them is over 1600, another is 2000 and another is 2500; correct?

A That's correct.

Q In addition, now going to chart 4, in or around the month of March 2001, did Judge Porteous use that Fidelity account?

A Yes.

Q And does chart 4 depict some of the checks drawn on that account in March?

A Yes.

Q You've previously mentioned one check in particular that was written on March 27; is that correct?

A That's correct.

Q What was that check?

A That was the $40 check he wrote to get the $2000 balance to deposit into his account.

Q Now, going back now to the checking accounts or the accounts that Judge Porteous had to disclose, can you indicate whether the Fidelity account is or is not listed?

A It's not listed.

Q Okay. So any creditor or trustee or anybody who looked at this would not know that there was a Fidelity account that Judge Porteous had?

A That's correct.

Q Okay. Now, on that statement of financial affairs we saw, is there a question, and I'm going now to chart 8, which specifically refers to gambling losses?

A Yes.

Q Showing you now chart 8, I'd ask you to read the text box and indicate how that box is answered.

A Question 8 of the statement of financial affairs asks for Judge Porteous to "list all losses from fire, theft or other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of the case. Married debtors filing under chapter 12 or Chapter 13 must include losses by either or both spouses, whether or not a joint petition is filed. Unless the spouses are separated and a joint petition is not filed."

Q Okay. And what box is checked there?

A Judge Porteous checked "none."

Q In connection with your 5th Circuit

testimony, did you actually try to go through Judge Porteous's gambling records?

A Yes.

Q Is there a phrase which is called being a rated player?

A Yes.

Q What does it mean to be a rated player?

A That's a player who will come into a casino and the casino will rate his play, meaning they will keep track of how much he bets, how much he wins, how much he loses, stuff like that.

Q Just why would a player want to be a rated player?

A Well, they earn comps when they're playing at the casino based upon how much they play, and also for tax purposes.

Q Okay. And would all of Judge Porteous's casino records reflect all the times he gambled, or would that only reflect the times that he indicated to them he wanted to be rated for his play?

A It would only reflect times he wanted to be rated by the casino. Some casinos he could go into, they would not know who he is, he could gamble and be rated. Other casinos they know who he is and he could play and be rated without even knowing it.

Q Did you prepare a chart or table in which you tried to go through and indicate the wins and losses from the casinos for which you had records?

A Yes.

Q And I'd like to show you House Exhibit 337. And this is the same as SC Exhibit 00030.

Is this the chart that you prepared?

A Yes.

Q And did you prepare it based on your own review of Judge Porteous's casino records?

A Yes.

Q And is it truthful and accurate to the best of your knowledge?

A To the best of my knowledge.

Q And did you testify about this chart in the 5th Circuit as well?

A I did.

MR. DUBESTER: I would move this document into evidence.

MR. O'CONNOR: We have no objection, so long as the record notes that as the witness testified, this chart only reflects those gaming losses and winnings that were reflected where Judge Porteous was a rated player and where his actual play was being recorded.

CHAIRMAN MC CASKILL: The exhibit will be received.

(House Exhibit 337 received.)

BY MR. DUBESTER:

Q Agent Horner, on the records you have, indicate, and I think on the very first page -- there's a summary and it indicates from the records you had, what were his winnings and what were his losses?

A Well, Judge Porteous had gross gaming losses of $12,895.35, and he had winnings of $5,312.15.

Q So at least on these records, there were losses for the year; is that correct?

A That's correct.

Q And in addition, were you present during the 5th Circuit testimony?

A Yes.

Q And did Judge Porteous -- was Judge Porteous asked about his winnings and losses at the casino?

A He was.

Q I'd like to now publish and read to the members of the panel an excerpt from House Porteous Exhibit 10. And I'd like to start -- this is Judge

Porteous's 5th Circuit testimony. And I'm on page 98 and 99 of the transcript. And I'd like to read out loud starting on line 21. It's after an introductory colloquy concerning the box relating to losses that we just looked at. Starting at line 21, the question, "it asks you to list all losses for fire, theft, other casualty, gambling, within one year immediately preceding the commencement of this case, meaning your case, or since the commencement of this case. And I believe we read this before about married debtors filing under Chapter 12 and Chapter 13, and you list none; correct?

Judge Porteous, "That's what's listed, correct.

"Question: Judge Porteous, do you recall that in the -- that your gambling losses exceeded $12,700 during the preceding year?

"Answer: I was not aware of it at the time, but now I see your documentation and that -- that's what it reflects.

"Question: So you -- you don't dispute that?

"Answer: I don't dispute that.

"Question: Therefore, the answer no was incorrect; correct?

"Answer: Apparently, yes.

"Question: Even though this was signed under oath, under penalty of perjury; correct?

"Answer: Right."

Did I read that correctly?

A Yes.

Q And actually, were you present when Judge Porteous testified to that?

A Yes.

Q Okay. So as of the date that Judge Porteous filed his schedules, there was no reference to the casino debts, gambling, the cash that he had just had or the tax return that he was about to receive; is that correct?

A That's correct.

Q And all of those were matters which were called for on the forms; is that correct?

A Yes.

Q I indicated before that there was a wrinkle with the Grand Casino records, and I'd like to just ask you if you can explain what happened in the month between him taking out the records -- sorry, between him incurring the debt at that casino on February 27 and him repaying on April 4 and 5 pursuant to that first chart that we saw.

A What happened was Judge Porteous had the two outstanding markers at Grand Casino, and Grand Casino deposited the markers into his account, and they were returned to judge -- the markers were returned to Grand Casino because they had the wrong account number on them. Judge Porteous's bank had merged with another bank, and the routing number and account number was wrong. So they were kicked back to the casino.

And then the casino had made contact with Judge Porteous, or he called the casino, they got it worked out. They redeposited the markers, and they cleared the account.

Q Okay. Now, Agent Horner, let's just assume that Judge Porteous had some reason to believe that the markers had cleared his account. Between February 27 and the day he filed.

If that were the case, should that debt have been reported as having been repaid, with debt repaid to an unsecured creditor within 90 days?

A Right.

Q It wasn't reported there either, was it?

A It was not reported there either.

Q And in addition, on March 27, the day before filing bankruptcy, Judge Porteous put $2000

into his Bank One account?

A Yes.

Q And if the Senate accepts the inference, that would suggest that on March 27, Judge Porteous well knew that those markers were outstanding; is that correct?

A That's correct.

Q Now -- so now he's filed for bankruptcy and he's taken the acts that we've described. Let me move on now to some conduct immediately following his filing for bankruptcy.

On April 6 -- I'd like to go to chart 11. On April 6, and by the way, that would be between the time he actually filed for bankruptcy and the time he filed those schedules we saw, did Judge Porteous do anything else regarding either gambling or obtaining credit at casinos?

A On April 6, 2001, Judge Porteous went to the Beau Rivage casino in Mississippi and had his credit limit increased to $4000.

Q And we don't have the casino record in front of you, partly because it's complex and partly for space reasons. But are you aware of whether or not when he left the casino, he owed it?

A Yeah, when he -- he left the casino, he

owed $1000.

Q And how did he repay that $1000 debt to the Beau Rivage?

A On April 24, 2001, Judge Porteous withdrew $1000 from his IRA account, and then he took that withdrawal check and endorsed it to Rhonda Danos.

Q And then at the bottom, you see that Rhonda Danos wrote a check to the Beau Rivage for $1000?

A Right. On April 30 she wrote a check out of her personal account to Beau Rivage.

Q Okay. Now, going back to this issue about casinos being included as unsecured debt, in the course of your investigation, did you have occasion to talk to representatives of casinos?

A Yes.

Q Did you talk to them about their credit policies?

A Yes.

Q What would have been the consequences to an individual, such as Judge Porteous, in terms of obtaining credit from a casino if he ever failed to pay a casino debt in full?

A They would have -- they would not have given him credit anymore.

Q Would it have been a big deal to a casino if a casino debt was listed on a bankruptcy petition?

A Yes.

Q What would -- would that justify --

MR. TURLEY: I'm going to object. The witness is now testifying as to what the views of casinos are in terms of particular facts. I'm not aware that he's an expert in that area or qualified to give that testimony.

CHAIRMAN MC CASKILL: Sustained.

BY MR. DUBESTER:

Q I'd like to now go to House Exhibit 149. On April 30 -- just let me start that question over.

What is House Exhibit 149 in front of you?

A This is a Harrah's casino credit application.

Q When is it dated?

A April 30, 2001.

Q Who signed it?

A Judge Porteous.

Q There's some information on the bottom left-hand corner of this, it says -- reports income excess of 100,000, there's a hole punch, presumably by size it suggests house or residence, of 250,000,

indebtedness, zero. You don't know who filled that out or under what circumstance; correct?

A No.

Q But --

A But Judge Porteous signed it.

Q Okay. Okay. Are you aware that in May of 2001, there was a meeting of creditors?

A Yes.

Q And ultimately a bankruptcy order was issued on June 28, 2001?

A That's correct.

Q I'd like to go to chart 9. Did the order require that the debtor not incur additional debt during the term of this plan except upon written approval of the trustee?

A Yes.

Q Was that issued June 28?

A Yes.

Q And did Judge Porteous incur debt?

A Yes.

Q Notwithstanding that order?

A That's correct.

Q And what else is depicted on this chart 9?

A On August 13, 2001, Judge Porteous applied for a Capital One Visa card.

Q And you've reviewed the records. Did he receive it?

A Yes.

Q Did he use it?

A Yes.

Q And the very first time that he used it, was it at Lucy's restaurant on September 17?

A Yes.

Q Now, I say "he used it." Was that card used?

A It was used.

Q And where is Lucy's?

A Lucy's is a restaurant/bar that's about two blocks from the federal courthouse.

Q Okay. Now, did Judge Porteous continue to take out debt at casinos?

A Yes.

Q And did you do a chart or table that ended up getting typed up reflecting the taking out of debt at casinos over the next year while he was under the supervision of the bankruptcy court?

A Yes.

Q I'd like to refer to -- show you what is table 7, and that's how this will be called. And this is a table which is included in the House

report which accompanied the articles of impeachment.

Okay. What is table 7, Agent Horner?

A That's a table which shows Judge Porteous's gaming markers -- or gambling markers July 2001 through July 2002.

Q And the bottom line here is how many -- how many times did he incur debt in the form of markers?

A 42.

Q And what was the total amount of markers that he took out that is reflected on this chart?

A 33,400.

Q Now, some of these -- some of the times that he took out debt he repaid it the same day; is that correct?

A That's correct.

Q Okay. Were there times that he took out debt that he didn't repay it the same day?

A Yes.

Q Okay. And that's reflected on the chart; correct?

A And in particular, there's one October 17 and 18 of 2001, Judge Porteous went to the Treasure Chest, he left owing -- he left owing $5900. And

then he repaid it on November 9 with an $1800 check and, I think, $2600 in cash.

Q Okay. Now I'd like to -- we've previously discussed that he didn't disclose to the -- his Fidelity account. Is that an account that he continued to use while he was in bankruptcy?

A Yes.

Q I'd like to now turn to chart 18. And can you tell the members of the panel here what's depicted in chart 18?

A This is how Judge Porteous used the undisclosed Fidelity account when he was in bankruptcy to pay casino debts.

Q Okay. There's three -- three transaction items at the top of this chart. What do those depict?

A That was the Treasure Chest trip, where Judge Porteous owed $4400. And what he did was he withdrew $1760 from his IRA, and he deposited that IRA into his Fidelity account. And then he wrote a check out of the undisclosed Fidelity account for 1800 to Treasure Chest, and then paid the remaining amount in cash.

Q Okay. And then in the summer of 2002, did -- what's the item which is reflected on the

bottom of that chart?

A That's a check that Judge Porteous wrote to the Grand Casino for $1300.

Q And, again, off of what account?

A Off the Fidelity account.

Q Okay. Now, there was reference in Mr. Turley's opening statement to the fact that some creditors got more than they were supposed to get, or some words to that effect, in bankruptcy.

Understanding you don't know exactly what Mr. Turley was referring to, can you explain what you think he's referring to and what the import of -- your analysis of what the creditors got reveals?

MR. TURLEY: Objection, Madam Chair. He's asking the witness now to explain what I was thinking of in an opening statement, and then proceeding to ask him for what sounds again much like an expert testimony, but both objections are filed.

CHAIRMAN MC CASKILL: Sustained.

BY MR. DUBESTER:

Q Did any creditors -- tell the members of the panel how Judge Porteous's payments to his trustee in the Chapter 13 were distributed to the creditors.

A The creditors in Judge Porteous's case, when the case was first filed, he had a number of creditors listed on the -- on the schedule.

And in order for the creditors to collect or to be included in the payment plan, they had to file a claim.

And in Judge Porteous's case, there was a few creditors that didn't file a claim. And as a result of that, the creditors that did file a claim, the payments to those creditors were increased. Not because there was more money but just because there was less creditors, so there's more money for each creditor to split.

Q Now, let me ask you this. Judge Porteous reported his take-home pay as of May of 2000; correct?

A That's correct.

Q It was under what he was actually taking home in May of 2001; is that correct?

A That's correct.

Q And starting in August of 2001, did anything significant happen to Judge Porteous's take-home pay?

A In August of 2001, Judge Porteous had reached the Social Security cap.

Q So what would happen?

A They would quit taking Social Security out of his paycheck.

Q And his salary would go up 800, a thousand bucks, something like that?

A That's correct.

Q Same thing happen in 2002 in or about August?

A That's correct.

Q Same thing happen in about 2003 in or about August?

A That's correct.

Q Did Judge Porteous every August, to make these creditors get more than they maybe had to get, say I want to pay $1000 more a month every month to make sure these creditors get every penny they deserve?

A No.

Q Did he pay extra starting August of 2001, August 2002, August 2003 in order to make sure the creditors were whole?

A No.

Q So that was several thousand dollars more every month for -- during those periods of time; is that correct?

A That's correct.

MR. DUBESTER: Senate's indulgence.

BY MR. DUBESTER:

Q I'd like to go finally to chart 18. I'm going to have to handle one chart the old-fashioned way by showing the witness a document and catching up -- getting the document into evidence and having the witness explain it that way.

MR. TURLEY: Is the defense allowed to know what this document is?

CHAIRMAN MC CASKILL: Please stop and show the judge's team the document as you go to the witness stand.

MR. TURLEY: Thank you very much.

BY MR. DUBESTER:

Q I'm sorry we don't have the screen for this. Obviously this would be easier to see than to hear, but we'll go ahead.

Agent Horner, we've talked about the undisclosed Fidelity account; is that correct?

A That's correct.

Q And you've indicated the various types of deposit items that went into that account; is that correct?

A I have.

Q Going to -- by May of 2002, what was the account balance in that account?

A $8760.37.

Q What was his account balance in his checking account?

A $1120.91.

Q Okay. So the -- there was far more in the Fidelity account than the checking account; correct?

A That's correct.

Q And in July of -- sorry, in the next month in 2002, does the same pattern hold?

A That's correct. The balance in the Fidelity account, over $7800, and the balance in the Bank One account as of June 24 was about $857.

Q Okay. Agent Horner, if one were to look at Judge Porteous's bankruptcy petition and bankruptcy filings, is there any reference at any point anywhere to any gambling activity whatsoever by Judge Porteous?

A No.

Q I believe we found -- there we go, it's on the screen. Quickly, Agent Horner, since you described the document, what does this depict, chart 18?

A Judge Porteous's use of the undisclosed

Fidelity account to accumulate cash outside of the disclosed Bank One checking account.

Q So in the undisclosed account, cash was accumulating and the balance in this disclosed account was still kept at a low level; correct?

A That's correct.

MR. DUBESTER: That concludes the questioning. I would like to move in the financial disclosure forms for Judge Porteous for the years that have been displayed to the panel. For calendar year 1996, that would be House --

CHAIRMAN MC CASKILL: I'm going to interrupt you, Counselor. I think this is going to be more efficient to have the exhibit numbers as opposed to describing the documents. And since your case is not closed, I would like to move on to the next witness. And if you would present the list of documents by exhibit numbers that you would like to come into the record, and if, Mr. Turley, you would indicate whether or not -- to us whether or not you object to any of those, then we will deal with those.

MR. DUBESTER: Very well. Fine, thank you very much.

CHAIRMAN MC CASKILL: So we can move on to

cross-examination.

MR. TURLEY: We shall do so. Thank you, Madam Chair.

CHAIRMAN MC CASKILL: Cross-examination for Judge Porteous's team.

MR. SCHIFF: Madam Chair, just a housekeeping matter. The votes will be around 2:00. There are at least five votes. First is a 15-minute vote. The rest are all five-minute votes. Reasonably, the first 15-minute vote won't probably close for 25 minutes, if we're lucky, they will close at 25 minutes. But if you assume 30, the next five-minute votes will go fairly quickly. So that would be 50 minutes, best case. Walking to and from, I think we're talking about an hour.

CHAIRMAN MC CASKILL: Okay. Well, let's see how far we can get with this witness. We may -- we may prevail upon you to take your expert out of order.

CROSS-EXAMINATION

BY MR. O'CONNOR:

Q Good afternoon, Mr. Horner. My name is Dan O'Connor and I'm one of the attorneys representing Judge Porteous in this case.

A Good afternoon.

Q We have not spoken before; correct?

A No, we haven't.

Q As you testified earlier today, you're a lawyer?

A That's correct.

Q Have you ever practiced bankruptcy law?

A No.

Q Do you have any particular expertise in bankruptcy law?

A No.

Q What is the extent of your expertise with regard to bankruptcy?

A None. I'm not a bankruptcy lawyer and never practiced bankruptcy law.

Q Okay. Thank you. With regard to the Porteous investigation, I'd just like to establish a few background facts quickly. Mr. Dubester touched on some of this but he didn't really paint the full picture. When did you first become involved in the government's investigation into Judge Porteous?

A It was either late 2001 or sometime in 2002, something like that.

Q And what was your role in that investigation?

A I was the case agent.

Q And as your testimony so far seems to indicate, you were investigating the bankruptcy case that Judge Porteous and his late wife Carmella filed in 2001; is that correct?

A Yes, that's correct.

Q That was a Chapter 13 bankruptcy case?

A That's correct.

Q Can you briefly explain what a Chapter 13 bankruptcy case is and if it's different from other types of bankruptcy cases?

A Chapter 13 is a wage earner's bankruptcy, which is based upon a stream of income that the debtors will have during the bankruptcy period. A Chapter 7 is a liquidation bankruptcy, where they liquidate all the assets of the debtors to pay off the creditors. A Chapter 11, I think, is a business reorganization, and a Chapter 13 is a family farm reorganization, I think.

Q I think that's "Chapter 12, "is the last one?

A Chapter 12 is the family farm.

Q So really the basic distinctions for individuals is a Chapter 7 versus 13 where 13 is a repayment plan where you pay over a period of time, and Chapter 7 is a liquidation plan where you turn

over your assets and then ultimately whatever debts remain are discharged; is that correct?

A That's correct.

Q Other than with regard to Judge Porteous, have you ever been called upon as an FBI agent to investigate the conduct of a debtor in connection with a Chapter 13 bankruptcy case?

A I don't know about ever, because I don't know if I can say that bankruptcy issues have never been involved in some of my cases. But I think -- I think Judge Porteous is probably the only case that I've had where bankruptcy was a central -- you know, one of the central issues in the case.

Q So you're not a bankruptcy expert and this is the only case you've worked on where bankruptcy issues played a central role?

A Yes, that's accurate.

Q Would you describe the government's investigation of Judge Porteous as thorough?

A Yeah.

Q And after conducting a thorough, multiyear investigation of Judge Porteous, the Justice Department specifically declined to pursue any criminal charges against Judge Porteous; is that correct?

A That's correct.

Q I'd like to show you a document that the House has marked as Exhibit 4. Do you recognize this document?

A Yes.

Q Is this a May 18, 2007 letter from Department of Justice?

A Yes, to Judge Jones.

Q And this letter specifically states that the Department of Justice would not be pursuing any criminal charges against Judge Porteous; correct?

A That's correct.

Q I'd like to draw your attention to the second paragraph on the first page. That paragraph states "the Department of Justice and the FBI specifically investigated Judge Porteous in connection with a number of criminal allegations, including bribery, Honest Services fraud, false statements and bankruptcy fraud."

Is that correct?

A That's correct.

Q And notwithstanding those wide-ranging allegations and the Department of Justice and the FBI's thorough investigation, the first line of the third paragraph states, "the department has

determined that it will not seek criminal charges against Judge Porteous."

Is that correct?

A That's correct.

Q And do you see that among the reasons the Department of Justice lists for its decision not to prosecute Judge Porteous are, "concerns about the materiality of some of Judge Porteous's statements" and the "specific difficulties of proving mens rea, an intent to deceive beyond a reasonable doubt," and "the need to provide consistency in charging decisions concerning bankruptcy and criminal contempt matters"?

A That's what it says.

MR. O'CONNOR: At this time, your Honor, Defense would like to move House Exhibit 4 into the record.

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: It will be received.

(House Exhibit 4 received.)

MR. O'CONNOR: Thank you.

BY MR. O'CONNOR:

Q Mr. Horner, are you aware that Judge Porteous signed a series of tolling agreements

extending the applicable statutes of limitations for a number of criminal violations for which he was then under investigation?

A I'm aware that some tolling agreements were signed. I'm not sure how many. But yes, I'm aware that some were signed.

Q And Judge Porteous signed those tolling agreements?

A Yes, he did.

Q And those tolling agreements --

MR. SCHIFF: Madam Chair, if I could, again, this is something that I hope we'll have an opportunity to argue prior to your 2:00 vote, in terms of how much you'll allow the defense to get into prosecutorial decisionmaking.

But as we are now starting to tread on that ground, we do object that the department's decision is not relevant to whether this judge should be impeached. The standards are different. The evidence is different. In fact, I think the letter counsel is referring to refers the case for potential impeachment.

And I don't know if, Madam Chair, we need to broach this now or how far counsel intends to go. But to question this witness about why the DOJ made

its decision will intrude on that.

The final thing I would say is we have an interest in the sense that we don't think it's the same standard, same evidence or same rule to be applied in terms of prosecution versus impeachment.

The department has its own separate interest, however, in not having the internal deliberations in any investigation of the judge, the Department of Justice will have to know in the future if the decisionmaking can come out during impeachment, that they can't discuss it internally without knowing that one day it will become public.

And I don't feel like I'm in a position, frankly, to speak for the department on that very important institutional interest. But if you're going to want to hear from the department on that, then we need to make arrangement for that as well.

MR. TURLEY: Madam Chair, if you can -- if the defense could speak to this overall issue, these documents were turned over to the defense. Mr. Schiff is correct, he's not representing the Department of Justice. Department of Justice has been aware of these documents in the case.

The House just introduced years of financial disclosure forms before the bankruptcy

period because of their connection to Judge Porteous. We have an agent describing an investigation. These are documents signed by Judge Porteous.

I think it would be rather strange to introduce financial disclosure forms in prior years but not actual tolling statements signed by the judge.

CHAIRMAN MC CASKILL: Well, we've had a couple of -- we've had a talking objection that reaches far beyond the question that was asked.

I believe the question that was asked is a proper question as to whether or not this witness was aware of tolling statutes. You're going to have an opportunity to cross-examine, and I think that, you know, we are talking about different standards. We're talking about different kinds of procedures.

And this is not a typical jury that's sitting up here. These are people that are going to be able to weigh the various information that comes in front of this committee and the records that develop and decide which part of that information is relevant to their personal decisions in regards to a conviction or not -- or an acquittal on the impeachment.

So I think the question is -- I would overrule the objection to this question and would urge the parties to make it a little simpler, to try to limit their objections to the questions being asked.

And if you have a matter that is larger than the questions being asked, to bring it to the attention of the committee separate and distinct from the time that questioning is occurring.

MR. TURLEY: Thank you, Madam Chair.

MR. SCHIFF: Thank you, Madam Chair. May I ask one last question, though, in terms of the -- I think you mentioned we're going to have a 2:00 vote on the department witnesses.

Will the chair want to hear from the department on their institutional interests and their internal deliberations?

CHAIRMAN MC CASKILL: Well, there has been a motion to subpoena a member of -- someone who works at the Justice Department. And that motion will be voted on by the committee. And we will vote on that motion at 2:00.

MR. SCHIFF: There will be argument on that motion, Madam Chair?

MR. TURLEY: Madam Chair, if the defense

can also just point out, the Department of Justice is fully aware of these documents and has not presented anything thus far. I'm surprised at this point Mr. Schiff, after giving a speaking objection, is saying that they want to be heard.

I'm not aware of that, in terms of this material being turned over. But I can't imagine why my client signing tolling agreements in these documents would be kept out. I mean, I can't imagine how that reveals something secret about prosecutorial discretion. He signed tolling agreements. He's not a prosecutor --

MR. SCHIFF: Madam Chair, I'm not objecting to the tolling agreements. What I am asking, if the Senate committee intends to make a ruling on -- at 2:00 on whether certain witnesses can be called, will the committee want to be -- hear argument on that motion, and in particular, we're obviously available to make argument on that.

But will the chair want to hear argument from the department, in which case --

CHAIRMAN MC CASKILL: We don't intend to hear any further oral arguments on this motion.

MR. SCHIFF: Thank you, Madam Chair.

MR. TURLEY: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: And the letter that the Justice Department sent to the committee is now part of the record.

MR. O'CONNOR: Thank you, Madam Chair.

BY MR. O'CONNOR:

Q Mr. Horner, let's go back just briefly and make sure we're back on the same page.

A Okay.

Q So Judge Porteous signed a series of tolling agreements; is that correct?

A I know he signed some tolling agreements, but I don't know how many.

Q Okay. And with regard to the tolling agreements, are you aware that those tolling agreements tolled the statute of limitations for a number of crimes, including bankruptcy fraud, bribery, criminal contempt, false statements and honest services mail and wire fraud?

A I don't know that, but if you're reading them, then I would assume that's true.

Q Let me show you one and see if that helps. I'd like to introduce Porteous Exhibit 1003. Have you seen this document before?

A No.

Q If you'll take a look at it, is this a

tolling agreement that was signed by Judge Porteous in April 2006?

A Well, it's signed by Judge Porteous in April of 2006, but I haven't had a chance to read to see what it is.

Q Okay. I'll represent to you this is a tolling agreement signed April 2006 by Judge Porteous that tolls the statute of limitations for a number of criminal crimes, including bankruptcy fraud.

A Okay.

Q I'd like to introduce Porteous Exhibit 1004. Have you seen this document before?

A No.

Q We can go to the second page. Does this appear to be a tolling agreement signed by Judge Porteous June 22, 2006?

A You know, again, it's signed by Judge Porteous, but I haven't read it, so I'll assume it's a tolling agreement.

Q All right. I'd like to show you one more and see if you've seen this one. I'd like to introduce Porteous Exhibit 1005. Does this appear to be a tolling agreement signed by Judge Porteous in October 2006?

A Yes, with the same assumption.

MR. O'CONNOR: Madam Chair, at this time, the Defense would like to move Porteous Exhibits 1003, 1004 and 1005 into the record.

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: Will be received.

(Porteous Exhibits 1003, 1004 and 1005 received.)

BY MR. O'CONNOR:

Q Mr. Horner, who requested that Judge Porteous sign these tolling agreements?

A Well, I was not a part of this process, so I don't know if, you know, the department requested it or if Judge Porteous's attorneys requested it. I really don't know.

Q In your experience, do defense attorneys typically request to sign agreements to extend statute of limitations?

A Well, I have had a case where defense attorneys have signed tolling agreements to extend statutes of limitations in cases, yes.

Q Do you have any reason to believe that's what happened in this case?

A I have -- I really don't know what happened.

Q Okay.

A Okay.

Q During direct examination, the House asked you about a number of different allegations in connection with the Porteous' bankruptcy case. I'd like to return to those. First, the House's questions are entirely premised on the fact that a marker is a debt. Would you agree with that statement?

A Okay. Repeat that question.

Q So the House's statements asked to go through various portions of the bankruptcy statements that Judge Porteous filed. And in connection with those questions, House counsel asked you whether certain prepetition payments to creditors were made or certain unsecured creditors were not listed on bankruptcy statements.

In order for that to have been the case, a marker must be a debt. Is that true?

A Well, that's a lot there. But generally, yeah, that's true.

Q Now, you've testified that in connection with your investigation of Judge Porteous, you investigated casino records and casino markers; correct?

A Yes.

Q And in connection with that investigation, did you speak with Vincent Schwartz, the comptroller of the Treasure Chest Casino in Kenner, Louisiana?

A Yes, I did.

Q Do you recall when you spoke with him?

A Oh, boy. No.

Q Would it have been June 2003?

A I'm assuming you're reading from the 302, so --

Q Let me see if I can refresh your recollection. I'd like to pull up a 302 report. Have you seen this document before?

A Yes.

Q Who prepared this document?

A I would assume that I did.

Q Why do you say that?

A Well, because I remember interviewing Mr. Schwartz, but I mean, I haven't seen this 302 in probably six years.

Q I'd like to direct your attention to the third paragraph, which begins "Porteous usually used markers when he played at the Treasure Chest Casino."

Do you see that paragraph? If you would,

I'd like you to read out loud the second sentence in that paragraph which begins "Schwartz explained."

(Witness reviewed the document.)

A Okay.

Q Would you mind reading that out loud?

A "Porteous usually used markers when he played at the Treasure Chest. Schwartz explained a marker is a temporary check from Porteous's checking account. If Porteous does not repay the marker, the Treasure Chest will negotiate the marker. Porteous has 30 days to repay any marker."

Q Thank you. And so from this statement, Mr. Schwartz was explaining to you that a marker is a check; is that correct?

A Yes.

Q And so according to the Treasure Chest Casino, markers are treated as checks?

A Well, it's a check that's used to pay a debt owed to the casino.

Q But the marker is a check?

A Yeah, the marker is a check and they use it to pay the credit that's owed.

Q And the advantage of treating a marker as a check is that the marker can then be directly deposited in a bank account; is that correct?

A Yeah, that's correct.

Q And is there a term for that, when that process occurs, when a marker --

A A casino -- they usually say they drop the marker.

Q They drop the marker, means they negotiate the marker?

A Right.

Q And they effectively submit it to the bank and in return are paid just like a check is normally honored by a bank?

A That's correct.

Q Also, are you aware that a number of the judges in the 5th Circuit who considered whether to discipline Judge Porteous specifically addressed whether markers constitute checks and not debt?

A No.

Q I'd like to show you a document that's been marked by the House as Exhibit 6(b). Do you recognize this document?

A No.

Q I'd like to go ahead to page 39 of House Exhibit 6(b).

A Is this the dissenting opinion from the 5th Circuit?

Q Yes, it is.

A Okay.

Q And this is page 39 of House Exhibit 6(b). In the middle of the page do you see the sentence that states, "under Louisiana law, markers are considered checks as defined by Louisiana statute"?

A Yes.

MR. O'CONNOR: Madam Chair, at this time, the Defense would like to move House Exhibit 6(b) into the record.

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: Will be received.

(House Exhibit 6(b) received.)

BY MR. O'CONNOR:

Q Mr. Horner, with regard to the calculation of gambling losses, House counsel introduced a chart and asked you to discuss it. Do you recall that?

A Yes.

Q And you testified that you had calculated gambling losses in the year preceding the Porteous' bankruptcy as approximately $12,000; is that right?

A That's correct.

Q And you also said that you calculated in that same period of time that Judge Porteous had winnings of at least $5312.15; is that correct?

A That's correct.

Q Now, those figures are based on your review of casino records, including marker transactions; is that right?

A That's correct.

Q So the figures that are in that chart are only as good as the records that you were able to receive from those casinos; is that correct?

A That's correct.

Q And you've testified before that casino records are, quote, very confusing; is that right?

A Yes, they can be.

Q You'd agree generally casino records are tough to discern exactly what's happening in them?

A Yeah, they can be. They have a bunch of abbreviations and things like that. So yeah, they can be hard to read at times.

Q You've also testified that casino records contain certain nuisances; is that right?

A Yeah.

Q Now, the figures that were on that chart with regard to the calculation of gambling losses versus winnings, those figures do not include cash transactions; is that correct?

A That's correct.

Q That's as a result of the fact that the only information you had on that chart was reflected in rated play; is that correct?

A That's correct.

Q And you also testified earlier that while Judge Porteous was a rated player, he wasn't well known at the casinos that you went to in order to collect documents and information, and often would gamble without being recognized and wouldn't have, quote, rated play; is that right?

A Well, he was fairly well known at Treasure Chest, because he played there a lot. But, you know, a lot of the other casinos like Beau Rivage, casinos on the Gulf Coast, he was not a known player, so he could have went in there, played and not have been rated. So that would have not been recorded or reflected in the records.

Q So the wins or losses that came out of that play would not be recorded in the records and wouldn't be recorded in your chart; is that correct?

A That's correct. The only thing I had to go on was what was in the records.

Q So just as an example, if Judge Porteous had gone into a casino, let's say the Beau Rivage, one where he was not particularly well known, and he

had $200 in cash in his pocket when he started and he left with $1000, he would have winnings that there was no way that you would have known about and would not have been reflected in that chart; is that correct?

A That's correct.

Q So ultimately, is it possible that in the year preceding Judge Porteous's bankruptcy, he, in fact, had net gambling winnings because he had significant winnings that were not recorded in the information you were able to collect?

A Well, I mean, that's possible. But he didn't report any gaming winnings on his tax return.

Q But it's possible?

A It's possible.

Q Mr. Horner, there was a series of testimony when Mr. Dubester was asking you questions with regard to a Fidelity Homestead money market account; is that correct?

A That's correct.

Q Do you know the balance of that account on March 28, 2001, the day that Judge Porteous filed his bankruptcy?

A I think it was like $200 or something like that.

Q It was about $200.

A On March 28. I think that's what he reported, or that's what we -- when we did an analysis, I think it was about $200.

Q And, in fact, for the committee's benefit, I can cite the committee to stipulation 230, where the parties were able to agree to the actual balance in that account. And it is effectively $283.42.

A That sounds familiar.

Q Mr. Horner, you've testified earlier there was a series of documents that were presented to you and you said Judge Porteous signed these documents; is that correct?

A That's correct.

Q So you're familiar with his signature; is that correct?

A Yes.

Q You can recognize it?

A Generally I can recognize it.

Q I'd like to show you a document that's been marked by the Porteous defense team as Porteous 1100(b). While this pulls up, this is the original petition Judge Porteous filed on March 28, 2001.

I'd like to go to the second page. Do you see the signature there?

A Yes.

Q Is that Judge Porteous's customary signature?

A I would say no.

Q Why would you say that?

A Because usually you can read -- you can kind of read Gabriel, and usually the B is a little more pronounced. This signature is a little shorter than when he signs Gabriel Thomas or Gabriel T. Porteous. This is a little shorter, and you really can't read Gabriel. I mean, you really can't read anything on it.

So I would say no, it's not a typical signature of his.

CHAIRMAN MC CASKILL: I think you may mean P, not B.

THE WITNESS: P, that's correct, yes.

BY MR. O'CONNOR:

Q I'd like to move on to -- there was a chart Mr. Dubester showed you about markers for a period of time in 2002. Do you recall that?

A Okay. Repeat that.

Q There was a chart Mr. Dubester showed you that listed a number of markers from 2002. Do you recall that chart?

A Yes.

Q And I just want to make clear for the record that the majority of the markers that were listed on that chart were redeemed the very same day that they were executed; is that correct?

A Can you show me the chart again?

Q You know, I don't have it. House counsel is the one putting that up.

You may be able to answer the question just generally. I think you testified before when we went through the chart certain markers were taken out and there was discussion as to how many of those were redeemed on the same day.

A Okay.

Q And is it your understanding that the majority of them were, in fact, redeemed on the same day?

A I wish I could see the chart to know. But, I mean, a lot of time -- I mean, sometime he would redeem markers on the same day that he played, so --

Q Frequently he would do that?

A Yeah. I mean, occasionally. I mean, he gambled a lot, so sometimes he'd repay the markers the same day, a lot of times he'd walk out owing the

casino some money. So it's really kind of hard to say.

SENATOR RISCH: Madam Chairman, would this be a good time to break? We have a meeting we're late for already.

CHAIRMAN MC CASKILL: I am hopeful we can finish this cross. We're scheduled to go until 1:00.

How much more do you have, Counselor?

MR. O'CONNOR: I can be brief. Is it just a few minutes to 1:00?

CHAIRMAN MC CASKILL: It is.

MR. O'CONNOR: May be a few minutes more than 1:00.

CHAIRMAN MC CASKILL: We will adjourn until 2:00.

(Whereupon, at 12:59 p.m., the proceedings were recessed, to be reconvened at 2:00 p.m. this same day.)

AFTERNOON SESSION (2:08 p.m.)

Whereupon,

DE WAYNE G. HORNER

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

CHAIRMAN MC CASKILL: We will begin by continuing the cross-examination of this witness.

MR. O'CONNOR: Thank you, Madam Chair.

CROSS-EXAMINATION (Continued)

BY MR. O'CONNOR:

Q Mr. Horner, I just have a few quick questions for you. Did you have occasion to meet with the Chapter 13 trustee, Mr. S.J. Beaulieu, who administered the Porteouses's bankruptcy case?

A Yes.

Q When did you meet with him?

A A number of years ago.

Q Would it have been January 2004? Does that sound right?

A I mean, that's probably correct.

Q Who else attended that meeting?

A There was some public integrity folks and another agent. I can't remember who it was. But do you have the 302? If you have --

Q I do. I can show it to you if that would help.

A Yes.

Q If we can go ahead and turn on the projector and pull up what's been marked Porteous Exhibit 1106.

Do you recognize that document?

A Yes.

Q And is that the 302 of your January 2004 meeting with S.J. Beaulieu?

A Yes.

Q Can you tell from that who else attended the meeting?

A Another agent, Pat Boer, a financial analyst, Jerry Fink, and then public integrity attorneys Noah Bookbinder and Dan Petalas.

Q A number of people from the Department of Justice as well as the FBI?

A Yes.

Q What did you discuss in your meeting with Mr. Beaulieu?

A Oh, boy. I mean, I'd have to review the 302. It's been six years since I've seen it.

Q Maybe we can step back. Do you recall where the meeting occurred?

A I think it was at his office.

Q How long did it last?

A Oh, boy.

Q Roughly, was it an hour, two hours, a whole day?

A I'm sure it was more than an hour, and probably around two hours or something like that.

Q Okay. Well, in that meeting, did you describe in detail the various allegations of errors and omissions and misconduct in connection with the Porteous's bankruptcy case that you were investigating?

A What I did was we asked him questions about certain things that Judge Porteous did in his bankruptcy. We didn't describe them as, you know, the terms that you used, okay, because, you know, we weren't going to reach -- I mean, we weren't going to tell him those types of conclusionary -- or interview him with those conclusionary words.

So we just asked him, you know, about the things that Judge Porteous did, and he answered the questions. I mean, we didn't reach the conclusions about, you know, the words that you described in your question.

Q So do you recall now what specific issues

you raised with Mr. Beaulieu?

A Well, I'm sure it was, you know, the amount in the Bank One account, probably the omitted Fidelity account, the false name and probably -- probably, you know, most of the things that I testified about, I'm sure that we asked him about.

Q So effectively everything that the House has asked you about today would have been the issues you would have discussed with Mr. Beaulieu back in 2004?

A I mean, in essence, yes, we'd have talked to him about those.

Q When you met with Mr. Beaulieu, the Porteous' bankruptcy case was still pending, it was still open; is that right?

A That's correct.

Q Now, are you aware that following your meeting with Mr. Beaulieu, he had one of the attorneys that worked for him send you a letter, advising you that he did not take -- intend to take any action in connection with the Porteouses' bankruptcy case as a result of the allegations that you brought to him?

A Okay. You're going to have to repeat that.

Q Sure. Well, do you recall receiving a letter from Mr. Beaulieu following your meeting?

A I recall receiving a letter, but I'm -- I can't remember if it was from Mr. Beaulieu or not.

Q Well, let me go ahead and show you what's been marked as Porteous 1108. Do you recognize this letter? Is that letter addressed to you, Mr. Horner?

A Yes. It's been a long time since I read it.

Q Does that appear to be a letter from one of the attorneys who represented Mr. Beaulieu to you?

A If you can go to the next page. Yes. Yes, it does.

MR. O'CONNOR: Madam Chair, we would like to move Porteous 1108 into the record.

MR. DUBESTER: We object. It's a hearsay document from a third person that Agent Horner happened to receive.

MR. O'CONNOR: It's a letter from Mr. Beaulieu to Mr. Horner. He just testified he received it and recalls it and it specifically discusses the meeting --

CHAIRMAN MC CASKILL: For what purpose is

it being offered?

MR. O'CONNOR: It goes to the fact that the meeting occurred.

CHAIRMAN MC CASKILL: Is it being offered for the truth of what's contained in the letter? Are you impeaching the witness with it? Are you refreshing his recollection?

I think you have the right to certainly use the letter to refresh his recollection about what he learned about this incident. But if you're offering it for the truth of the matters asserted in there, it's a little more problematic.

MR. O'CONNOR: We certainly are using it to refresh his recollection. Mr. Horner testified he recalled receiving the letter but he doesn't recall the contents of it. So yes, we're of course using it for that.

CHAIRMAN MC CASKILL: Why don't you establish a foundation about what's in the letter that you think is relevant, and then we'll offer it again.

BY MR. O'CONNOR:

Q Mr. Horner, this is a letter that you received from an attorney representing Mr. Beaulieu; is that correct?

A That's correct.

Q And this letter describes Mr. Beaulieu's position with regard to the issues you discussed with him when you met with him in 2004; is that correct?

A I'd have to read the letter first.

Q Go ahead and please take a quick read.

CHAIRMAN MC CASKILL: Counsel, is the author of the letter going to be a witness?

MR. O'CONNOR: At this point we believe the author of the letter likely will not be a witness because it was a staff attorney who represented Mr. Beaulieu. But Mr. Beaulieu will be appearing as a witness in this case.

CHAIRMAN MC CASKILL: Who is the letter from?

MR. O'CONNOR: The last name of the attorney who wrote the letter is Mr. Adue, Michael F. Adue.

CHAIRMAN MC CASKILL: From Mr. Beaulieu's law office?

MR. O'CONNOR: Yes.

CHAIRMAN MC CASKILL: I'm going to allow the letter to come in. You're going to have an opportunity to cross-examine the lawyer that this

lawyer worked for, and we're not going by strict hearsay rules in this trial, obviously, on both sides. So I will allow the letter.

(Porteous Exhibit 1108 received.)

MR. O'CONNOR: I appreciate that, Madam Chair.

BY MR. O'CONNOR:

Q Mr. Horner, do you recall that the Department of Justice responded with a letter to Mr. Beaulieu following receipt of this letter?

A I don't recall that.

Q Let me show you what's been marked as Porteous 1109. Would you please take a look at that and tell me if you recognize it?

(Witness reviewed the document.)

A I'm not sure that I've ever received that letter.

Q Mr. Horner, can I direct your attention down to the cc line on the bottom left?

A Okay.

Q Does it say special agent DeWayne Horner, FBI, cc?

A Okay, then I did receive it.

Q Okay. And this letter discusses the Department of Justice, obviously they were aware of

the fact that these conversations had happened and that Mr. Beaulieu had his attorney send a letter to the Department of Justice reciting what his position was with regard to the allegations that you had discussed in your earlier meeting; is that correct?

A Right. I think what Mr. Beaulieu was asking us to provide him was in the interview, as a result of the questions that we were asking him, Mr. Beaulieu, you know, surmised that there were some problems with the bankruptcy, but he wanted us to provide him with evidence that he could use.

And I think the position of the Department of Justice was that, you know, if you learned something through the questions that we ask you, you know, you have to take your own steps, that we can't provide you with evidence and documents and things like that, you have to ask in your own questions, get your own records and take your own course of action.

I think this is what the issue was.

Q And ultimately, Department of Justice sent back the letter, saying that they wouldn't be providing any additional information to Mr. --

A Right. They said, you know, we can't give you any of our evidence. You know, if you think

that he had additional money in his Bank One account or, you know, the bankruptcy was filed under a false name, you know, you have to investigate that yourself, you're the trustee.

MR. O'CONNOR: Okay. Madam Chair, I would like to move this document into the record, this is Porteous Exhibit 1109.

MR. DUBESTER: No objection.

CHAIRMAN MC CASKILL: No objection, it will be received.

(Porteous Exhibit 1109 received.)

BY MR. O'CONNOR:

Q Just have a couple quick questions here at the end, Mr. Horner. With regard to the financial disclosure statements, first, are you familiar with the articles of impeachment against Judge Porteous?

A Yes.

Q And those articles do not allege improprieties in connection with the financial disclosure forms that Judge Porteous filed while a federal judge; is that correct?

A That's correct.

Q There was some testimony earlier with regard to filing proofs of claim. Is it fairly common for creditors to fail to file a proof of

claim in a bankruptcy case?

A You know, as far as I know, I think it is pretty common, where creditors don't file claims for whatever reason, maybe if they don't, you know, feel that there's enough fight over, whatever, they probably won't file a claim.

Q Thank you. With regard to the FICA effect, Mr. Dubester testified that the FICA effect could be as much as a few thousand dollars a month. That's not correct, is it? The FICA effect might be more like a few hundred dollars a month?

A If I remember right, I think in Judge Porteous's case, his monthly salary increased about $800 a month.

Q So certainly not thousands of dollars a month?

A No, not thousands.

Q And the trustee was free to move to amend the plan to attempt to get additional income into the Chapter 13 repayment plan at any time; is that correct?

A That's correct.

Q And he didn't do that?

A No, he did not.

Q The last question I have for you is with

regard to the Beau Rivage markers. Do you know whether the redemption of the Beau Rivage markers in April of 2001, using exempt assets from Judge Porteous's IRA account, is improper under bankruptcy law?

A Okay. Rephrase that question.

Q Sure. You testified earlier that there were some markers at the Beau Rivage that Judge Porteous redeemed in April 2001 using some money from his IRA account?

A That's correct.

Q Do you know whether the redemption of those markers using funds from his IRA account is improper under bankruptcy law?

A I don't know that. I don't know one way or the other.

MR. O'CONNOR: Thank you, Mr. Horner.

We have no further questions at this time.

REDIRECT EXAMINATION

BY MR. DUBESTER:

Q Okay. Agent Horner. Putting aside the lawfulness of what funds were used to repay the markers, as far as that -- as far as Judge Porteous's repayment of his debt to the Beau Rivage by running a check -- by running an IRA check

through Ms. Danos's account, would it be true that if anybody looked at any of Judge Porteous's Fidelity account or his Bank One account, no one would ever see that he had taken out credit within just a few days of filing for bankruptcy?

MR. TURLEY: I'm sorry, was that a question? Because it seemed like he was -- counsel again was testifying.

CHAIRMAN MC CASKILL: What's your objection?

MR. TURLEY: That's testimony. He's not asking a question.

CHAIRMAN MC CASKILL: Rephrase the question.

BY MR. DUBESTER:

Q As to the repayment of the markers at the Beau Rivage, did that go through either Judge Porteous's personal Bank One checking account or his Fidelity account?

A No.

Q Okay. Now, you have been used as a sounding board probably by both counsel a little bit to have documents presented in front of you. The defense counsel has asked you about some very specific documents. I'd like to just show you some

other portions of those same documents.

First, I'd like -- you were asked about a definition of a marker which shows up in the dissent of the 5th Circuit opinion.

I'd like to show you the majority opinion on this very topic and ask you to identify what is stated in that document.

Showing you now what is marked as House Porteous Exhibit 5, which is the majority opinion in the 5th Circuit opinion regarding Judge Porteous.

Do you see that in front of you?

A I do.

MR. DUBESTER: We move the -- we move that House Exhibit 5 into evidence.

MR. TURLEY: No objection.

(House Exhibit 5 received.)

BY MR. DUBESTER:

Q I'd like to draw your attention to page 18 of that opinion, and going into page 19 in the section which starts "impermissible debt" and ask you to start reading where it isn't highlighted, "B_impermissible debt."

A It says, "Porteous was explicitly warned by the Chapter 13 trustee, S.J. Beaulieu, his own attorney and Judge Greendyke that he could not incur

debt while in bankruptcy. Examples of incurring debt would include credit cards, including credit cards not disclosed to the trustee, and taking out gambling markers. A gambling marker is a form of credit."

Q Okay. And there's a reference to a footnote 10. I'd just ask you to read footnote 10 out loud.

A Footnote 10. "A gambling marker is a form of credit extended by a gambling establishment, such as a casino, that enables a customer to borrow money from the casino. The marker acts as the customer's check or draft, to be drawn upon the customer's account at a financial institution, should the customer not repay his or her debt to the casino.

"The marker authorizes the casino to present to the bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time.

"Porteous testified that this definition of a marker was accurate."

Q And then there's a cite to his 5th Circuit testimony; is that correct?

A That's correct.

Q Okay. So now let's go to that 5th Circuit

testimony. I'd like to show you a portion of Exhibit 10, Judge Porteous's 5th Circuit testimony, starting on page 64, line 13, and ask -- I'll read it to you, and ask if I'm accurately reading it.

Before I do that, were you present at that hearing?

A Yes.

Q Did you hear the examination of Judge Porteous at that hearing?

A Yes.

Q Okay. Starting at line 13, Judge Porteous is asked the following:

"Question: Would it be fair to state that 'a marker is a form of credit extended by a gambling establishment, such as a casino, that enables the customer to borrow from the casino? The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution, should the customer not repay his or her debt to the casino, the marker authorizes the casino to present it to the financial institution or bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time.' Is that accurate?

"Answer: I believe that's correct and

probably was contained in the complaint or -- or the second complaint. There's a definition contained.

"Question: And you have no quarrel with this definition?

"Answer: No, sir."

Did I accurately read the transcript?

A Yes.

Q And were you there or was that the testimony which was given?

A Yes.

Q And according to that testimony, had Judge Porteous been given that definition even in advance of the 5th Circuit hearing?

A Yes.

Q Okay. Now, you've also been read by Judge Porteous's lawyers a portion of the Department of Justice's complaint letter to the 5th Circuit. Do you recall being asked about that document in your cross-examination?

A Yes.

Q And you were read a paragraph -- this document is in evidence. You were -- recall being read the second paragraph on the cover page?

A Yes.

Q I'd like to start by reading other

materials from that letter, starting at the very bottom of that first page with the words "the department."

Just read along as I read. "The department also gave careful consideration, as it must, to the availability of alternative remedies for Judge Porteous's history of misconduct while on the bench, including impeachment and judicial sanctions administered pursuant to 28 USC sections 351 to 64.

"Despite the department's decision not to charge Judge Porteous with violations of federal criminal law, the investigation has uncovered evidence of pervasive misconduct committed by Judge Porteous.

"The department also is aware that Judge Porteous and his medical examiners have concluded that he is mentally and psychologically unfit to serve as a federal judge and that his incompetence is permanent.

"Collectively the evidence indicates that Judge Porteous may have violated federal and state criminal laws, controlling canons of judicial ethics, rules of professional responsibility and conducted himself in a manner antithetical to the

constitutional standard of good behavior required of all federal judges.

"Further, it has come to the department's attention that Judge Porteous is scheduled to return to the federal bench in June 2007, at which time he may seek to preside over matters involving the department. The department accordingly refers this evidence to your Honor for possible disciplinary proceedings and, if warranted, certification of the allegations to Congress for impeachment."

Did I read that correctly?

A Yes.

Q And just one final excerpt, Senators. I'd like to go to page 22 of that document, "Conclusion," and ask if this is what the department also wrote in its letter to Chief Judge Jones.

"Conclusion. As noted earlier, issues of statute of limitations, the materiality of the alleged false statements, the government's twin burdens of proof and unanimity at trial and the availability of alternative remedies persuaded the department that criminal prosecution was not warranted. The results of the FBI's investigation into allegations of misconduct concerning Judge Porteous, however, raise serious doubts about his

suitability for office under the constitutional standard of good behavior on which that service is contingent.

"The instances of Judge Porteous's dishonesty in his own sworn statements and court filings, his decade long course of conduct in soliciting and accepting a stream of payments and gifts from litigants and lawyers with matters before him and his repeated failures to disclose those dealings to interested persons and the Court all render him unfit as an Article III judge.

"Based on the evidence of pervasive misconduct described herein, the department respectively submits this complaint for any further action your Honor may deem warranted."

Did I read that correctly?

A Yes.

MR. DUBESTER: I have no further questions of this witness.

MR. TURLEY: Madam Chair, we just have a very brief recross.

RECROSS-EXAMINATION

BY MR. O'CONNOR:

Q Mr. Horner, I just have one question for you. Isn't it true that reasonable minds, including

federal judges in the 5th Circuit, disagree with regard to whether markers constitute checks or debt?

MR. DUBESTER: I object.

CHAIRMAN MC CASKILL: Basis for your objection?

MR. DUBESTER: This calls for a question that this witness cannot answer.

MR. O'CONNOR: I believe this witness can specifically answer this now that he's seen both the majority and dissenting opinions in connection with Judge Porteous's appearance before the 5th Circuit.

CHAIRMAN MC CASKILL: I think you're asking him to comment on the evidence that's been admitted into the record. Are you establishing him as an expert witness in the area of bankruptcy?

MR. O'CONNOR: I am not.

CHAIRMAN MC CASKILL: Creditor/debtor law?

MR. O'CONNOR: I'm simply asking the witness whether he is aware that there are differing positions among jurists, especially in the 5th Circuit, the issue as to markers --

CHAIRMAN MC CASKILL: I'm going to sustain the objection. You have an expert witness coming on bankruptcy?

MR. O'CONNOR: We do. We'll withdraw the

question.

CHAIRMAN MC CASKILL: You have a great opportunity for cross-examination on that issue with that, Counselor.

MR. O'CONNOR: We'll withdraw the question.

CHAIRMAN MC CASKILL: Thank you.

Any questions of the witness by the panel?

Yes, Senator?

EXAMINATION

BY SENATOR RISCH:

Q Briefly. Mr. Horner, I don't have the document in front of me, but you had testified regarding the box that the judge X'd on the bankruptcy, which said that he hadn't had any losses, I think, from fire or a number of things that ended with gambling.

A Right.

Q Do you recall that testimony?

A Yes.

Q And counsel for the defense got up and went through that it was possible that his net over the year could have been a win as opposed to a loss, since you only looked at the records that they kept.

Is that a fair characterization of the

cross-examination?

A Yes.

Q You know, it seems to me, as I read that, that there's good reasons why that question is asked on the bankruptcy form, and it seems to me that they don't ask about a net gain or loss, it just says have they had losses.

So if he won and he lost, regardless of what the net result is, the answer to that question should have been yes. Is that a fair statement?

A Yes, because I think the specific question asks for gross gaming losses or words to that effect.

SENATOR RISCH: Thank you, Madam Chair.

EXAMINATION

BY SENATOR BARRASSO:

Q Agent Horner, if I could, you testified that Judge Porteous filed his March 28, 2001 bankruptcy under a false name; is that correct?

A That's correct.

Q So I believe that the documents related to that bankruptcy was filed by, was it G.T. Ortous, O-r-t-o-u-s, and C.A. Ortous? Is that correct?

A That's correct.

Q Okay. And is it your understanding that

Judge Porteous signed his bankruptcy filing under penalty of perjury as G.T. Ortous?

A Well, I think, you know, the signature is not his typical signature. So I think he was trying to, you know, sign it in such a fashion that you probably couldn't read Gabriel Porteous.

Q In your view of other Judge Porteous's financial records, did you ever see that name, G.T. Ortous, on any other of those documents?

A No.

SENATOR BARRASSO: Thank you.

Thank you, Madam Chairman.

CHAIRMAN MC CASKILL: Any other questions from the other Senators?

The witness can be excused.

Thank you, sir, for your cooperation.

THE WITNESS: Thank you.

(Witness excused.)

CHAIRMAN MC CASKILL: We are going to now adjourn to our committee room for a closed session for a vote, and then we will come back and hopefully by the time we come back, in about 15 minutes, the Congressmen -- could anybody tell us whether the votes have begun in the House? They have? Okay.

MR. DAMELIN: Madam Chair, I have an

e-mail from Mr. Schiff's assistant and he indicates, just a rough estimate, that they hope to be back between 2:50 and 3:00.

CHAIRMAN MC CASKILL: 2:50 and 3:00. Okay. So that we can give you all time to work on things and consult with witnesses, we will not reconvene in the hearing until 3:00, but the committee needs to come back to the -- I don't want to say chambers, the committee room behind the committee room for a closed session.

(Closed session follows.)

OPEN SESSION CONTINUED

CHAIRMAN MC CASKILL: We will reconvene now, because I can see our colleagues have returned from their votes.

Before we begin the next witness, there are a number of us that probably would have participated in the wreath ceremony they're having on the Capitol steps right now in remembrance of the victims of 9/11. And so if you all would indulge us, because we feel that taking the time to go over there would be disruptive to all of you, so if we would all pause for a moment of silence to give honor to all of the families and the loved ones and friends of those who lost their lives on that day.

(Moment of silence.)

CHAIRMAN MC CASKILL: Thank you very much.

The House may call its next witness.

MR. SCHIFF: A quick issue with the chair before we proceed. The witnesses have been sequestered. Now that Agent Horner has testified, he's not on the defense list, it would be helpful to the House to have the agent remain so we can consult with him, because no one has a longer institutional case than the agent. If that would be appropriate to the chair.

MR. TURLEY: We have no objection.

CHAIRMAN MC CASKILL: That would be fine.

MR. SCHIFF: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: Thank you for asking.

MR. SCHIFF: The House calls Claude Lightfoot.

CHAIRMAN MC CASKILL: The House now has nine hours and 57 minutes remaining in their case, and Judge Porteous has 12 hours and 24 minutes remaining in their case.

Whereupon,

CLAUDE C. LIGHTFOOT, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: You may sit down, thank you.

THE WITNESS: Thank you.

CHAIRMAN MC CASKILL: Counsel, you may proceed.

MR. GOODLATTE: Thank you, Madam Chairman.

DIRECT EXAMINATION

BY MR. GOODLATTE:

Q Would you please state your full name for the record.

A Claude C. Lightfoot, Jr.

Q Where did you go to school?

A Went to Loyola University undergraduate and University of New Mexico, master's in English. I studied at Tulane toward a PhD in English, then -- I was an English teacher, and I went to law school in mid -- early to mid-'80s.

Q Prior to your becoming an attorney, you taught English?

A Yes, sir, that's correct.

Q And how long have you been in the practice of law?

A Since 1987, I believe.

Q What is your area of practice?

A Since about 1990, it's been almost exclusively bankruptcy.

Q This is in the city of New Orleans?

A Yes, sir.

Q And are you with a firm?

A I had a partner until '95, but I've been on my own since then.

Q Was Judge Porteous a client of yours?

A He was.

Q When did he contact you?

A It would have been the summer of 2000.

Q Why did he retain you?

A Initially, it was to attempt a workout with various credit card creditors, to avoid a bankruptcy to see if we could find a way to borrow money against his house to fund a payment that all of those creditors would accept.

Q And can you explain what you do as a part of that process?

A Well, the way I went about that is --

Q What's that called, first of all?

A A workout outside a bankruptcy. I guess they might have other terms, but it was a proposal to partially pay the debts and to achieve satisfaction of those debts through offering -- offering what the creditors would have gotten, had there been a bankruptcy. So for me to commence on that endeavor, I would solicit and get all of the debt and asset information, just as though I were preparing for the bankruptcy in this case, my analysis would have been had it been a Chapter 7 bankruptcy, I wanted to know exactly what creditors could have expected in a Chapter 7 bankruptcy from the assets that were available.

Q Did you know Judge Porteous before you undertook the representation?

A No, sir.

Q Did you know of his background? Did you know of him?

A I knew that he was a judge, and some maybe 15 years ago I had an appeal that was allotted -- a bankruptcy appeal allotted to Judge Porteous. But the -- I was the appellee. Appellant dismissed the appeal so it never did come to fruition, I never did meet the judge at that time.

Q This was a bankruptcy case?

A This was a bankruptcy case, probably 10 years before, maybe in 1990, early '90s.

Q I think it's already established in the record, Judge Porteous did not become a federal judge until 1994, so it would have been sometime after that?

A Sometime after that.

Q All right. And how did you go about trying to achieve the workout that you just discussed?

A Well, I gave the judge a set of worksheets to gather all of the information on all of the debts and all of the assets. I probably got a check stub at that time and to see what the income was, and then I analyzed the -- I think we next got a fresh

valuation on his home.

The two vehicles that he had were leased, so they didn't really come into play since they were not owned. And I analyzed what would come to creditors if this were a Chapter 7 case. And then I made a -- a letter with a proposal to all of these unsecured credit card creditors, showing them what they would get and asking if they would accept a global settlement where each would receive a pro rata share of money that would have been borrowed against the house.

In other words, it would have been funded by an additional mortgage against the judge's house.

Q What kind of information do you call for in order to accomplish that from the debtor?

A I had to get everything as though I was going to do a bankruptcy case at that moment. Because in order to do the analysis, I had to have everything that existed about assets and debts so that I could complete the analysis to make that proposal.

Q And did Judge Porteous fill out the worksheets?

A He did.

Q And did the worksheets indicate any

indebtedness to any casinos?

A No.

Q If there were debts owed to casinos, should that have appeared on the worksheets?

A I would have expected all debts, regardless of who -- even if it was to someone's mother-in-law, I'm looking for all of the debts, whether it be a gambling debt or any kind of debt.

Q Was the effort of the workout successful?

A It wasn't.

Q Was a decision made to file for bankruptcy?

A Ultimately, when we got no response to the workout offers, that I had been following up, this is a period of some months I had been pursuing by telephone the large packages to each creditor I sent out. And it's very difficult to get anyone on the phone, couldn't get any answers, certainly couldn't get the lion's share of the creditors accepting any proposal at all.

And so ultimately, then, we had to consider the Chapter 13 bankruptcy.

Q And when was this?

A This would have been, I believe it was, March of 2001.

Q And were papers prepared to file for bankruptcy at that time?

A They were.

Q Who provided the information that went on the schedules that had to be filed?

A Went back to the worksheets that I had collected from the judge. And he would update that with various invoices that he would receive from time to time that would bring -- bring the amounts due on the various debts current.

Q Did you ask him if all the information was up to date?

A Well, he -- it was a regular thing where he would -- he would give them -- give me that information. So I didn't even need to ask. I just kept them up to date as we went along.

Q And did you go over these schedules and other documents related to the bankruptcy filing with Judge Porteous?

A I did.

Q And did Judge Porteous tell you at that time that he had debts whereby he owed money to casinos?

A No.

Q And did he ever tell you that he gambled

or had any gambling debts?

A No, sir.

Q The record shows that the original bankruptcy petition was filed on March 28. Did Judge Porteous tell you that he owed $2000 to the Grand Casino Gulfport on that day?

A No.

Q Was that a debt that should have been disclosed to you so it could appear on his bankruptcy schedules?

A I'm trying to collect all debts, so all debts of any nature I would have listed, had I known about them, yes.

Q So your answer is yes?

A Yes. Yes, sir.

Q In your experience, is a marker evidence of credit extended by a gambling establishment, such as a casino, so a customer can borrow from the casino?

A I've had a little experience with markers, because I started this practice before we had gambling in Louisiana. And then after the gambling came, I had occasion to have to look at markers.

And a marker, to me, they look just like a check. And as I had researched it in the past, I

found that it was -- the big fight was whether or not it was a check. But it certainly was a debt in my -- and it is a debt in my opinion. It's a promise to pay.

Q If you had known about the marker, would you have listed it on the bankruptcy schedules?

A Certainly.

Q The attorney for Judge Porteous raised the point with the previous witness that Judge Porteous might have had gambling winnings. If Judge Porteous had gambling winnings, should he have reported this to you?

A It would depend on at what point -- if they were winnings --

Q Prior to the filing of the bankruptcy.

A If they were prior to the bankruptcy and the winnings were in cash or in a bank account, then when I would list that particular asset, that's where I would list those holdings or whatever form they might be in.

Q Let me call up Exhibit Number 125 and ask if you could identify -- can you see that on the screen next to you?

A I can see it.

Q What is that?

A That's the initial petition for Chapter 13 that was filed.

Q And how was this prepared?

A I prepared it, on a computer.

Q And did Judge Porteous review it?

A He did.

Q Now, turning to page 2 of the petition, is that Judge Porteous's signature?

A Yes, sir.

Q Did he sign that under penalty of perjury?

A That's what the language above the signature says.

Q So this is his signature and not yours?

A That's correct.

Q What was the name of the debtor on that original petition?

A G.T. Ortous.

Q And you can see that right there too?

A I do.

Q Is that a false name?

A It is.

Q How did it come about that the petition was filed with a false name?

A I've accepted responsibility for that very stupid idea. The intention was to correct the name,

which was done, after the filing of these initial documents. My concern was at that time the names of all the people who filed bankruptcy used to be published in the news -- the local newspaper at that time.

And I think it was compassion for the judge, wanting to help him avoid embarrassment, frustration with getting absolutely no response from the creditors that I was honestly trying to work out a good workout with, and just plain stupidity, thinking that somehow all of this wouldn't come to light, that I could keep him from having a splash in the newspaper.

So the intent was to avoid embarrassment but to immediately fix it so that all the creditors would be properly notified.

Q Have you ever advised any other client to do that?

A No, sir.

Q And what was Judge Porteous's response to your idea?

A Well, we didn't -- we didn't have a very long discussion about it. I came up with the idea, I told him about it, and it was decided to go in that direction.

Q He agreed to it?

A He agreed to it. I can't say we had much discussion about it, though.

Q Did he say I can't do that?

A No.

Q Did he say I'm a United States District Court judge that hears bankruptcy court appeals and I can't be engaged in committing fraud in a bankruptcy proceeding?

A No.

Q Did he say I'm signing under penalty of perjury or protest in any other way?

A No.

Q Did he understand he was signing under penalty of perjury?

A I think so.

Q Does the penalty of perjury consequences apply only to statements on the bankruptcy form that would have materially affected the outcome of the bankruptcy or to all of the statements on the form?

A Well, the document is signed at various places, and I believe almost all of it is subject to penalty of perjury.

Q Do you know of any statement on the form that's not subject to the penalty of perjury?

A I don't -- I don't think -- there may be some miscellaneous documents that go along with it that might not have that language repeated on the form. But these are official forms, and I think that all the significant parts of it carry --

Q All the schedules, all the listing of assets, that's all signed under penalty of perjury?

A Correct.

Q The form also shows a P.O. Box as the street address, you can see that.

A I do.

Q Whose idea was that?

A That, again, is out of the same effort to avoid embarrassment, was my misguided idea.

Q Did you go out and get the post office box?

A I didn't.

Q Who did?

A I don't know. It was provided to me.

Q Who provided it to you?

A The judge gave me the -- the number.

Q Was the bankruptcy petition amended at some point?

A It was. As soon as -- as soon as the paper had come out and it was immediately amended,

both the petition and then the statement of the schedules and the Chapter 13 plan were also filed all at the same time.

Q Now I'd like to call up Exhibit 126 and ask if you recognize this document.

A I do.

Q What is that?

A That's the amended voluntary petition.

Q And when was it filed?

A It was filed some days later, nine days, eight days, 12 days, I'm not sure.

Q I think you can see the date right there.

A April 9, '01 it was signed. I presume it was filed.

Q So it was filed 12 days after the original petition. Does this amended petition have Judge Porteous's true name and address on it?

A It does.

Q What other documents were filed on April 9?

A The Chapter 13 schedules and the Chapter 13 plan.

Q And they had not previously been filed?

A No, they're not due until 15 days -- they can be filed initially, but they're not due until 15

days after the petition.

Q Let me call up Exhibit 127. Do you recognize these documents?

A I do.

Q And what are they?

A These are the Chapter 13 schedules and plan.

Q And where did you get the information to fill out the bankruptcy schedules and the statement of financial affairs?

A Same place as where I started, with those initial worksheets, and then all of the invoices and materials that I got month by month during that period where I was attempting the workout.

Q Who did you receive that information from?

A From the judge.

Q And he gave the information -- to what extent did you rely on Judge Porteous to give you the information?

A Entirely.

Q Did you review the schedules and statement of financial affairs with him before they were filed?

A We did.

Q Did you go over it with him at length?

A Oh, yes, sir.

Q Explain how you do that.

A Well, at least -- at least at the beginning, just explaining how to fill out worksheets, what happens in Chapter 13, how does it work. I made sure --

Q But once you have the entire --

A Draft after draft --

Q -- petitions and statements and schedules prepared, did you then go over all of that with him?

A Yes, sir.

Q Page by page?

A Yes, sir.

Q And how many times did you review it with him?

A At least two drafts we went through, if not more.

Q Were these bankruptcy schedules signed by Judge Porteous?

A They were.

Q Were they signed under penalty of perjury?

A They are.

Q Did Judge Porteous also sign his statement of financial affairs?

A Yes, sir.

Q Was that signed under penalty of perjury?

A It is.

Q And let's turn to bankruptcy schedule B, question 17. What information does it ask for?

A Other liquidated debts owing to the debtor, including tax refunds.

Q Now I'd ask to call up Exhibit 141. Did Judge Porteous ever tell you that on March 23, 2001, just five days before his original petition was filed, that he filed his year 2000 tax returns and claimed a refund of $4143?

A No, I don't remember him telling me that.

Q Did Judge Porteous ever tell you that on April 13, 2001, just four days after he filed his bankruptcy schedules, that he received the $4143 tax refund and deposited it in his bank account?

A No.

Q Is this information about the tax refund something that should have been disclosed on the bankruptcy schedule?

A If it were liquidated, to me that means if it were filed and you knew exactly what your tax refund was, as opposed to somebody filing in November who doesn't know what their --

Q If he filed the return five days before

you filed --

A The return was filed, the amount was liquidated, it should have been listed.

Q And on the tax return it shows the amount of refund that's due to him, he knows the exact amount. Should he have disclosed that to you?

A Yes.

Q What if after you filed his schedules, you'd found out that he'd filed for a tax refund in a liquidated account? What would you have then done?

A Well, at that time, in Chapter 13 in the Eastern District of Louisiana, the tax refunds were not something normally taken for the duration of a plan -- a plan of repayment like this, by the trustee.

So had I learned that it was liquidated and should have been listed, then I would have amended to list it.

But as far as future years --

Q But that year. That year.

A That year it should have been listed.

Q And let's look at bankruptcy schedule I. What does it contain?

A This is the income.

Q And what is the dollar amount listed for Judge Porteous?

A It's $7531.52.

Q Where did that number come from?

A That came from the check stub I probably got at the beginning of the process.

Q And did Judge Porteous ever give you a more current pay stub?

A No, I don't believe so. This was the one I used.

Q And did he ever tell you that in 2001, prior to the filing of the bankruptcy, his net pay increased to $7705 per month?

A No, I didn't know.

Q Was it relevant for you to know his salary increased in 2001 when he filed for bankruptcy?

A I would have used the most current stub. Frankly, in this case, I didn't think of it because I thought it probably didn't change, it was going to be the same as it had been, you know, some months before.

Q Judge Porteous reviewed page by page all of the petition, statement and schedules with you?

A Yes. Yes.

Q And he could have told you, could he not?

A He could have, yeah.

Q Turning -- let me show you -- let's return to Exhibit 127. Turning to Judge Porteous's statement of financial affairs, what does question 3 ask for?

A Question 3 is about preferences that are -- or potential preferences, I should say. That's payments made on -- to creditors that exceed $600 within 90 days of the bankruptcy filing.

Q And what was the response to question 3?

A Normal installments.

Q And why normal installments?

A Well, during the workout period, the judge had been -- while we were attempting to get the attention of the credit card companies for the workout proposal, the judge had been continuing to service these credit card debts. And we talked about not making any new debt, and we reached a point where we weren't getting any -- any feedback whatsoever, no contact whatsoever from these credit card companies. So it looked like it was going to have to be Chapter 13.

So at a certain point, we said, well, maybe if you just stop paying them, we can get their attention before we have to decide on Chapter 13.

And I really -- other than payments on the two car leases and the two home loans, that's what was intended with normal installments. And those were the normal contractual installments.

Q Did Judge Porteous --

A I was aware of no other payments on the other unsecured debts because we had decided not to pay them.

Q Did Judge Porteous tell you that he gambled at the Treasure Chest Casino on March 2, 2001?

A No, sir.

Q That he left the casino that day owing $1500 and that he paid the casino in full in cash on the day before his original bankruptcy petition was filed?

A No.

Q That date he paid that was March 27, 2001; the petition was filed March 28.

Was that information called for on the schedules you reviewed with him?

A It would have been if it was a repayment of a debt within 90 days more than 600. It should have been on there.

Q If you had known about it, would you have

put that payment to the casino on the schedule?

A I would have.

Q Returning to Exhibit 127, let's look at question 8 on the statement of financial affairs. What information is being requested there?

A This is losses from -- from fires, thefts, casualties or gambling within the one year prior to the case.

Q That's a specific question on the questionnaire and encompasses losses due to gambling?

A It does.

Q What was the response?

A None.

Q Had Judge Porteous told you about any gambling losses?

A I didn't know that Judge Porteous gambled. I don't gamble, and I didn't know that he gambled. So I knew nothing of gambling at any time.

Q Was it important for you to have information about gambling losses?

A If it answered this question and I knew that there was a quantified amount, I would have put that answer on the --

Q And why is it important to have that

information?

A Well, I don't know why that particular question is in there. I guess it prompts many other questions for a trustee to ask in the examination of the case.

Q Would it be important for some creditors to know that information?

A I guess if you were a creditor that was owed a gambling debt, it would be important to know that it was included. But it should have been included as a debt as well.

Q Was there a bankruptcy creditors meeting held in this case?

A There was.

Q When was that?

A It would have been about a month after the filing of the -- of the plan and the schedules, which was April. So I presume it was in May, sometime in May of 2001.

Q And who -- who presided over that?

A There's a standing Chapter 13 trustee, a Mr. S.J. Beaulieu, Jr.

Q And what's the purpose of that meeting?

A Creditors are invited to ask questions. The trustee reviews the schedules and the plan with

the debtor under oath, and it gets to a point where he understands how he will be distributing the moneys paid through him to the creditors under this plan, the Chapter 13 plan.

And ultimately, if the trustee is satisfied, he must make a recommendation to the bankruptcy court at a later hearing about whether the plan should be confirmed.

Q And was Judge Porteous examined under oath at that hearing?

A He was. The debtors are sworn in.

Q Let me call up the transcript of the hearing, which is Exhibit 130. Did the trustee give Judge Porteous any instructions about incurring debt?

A He normally at all the meetings, and you've got to -- this is going back a decade for me, but I have been to many, many thousands of them. And he generally makes a statement, whether it be to each particular debtor or to a group, they are done a number of them at a time, usually six cases are called for a given period of time, is a statement you're not to incur new debts without court authority during the bankruptcy.

Q And let me call up Exhibit 148 and ask if

you recognize this.

A This is the trustee's brochure, which is given to the debtors.

Q He gives that, by your experience, he gives that to every debtor?

A He mails it to the debtors with their note -- at this time the trustee was doing the noticing of the meeting of creditors' hearings. And when he would send out that notice, he would include that pamphlet. And he would always have a stack of pamphlets at his desk when the hearings would transpire in case somebody lost theirs or wanted another one.

So one way or the other, the debtors get that pamphlet.

Q What does paragraph 6 say in that brochure?

A "You may not borrow money or buy anything on credit while on Chapter 13 without permission from the bankruptcy court. This includes the use of credit cards or charge accounts of any kind. If you or a family member you support buys something on credit without court approval, the court could order the goods returned."

Q And what's the purpose of that

requirement?

A Well, when you have a budget and you're on a plan to repay and you start creating more debt, at a certain point, that budget is not going to work anymore. And I think it's to preserve the viability of the plan, and to have the court exercise some control over the finances of the debtor during the time of the plan.

Q Did Judge Porteous ever advise you that during the month after he attended the creditors meeting, he went on several gambling trips and got credit to gamble amounting to $2000?

A No.

Q Who was the bankruptcy judge who presided over Judge Porteous's case?

A Judge Greendyke.

Q And where was he sitting?

A He was in Houston.

Q And why did a judge on the Texas court preside over Judge Porteous's case?

A Well, the 5th Circuit had issued an order recusing the judges in -- I can't forget if it was Texas and -- it wouldn't have been Texas because he was from Texas, but maybe Mississippi and Louisiana. And obviously appeals from bankruptcy courts go to

district courts first, before the 5th Circuit.

Q So all of the bankruptcy judges in the state of Louisiana recused themselves from hearing Judge Porteous's case?

A I don't know if they did it, but I know that the 5th Circuit recused them and assigned the case to Judge Greendyke.

Q Did Judge Greendyke issue a confirmation order in Judge Porteous's case?

A He did.

Q Let me call up Exhibit 133 and ask if you can identify that.

A That's the order.

Q That's Judge Greendyke's --

A This is Judge Greendyke's -- it's the only confirmation order in this case, and it's from Judge Greendyke.

Q Directing your attention to paragraph 4, what does it provide?

A It says that "the debtor shall not incur additional debt during the term of this plan except upon written approval of the trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and not dischargeable."

Q Did Judge Porteous receive a copy of this

order?

A Yes.

Q Did he appear to understand its requirement?

A I believe so.

Q Let me call up Exhibit 339. Do you recognize this?

A I do. It's a letter from me to the Chapter 13 trustee about refinancing the judge's home.

Q How did that letter come about?

A Well, the -- an opportunity. And this one I'm not as good in my memory on this as the car leases, where you'll be going next.

But there was an opportunity or necessity to refinance one of the mortgages on the judge's home.

Q And so did -- did the judge contact you about this?

A He did. And I went back to the confirmation order, because this is a little different than our normal order. In the Eastern District of Louisiana, we required a motion and a hearing before the court for these things.

And as you can see, Judge Greendyke said

it was upon written approval of the trustee. So it was a little less formal.

So I went back to the confirmation order and looked at that. And I would have asked Judge Porteous for the details on the refinancing, and I would have sent that to the trustee and asked for this written authority to -- to do the refinance. And that's from whence this letter came.

Q Let me call up Exhibit 340 and ask if you recognize that.

A This is the letter that I got about the two car leases, which had, during the time of the Chapter 13 plan, come to their contractual end. So it was necessary to get a new lease car.

Q Who brought that to your attention that you needed --

A Judge Porteous told me about this, and then I went and got the -- got the detail. I'm sure I got the details from him on the new contract. And I would be looking to see that it was budget-neutral, that the price of the cars, the monthly payment was about the same, so the budget would work, and sent that along to the trustee. And then I would have received this letter pursuant to Judge Greendyke's order, the written approval.

Q So Judge Porteous knew in both of these instances that he needed to contact you to get approval for these changed obligations?

A He did.

Q So presumably, he knew to tell you about his gambling losses?

A No. Did you say presumably he didn't tell you about his gambling losses?

Q Well, if he knew that this was the process, if he had other debt, should he have followed that process as well?

A Any creation of debt. Now, I know you could have someone that has to go to the emergency room, I suppose there's some involuntary debt. But anything of a voluntary nature, I would expect to hear about so I could go get court authority for.

Q Did Judge Porteous ever tell you that he gambled on credit from casinos after the confirmation order?

A No.

Q Would it have been a surprise to you that he took 14 gambling trips and signed 42 markers during the year after his confirmation?

A I didn't know about it, so it's a surprise.

Q Never told you anything about any of that?

A No, sir.

Q Would those actions have constituted a violation of the bankruptcy judge's order?

A Well, it would be contrary to the confirmation order, incurring new debt without the trustee's written approval would be a violation.

Q And as spelled out in the order, as spelled out in the brochure from the bankruptcy trustee, as spelled out by what the bankruptcy trustee says at his hearings?

A Yes, sir.

MR. GOODLATTE: Those are all the questions I have, Madam Chairman.

CHAIRMAN MC CASKILL: Is there cross-examination of this witness?

MR. TURLEY: Yes, Madam Chair.

CROSS-EXAMINATION

BY MR. O'CONNOR:

Q Good afternoon, Mr. Lightfoot.

A Good afternoon.

Q My name is Dan O'Connor, and I'm one of the attorneys representing Judge Porteous.

It's nice to finally be able to speak with you.

Now, some of the questions that I had for you actually have already been covered so hopefully it will move a little quicker through this.

You said that the Porteouses retained you as their lawyers in the summer of 2000; is that correct?

A Yes, sir.

Q And when they retained you, you'd never met either Judge Porteous or his wife Carmella before; is that correct?

A No, don't believe so.

Q And when they retained you, you said you'd been practicing bankruptcy law almost exclusively for about 10 years. Is that your testimony?

A That would be about right.

Q And they were looking to get your help with a workout in an attempt to restructure their debt; is that correct?

A Correct.

Q And the reason that they wanted to work out their debt was specifically because they were hoping to avoid filing for bankruptcy; is that right?

A Absolutely.

Q And why was it that the Porteouses wanted

to avoid filing for bankruptcy? Were they hoping to avoid the embarrassment of having to seek bankruptcy protection?

A I think so.

Q And did you know that Judge Porteous's late wife, Carmella, was particularly embarrassed about the possibility of having to seek bankruptcy protection?

A When I met with her, I could tell that she was distraught over the -- over the situation that they were in.

Q And she particularly was very distraught by it?

A Very emotional and, you know, that's sort of typical in the work that I do.

Q Sure. Were you also aware that the Porteouses were very concerned about the embarrassment that would be visited upon their four children if they were to file bankruptcy protection?

A I wasn't told as much, but I'm sure that would have embarrassed them, sure.

Q And did either Judge Porteous or his wife have any familiarity with or knowledge about the bankruptcy practice or bankruptcy law?

A I didn't presume that there would be any

knowledge. Even though -- even though Judge Porteous probably had heard bankruptcy appeals before -- none involving me because the one that I had was dismissed, but I wouldn't presume that somebody that doesn't work in that area every day really has total command over it.

And so I made sure -- and, of course, Mrs. Porteous wouldn't probably know much about it.

And so I made sure that I treated them like I would any other unsophisticated client that came in in that sense.

Q Sure, and I appreciate that. And so just so I'm clear, there's been the allegation that because Judge Porteous was a federal judge, of course he would have extensive knowledge about bankruptcy practice. But it's your understanding that many federal district courts don't, and when you met with Judge Porteous, it wasn't your sense that he, in fact, had a strong command of bankruptcy process; is that correct?

A That's true, particularly with Chapter 13, because many, many lawyers work in high-dollar Chapter 11 cases, and they know next to nothing about Chapter 13 either. And they're bankruptcy lawyers.

Q And so would it be fair to say that they looked to you and relied on your advice with regard to the bankruptcy practice and the bankruptcy procedures in their bankruptcy case?

A In the way I explained how it worked and what we needed to do and how it was to be done, absolutely.

Q So sure, they were relying on you for all of that?

A I think so, sure.

Q Well, in fact, that's why they hired you; right?

A Right.

Q And you were a bankruptcy practitioner with significant experience. You'd been doing this almost exclusively for 10 years at that time; right?

A That's correct.

Q And now you've already testified with regard to the documents that you requested and received from Judge Porteous. I just want to make sure I have the list.

So you said there was a set of worksheets that you gave him and he filled out and gave back to you; is that correct?

A He did.

Q And also did you receive a handwritten list of Judge Porteous's creditors?

A I think at some point early on, he had started out just by making a list, and then the worksheets helped to develop that list and expand and refine that list.

And then the invoices that I would get periodically thereafter would update the worksheets which had expanded off that original list.

Q By "invoices," you're referring to credit card statements?

A The statements that would come every month.

Q The Porteouses would receive the credit card statements and they would forward them on to you so you were aware of the current status of the debt?

A That's the way it work, yes.

Q And you also testified that early on in your relationship with the Porteouses, that you had requested a pay stub from Judge Porteous; is that correct?

A That's correct.

Q And that pay stub was dated May 2000?

A If that's the date on it. I'm sure it was

at the very beginning of the process, when I was starting to work on the workout proposal, because I had to design the whole case, and I got a check stub that was a current check stub from that time.

Q Sure. So that makes sense. They retained you in the summer of 2000 and you asked for a pay stub very quickly thereafter and you received a May 2000 pay stub?

A That's correct.

Q And I'd like to ask you a little bit about the workout period. You said that you spent considerable time reviewing and analyzing the records that you were receiving from the Porteouses, the worksheets, the lists of creditors and the various credit card statements; is that right?

A That's correct.

Q And the purpose for that review was to understand their debts and assets so that you could perform a workout analysis; is that right?

A That's true.

Q And you went ahead and did that. You reviewed all of that material and prepared a workout analysis?

A I basically prepared -- for the purpose of the analysis and trying to go where I was trying to

get to the end result of, I prepared all the information that I got as though it would be a Chapter 7 case, so that I could find out what equity in assets was available to satisfy the creditors' claims in a hypothetical Chapter 7, which is a requirement for Chapter 13 as well, that you pay creditors at least as much as they could have gotten in a Chapter 7 case.

That's one thing that I do on every case, whether I know it's going to be a 13 or a 7, I always want to start out with what would happen if it would be a Chapter 7.

In this case it was to determine how much money would have been available from the assets for payment to creditors in Judge Porteous's case, from which then I was able to base the workout proposal.

Q Sure. And the workout proposal was, in effect, an analogy that if we filed a Chapter 7, this is how the debts would be resolved. And so we can go through that process or alternatively you can give us a call back and maybe we can work out a similar --

A Or we had hoped -- actually, what I proposed was that the judge was willing to go to a lender to obtain the equity out of the house that he

could borrow to fund this pro rata workout proposal with payment to all of the creditors.

Q Sure. I'd like to show you a document, we're going to go ahead and pull it up, it's been marked as Porteous 1101.

If you'll look at it on the screen there, this is a multiple page document. And it is my understanding -- and you can look at the Bates number in the bottom left-hand corner, which has CL 001. It's my understanding that this is a copy of your file which was produced to the Government in response to a grand jury subpoena.

A That's my writing.

Q So that's your writing on the first page?

A Yes.

Q We can go ahead and turn the page a couple -- why don't we go ahead and go forward to page 4. And do you see that document? Is this a copy of the worksheets that you gave to Judge Porteous, he filled out and gave back to you?

A That's the first page, yes.

Q And it's a multiple page document; is that correct?

A Many pages. And it tracks the final product.

Q Excellent. And I will not subject you to having to go through every page. Instead I think we can jump forward to page 28 of the worksheets. And this page is -- it's page 32 of the PDF, and it is Bates labeled in the bottom left-hand corner as CL 0032.

This page, do you see the title "income information" across the top?

A Yes.

Q And I'd like to direct your attention to the upper right-hand corner, there is a question with regard to what is the total -- the monthly total that you receive after all deductions and taxes are taken out of your paychecks.

Do you see that question?

A I do.

Q Do you see the answer? We'll go ahead and call it out for you if we can.

A I think it says 7900, approximately 7900.

Q So we pulled it out. Does that help?

A I can see it.

Q So the disclosure from Judge Porteous to you is that he -- his net monthly take-home was approximately $7900 a month?

A That's what he said on that page. Of

course, I know that I submit the check stub when I file it, so to me the check stub is the best. Sometimes people don't understand to take the taxes out, no matter how clear the question is.

But that was a starting point when he filled out the worksheet.

Q I see. So just let me make sure I understand that, then. So you asked Judge Porteous to fill this out. He filled it out. He said that his take-home was $7900 a month. You looked at that, you compared it to the pay stub and you decided that the pay stub was the more accurate of the two?

A Absolutely. The checks that would be the best -- the best evidence of it.

Q So it was your decision to rely on the pay stub as opposed to the --

A Well, and the trustee expects me to file the schedules with a copy of the check stub. So that's what I used.

Q Sure. So you went ahead and included that in the schedules and relied on the number in the pay stub?

A Correct.

Q And you disregarded this number because

you thought the other was more accurate?

A Correct.

Q And you testified about this before, so we'll go very briefly. But you said that you were working on the workout proposal and talking or attempting to talk with various creditors of the Porteouses. And that spanned for a number of months; correct?

A It did.

Q Summer of 2000, until I think you said it was clear it wasn't going to work by March of 2001?

A If not before. But yeah, for some months, I was, you know, setting aside time to call the 800 numbers on all the credit card statements and say did you get my package, trying to get a response.

Q And you weren't having any success on that endeavor?

A I didn't get anywhere.

Q So ultimately, it became clear that the workout proposal was not going to come to fruition?

A And finally, there were a couple of local lawyers that must have been assigned accounts for collection. And then when I spoke with them, they had not received from their client the package and repackage, you know, all the communications that I

had sent.

So I sent it along to them, and then they -- in the case of one of them, one of the lawyers said the client declined. So it looked like we were getting toward collection activity.

Q And once you already had a lawyer on the other side representing one of the creditors who had taken a look at your package and said, well, hey, my client is not going to go for this, it was clear to you at that point the workout proposal wasn't going to succeed?

A Right. I had many no-responses and one no. I didn't have any yeses.

Q At that point then it became clear that the workout wasn't going to happen?

A That's the way I felt about it.

Q So it became clear, and I think you testified earlier this was about March of 2001, that the workout attempt had failed and you started having discussions with the Porteouses about filing for bankruptcy; is that correct?

A Around then, if not a little earlier, because at some point, when we weren't -- I was putting in time calling, I was getting nowhere, and the judge -- Judge Porteous was concerned about it,

and I was concerned about it. And we figured it might be coming.

And then -- and then it was my next idea, well, maybe if you just stop paying them now, since we're having to now confront the eventual bankruptcy if nothing better comes about, maybe that will get their attention.

And that didn't work either.

Q So you had a discussion with Judge Porteous, and you said well, here's an idea, let's decide to stop paying the creditors. And so you advised him to go ahead and stop, and he did?

A He did, yes.

Q Did that end up precipitating any additional communications from creditors?

A No, it didn't make a difference.

Q I guess it did result in the debts ultimately becoming bigger because the Porteouses had stopped paying off their credit cards the way they had been before; is that right?

A Well, except for the payments that were being made were the minimum payments, probably weren't even keeping up with the interest. So it wasn't really going -- there was not much forward progress.

Q Sure. So it may have been stagnant when they were making the payments, but once they stopped making the appointments, then the debts started increasing because they weren't even keeping pace?

A Sure, sure they would.

Q And I believe you already testified to this earlier today, that you didn't request any additional records from the Porteouses in connection with preparing the actual bankruptcy that was filed in March, because you had already collected all the information at the front end, as well as received a series of credit card statements and invoices along the way; is that right?

A That's -- that's what I was getting. As we went along, I was just getting fresh information by new statements on those debts, showing what the balances were, so that I could keep that updated.

Q Sure. So you didn't feel like you needed to request any additional information?

A Thought I had it all, right.

Q And you didn't ask Judge Porteous for a new pay stub; is that correct?

A No.

Q You previously testified, I think we've already looked at it today, that you filed the

initial petition on behalf the Porteouses on March 28, 2001; is that correct?

A Yes.

Q I think we'd like to go ahead and pull up a copy of that so we can look at it. It's been marked by the Defense as Porteous 1100(b). Is this the original petition that you filed on behalf of the Porteouses?

A That's it.

Q We've already talked about this a little bit but I just want to make sure I'm clear, with regard to the name under which this petition was filed. You testified before this was your idea; correct?

A And the P.O. box.

Q So both the name and the P.O. box were both your idea?

A Correct.

Q And you proposed those ideas to the Porteouses; is that correct?

A I did.

Q And you told them that it would be okay to file the petition under that name and use a P.O. box; is that correct?

A I don't know if I told them it was okay,

but I told them I was concerned about the embarrassment and how this would work, and that it would be corrected before a notice went out to a creditor. And, in fact, all the creditors got a perfectly correct notice, and that part of -- that part of my suggestion went according to the way I intended it for, to do.

Q Sure. And I just want to understand. So you guys are having a conversation with regard to filing the bankruptcy, and the Porteouses were understandably very upset about the prospect of being very embarrassed of having this petition out in the media.

And so you suggested that they could file under a false name and use the P.O. box, and then you would file an amended petition very shortly thereafter and proceed with the bankruptcy. Is that effectively how it worked?

A That's exactly correct.

Q And again, just to go back to what we talked about before, the Porteouses didn't have any particular expertise in bankruptcy and they had hired you because you were a bankruptcy expert and they wanted to rely on your help. So when you had this conversation, is it reasonable to assume that

they relied on your advice?

A I think so.

Q With regard to the actual name, Ortous, is that something that you picked?

A Just made that up.

Q But you were the one that --

A I rue the day. But yes. Could have been John Doe. Could have been anything.

Q That was a decision you made, you just picked it out of the blue?

A (No verbal response.)

Q With regard to the post office box, I think you testified earlier that you told Judge Porteous that he should go get a P.O. box; is that correct?

A Correct.

Q And then I think you said that you don't know who went and ultimately obtained the P.O. box, but later you received a P.O. box address, and so --

A That's correct.

Q And I just want to go back briefly to the issue with regard to the embarrassment. So it was correct that in 2001, the Times-Picayune newspaper was running every week, I think it was on Sundays, a article that listed everyone who had filed for

bankruptcy in the preceding week; is that correct?

A It really wasn't an article, just a listing in very small type of all the -- all the bankruptcies that were filed. And I believe it was only individuals. I don't even know if they included corporations at that time.

They used to also list DWI arrests, things like that, in the paper.

Q Sure.

A And eventually, and certainly after Hurricane Katrina, none of that is published anymore. But at that time it was.

Q What were your feelings with regard to the Times-Picayune's decision to publish those names in the paper?

A About -- about them doing it when they used to do it?

Q Yes.

A Well, for most people who have no particular -- they're just regular folks, no one is going to notice their name in there, it's not going to be a tremendous embarrassment to them because nobody knows them.

But I feared that it would trigger a big, you know, sort of an article or an expose in the

paper that would embarrass Judge Porteous and his wife.

Q Sure. So bankruptcy, for most people who aren't public figures, is very anonymous; is that right?

A That's true.

Q But if you happen to be a public figure and the media gets hold of it, then it's likely you're going to have a very large story where they say so-and-so has filed for bankruptcy, and they're going to go through the filing in excruciating detail and discuss all the various debts and assets and -- is that correct?

A That's what I hoped to avoid. That's what I had hoped to avoid.

Q I'd like to go ahead and pull up a document that's been marked as Porteous Exhibit 1064. Once we get this turned for you, hopefully you'll be able to see it.

Take a look and let me know if you recognize that as the news article or the listing that came out in the Times-Picayune newspaper on April 8, 2001. And if it helps, the date is in the upper left-hand corner.

A I see it. That's what it is. That's how

it looked.

Q So this is the type of I guess it's not really an article, but this is what the Times-Picayune was running, listing all of the people who had filed for bankruptcy the preceding week?

A That's the way they listed it.

Q I'd like to go ahead to the fourth page of this exhibit. We'll see if we can zoom in. It's on the left hand column, probably about two-thirds of the way down, hopefully we can blow that up for you and you can see it.

But do you see the name Ortous?

A I see it.

Q And so that filing was picked up by the paper and ultimately was run on April 8, 2001?

A Right.

Q And they list here the post office box address that was included on the original petition; is that correct?

A Correct.

Q Can you look at the article for me. There are other debtors who have listed post office box addresses; correct?

A Yes.

Q A number of them, in fact?

A Yes.

Q Is there anything wrong with using a post office box as the address on your bankruptcy petition?

A No.

Q People do it all the time, don't they?

A Yes.

Q And many people don't have regular mail service or they prefer to get their mail at the post office or for a variety of reasons; is that correct?

A That's true.

Q And so you didn't have any concern with regard to advising the Porteouses to get a P.O. box and list that as the address on their bankruptcy; is that right?

A No.

Q Now, with regard to the timing, we've already discussed that the original petition was filed on March 28, 2001, and that the plan all along was to immediately amend -- file an amended petition with the correct name and the correct -- to change the address immediately after the name had been picked up and published in the Times-Picayune. That was the plan?

A It happened the next day.

Q So you filed the original petition on March 28, 2001 and then you and the Porteouses are looking in the paper. Do the articles come out every Sunday; is that right?

A I believe it was on Sunday, but as soon as -- you can see if it was in the paper on the 8th, I filed that amended voluntary petition, the plan and the schedules on the 9th.

Q Right. So Ortous hits the paper on April 8, and then you file the amended petition on April 9, 2001?

A Correct.

Q So it was immediately after?

A The next day.

Q You said you knew no creditor was going to get notice under the original petition that listed Ortous; is that correct?

A That's correct.

Q How did you know that?

A I knew that because at that time, the filing of the schedules and the plan, not the petition but the filing of the schedules and the plan, were required before the notice could be prepared to be sent out.

Q I see.

A The reason for that was because there's information on the plan that was transmitted in the notice.

Q So filing the petition alone is not enough to allow the court to issue any notice to creditors; is that correct?

A At that time it was not issued until the second part, the schedules and the plan were filed.

Q So the schedules had to be filed with the court before the court could issue any notice?

A That's true, at that time. It's changed since, but at that time that's the way it worked.

Q Sure. So in 2001 when this was all happening. So when you filed the original petition, you knew for a fact that no notice would go out to any creditor because the court lacked necessary information to put into that notice until the schedules were filed?

A Actually, I think in those days, the Chapter 13 trustee handled his own notices, and he put information from the plan into the notice. And that's how I knew.

It wasn't the court; it was the trustee doing it at the time.

Q I see. But in any event, it's the same issue, that the trustee couldn't issue the notice until the schedules were filed because the schedules contained necessary information that would go into the notice?

A That's correct.

Q So you knew for a fact that no creditor was ever going to get notice under Ortous; is that correct?

A That's true.

Q And in addition to that, you know that no creditor did actually receive any notice that listed Ortous; right?

A Oh, I know that, because I -- I saw the notice and certificate of service showing who the notice was sent to, and that's why I wanted to make sure, regardless of the P.O. box issue, I wanted to be very sure that all creditors knew that this notice related to Judge Porteous.

So the address was his home address and the names proper, et cetera. And that was actually the notice that was mailed out to the creditors in this case.

Q Sure. So you were actually very careful that when you did the amendment and provided the

schedules, you want to make sure that the notice that, in fact, went out to creditors had all of the correct information, it went to all of those creditors?

A That's correct.

Q And so when you decided or when you discussed using the name "Ortous" with the Porteouses, there was never any intent to deceive anyone; is that correct?

A The only intent was to prevent embarrassment.

Q So really the only person that you were trying to deceive was the Times-Picayune, you were just hoping to keep the name out of the paper?

A Well, you know, I -- there was no intent to really deceive them. I just -- I was just hopeful that there would be the kind of lack of notoriety that other people who file enjoy.

Q You thought that the Porteouses should get the same treatment as everyone else who seeks bankruptcy protection?

A Yes.

Q I'd like to go back to the original bankruptcy petition. That document, in fact, listed the Porteouses' true and accurate Social Security

numbers; correct?

A Correct.

Q And why did you want to include that information on the petition?

A Well, it's required to be part of the petition.

Q And --

A I don't think that the newspaper looks at the Social Security numbers or has a way to know who someone is from the Social Security number.

Q Sure. And the whole goal was just to avoid the paper publishing it?

A That was everything. That was it.

MR. O'CONNOR: Madam Chair, I'd like to move into the record Porteous Exhibit 1100(b), which is the original petition we discussed a moment ago.

CHAIRMAN MC CASKILL: Is there any objections to the original petition being moved into evidence?

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: It will be received.

MR. O'CONNOR: Thank you.

(Porteous Exhibit 1100(b) received.)

MR. O'CONNOR: I would also like to move into the record Porteous Exhibit 1064, which is the

article that was run in the Times-Picayune on April 8, 2001 that listed the Ortous filing.

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: It will be received.

(Porteous Exhibit 1064 received.)

MR. O'CONNOR: Thank you.

BY MR. O'CONNOR:

Q I'd like to go ahead and call up a document that's marked Porteous 1100(c), the amended petition. I believe Mr. Goodlatte already asked you about this.

Do you recognize this document?

A I do.

Q This is the document that was filed on April 9, the day after the Times-Picayune article came out; is that correct?

A That's correct.

Q This lists the Porteouses' accurate name; correct?

A Correct.

Q And their accurate Social Security numbers still; correct?

A That's right.

Q And it also changed the address from the

P.O. Box to their residential address?

A Correct.

Q Now, just so I'm clear, you didn't think there was anything wrong with the post office box but you wanted to make sure creditors had absolutely --

A I didn't. I didn't think there was anything wrong there, but I really wanted to make sure those creditors knew who they were getting a notice on. And that was the address that the statements came to.

Q Sure.

A And so that's the address that I used.

MR. O'CONNOR: Okay. Madam Chair, I'd like to move Porteous Exhibit 1100(c) into the record.

CHAIRMAN MC CASKILL: Objection?

MR. SCHIFF: No objection.

CHAIRMAN MC CASKILL: It will be received.

(Porteous Exhibit 1100(c) received.)

MR. O'CONNOR: Thank you.

BY MR. O'CONNOR:

Q I'd like to go ahead and show you what's been marked as House Exhibit 128. This is the notice of commencement. Please take a look and let

me know if you recognize this document. And if we can focus in on the top, that may help. I see United States District Bankruptcy Court, Eastern District of Louisiana, notice of commencement of the case. And then you will see the names of the debtors?

A Yes.

Q Which is Gabriel T. Porteous and Carmella A. Porteous, do you see that?

A Yes.

Q As well as their full Social Security numbers?

A I see that.

Q And at the bottom of the document it says "trustee's copy." Does that indicate to you this is a copy that came from S.J. Beaulieu, the Chapter 13 trustees -- trustee in this case, his file?

A Well, that just identifies who the trustee is.

Q At the bottom, sir, it says trustee copy. Maybe you can correct me if I'm wrong --

A I see.

Q Is it a document that's in triplicate and you pull it apart and you get a trustee copy, a court copy and creditor copy?

A This one says court copy, the one you've got on the screen.

Q Oh, I'm sorry. Let me -- we can use this one. So this is the court's copy of the document.

A And you'll notice how it has that information from the plan like I was telling you.

Q That's about two-thirds of the way down, the unsecured nonpriority claims, and it lists a percentage?

A Correct.

Q That's information -- sorry?

A And it gives you the summary of the plan as filed by the debtor, tells you how much the debtor is paying, how long the length of the plan is and what expected percentage to creditors would be.

Q Sure. And that's the information you were referring to earlier, that without that, the trustee couldn't issue the notice?

A Correct.

MR. O'CONNOR: Madam Chair, I'd like to move House Exhibit 128 into the record.

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: No objection.

CHAIRMAN MC CASKILL: So received.

(House Exhibit 128 received.)

MR. O'CONNOR: Thank you.

BY MR. O'CONNOR:

Q Now, I'd like to go ahead and put up Porteous 1100(d). This is a document that I believe you discussed earlier with Mr. Goodlatte. This is a copy of the Chapter 13 schedules and plan.

Do you recognize that?

A I do.

Q So this document was filed on April 9, 2001, along with the amended petition?

A Yes.

Q I'd like to go ahead and flip forward to the income statement, which is schedule I.

A Yes. I'm looking at it.

Q So with regard to schedule I, there's been some issue that many of the blanks on this statement are not filled out, there's just zeros, instead it is a single number listed at the top as well as a single number listed at the bottom.

Why does this page appear the way that it does?

A Well, because I attached right behind this page the actual check stub.

Q So if we turn the page, we'll see the check stub?

A Here it is, yes.

Q So all of the information that would have been filled in on the blanks on the preceding page is all here?

A Right.

Q So you didn't think there was any need to --

A Well, the trustee required the check stub, and I think at that time we were in the practice of just putting the net on here, because it results in the net for the computations in the plan. And then since we're attaching the actual check stub, we leave it at that.

Q Sure.

MR. O'CONNOR: Madam Chair, I'd like to move in a copy of the bankruptcy schedules into the record. This is Porteous 1100(d).

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: No objection.

CHAIRMAN MC CASKILL: No objection.

(Porteous Exhibit 1100(d) received.)

MR. O'CONNOR: Thank you.

BY MR. O'CONNOR:

Q I just want to be clear. You included a copy of the pay stub in the actual schedules that

were filed; right?

A I did.

Q And so it was open and obvious to anyone who wanted to look at this document that was filed publicly that the income number that was being used was based on the May 2000 pay stub; is that correct?

A Yes.

Q So that would have been obvious to the trustee who looked at it as well?

A Sure.

Q And just so I'm clear, no one, not the judge, the trustee or any of the creditors, ever objected to the Porteouses' income as it was scheduled in the plan -- or in the schedule; is that correct?

A No, there was no objection to the plan, no creditors voiced any complaint. In fact, a large number of creditors didn't even bother to file claims to collect the money that was being offered through the plan.

Q Sure. So this information about the income that was being disclosed was open to everyone, and no one objected?

A It was public record.

Q And no one objected?

A No.

Q And now I just want to go back briefly that we talked about with regard to the worksheets, that Judge Porteous had disclosed -- that he was disclosing to you his net income was approximately $7900, but you felt that using the pay stub was more appropriate and so you used that information?

A I didn't even go to work on that. The $7900 number. Because I always used the check stub.

Q Okay. And to be clear you never asked --

A Most people don't know off the top of their head exactly how much they make gross and net. They just don't know.

Q And you never asked for an updated pay stub from Judge Porteous?

A No. Frankly, as I said before, I had no reason to believe it would change. I thought it was sort of a fixed salary type of job.

Q And now there's also been an issue with regard to FICA limits. I know that you've previously testified that in 2001, that was an issue you'd never run into before; is that correct?

A FICA limits?

Q Maybe that's the first question. Do you understand what I'm talking about when I say FICA

limits?

A No, I -- not in this context, I don't.

Q Well, maybe just so we can explore it a little bit, I can represent to you that for certain high earners, that once you reach a certain maximum income for the year, some federal taxes stop being deducted from your income.

A Okay, I understand that.

Q And so that's been generally referred to as a FICA limit.

A Okay.

Q But I guess, as is clear here, that's not an issue you had ever dealt with --

A My regular clients don't approach the FICA limit.

Q So it was an issue you'd never dealt with?

A Not much.

Q It's not anything you ever discussed with Judge Porteous?

A No.

Q I'd like to ask you whether the trustee in this case, Mr. S.J. Beaulieu, whether he ever asked or requested that the Porteouses update their income or update their schedules in any way.

A No.

Q He never requested any periodic updates?

A No.

Q And so as a result, they didn't have any obligation to make additions to the schedules, if the trustee hadn't asked for it, they didn't have any obligation to do that; is that right?

A No.

Q No, they didn't have an obligation to do that?

A Well, if something were left out or -- many times the trustee will, if someone's employment appears to be unstable, perhaps they're making less than they used to now, or they might be obtaining a new job and they have a temporary job now, the trustee will include in the confirmation order a requirement to make periodic reports on income.

That's where I would look to for that sort of obligation.

Q That typically doesn't happen with debtors who have stable employment?

A Correct. Correct.

Q And ultimately, the Chapter 13 repayment plan that was proposed by the Porteouses was ultimately confirmed in June 2001; is that correct?

A Yes.

Q And after that confirmation, did you ever have any additional discussions with the Porteouses with regard to their income?

A No, not about income.

Q I'd like to go into the schedules and back up a little bit, so this is again Porteous Exhibit 1100(d). I'd like to go to schedule B.

A Okay.

Q Do you see that?

A Yeah.

Q And we'll have it pop up here in a second. It is Porteous 1100(d). We have it up on the screen. If we go ahead and move forward through the document, we'll see schedule B, and I know you have the hard copy you're looking at so we'll catch up with you here in a second.

So on schedule B, you'll see in item number 2, "checking account," there's a Bank One checking account listed?

A Correct.

Q It says the current market value of the account is $100.

Do you see that?

A Correct.

Q That was the amount that you listed as the

current market value of the Porteouses' Bank One account; correct?

A Correct.

Q And the way that you came up with that figure, and you testified to this previously, I believe, is that Judge Porteous -- you asked Judge Porteous approximately how much money do you have in that account?

A Exactly. That's one thing that will change, obviously, because checks come in and checks go out.

Q Sure.

A So last minute, check again, how much is in your bank account.

Q And again, your question is approximately, just give me an idea of how much is in that account?

A Correct.

Q Okay. So it's your general practice just to -- do you just typically call up the debtor and say can you tell me how much is in your account?

A Well, normally, it might be happening when we're signing or just before we're signing or finalizing in the couple of days, because checks are coming and going all the time. So it's -- it's frankly more important in a Chapter 7, because the

trustee is going to take the money, if it's significant. In a Chapter 13, since it's a repayment plan, the trustee is not liquidating the trust and doesn't take the money.

Q Sir, that's an important point. There's a distinction between a Chapter 7 liquidation and Chapter 13 repayment; correct?

A Correct.

Q In the Chapter 7, the debtor is going to turn over nonexempt assets to the court, which is then going to liquidate them and pay them off to creditors; is that correct?

A That's the general idea.

Q So the amount that's in that bank account in a Chapter 7 is critical on the date of filing; correct?

A It's important.

Q But on Chapter -- in a Chapter 13 case, it's a repayment plan, so the whole idea is the debtor is going to make payments going forward for a period of time, and those payments will then go to the creditors; is that correct?

A That's true.

Q And so the assets that the debtor has at the date of filing in a bank account, for example,

typically is not going to be turned over to the trustee; instead, the debtor gets to maintain that money; correct?

A Correct.

Q Because instead the debtor is turning over a portion of the future income, not the current assets?

A That's correct.

Q Okay. So again, sort of back to your earlier point, that in a Chapter 13, the actual balance in the account on the date of filing is less important, it's not like a 7, where that is critically important?

A That's true. It's important, but less important, because no one is going to take it away from you.

Q Sure. No one is going to seek to recover the money?

A Correct.

Q In 2001, was it more difficult than it is now to find out exactly how much money you have in an account on a particular day?

A I don't think so. Hard to find out? You know, people could call or sometimes people check on the computer.

Q I'm just trying to think back, back in 2001. It seems, at least in my own experience, it was a little -- it's easier now to log onto your bank account and find out exactly how much you have. I don't know if in 2001 that was the case, and I guess that's my question to you, whether there was a difference.

A I think maybe people would have to call more so back then. Now -- now many times there's no more bank statements at all, it's all on the computer.

Q Now, I'd like to ask you with regard to the tax returns. Didn't you tell the Porteouses they could keep their 2000 tax return?

A Not -- I remember a conversation with the judge about a tax return for a later year, and not that particular year. Frankly, I had been working on this case for so many months, I really wasn't thinking about a tax return. I was just thinking about my plan. Or tax refund, I should say.

At that time, in Chapter 13s, the trustee was not the Chapter 13 trustee, was not taking the Chapter -- the tax refunds from year to year to add to moneys to be distributed to creditors.

In Chapter 7, that's always been an issue.

Of course, it's a snapshot in Chapter 7. We're not talking about future years; it's only at one particular time.

Q Sure.

A So it was not something that I gave a lot of thought to.

Q I see. So it wasn't something that you would --

A Until asked after. Now, it was a later year, he -- I remember the judge -- Judge Porteous asking me about the tax refund, and I said, well, we don't have any general requirement to turn them over to the trustee. We would look to the confirmation order to see if -- that's where it would be, if it would be anywhere.

And I double-checked -- I remember double-checking Judge Greendyke's order, because it's a little different the way it was done in Houston than the way I was used to in the Eastern District of Louisiana, and it was no requirement stated in the confirmation order to turn over any tax refund.

Q Sure. So there was no requirement in connection with that?

A And the trustee in the Eastern District

did not make a regular practice of that either at that time.

Q I see. Okay. I'd like to ask you about -- in the 2001 timeframe, in Chapter 13 cases in Louisiana, the trustee didn't typically attempt to avoid or recover preferential payments or prepetition payments to creditors, did he?

A In a Chapter 13 case?

Q Yes.

A Would not be done in a Chapter 13 case. Ever. I mean, I suppose maybe there's got to be an example of it, but the 13 trustee is a distributing agent of moneys paid under a plan and not a liquidator, like a Chapter 7 trustee.

So you would not -- you would not see a trustee recovering preferences, although they would be part of his measurement of the plan, in a way, because you would, in a Chapter 13 case, there's a general -- general requirement that the creditors be paid equal to or greater than what they could have received in Chapter 7. It's called the best interest of creditors test.

Q Sure.

A And so if there had been a preference, the trustee would have -- would have considered that it

would be recovered, conceivably, in a Chapter 7. And so that would be part of that analysis of are you paying the creditors at least as much as they would have gotten in Chapter 7.

Q I see.

A That's how --

Q It would be considered, but the Chapter 13 trustee wouldn't attempt to recover those payments?

A That's correct.

Q I'd like to ask you a little bit about the plan as it was ultimately confirmed by the Porteouses. There's been some -- some indication and some testimony earlier that the ultimate percentage that was received by the Porteouses' creditors was higher than it otherwise would have been because some creditors didn't file proofs of claim; is that correct?

A That's true.

Q I'd like to get to that, but I want to take a step back. So the original plan that was proposed listed the Porteouses' actual expenses as they existed at the time of the filing; is that correct?

A Correct.

Q And ultimately, that led to a repayment

percentage to creditors, unsecured creditors, of about 14 percent; is that correct?

A Correct.

Q And that ultimately led to the trustee objecting to the plan and seeking to obtain a higher percentage repayment to creditors; is that right?

A Well, no, there was another step. The actual expense of a daughter who was in college at LSU was in the budget. And I forget if it was 3- or $400 a month. It was to help with her rent and her food plan at school.

And the trustee that we had in the Eastern District of Louisiana was arguing with me about that, and he thought that was too high and that's not the kind of expense that he liked to see on the budget and could I do something about it.

And so we trimmed it down. I know that the reality of the expense was still there, but in order to placate the trustee, we amended the plan to provide some extra money to creditors --

Q So you worked with the Porteouses to do some additional belt tightening to say where can we --

A Correct. That was before confirmation. That's the part that you didn't ask me.

Now, after confirmation, there is a deadline for the creditors to file claims. And some $75,000 worth of claims were not filed by the deadline. And then the funds that were proposed to be paid through the plan obviously extended to pay a much higher percentage to the unsecured creditor class, now composed of the total universe of claims, that is all those who had filed timely claims.

Q Sure.

A And the trustee filed a simple motion to simply amend the percentage of payback -- I'm not sure the exact number, I'm sure that you know, but it came up dramatically.

Q And I think the final repayment percentage was around 34 percent; is that correct?

A I don't know. It could have been higher than that, even.

Q Okay. Just so I can be clear and we can summarize, I guess, the ultimate -- that repayment percentage was the result of two things, really, the Porteouses tightening their belt and reducing their expenses, even though as you said the expenses didn't go away, but they just weren't listed in the budget, as well as some of the Porteouses' creditors electing not or failing to file proofs of claim in

the case?

A That's true.

Q I'd like to talk briefly about confirmation. Did you ever sit down with the Porteouses and discuss with them the confirmation order that Judge Greendyke entered?

A I mailed it to them. And I know that they were sent a copy. I didn't see anything in here that was unusual. It's a lot more detailed than what we typically will use. We sort of refer more to the plan and have the order simply approve the plan.

So I didn't see anything particularly different. It was a more relaxed standard about incurring new debt, requiring only the written approval of the trustee. But normally we would require a motion and order. So that was simply relaxation.

So I don't -- I didn't see anything in here that really needed additional highlighting than what we'd already discussed.

Q So there wasn't any additional discussion because there wasn't anything you needed to draw their attention to?

A No, huh-uh.

Q I wanted to talk a little bit about the post-confirmation debt, something you were asked earlier by the House. What is the consequence if a Chapter 13 debtor incurs debt after confirmation without court authority?

A Well, it's certainly not protected by the bankruptcy process.

Q And so for us nonbankruptcy lawyers, that basically means the debt won't go through the plan and you won't be able to discharge it after you complete the plan?

A All of that is true, but there's also no automatic stay, no protection. So such a creditor could sue the debtor, not even knowing of a bankruptcy and not being aware of a stay.

Q Sure. Are you aware of a debtor ever being held in contempt of court for incurring debt post petition without court authority?

A No, I've never seen that myself.

Q And are you aware of a debtor ever being referred for criminal prosecution for incurring debt after confirmation without court authority?

A I haven't seen it.

Q I'd just like to talk about the plan and the period of time in which the plan was in place

and the completion of the plan. So the Porteouses timely submitted all of their Chapter 13 repayment plans; is that right?

A All the payments?

Q Yes.

A Yes, sir.

Q And, in fact, they reached their expected total payments earlier, before the 36-month period of the plan had completed; is that right?

A Well, they would have, but remember, the trustee had adjusted the percentage, so that the full 36 months of required payments went a lot farther.

Obviously, they would have finished way early at the -- at the initial percentage. But the trustee continued to collect those payments for the full 36 months.

Q And do you recall Judge Porteous calling you up and asking you what to do once he had paid all of the plan payments that he was going to, the original target, but he still had months left to go in his plan? Do you remember being contacted?

A I do. I do.

Q And did you tell him that he should continue to pay into the plan, even though he had

reached his original target?

A I did. And I may have actually checked with the trustee. But I knew that that was the way we did it. And it's called a pot plan. In other words, you just pay the money into the pot. If the plan called for 36 payments, you pay them. And then how the pot gets distributed waxes or wanes depending on the creditors' claims as they are filed.

Q I'd like to go ahead and show you the document that's been marked as Porteous 1100(z). This is a copy of the trustee's final report. Would you mind taking a look at that and tell me if you recognize it?

A I do.

Q And I'd like to direct your attention to the paragraph that's near the top, just below the "In Re: Porteous." Does that list the total amount that was received from the Porteouses in connection with their Chapter 13 trustee, their plan?

A That's correct.

Q And what is that total amount?

A That would be the total amount of payments that were paid under the plan. That's the 36 months worth of payments.

Q That ended up totaling $57,600?

A Correct.

Q In your experience in 2001 was that a significant amount of money for a Chapter 13 repayment plan?

A It was -- it was higher than many. Occasionally, there would be a very, very high one. But I think that would be considered on the higher side probably at that time.

Q And I'd like to go down to the bottom. It looks like it lists the various creditors and then there's sort of a summary. And the last line on the right side says, "disbursed to unsecured creditors" and gives a total.

Do you see that?

A Yes, $52,567.01.

Q So that's the total dollar figure that was paid out to the Porteouses' unsecured creditors in connection with the plan; correct?

A That's correct.

Q And the difference between those two numbers is the costs associated with the trustee administering the case?

A Well, the trustee had a commission to fund his office to do all this work. And then the

attorney, my attorney's fee was paid through the plan as well.

Q I see. So those are the differences in the numbers?

A Those are the only two other items that came out.

MR. O'CONNOR: Madam Chair, I would like to move Porteous Exhibit 1100(z) into the record.

MR. SCHIFF: No objection.

CHAIRMAN MC CASKILL: It will be received.

(Porteous Exhibit 1100(z) received.)

BY MR. O'CONNOR:

Q I'd like to go back to one of the issues that was raised when you were being questioned by the House. There was a discussion about the text that appeared above the signature line on the original petition that discusses the penalty of perjury under which the original petition is filed. Did you ever specifically discuss that provision or that language with the Porteouses?

A I don't remember mentioning that, reading that out loud or specifically discussing it, no.

Q And with regard to the post office box, that's not -- there's nothing false about a post office box. In fact, that was a post office box

address that the Porteouses had, it just happens to be a different address than their residential address; correct?

A Correct.

Q And with regard to the original petition, the Porteouses signed it, but you also signed it, is that correct, as their lawyer?

A Yes.

Q You testified earlier that the reason for including a post-petition prohibition on additional debt is in order to preserve the viability of the plan. Do you recall that? That was earlier today?

A Yes.

Q And so it's your position that the reason why the court says don't go out and incur more debt is because they want to make sure the Chapter 13 plan is successful and it's ultimately completed?

A That's true.

Q That's a concern, because many Chapter 13 plans are unsuccessful, they, for some reason, fall apart somewhere throughout; is that correct?

A That's true.

Q In this case the Porteouses' Chapter 13 plan was completed successfully; right?

A It was.

Q And creditors were paid a significant sum of money?

A It was -- it was completed right on schedule. There was no hang-ups.

Q Also Mr. Goodlatte was asking you about the recusal. Is it your understanding that that was standard practice, if there was a federal judge who was filing a bankruptcy case, that the bankruptcy judges in that same district would recuse themselves as a matter of course?

A I wouldn't be surprised if there weren't a standard procedure like that. That was the first time I had been -- had seen it. But it certainly didn't take me by surprise. I expected something like that would happen.

Q I'd also like to go back to the plan. We talked a little bit about the belt tightening that the Porteouses did. Under the original plan, do you recall that the amount of income that was going to be paid under the plan monthly was $875? Does that sound about right?

A That's about right.

Q That was the original proposed plan; correct?

A Correct.

Q And that number was revised upwards significantly in connection with trying to meet the trustee's demand and pay additional moneys to creditors; correct?

A It was.

Q That number went from $875 to $1600 a month; correct?

A Correct.

Q That's an increase of $725 a month?

A That was after my discussion of the budget with the trustee.

Q And with the Porteouses?

A And with -- with the judge and his wife and with -- particularly the expenses for the daughter, too, came into play in that.

Q And ultimately, that change in the amount of income that was going to be paid monthly into the plan dramatically increased the return to creditors; correct?

A And that's sort of a typical pull and tug that you have where a debtor's lawyer is butting heads with the trustee, and you reach a compromise on an acceptable budget. And that's not unusual. But in this case, it resulted in a much higher payment.

(Recess.)

BY MR. O'CONNOR:

Q Mr. Lightfoot, I just have a few more questions for you. You testified previously that you didn't know that the Porteouses gambled or had gambling debts, that is correct?

A True.

Q What percentage of debtors that you worked with in the early 2000s gambled or had gambling debts?

A I didn't see it very often.

Q Now, we've already talked about this. In connection with the workout and then ultimately filing the bankruptcy for the Porteouses, you spent a considerable amount of time analyzing the Porteouses' credit card statements; is that correct?

A (No verbal response.)

Q I'm sorry, could you answer verbally?

A I'm sorry. Really looking just to get the new balances.

Q But you were reviewing the credit card statements that were coming in?

A Right. But my main function was I had -- I had the ongoing list, was maintaining of the amounts on these debts, and when new -- when I would

get a load of new statements, I'd go back and update them all to show the balance.

Q So you'd receive the new statements from the Porteouses, open them up, look through them and update your list?

A Right.

Q I'd like to show you a couple of the statements that are included in some of the files that came from you that were produced in response to a grand jury subpoena. The document I'd like to pull up has been marked by the House as 343.

I'd like to go to page 49 of this .pdf.

A I see it. It's a letter from -- or notice from Regents Bank?

Q I'd like to ask you about page 49, and we will get there in a second. Let me flip forward. And do you recognize these documents as documents that were in your file?

A Sure.

MR. O'CONNOR: Madam Chair, while we're moving forward, I'd like to offer this exhibit into evidence, House Manager's Exhibit 343.

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: Received.

(House Exhibit 343 received.)

MR. O'CONNOR: Thank you.

BY MR. O'CONNOR:

Q When we get to page 49 of the PDF, this is going to be an October 2000 MBNA credit card statement. Do you see that?

A I can see it.

Q I'd like to direct your attention to some of the charges that are listed on that credit card statement. If you will look, there are some dates, it begins on September 27. Do you see that line item?

A I do.

Q Can you read that line item across?

A September 27, there's two of them. One of them is a fee, and then there's GCA Treasure Chest, $214.

Q Are you familiar with what that reference is to? Is that the Treasure Chest Casino in Louisiana?

A I'm sure that it probably is.

Q So this is a charge for $214.99 that was incurred on the Porteouses' credit card prior to the bankruptcy at the Treasure Chest Casino?

A That's what it reads.

Q Right below it, a cash equivalent

transaction fee. Does that appear to be linked to the item we just discussed?

A I have no idea what that is.

Q So the first one is obviously a gambling-related charge; is that correct?

A I don't know --

MR. SCHIFF: Objection, Madam Chair.

CHAIRMAN MC CASKILL: Sustained. Sustained.

BY MR. O'CONNOR:

Q I'd like to move forward to page 55 of the same document. This is also an MBNA credit card statement for the Porteouses, and this one is dated as closing December 12, 2000. Again, do you see an entry that is dated 11/12, November 12, that reads GCA Treasure Chest, for $214.99?

A Same exact amount of money, yeah. I see it.

Q And again, does that appear to you that that's the Treasure Chest Casino in Louisiana?

A I would imagine that it is. These are not things that I picked out before that were noticed so --

Q Sure. So these are credit card statements that were sent to you and you had reviewed them?

A I got them and mainly was looking for the balances. And these go back to November, so this was during the workout time.

Q Sure. But even in the workout time, you were still reviewing all the statements?

A I got them almost every month, six weeks.

Q Sure. I'd like to go back briefly to the Chapter 13 schedules that you filed on behalf of the Porteouses. This has already been entered into the record as Porteous 1100(d). And I believe you have a hard copy there.

A I do.

Q What I'd like to ask you about is with regard to the case number. On the first page of the document, you'll see that it says in the matter of the Porteouses and it lists the case number as 0112363; is that correct?

A That's correct.

Q And you testified earlier that you create these schedules by using a computer software program; is that correct?

A That's right.

Q So you would input the information and then it would output the schedules?

A Right.

Q So what I'd like to ask you about is if you'll keep flipping through, you will see that the case number is listed in the upper right-hand corner of each page. So on the summary of schedules you will see the case number; is that correct?

A Correct.

Q That's on schedule A, you will see the case number?

A Correct.

Q And if you continue on, we can keep flipping, we see the case number on every page in the upper right-hand corner?

A Right.

Q I'd like you to go to the last page of the schedules, and this is the one that says declaration concerning debtors schedules. Do you see that?

A All right.

Q Wait a moment while we get it up onto the screen so everyone can see it. What I'd like to draw your attention to is if you look in the upper right-hand corner you see case number but nothing entered there?

A I see that.

Q Is that because at the time that this piece of paper was printed, you didn't have the case

number for the bankruptcy case?

A No, I wouldn't say that. I don't know why there's -- I would have expect -- I never noticed this before, but I would have expected the number to be repeated there too.

Q It's very unusual, isn't it, that the case number is listed on each of the preceding pages in the upper right-hand corner but when you get to the page that's signed by the Porteouses, there is no case number?

A I don't know if it's unusual or not. I don't know why it's not there.

Q In your experience with your bankruptcy software, when you enter in the case number, does it automatically fill it onto each page including the declaration page?

A I don't know if it does it on this page automatically or not. I would expect that it would.

Q Does it strike you as a little strange that it's not on this page?

A I don't know why it's not there so -- it's unusual. I would expect it to be there.

Q So it's unusual, you would expect it to be there?

A Well, because it's on every other place.

Q Sure. With regard to the date, do you recognize the handwriting in which the date is written on this page?

A Yes.

Q Whose handwriting is that?

A My handwriting.

Q So you added the date to this page?

A Yes.

Q So when the Porteouses signed this, they didn't date it?

A They didn't date it themselves, no.

Q Did the Porteouses sign this document prior to it ultimately being filed?

A Yes.

Q How far in advance?

A I don't remember, but I can tell you that sometime the judge would have to bring the document home to have his wife sign it.

Q So there would have been some period of time between you giving a set of documents to the judge, him taking a look through them, having them signed, getting that back to you, and ultimately the documents being filed?

A That happened because she wasn't always there and I usually saw him in his office.

Q Sure. And is it possible that he didn't know when it was ultimately going to be filed, and so the date was left blank for you to fill in when ultimately it was filed?

A That's probably true, yes.

Q So is it possible that this declaration concerning the debtor's schedules was slip-sheeted into the filing to follow behind the rest of the schedules and that's why there's no case number on this document but there is on every other page?

A I don't know.

Q But it's possible?

A I don't -- you know, I know that I prepared it, I gave it out to be signed. When I would file it, I would make sure that it's dated and I will put the date that I'm filing it on there.

Q Sure. And with regard to the date, I believe that the handwriting on all of the dates is your handwriting. Maybe we can pull this up real briefly. Porteous 1100(b). This is the original petition.

If you'll look at that, all of the dates on this document are in your handwriting, are they not? Second page of the document on the screen. If you look at the dates below the signatures, you can

tell me if that's your handwriting.

A Yes.

Q So again, these were all signed but not dated and ultimately you added the date when it was filed?

A I added the date and probably that had -- the reason for that is we weren't signing them in my office, that it was easier for us to meet in his office because I was in court every day and my office was in another part of town at that time.

Q So you weren't sure if they were going to be signed?

A If I had the two of them in front of me, I would let the computer put the date in, because I know that we would be filing it right then. Also, this goes back before electronic filing so they have to bring them physically to the court and file them.

Q Again, so it was possible there was some delay between these documents being signed and ultimately being filed?

A Could be.

MR. O'CONNOR: Madam Chair, we have no further questions at this time.

CHAIRMAN MC CASKILL: Redirect?

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: How long do you think the direct is going to take? We had scheduled an hour and 15 for this witness. We are approaching two hours. Do you anticipate a long -- I'm not telling you -- it's your time, if you want to use it this way, do you think it will be long?

MR. GOODLATTE: Chairman, 15 minutes or less. Combined time of direct and redirect will be less.

REDIRECT EXAMINATION

BY MR. GOODLATTE:

Q Mr. Lightfoot, even if Judge Porteous was not particularly knowledgeable in bankruptcy cases, and we don't know if that's the case or not, but do you think Judge Porteous as a federal judge understood what it meant to sign a court document under penalty of perjury?

A I believe so.

Q Did you really think that you needed to tell a federal judge not to perjure himself?

A I didn't think of needing to, no, sir.

Q Did the two of you agree that you had a higher duty to protect Judge Porteous from embarrassment than to tell the truth?

A No, we -- we didn't have a discussion like

that.

Q Does the penalty of perjury apply less under a Chapter 13 than under a Chapter 7?

A No.

Q Is telling the truth under penalty of perjury a concept limited to bankruptcy filings?

A No.

Q Now, let me pull up Exhibit Number 145. I think we need help from the IT folks again.

This is the application for a P.O. box. Whose name is on this application?

A It reads Gabriel T. Porteous, Jr. and that's the only -- no Carmella Porteous is underneath.

Q Do you recognize Judge Porteous's signature?

A Not really. I can't make out the letters on his signature.

Q Perhaps they can blow it up a little for you.

A All I could do would be to compare it to another signature.

Q It's not your signature, is it?

A No.

Q It's not Mrs. Porteous, doesn't say

Carmella?

A No, I can make out the Gabriel.

Q Okay. Now, on the bankruptcy petition, there's actually two blocks on there.

If you would call up Exhibit 125.

Now, this is the actual petition.

If you could blow up the section that relates to the address.

I think you'll find there's both a question for a mailing address and for a residential address, is there not?

A There is.

Q Okay. Now, when the attorney for Judge Porteous asks you if it's acceptable to use a post office box, that's perfectly acceptable for the mailing address, is it not?

A It is.

Q But for the residence, you're supposed to list the residence?

A Some physical place where they live.

Q And Judge Porteous had a residence, did he not?

A He did.

Q And that was not listed on the form?

A It wasn't.

Q Thank you. Now, with regard to the newspaper listings for bankruptcy filings, the newspaper gathers the list of bankruptcy filings and publishes it so that creditors can learn about a bankruptcy. Is that not one of the purposes?

A I don't know what their purpose is for doing that. There's no publication notice in bankruptcy unless it's a special court order.

Q No. But all of the names that are listed are available to creditors to --

A They are, yeah.

Q So when it's listed in the newspaper, that's of most interest to not the creditors who are listed on the schedules but creditors who might not be listed on the schedules.

A Could be.

Q Could be. So if they see G.T. Ortous and a P.O. box, that doesn't tell a creditor who is not listed on the schedules that Judge G. Thomas Porteous has filed bankruptcy?

A That's true.

Q Now, the newspaper could just publish articles about public figures or celebrities who file bankruptcy without doing that long, lengthy list of all the names of people. Isn't that

correct?

A They could.

Q That was shown on the exhibit. And the reason they publish the list of everyone is that there may be creditors who would otherwise not find out?

A I can't go there with you. I don't know why they list them.

Q Okay. Let's just -- I'll go back to your earlier answer -- you do acknowledge that a creditor could find out by --

A They could. They could.

Q Okay.

A All the businesses are listed in another paper, and they now stopped doing that, the business cases. And the business cases aren't in the Times-Picayune, so I don't know why they do what they do.

Q You've been practicing bankruptcy law for 20 years or more. There are a lot of people who are embarrassed to file bankruptcy, aren't there?

A Sure.

Q Absolutely. They're worried about their neighbors seeing their name in the paper filing bankruptcy, the people they work for seeing that

they filed bankruptcy. But in your 20 years as a bankruptcy attorney, this is the only case that you filed under a false name to protect an individual from embarrassment, as you say?

A Correct.

Q Now, by filing under a false name, whether it was your intention or not, the judge could accomplish an additional goal by using a false name, and that is to avoid having it in the paper so that a creditor could see it?

A I can see that could happen, yes.

Q Now, when we talked about tax refunds, you're referring to future refunds coming in after the confirmation of the plan.

A Yes, sir.

Q A refund, as we said earlier, a refund that is ascertained and liquidated at the time the plan is filed should be reported to you so you could put it on the schedules?

A It would be at that question B17.

Q There's a very important reason for having that, as well as other assets, listed on -- on the schedules, because that's the numbers you use, and the bankruptcy trustee in checking your work would use, to determine whether or not the debtor is

paying more in the Chapter 13 plan than would be received by those creditors if he went through a Chapter 7 liquidation and there was a payout.

So if $4100 in a tax refund is not listed, that reduces his payment over the course of the plan effectively by $4100, does it not?

A It could. It doesn't have to in every case, but it could.

Q Now, you said that you went over the schedules and the petition and the statement with Judge Porteous on at least two occasions?

A Yes, sir.

Q And on the schedules, his pay for 2000 is on the schedule itself, not just on the pay stub?

A The net pay is on the schedule.

Q The net pay matches the amount on the stub that you used?

A Yes, sir.

Q So when Judge Porteous reviewed these petitions prior to filing, prior to signing them under penalty of perjury, he had the opportunity to see that he had not updated his pay stub from a year previous?

A Yes.

Q Now, you had indicated earlier that if the

trustee had known about the gambling, that would have prompted other questions. What other questions would those be?

A Well, I don't know about the trustee, but had I known when I have clients with -- that I'm aware that there's gambling, I have a lot of question -- I have a lot of sort of concerns for them, and it brings me to many questions and many discussions with them about the gambling and how, you know, it causes a problem in a Chapter 13 because you can't be certain of your income if you're gambling some of it away.

If there are gambling debts, they have to be listed, and you must tell me about them. If you have markers that haven't been redeemed, you could have a bad check problem when they try to pass the marker through as a bad check.

So it gives me an opportunity to have a conversation about all those concerns of mine.

Q And at the time, notwithstanding what might have been on credit cards, you weren't going through and listing all those credit card payments as -- on your schedules? You were asking the judge to give you a schedule that says I owe this amount of money to this person; correct?

A Correct. I was just updating balances.

Q At the time, you believed that Judge Porteous was acting in good faith?

A I did.

Q When he came to you, when you helped him with the workout, when you prepared the bankruptcy petition and schedules and statement, you did not know anything about gambling?

A I didn't.

Q He clearly did not disclose that to you in any way, shape or form?

A No, sir.

Q And you had no idea that he was concealing facts from you?

A No, sir.

Q So you can't say whether Judge Porteous had motives other than personal embarrassment to avoid the listing in the paper?

A What you've heard was my experience, and I don't know anything beyond that.

Q Now, in point of fact, if Judge Porteous had objected to your filing under a false name, you wouldn't have filed under a false name?

A Oh, no.

Q Did you consider Judge Porteous a

layperson who is not capable of understanding the importance of truthfulness in a court process?

A No, sir.

Q Should he have provided you with correct information?

A Yes.

Q And you and Judge Porteous indicated you'd hoped by filing in a false name, it wouldn't have come out in the papers; is that right?

A Correct.

Q But it did anyway?

A It did.

Q If it hadn't, would creditors that Porteous failed to disclose have been kept from hearing about his bankruptcy?

A I didn't know anything about those creditors, so I don't know if they would have seen it in the paper or not. I couldn't tell you.

MR. GOODLATTE: Madam Chairman, at this time I would like to move the introduction of the exhibits that we referred to, and I'll refer to them again. That would be Exhibit 125, which is the original voluntary petition in bankruptcy, Exhibit 126, which is the amended petition, Exhibit 127, which is the Chapter 13 schedules and plan, Exhibit

141, which is Judge Porteous's tax refund, Exhibit 148, which is the trustee's brochure, Exhibit 133, which is Judge Greendyke's confirmation order, Exhibit 339, which is the letter from the trustee to Mr. Lightfoot regarding refinancing a mortgage, Exhibit 340, which is a letter from the trustee to Mr. Lightfoot regarding car leases. I believe that's it.

CHAIRMAN MC CASKILL: Any objection?

MR. TURLEY: No objection, Madam Chair.

CHAIRMAN MC CASKILL: Those are all be received into evidence.

MR. GOODLATTE: I'm sorry, and Exhibit 145, which was the post office box application.

CHAIRMAN MC CASKILL: Any objection?

MR. TURLEY: No objection, Madam Chair.

CHAIRMAN MC CASKILL: All those exhibits will be accepted in the record.

(House Exhibits 125, 126, 127, 133, 141, 145, 148, 339 and 340 received.)

MR. GOODLATTE: And those are all the questions I have.

CHAIRMAN MC CASKILL: Thank you.

MR. O'CONNOR: Madam Chair, we have no further questions.

CHAIRMAN MC CASKILL: Any questions from the panel?

SENATOR SHAHEEN: Yes.

CHAIRMAN MC CASKILL: Yes, Senator Shaheen.

EXAMINATION

BY SENATOR SHAHEEN:

Q Mr. Lightfoot, I just heard you testify that in the 20 years or so that you practiced bankruptcy law or in the entire time, that this is the only client who you recommended use a different name than his real name?

A Yes, ma'am.

Q Were you not concerned that when you filed the amended petition, that on something as basic as a name, that the court would pick that up and it would raise questions about information in the rest of the filing and that the court would take some action because of the difference in the name?

A I was -- it was a very misguided effort. It was out of compassion for somebody who I could see was suffering with the decision.

And in hindsight, it was about the stupidest thing that I could do, because of course, when the newspaper got hold of it, it made it look

even worse.

If I could go back and change that day, I would.

I knew that I was going to make sure the notices went out right, and they did. The creditors got noticed. They got paid, those that chose to be paid. And that part of it was never in doubt in my mind. It was -- it was -- it was a mistake.

Q Well, given -- given the question raised on the filing about under penalty of perjury, there was no concern that the court would see that name above that under penalty of perjury and then when they saw the amended filing, be concerned that someone had misrepresented on the bankruptcy filing something as basic as their own name?

A That concern was not in the forefront. I was -- my concern was the embarrassment, and as I tell you, looking back, I would have a completely different view today than I did then, and it would never happen again, and it never has.

SENATOR SHAHEEN: Thank you.

CHAIRMAN MC CASKILL: Any other questions by senators?

SENATOR WHITEHOUSE: Yes.

CHAIRMAN MC CASKILL: Senator Whitehouse?

EXAMINATION

BY SENATOR WHITEHOUSE:

Q Counselor, we've heard different testimony on whether a marker is a check or a debt. Whether a marker is a check or a debt, there is an underlying debt that the marker pays; correct?

A I believe a marker is at least a promise to pay. Promise to pay is a claim in bankruptcy.

The form that that promise to pay takes is as close to a negotiable instrument or a check as the gambling industry has been able to make it. Frankly, because they like the DA to collect their bad checks for them.

That's been my concern in having to deal with cases involving gambling, is making sure that the clients, when I know of gambling, those are -- those are my concerns, that it might be a bad check issue as well as just a civil debt.

Q But however you construe the marker itself as an instrument, there is necessarily an underlying debt, there is an individual, there is a casino, the individual owes money to the casino and that is a debt.

A I believe so.

SENATOR WHITEHOUSE: Thank you.

EXAMINATION

BY SENATOR RISCH:

Q Very briefly. Mr. Lightfoot, have you been disciplined at all by the bar for counseling someone to commit perjury on a document?

A I've gotten a letter from the bar and I've responded to the bar. So that's ongoing, I'd have to say, at this point.

Q So how long ago was it you got the letter?

A About two years ago.

Q And are -- is there a proceeding against you right now by the bar?

A There is a letter which they -- is a complaint, and I've responded to the complaint. And I imagine that the bar association is waiting for the completion of the proceedings here.

Q And what do you anticipate? Are they going to take to take your license or --

A I don't know. I'm too young to retire, so I hope not.

CHAIRMAN MC CASKILL: Any other questions by any other senators? The witness is excused, thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. SCHIFF: Madam Chair, ready for us to call our next witness?

CHAIRMAN MC CASKILL: Yes, we are.

MR. SCHIFF: The House calls Chief Bankruptcy Judge Duncan Keir.

Whereupon,

DUNCAN W. KEIR

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KONAR:

Q Judge Keir, good afternoon.

A Good afternoon.

Q Would you please introduce yourself to the Senate committee.

A I'm sorry, would you speak up a little?

Q Would you please introduce yourself to the Senate committee.

A I'm Chief Judge Duncan W. Keir, Chief Judge of the United States Bankruptcy Court for the District of Maryland. And I've served there, have for the last 17 years.

Q Would you please explain your expertise to us in the area of bankruptcy law.

A I started my practice in 1975, after

graduating from the University of Maryland law school with honors and Order of the Coif. And I started in the area of commercial litigation, formed and then led their practice group at the firm of Miles & Stockbridge on creditors' rights and insolvency, which, of course, has a lot to do with the bankruptcy code.

During that time, I taught a course at the University of Maryland law school as well as an adjunct professor in commercial paper.

I was asked and went to Embassy Financial Corporation in 1991 to help rescue its subsidiary banks during that real estate crisis, and I served as deputy general counsel in charge of the office of special assets counsel at those institutions until 1993, when I was appointed United States bankruptcy judge for the District of Maryland.

I'm a member -- a fellow of the American College of Bankruptcy, a past governor of the Board of Governors and the National Conference of Bankruptcy Judges, and I continue to teach as a visiting lecturer both at the University of Maryland School of Law, University of Baltimore School of Law, and the Industrial College of the Armed Forces at Fort McNair.

MS. KONAR: Madam Chair and members of the committee, the House has previously submitted a biography for Judge Keir regarding his qualifications and has indicated that it is designating Judge Keir as an expert in the area of bankruptcy. I would now move to have Judge Keir designated by the committee as an expert witness.

CHAIRMAN MC CASKILL: I assume there's no problem with this?

MR. TURLEY: There is no objection.

CHAIRMAN MC CASKILL: The witness will be treated as an expert witness for purposes of this hearing.

BY MS. KONAR:

Q Judge Keir, what materials did you review in preparation for your testimony today?

A I reviewed the docket of Judge Porteous's bankruptcy case, the case filed by Judge Porteous and his wife. I reviewed the documents filed in that case, including the original petition, the amended petition, the statement of financial affairs and the schedules, all of those documents being sworn to under penalty of perjury.

I also reviewed the plan that was confirmed in the case, the order confirming the

plan, excerpts of previous testimony before the 5th Circuit. I reviewed the House report for this proceeding and a transcript of part of the testimony before the House panel.

Q Would you please briefly describe what a Chapter 13 bankruptcy is.

A Chapter 13 bankruptcy is sometimes described as a wage earner's plan. It's actually available first of all only to an individual, and it doesn't require that the individual have wages, but it does require the individual to be in receipt of regular income. So, for example, unemployment would qualify, even though those aren't wages.

The purpose of the plan is to deliver to a trustee who then distributes to creditors an amount equal to what unsecured creditors would have received if there had been simply a straight Chapter 7 bankruptcy and the debtor's assets had been sold.

There's a number of requirements the plan has to meet. The equivalency requirement, which I just described, is one of them. The debtor is required to dedicate to the plan all reasonably disposable income. The words in the statute are "projected disposable income."

The duration of the plan may be three to

five years, depending on the circumstances, and the ultimate goal of the plan is to let the debtor continue to occupy their home, if they own one, and retain the use of their possessions, but creditors get the equivalent value of what they would have gotten in a liquidation.

At the end of the case, if successful, if the plan is completed, the debtor gets a discharge, which enjoins the collection in personam of the debts that are discharged in the case.

Q Judge Keir, is it important that a debtor be candid with the bankruptcy courts in all of his or her bankruptcy filings?

A It's absolutely essential. If the debtor is not candid, then the system will break down completely. The debtor is the person who puts down under penalty of perjury the financial information that the trustee reviews and creditors can review and follow up, if they think a question is asked or some more information may be needed.

The debtor doesn't put down accurately and completely what the schedules and statement of financial affairs require, then the trustee and creditors are deprived of that opportunity and the whole system will not work.

The United States Supreme Court in a 1934 decision often quoted in a case of a Local Loan Company versus Hunt described it as Congress affording bankruptcy relief to the honest but unfortunate debtor. And that's really the final measure.

Q The evidence in this case has shown that Judge Porteous filed his initial bankruptcy petition using a false name and using a P.O. Box address instead of his residential address. What are the significance of those facts to you?

A Well, first and perhaps most importantly to me as a judge, it was perjury. The oath on the petition is a very strong oath. It is not an oath to tell the truth according to the best of your information or knowledge and belief.

It states that all of the information put down on the petition is true and correct under penalty of perjury, period.

Judge Porteous signed that oath, when he knew that the name on the petition and the residence address were both false, so he committed perjury.

It also falsified the record of the United States bankruptcy court for the Eastern District of Louisiana. Electronically through a system called

PACER and also a phone-in system in many jurisdictions, and if it doesn't exist, you call the clerk, anyone can find out if someone has filed a bankruptcy case, and many times, people try to find that out before they enter into transactions with a person.

If they had done that -- and I don't know whether they did or not -- they would be told there was no Gabriel T. Porteous who had filed a bankruptcy case, because the record had been falsified. So it created a false record.

The residence address also did not disclose where Judge Porteous lived. That information is, first of all, used to determine whether the case is filed in the correct jurisdiction and in the correct venue where there's more than one division within that jurisdiction. And it didn't exist. It was a post office box.

Q The evidence has also shown that the idea to file the bankruptcy petition with the false name and with the post office box was that of Claude Lightfoot, Judge Porteous's bankruptcy attorney.

Do you believe that Judge Porteous can claim an advice of counsel defense as an excuse for filing with a false name?

A No. Advice of counsel is not a defense where someone commits a wrongful legal act knowingly that it's wrong. Even if someone says, well, go ahead and do it anyway, that's not advice of counsel. It might be collusion, but it's not advice of counsel. And it shouldn't form any defense, particularly where here, from the experience of the individual, Judge Porteous, it would have to be assumed that he knew what true and correct under penalty of perjury meant. He didn't need his counsel to explain it, and he would understand that that's not what he was doing. So it wouldn't mislead him into doing it.

And I omitted one fact from something you asked me, and that is the other result of putting down a wrong name and an incorrect address is it cloaked from the general public that this particular -- these two particular individuals had filed bankruptcy.

According to the report I read, it was customary at the time in New Orleans that the local papers published the names of those persons who had filed bankruptcy within the last period of time, I don't know whether it was weekly, I think it may have been.

And so the publication didn't disclose Gabriel T. Porteous, and anyone who read it would not have been alerted that they might want to follow up if they thought they had a claim or some other action that needed to be brought or question to be asked about that bankruptcy. Such as a casino.

Q Even though Judge Porteous filed his initial petition under a false name, the evidence has shown that false name was corrected several weeks later and it was corrected prior to notices going out to Judge Porteous's creditors. How do you view a claim that the filing under a false name was therefore --

MR. TURLEY: I'm sorry, I'm going to have to object. I believe you said several weeks later. The evidence in the case I believe was 12 days. I just wanted to correct that.

MS. KONAR: Fair enough.

BY MS. KONAR:

Q 12 days later the name was corrected. And it was not until after the name was corrected that any of Judge Porteous's creditors listed in his initial petition received notice.

How do you view a claim that Judge Porteous's filing under a false name was therefore

no harm, no foul?

A Well, first of all, I know of no legal defense, no harm, no foul, to this perjury. I don't believe it's any part of it, that you can't prove with particularity that a specific individual or entity suffered a quantifiable loss.

I also don't know factually that I can say that did or did not happen.

I believe the record includes that a casino extended markers, which is credit and debt, to Judge Porteous on April 7 and 8, after the filing, but before the name was corrected.

I have no way of knowing whether they tried to check court records or not before they went out on that limb.

But in any case, it simply isn't a matter of no harm, no foul. Someone goes down a one-way street at 100 miles an hour but miraculously doesn't hit anybody or do any physical damage, are they without blame or are they just lucky?

Q Judge Porteous filed a tax return on March 23 of the year 2000 claiming more than a $4000 refund. On March 28, five days later, he filed his bankruptcy petition. On April 9, when he filed his bankruptcy schedules and statement of financial

affairs, he did not disclose that tax refund.

What is the significance of his failure to disclose the tax refund?

A Well, there's two or three different elements there. First of all, the right to receive the refund is an asset. And since he had already filed the return quantifying the amount of the refund, it was what is known as a liquidated sum. Liquidated does not mean collected; it means quantified.

And the tax year having ended before the bankruptcy, he had the entitlement to it, it was his asset. Assets are required to be listed on schedule B under pain and penalty of perjury.

Question 17 of schedule B requires you to list liquidated sums owed to the debtor, and it specifically says "including tax refunds." And he did not put it down, so he falsified the schedule.

The effect on the case itself is that, as I've already stated, one of the measures of what has to be paid into a Chapter 13 plan is that the sum must be sufficient to deliver to creditors what they would have received in a Chapter 7 liquidation.

If you don't know there's an extra $4000 in asset value, your plan amount may be $4000 too

low, as a minimum.

Secondly, a tax refund is, of course, liquid once it's collected. And many trustees take the position that, therefore, it should be paid to the trustee as part of the disposable income and prevent it from being dissipated.

If the trustee doesn't know about it, they cannot either ask the debtor or if not voluntarily surrender, apply to the court by motion for an order, to take possession of the tax refund.

So by depriving the knowledge, you prevent the trustee from taking any action as well.

Q Judge Keir, are you familiar with the confirmation order entered in Judge Porteous's bankruptcy case by Judge Greendyke in July of 2001?

A I've been supplied by copy of it. I have it here in front of me.

Q Okay. Drawing your attention to paragraph 4 of that order, and this document is marked as House Exhibit 133, paragraph 4 of Judge Greendyke's confirmation order prohibited Judge Porteous from incurring post-petition debt without permission of the Chapter 13 bankruptcy trustee.

Are these types of prohibitions common?

A They are common in quite a few

jurisdictions. I know that Judge London, who wrote an exhaustive treaty on Chapter 13, states that this type of prohibition in a confirmation order is common to quite a few jurisdictions. I don't think it's universal to every jurisdiction.

Q If a debtor believes a bankruptcy judge's confirmation order is wrong or is improper in any way, can the debtor simply choose to disregard or ignore that order?

A Of course not. The order is a lawful order. If it's erroneous in its reasoning, the debtor may appeal the order, the debtor may ask by motion for reconsideration or for rehearing or for modification of the order.

But no one is -- has a right to simply disregard a lawful order at their whim. If that were true, then people would obey only those orders they thought they liked or were correct, they didn't disagree with.

Unfortunately, all too often, at least one party before me, when I enter a final judgment, is not happy with the result. Sometimes it's both parties. But that doesn't mean that they can simply disregard the order.

Q I'd like to ask you about Judge Porteous's

conduct in three specific areas after the entry of the confirmation order. The first is the evidence has established that Judge Porteous continued to take out markers at casinos after the confirmation order was entered, and he did so without the approval of the bankruptcy trustee.

Do you consider this to be a violation of the bankruptcy order?

A It's absolutely a violation of the bankruptcy order. This was an incurrence of debt after the order was entered, and that violated the order, because from the record I've reviewed, there is no indication that Judge Porteous requested permission from the trustee or, if requesting and failing to obtain it, filed a motion to obtain an order from the court.

Q Judge Keir, do you have an opinion on whether a casino marker constitutes a check versus a debt?

A Well, it is both. The debt arises, as far as the word is used in the Bankruptcy Code, when the -- when Judge Porteous has an obligation to repay the casino, and it's independent of the creation of the piece of paper called marker.

Section 101 of the Bankruptcy Code defines

debt as a claim, and claim is defined, and I have it right here in front of me, as right to payment.

When the casino pushes the markers across the counter to the gambler, who doesn't immediately pay for them, but will pay for them, the gambler is now obligated to pay the casino for the value of the markers. That's when the debt arises. That is debt, and all debts as covered by the order.

The marker is a three-party instrument under the Uniform Commercial Code. That's called a draft. It's an order by the signer on a bank to pay the payee or holder. And since it's drawn on a bank, it's also referred to as a check in Article IV.

There is an additional obligation under a draft for the drawer to pay the draft according to its tender, if it be refused by the drawee. So there is an additional UCC-imposed obligation on the instrument. But that's separate and apart from the underlying obligation which arises simply when the chips were advanced to Judge Porteous. That's when a debt arose.

Q Moving to the second area of Judge Porteous's conduct after Judge Greendyke's confirmation order was entered. The evidence has

also established that Judge Porteous filled out a credit application at Harrah's casino and thereafter gambled at that casino without the approval of the bankruptcy trustee.

Is this also a violation of the order?

A I think the answer is obviously it was. If he was gambling on credit, then as soon as he made a wager on credit, he had an obligation to repay the casino for that amount. And as soon as that obligation arose, they had a, quote, right to payment, which is the words in the code defining claim and debt.

So I think it would be very clear that that would violate an order which says shall not incur additional debts.

Q And the third and final area I want to ask you about regarding Judge Porteous's conduct post confirmation order. Judge Porteous also opened up a new credit card post confirmation order and thereafter proceeded to use that credit card on a monthly basis. He did this without the permission of the bankruptcy trustee.

Is this also a violation of the order?

A Well, yes. It would be a violation of the order at the time that the credit card was used to

make a purchase or obtain a cash advance, because at that instant, there again arose an obligation to repay. And the obligation to pay, i.e., the card issuer would have a right to payment, would be a debt.

So the debt arises as soon as the credit card is utilized.

Q Even though these actions we've just discussed were violations of the confirmation order by Judge Porteous, the defense has argued that Judge Porteous nevertheless satisfied his bankruptcy repayment plan and actually overpaid on that plan. Therefore, is it again no harm no foul, or doesn't that take away the problem that he violated the order?

A Well, I think violation of an order with impunity has no more defense of no harm no foul than perjury. I know of no doctrine where it says if you ignore the order but later can't be shown with quantification to any particular individual what the harm was you're exonerated from the potential contempt of disobeying the order.

So I don't think that that's a defense.

Q Do you think there is any special significance that the debtor in this case is a

federal judge?

A As I testified at the House panel, there's only one statute, and it applies to everyone without regard to what their occupation or position may be. So he certainly wasn't under any greater obligations to honestly report all the facts on what was filed and to obey the order.

But that said, it goes at least to intent. Because Judge Porteous served as a judge, he obviously must have known what the words "under penalty of perjury" mean. And by falsely putting down information or omitting information and admittedly falsely doing it in the petition, he obviously must have known he was committing a perjurious act. And that seems to be -- to go certainly to intent.

In addition, although not part of the bankruptcy code, it's my view that these actions cast a cloud, if you will, on the integrity of the judiciary, and that public officials, whether they're elected or appointed, have a duty to not have that kind of cloud cast on the integrity of the government.

If the public has no confidence in its courts, there aren't enough police officers, there

are not enough judges, there are not enough officials of any kind that are -- officials of any kind that are going to keep the peace in the public and make this an orderly society. There has to be that level of confidence, and this kind of activity certainly would attack and weaken that.

Q And, Judge Keir, if you had been the judge presiding over Judge Porteous's bankruptcy case and if the facts established through the evidence in this case had come to your attention, what actions, if any, would you have taken?

A Well, if I had known all the facts which the record contains at the time that the plan was before the court for confirmation, I would have denied confirmation because it's a requirement under Section 1325 of the Code that a plan be proposed in good faith, and these actions certainly would not show good faith.

If this had been converted to a Chapter 7, I would have denied a discharge under Section 727, because one of the specific provisions is dishonesty in the schedules and statements of financial affairs.

If I knew everything that I know now, I most likely would have also sent a letter of

referral to the United States Attorney under section 18 -- or rather Title XVIII, Section 3057.

A judicial officer has an obligation to report a suspicion of criminal activity, and I would have reported this one for investigation.

Q Judge Keir, do you know whether the United States District Courts handle appeals from bankruptcy courts?

A In all districts, the United States District Court is the first level appeal from bankruptcy courts with two exceptions. In some circuits and some districts within those circuits, the circuits, as authorized by Congress, have formed bankruptcy appellate panels. And if all of the parties to the dispute consent, it takes fully mutual consent, the appeal at first level will not go to the district court, it will go to what is referred to as the BAP, bankruptcy appellate panel.

In addition, in 2005, Congress amended Title XXVIII to provide an avenue by which orders can be appealed directly to the circuit and bypass either the BAP or the district court.

That takes a certification by the trial court and an acceptance of the direct appeal by the circuit court.

Q And with those two exceptions aside, it's correct, then, that bankruptcy court cases are appealed to the United States District courts?

A That's correct. In Maryland, and in Eastern Louisiana, there are no BAPs, so all first-level appeals go to the United States District Court, except for those very few under the recent statute that might bypass and go to the circuit by certification.

Q And what kind of confidence do you think the public would have in Judge Porteous as a judge potentially in a position to hear appellate cases in bankruptcy, knowing his violations in this case?

A Well, if the case on appeal dealt with alleged misconduct by a debtor, particularly if the misconduct was false swearing or some other fraudulent conduct, I think it would certainly weaken the confidence that anyone would have that the judge could sit impartially if he had already himself committed similar acts and tried to say that somehow these were innocent.

MS. KONAR: Madam Chairman, I have no further questions.

CHAIRMAN MC CASKILL: Cross-examination?

CROSS-EXAMINATION

BY MR. WALSH:

Q Good evening, your Honor. My name is Brian Walsh. I'm one of the attorneys for Judge Porteous. We haven't met, have we?

A We have not met. And good evening.

Q Judge Keir, I want to talk a little bit about the context in which the issues that you've discussed in your direct testimony arose in Judge Porteous's case. You mentioned a little bit about Chapter 13, a little context there. I want to talk a little bit about Chapter 7 as well. Those are the two principal types of consumer bankruptcy cases; right?

A Yes. Except for individuals whose debts exceed limits that prevent them from being eligible under Section 109E from being in a Chapter 13. Then Chapter 11 replaces Chapter 13, if you will, in terms of reorganization. Numerically, there are many fewer of those, though I've noticed a certain uptick in that.

Q I apologize, I didn't mean to talk over you. It happens every once in a while, not very often; right?

A I think that's a fair statement.

Q So let's stick with Chapter 7 and Chapter

13 for the present discussion, if you will indulge me. Now, in both of those chapters when a bankruptcy petition is filed, there's a bankruptcy estate that's created automatically by statute; correct?

A Correct. 11 USC Section 541A.

Q All right. And with some minor exceptions that are in Section 541, in a Chapter 7 case, the bankruptcy estate owns only what the debtor owned the moment the petition was filed. Is that a fair statement?

A That is a fair statement, as long as you acknowledge there are exceptions.

Q There are.

A The exception for certain things within 180 days post petition that will come into the estate. And an exception for certain kinds of trusts, assets that won't come in at all.

Q That's correct, there are some assets that don't --

A Spendthrift trust.

Q Right. The assets that might come in within 180 days would include an inheritance, for example?

A An inheritance.

Q Chapter 7 case, the Chapter 7 trustee will marshal that proper, other than the stuff that doesn't come into the estate at all. And other than assets that are exempt from the claims of creditors; right?

A That's correct. They will administer that estate.

Q By administering the estate, that generally means converting it to cash and distributing it to creditors; right?

A That's correct.

Q Okay. The Chapter 7 debtor gets to keep, with the exceptions we talked about, the Chapter 7 debtor gets to keep post bankruptcy assets, including post bankruptcy wages; right?

A Correct.

Q Chapter 13 --

A Unless they are proceeds of prepetition assets.

Q Other than proceeds, that's a fair clarification. Chapter 13 is a little different. In addition to the property of the debtor at the moment of the bankruptcy filing, the bankruptcy estate also sweeps in the debtor's post petition earnings; right?

A It doesn't sneak it in at all. It's open and notorious.

Q I'm sorry, I said sweeps it in.

A I'm sorry, I misheard you. The assets of an estate in a Chapter 13 consist not only of the estate assets under 541A at the time of the petition, but in addition, virtually all post-petition-acquired assets including earnings, not exclusive to earnings, just including earnings.

Q And one of the differences between Chapter 7 and Chapter 13 is that after the filing of the petition, the debtor, rather than the trustee, maintains ownership of property -- maintains control of property of the estate; correct?

A That's correct. Under Section 1303 of the Bankruptcy Code, Section 363(b), which normally only applies to trustees, applies to the debtor, which provides that the debtor may, in the ordinary course, utilize the assets, which means although they remain in control, it's not unfetterred. They have to use it in the ordinary course.

The words of the statute are course of business, which has been interpreted meaning as to an individual, an ordinary lifestyle, if you will, something necessary.

Q Let's go back to the more basic point, if we might, under Section 1306(b) in a Chapter 13 case. The debtor remains in possession of property of the bankruptcy estate unless there's a court order that says something to the contrary?

A Under Section 1306 they remain in possession, and Section 1303 by reference to 363(b), their use of the property is as described in that section. They don't have an unfetterred -- because they possess it doesn't mean that they're without some restrictions on what they can do with it.

Q Then let's move to the point where plan is confirmed in a Chapter 13 case. Unless there's a plan or court order that says otherwise, property of the estate revests in the debtor when the plan is confirmed?

A Section 1328 provides the -- unless the plan or confirmation order states to the contrary, property revests.

Q Have you reviewed the plan and confirmation order in Judge Porteous's case?

A I have. I have the confirmation order.

Q There's nothing in the plan or confirmation order --

A I don't recall seeing anything in the plan

about the property not revesting.

Q Okay. Now, I think you mentioned that the basic structure of a typical Chapter 13 plan is the use of the debtor's post bankruptcy earnings less certain expenses to make periodic payments to the trustee and then onto the creditors. Is that a fair summary?

A That's correct.

Q And again, that's different from Chapter 7, where the creditors don't have any claim to the post bankruptcy earnings; right?

A Correct.

Q Chapter 13 debtor isn't obligated to use assets that exist on the bankruptcy petition date to pay its creditors, to pay his or her creditors; right?

A I didn't understand what you just said. Please repeat it.

Q Sure. Let me ask it differently. The Chapter 13 debtor has certain assets on the date that a bankruptcy petition is filed; right?

A Certainly. Well, most of them do. I suppose it's possible that they would have none, but I wouldn't think so in Chapter 13.

Q That's true. Let's assume away that one

and assume a debtor that has a few assets at least. In that scenario, the bankruptcy code doesn't require the Chapter 13 debtor to use those existing assets to pay creditors, the focus is on the future income; right?

A It really doesn't -- there's two independent requirements for the plan to be confirmed. First of all, projected disposable income must be dedicated to the plan.

In addition, what value must be delivered to the trustee for distribution must be equal to at least the equivalent value of distribution in Chapter 7. And at times, that means the debtor is going to have to use assets in order to generate sufficient moneys to deliver the trustee to reach that equivalency value because the projected disposable income is going to be too little.

So the code doesn't state that only disposable income is the source. It actually sets a certain minimum amount based upon the higher of those two equations.

Q Let me see if I can summarize what you just said, your Honor. In certain circumstances, certain factual circumstances, the debtor might conclude if I'm going to get a plan confirmed here,

I guess I'm going to have to use something else besides my future wages if I'm going to satisfy the confirmation standard. Is that what you're saying?

A That's part of what I've said.

Q One of the key reasons that debtors file under Chapter 13 rather than Chapter 7 is because they want to preserve assets like a house or car or something like that, true?

A It varies from district to district in term of predominance, according to conversations I've had with colleagues around the country. But in many jurisdictions, including mine, and I believe in Louisiana, the principal reason why someone files a Chapter 13 is because they have an arrearage on their deed of trust or mortgage loan for their residence.

And under most state laws, they don't have a right to cure that arrearage over up to five years. And so a foreclosure is looming. And they can't afford a lump sum to bring it current, and so the way that they try to continue to retain the house and the use of it is to file a Chapter 13, cure the arrearage over the life of the plan and come out with it back as a current obligation. That's the principal reason, not the sole reason.

We also see similar situations with other secured debt like cars, where they're behind and again they can't cure it in a lump sum and they want to use the plan to cure that. There are some other more minor reasons.

Q Let me move on to a different topic, your Honor.

In your experience, would you agree that debtors often make mistakes and have inadvertent omissions in their bankruptcy filings?

A "Inadvertent" is the key word, and yes. Often? I'm not sure I would agree with that characterization. Certainly, it's not uncommon. Occasional and inadvertent mistakes certainly do happen.

Someone may have to estimate what the payoff of their total principal and interest balance on their mortgage is, and they might estimate it off a bit. That one is very common.

Someone who is not financially sophisticated and not particularly good at keeping records may underestimate how many payments they have missed over the last two or three years in sporadic payments, they owe three instead of two or they owe five instead of four. Those types of

inadvertent mistakes are found.

Sometimes somebody owes a lot of different physicians for a hospital stay and leaves one off the schedules until they realize that they have left it off and then they correct the schedules.

Q Is it fair to say, your Honor, that you've handled cases over the years where debtors have failed to make complete and accurate disclosures but nevertheless they have obtained relief in the form of a discharge?

A I think that that's an overbroad statement. To the extent that I would have known about it, if there was an inadvertent and occasional mistake that was corrected, I'm sure in a number of cases, discharges have been entered.

If there was a pattern of deceit, I know of no case where I presided over where a discharge has been entered where that was known.

I might add I've never seen perjury on the petition in a case in which a discharge was entered.

Q Understood.

Let's talk about the bank account balances on Judge Porteous's schedule B. You're aware of the allegation that Judge Porteous listed a bank account balance for one account that was too low and omitted

another account?

A I've seen that report, yes.

Q You've seen that mentioned. You would agree that unsecured claims in the Porteouses' bankruptcy cases, in their bankruptcy case were more than $196,000; is that right?

A I don't recall the exact figure, but that sounds about right.

Q And absent the requirement of the best interest test that you talked about a few minutes ago, cash the debtor has in the bank on the petition date is not required to be paid over to creditors in a Chapter 13 case; right?

A No, it's part of the equation of value that we talked about.

Q Okay. Let's talk about markers. Paul Mannes is a colleague of yours on the bankruptcy court?

A I've known Paul for many years, yes.

Q Are you familiar with his decision in the Sing case in which he held that a debtor's execution of a marker in exchange for chips was a concluded transaction and not an extension of credit?

A No, I'm not familiar with that case at all.

Q Are you familiar with the Louisiana case law to the effect that a marker is a negotiable instrument?

A I have seen a reported decision from Louisiana that so holds.

Q Okay.

A I agree with it. It's a negotiable instrument.

Q It's a negotiable instrument, all right.

A And that's why the drawer has a contractual obligation to pay it. But there's -- it's delivered for an underlying transaction as the UCC describes it. And the underlying transaction is the obligation, because there's a right to payment.

Q Would you agree that a debtor that's subject to a prohibition of the sort that's in the confirmation order in this case, don't incur debt without the trustee's approval, would be permitted to go to the grocery store and buy groceries with a check?

A With a check?

Q With an ordinary bank check.

A Well, first of all, I certainly have not researched the decisional law of Louisiana as to the effect of this order and whether there's a case out

there that says the facts that you just stated, so I don't know whether it's been tested or not.

I really can't give you an opinion, other than saying that it would appear there was an attempt to simultaneously pay for the groceries by tendering the instrument. And if there's a simultaneous transfer, then no debt arises, because there's no subsequent right to payment.

Technically, until the instrument is presented to the drawee and honored, the obligation, underlying obligation, to be paid for the groceries, just like you have to pay for the chips, is not extinguished.

Q It's suspended; right?

A It's not even suspended. It's just not extinguished. It usually will be, if the check is honored. It won't be if the check is not honored.

If the check is not honored, then the holder of the check has two separate obligations that they can pursue, the underlying obligation by a contract action, if that's where the -- what it was, and a suit on the instrument. They can only recover once.

Q So the hypothetical debtor I just mentioned who goes to the grocery store and

purchases groceries with a check technically incurs a debt until the check is honored by his or her bank; correct?

A I would think that's probably technically correct.

Q Would you agree that a debtor subject to the language of the sort we have in the confirmation order in this case could go to the grocery store and cash a check, if he could find a grocery store that would still cash a check today?

A They could cash a check, if that -- if -- I suppose they could do it. You mean without offending the order?

Q Without offending the order, that's the question, that's correct.

A Well, they undertake an obligation to take the instrument up if it's dishonored, if they cash the check. So it's the same technical question you asked me before, just another version of it.

Q Would you agree that a debtor that's subject to language like the one in the confirmation order in Judge Porteous's case could go to the grocery store, if there's an ATM there, withdraw some cash, pay cash for some groceries, without violating the order?

A That would appear not to violate the order, assuming for the moment that that ATM machine was current in terms of collectible balances of the account it's drawn on. So there's no right to repayment. There's simply a debit transaction simultaneous to the account balance. And a -- the cash is delivered to the customer at the same time. So nobody owes anything after that.

Q On schedule I, Judge Porteous listed his net monthly take-home pay as approximately $7500; right?

A That's what I've seen.

Q And some of the evidence in this case has indicated that his net take-home pay at the time was actually more like $7700. Do you recall -- recall seeing that?

A I've seen that.

Q And the difference is about $174 between the two figures; right?

A I don't remember the exact figures after the first two digits, but I'll assume that's correct.

Q Would you agree that the difference between those two amounts, in terms of significance, is on the borderline?

A Yes.

Q Those sorts of things always arise in the context of particular facts, don't they?

A That kind of discrepancy would appear more consistent, without any other facts, if -- in a vacuum would appear more consistent with the inadvertent mistake, somebody grabs a pay stub and it isn't the most current one. That could happen. If that's the only error, it probably would be treated as an inadvertent mistake.

Q And in that sort of scenario, a debtor might be underestimating his or her expenses a little bit. Is that fair?

A That sometimes happens too.

Q The difference in $174 or something in that range might be absorbed in legitimate expenses of the debtor. Is that fair?

A I'm not sure what you mean by "absorbed," so I don't really understand the question. It sounds like you're saying if they underestimated their expenses, then the two will offset and there's no harm. I've already spoken about this idea of no harm, no foul.

If the mistake is inadvertent and isolated and seems to be that way, then it's not treated as

an intentional false statement, whether it's an underestimate of a particular expense or a slightly inaccurate pay stub.

Q Let me go back to markers for a moment, your Honor. Before the House task force, you talked about another problem with the marker taken out post petition. And since that -- since your prior testimony may be introduced into evidence, I want to make sure I explore that.

And the issue you identified was that the payment of a marker taken out post confirmation might be a violation of the automatic stay. Do you recall that testimony?

A Yes. I said that if the marker was presented to the drawee bank, which I believe the prior testimony of the FBI agent, there's a slang term "deposit," it's really a presentment of an instrument. If that happens, you have a creditor who is collecting. It's their action.

And the automatic stay stays collection of post petition debts from the bankruptcy estate.

So if the money in the account, as we've already discussed, included post petition earnings, post petition acquisition under Section 1306, it's likely that estate property, estate moneys in the

account, would have been grabbed, if you want to use that term, by the presentment of the instrument. So it's an action of the creditor, it would violate the stay.

Albeit if the creditor had been deprived of knowledge of the filing of the bankruptcy, they did it innocently. Still a violation.

However, I also testified that if Judge Porteous went back to the casino or up to the window and paid the marker off in cash -- paid the debt off in cash with whatever source, and so presentment didn't occur, it doesn't appear that the creditor took action, but it appears possible that the debtor was using the same estate property after acquired cash for a purpose that's not in the ordinary course, as that term has been interpreted in Section 363(b), so there's a violation of the code, but the violation appears to be the debtor's violation.

Q Let me go back to the presentment issue just for a moment, your Honor. The automatic stay does not prohibit the presentment of a negotiable instrument, does it?

A It does not prohibit presentment for purposes of where necessary, such as where a note has to be demanded. I can look it up if you'd like

to be precise. It prohibits an act to collect, however. And if that is used to collect, as opposed to simply establish such as a demand note, making demand in order to bring to present the maturity of a demand note, which is another form of instrument, that's not prohibited.

But it is prohibited if the intent is actually to collect the debt. That's prohibited.

Q From estate property?

A From estate property. It's prohibited also as to a debtor's property, as to prepetition debts.

Q Not post petition?

A Post-petition debts, it's only prohibited as to estate property.

MR. WALSH: May I have a moment, Madam Chair?

CHAIRMAN MC CASKILL: Yes.

MR. WALSH: Nothing further, thank you.

CHAIRMAN MC CASKILL: Thank you.

MS. KONAR: Madam Chair, we have no further questions.

CHAIRMAN MC CASKILL: Thank you very much. Any questions by the panel? Any Senators have questions of this witness?

Thank you, Judge, very much, for your cooperation and your time this afternoon.

THE WITNESS: You're welcome.

(Witness excused.)

MR. SCHIFF: Madam Chair, subject to our introduction of documentary evidence, and counsel for both sides will be meeting later in the week to agree to as much of that as possible, subject to the introduction of that evidence, the House rests.

CHAIRMAN MC CASKILL: Thank you.

MR. TURLEY: Madam Chair, the defense is ready to present its case for G. Thomas Porteous. Can you just give us a few minutes, about five minutes for us to confer and then we'll be ready to start?

CHAIRMAN MC CASKILL: And how many witnesses do you have here prepared to testify right now?

MR. TURLEY: Well, we could present two more, if the Senators have the time for it. We could certainly do that. We have two witnesses available. It depends on how late the Senators want to go.

CHAIRMAN MC CASKILL: How long do you anticipate the first of those two witnesses will

take? I won't hold you to it. Just trying to see how long -- we're doing -- if you noticed, we haven't adjourned, and people are just tagging out to go back and use the facilities and grab a drink.

And I'm trying to maybe see if I can give my colleagues some kind of estimation of when I'm --

MR. TURLEY: I would think that our first witness would not go beyond 45 minutes. We can try to shave off some time as we go. But that would be my rough estimate.

CHAIRMAN MC CASKILL: All right. Why don't you take a few minutes, and we won't adjourn, but people -- if people want to go back and refill your water glass, let's take your first witness, as soon as you're ready.

MR. TURLEY: Thank you.

MR. SCHIFF: And Madam Chair, may I ask who the first couple witnesses will be? We have their trial order, but of course they're not obligated to follow it.

CHAIRMAN MC CASKILL: Who will your first witness be?

MR. TURLEY: Our first witness will be Judge Porteous's son, Timmy.

CHAIRMAN MC CASKILL: Your second witness

if we have time for that one?

MR. TURLEY: My assumption is the second witness would be Judge Bodenheimer.

CHAIRMAN MC CASKILL: Okay.

(Recess.)

(6:00 p.m.)

CHAIRMAN MC CASKILL: Judge Porteous may call his first witness.

MR. SCHWARTZ: We would call Timothy Porteous.

Whereupon,

TIMOTHY A. PORTEOUS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: Thank you. Be seated.

MR. SCHWARTZ: Thank you, Madam Chairman.

DIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Porteous, my name is Daniel Schwartz. I'm one of the attorneys for Judge Porteous. Would you please state your name.

A Timothy A. Porteous.

Q And where do you reside?

A I live in Kenner, Louisiana.