REPORT BY THE SPECIAL INVESTIGATORY COMMITTEE
TO THE JUDICIAL COUNCIL
OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DOCKET NO. 07-05-351-0085

In the Matter of Judge G. Thomas Porteous, Jr.
United States District Judge
Eastern District of Louisiana

Submitted

November 20, 2007

ACCOMPANIED BY
2 VOLUMES OF EXHIBITS

CONFIDENTIAL

I. Jurisdictional Basis

On May 18, 2007, the Chief Judge of the United States Court of Appeals for the Fifth Circuit received a formal complaint of judicial misconduct involving Judge G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana. (See Exhibit A) Chief Judge Edith H. Jones expeditiously reviewed the complaint under the authority of 28 U.S.C. §352(a), and determined under 28 U.S.C. §352(b) that it was not appropriate for summary dismissal. Accordingly, under 28 U.S.C. §353(a), Chief Judge Jones appointed a special committee to investigate the complaint, composed of Chief Judge Jones, Circuit Judge Fortunato P. Benavides and District Judge Sim Lake. Notice of this action was provided to Judge Porteous. Under 28 U.S.C. §353(c), the Special Investigatory Committee ("the Committee") was required "to conduct an investigation as extensive as it considers necessary" and to file" expeditiously" with the Judicial Council "a comprehensive written report" presenting "both the findings of the investigation and the committee's recommendations for necessary and appropriate action" by the Judicial Council.

The following report describes the Special Investigatory Committee's procedure, the scope of its investigation, the course of dealings with Judge Porteous and his counsel, the Committee's findings of fact and conclusions of law, and a recommendation of appropriate disciplinary action.

Two volumes of exhibits accompany this Report and include documents and testimony the Committee believes are most pertinent. While the exhibits bear initials for purposes of the index hereto, the reader may correlate them with the trial evidence identified in the Findings and Conclusions by looking at the "Hearing Exhibit" column of the Exhibit Index. On request, any member of the Council may review any of the witness statements, correspondence, and documents underlying this report.

II. Course of Proceedings

On May 18, 2007, Chief Judge Jones received from the United States Department of Justice ("DOJ") a Complaint of Misconduct against Judge G. Thomas Porteous, Jr. of the United States District Court for the Eastern District of Louisiana (Exhibit A). The Complaint was filed pursuant to 28 U.S.C. § 351 et seq. by John C. Keeney, Deputy Assistant Attorney General for the Criminal Division of the U.S. Department of Justice.

DOJ stated that it had determined, after a far-ranging investigation, not to prosecute Judge Porteous for various alleged crimes, including but not limited to (a) the filing of false statements under penalty of perjury during his and his wife's personal Chapter 13 bankruptcy case; (b) repeated violations of bankruptcy court orders; (c) deceptive pre-bankruptcy conduct with respect to his unsecured creditor, Regions Bank; and (d) receipt of money and things of value from lawyers

with cases pending before him. The 22-page, single-spaced Complaint alleged detailed facts supporting the charges and was derived from a years-long investigation of Judge Porteous and other persons in the New Orleans/Jefferson Parish area. DOJ obtained an Order permitting the release of grand jury materials for use in this disciplinary investigation pursuant to Federal Criminal Rule 6(e)(3)(E)(i).

Because the Chief Judge is not empowered to resolve factual disputes, Chief Judge Jones appointed Fifth Circuit Judge Fortunato P. Benavides and United States District Judge Sim Lake to assist her as a Special Investigating Committee (the "Committee"). *See* 28 U.S.C. § 353(a)(2); Rules 4(E) and 8(A) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability (hereafter, "5th Cir. Misconduct Rule"). The Committee retained a former United States Attorney for the Southern District of Texas, Mr. Ronald G. Woods, Esquire, of Houston, Texas, as an investigator. 5th Cir. Misconduct Rule 9(C) and (D). Judge Porteous was promptly notified of the Complaint and the appointment of the special committee by letter dated May 24, 2007.[1] 28 U.S.C. § 353 (a)(3); 5th Cir. Misconduct Rule 4(F)(2) (Exhibit D-1).

[1] Nearly all correspondence in this matter has been instantaneously faxed or e-mailed to the recipients and hence was both sent and received on the dates identified throughout.

Through Mr. Woods, the Committee began coordinating with DOJ attorneys to retrieve and organize grand jury testimony of over a dozen witnesses and obtain thousands of documents relevant to the allegations in the Complaint.

On June 11, 2007, Judge Porteous's then-counsel Kyle D. Schonekas and Herbert V. Larson, Jr. of New Orleans, (who represented Judge Porteous during the federal grand jury investigation), communicated an offer by Judge Porteous to retire voluntarily upon his being certified by the Judicial Council of the Fifth Circuit as disabled to continue performing the duties of a federal judge. Judge Porteous sought to receive "all customary retirement benefits" upon waiver of the length of service requirement pursuant to 5th Circuit Misconduct Rule 13(F)(5). (Exhibit D-2) This request was predicated on a petition the Judge had filed in May of 2006, seeking a certificate of disability from Chief Judge Jones. *See* 28 U.S.C. § 372(a).[2] Chief Judge Jones denied the request at that time and again when it was renewed in September of 2006, based on insufficient medical documentation of a permanent mental disability. The June 11, 2007, letter suggested that Chief Judge Jones might have to recuse from the misconduct proceeding because she had

[2] As of May of 2006 Judge Porteous asserted that he was a victim of serious mental depression arising from alcohol abuse, the loss of his house in Hurricane Katrina, his wife's then-recent and sudden death, and the ongoing grand jury investigation.

already ruled adversely to Judge Porteous on his foremost defense —disability by reason of depression.[3]

The Committee declined for two reasons to forward the Judge's offer to the Fifth Circuit Judicial Council. *See* letter of June 25, 2007 (Exhibit D-3). First, to do so would be inconsistent with the Committee's duty to conduct an investigation, which was in its infancy, and to file a comprehensive report with the Fifth Circuit Judicial Council. 28 U.S.C. § 353(c); 5th Cir. Misconduct Rule 9(E). Second, Judge Porteous had misinterpreted the statutory provision that authorizes waiver of length of service but not the minimum age for a judicial disability retirement. 28 U.S.C. §§ 354(a)(2)(B)(ii); 371; and 372(b). In its letter, the Committee also notified Judge Porteous that it would conduct a hearing on the Complaint's allegations on August 27-29, 2007; that he could avail himself of the procedures in 5th Circuit Misconduct Rule 11; and that he must file a formal answer to the Complaint on or before July 10. *See* 5th Cir. Misconduct Rule 10(A) and (B).

On July 2, 2007, Messrs. Schonekas and Larson informed the Committee that they no longer represented Judge Porteous (Exhibit D-4). This letter was followed, on July 5, by a letter from Judge Porteous seeking a continuance of the hearing; appropriate discovery rights; and a dismissal because of the Complaint's

[3] By June of 2007 as counsel's letter reveals, several stressors in Judge Porteous's life had been removed. He had abstained from alcohol for a year; the damage to his house had been fully reimbursed by insurance; and the grand jury investigation against him had terminated with a decision not to prosecute.

failure to be verified under oath (Exhibit D-5). *See* 5th Cir. Misconduct Rule 2(F). Judge Porteous also asserted that he might renew his disability request.

On July 10 the Committee informed Judge Porteous that it agreed to a continuance and reset the hearing for September 26-28. *See* Letter of July 10, 2007 (Exhibit D-6). The Committee explained that its process was being expedited in part to benefit Judge Porteous, who had already been subject to a well-publicized multi-year grand jury investigation. The Committee informed the judge that the final scope of the hearing would depend on his response to the Complaint (the date of which was also extended) and reassured him of adequate advance notice concerning the Committee's use of grand jury witnesses and documents. The Committee also informed Judge Porteous that it had retained another former United States Attorney for the Southern District of Texas, Lawrence D. Finder, Esquire, of Haynes and Boone in Houston, Texas, to assist Mr. Woods.

A new attorney, Michael L. Ellis, notified the Committee on August 2 that he represented Judge Porteous (Exhibit D-7). He requested further extensions of the hearing and response date. On August 3 the Committee refused to continue the hearing but extended the response date to August 17 (Exhibit D-8).

Committee counsel then undertook to obtain orders of immunity from federal prosecution for prospective witnesses who had testified before the grand

jury. These witnesses included friends of Judge Porteous, his secretary, and his bankruptcy counsel.

In a letter dated August 9, Judge Porteous sought dismissal of the Complaint for alleged technical defects[4] and requested the names and addresses of the witnesses identified therein (Exhibit D-9). Most of those witnesses were close friends or associates of Judge Porteous.

Responding on August 14, Committee counsel defended the Complaint's sufficiency as being based on sworn grand jury testimony, business records of casinos, banks, and credit card companies, and official bankruptcy court records (Exhibit D-10).[5] The Committee pointed out that the judge's former attorney had been deeply involved in the grand jury investigation and, in fact, had advised Judge Porteous's bankruptcy counsel to assert attorney-client privilege during his grand jury appearance. (The assertion was ultimately overcome, and the attorney, Mr. Lightfoot testified, after a judicial finding that the crime-fraud exception applied.) The Committee also offered to make all of its documents available for review at counsel's office in Houston, and the Committee named and provided addresses of all prospective witnesses and their attorneys.

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[4] Judge Porteous contended that the DOJ Complaint was unverified, contrary to 5th Cir. Misconduct Rule 2(F) and lacked the names and addresses of witnesses it identified. 5th Cir. Misconduct Rule 2(B)(3).

[5] On August 29, to alleviate any uncertainty, Chief Judge Jones identified a misconduct complaint based on the same facts and allegations articulated in the DOJ Complaint. *See* 5th Cir. Misconduct Rule 2(J).

Two days later, Mr. Ellis, Judge Porteous's new counsel, reasserted that his client claimed to suffer from memory lapses related to mental depression (Exhibit D-11). These conditions allegedly rendered the judge incapable of performing his duties on the federal bench or assisting competently in his own defense. Updated reports from Judge Porteous's psychological advisers were attached. Mr. Ellis also represented that he would call no witnesses on the substance of the Complaint's allegations and would rely solely on Judge Porteous's medical records.

In an abundance of caution, the Committee elected to request a psychiatric evaluation of Judge Porteous under the direction of Dr. Glen O. Gabbard, the Director of Baylor College of Medicine Psychiatric Clinic in Houston. Judge Porteous cooperated by visiting Houston for the evaluation and furnishing all of his prior relevant medical records to the doctor's team. Dr. Gabbard was asked to determine whether Judge Porteous is capable of performing the duties of a federal judge and capable of assisting counsel in a defense against the Complaint. Dr. Gabbard's report, furnished first to Judge Porteous orally and then in written form to the Committee, answered both questions in the affirmative. *See* Exhibit C, page 10. The report concluded that Judge Porteous is fully capable, but at this point in his career he "dislikes" being a judge. *Id.* He looks forward to life off the bench, is enjoying the company of his grandchildren, *See* Exhibit C, p. 4, and is

considering opportunities for mediation, teaching, and speaking, *See* Exhibit C, pp. 4, 10.

The delay occasioned by the psychiatric evaluation required the hearing to be reset to October 29 in New Orleans. The Committee's preparations continued apace in August and September. An order of federal immunity was obtained for Judge Porteous's testimony. Counsel for Judge Porteous was sent copies of significant documents: the judge's financial disclosure reports; the certified bankruptcy court file; Regions Bank loan documents; and bankruptcy attorney Lightfoot's file and correspondence. Committee counsel furnished the DOJ correspondence that identified all grand jury documents, comprising nine bankers' boxes, that the Committee had received. All of these were offered again for inspection by Judge Porteous's attorney. Committee counsel promised and did seasonably furnish pertinent grand jury transcripts and copies of FBI 302 reports of witnesses who would be called at the hearing.[6] (Exhibits D-13-15) Finally, the Committee invoked Local Rule 55.2 of the Southern District of Texas to require any disputes over admissibility of documents to be raised at least three business days before trial.

Counsel for the Committee traveled to New Orleans several times to interview witnesses for the hearing. As the hearing approached Committee

[6] Copies of complete grand jury testimony and/or 302 reports of the witnesses were transmitted to Judge Porteous's attorney beginning October 8, 2007.

counsel raised with Judge Porteous's attorney whether Judge Porteous would voluntarily resign in lieu of continuing with a hearing and disciplinary procedures. Mr. Ellis responded that Judge Porteous was receptive to resigning and it appeared that a deal had been struck whereby Judge Porteous would resign in a short period of time, and the Committee would recommend to the Fifth Circuit Judicial Council that it conclude the proceedings as moot. A Memorandum of Understanding was prepared by the Committee memorializing the proposed agreement.

Late on Monday, October 15, Committee counsel were informed by Mr. Ellis that Judge Porteous had reconsidered over the preceding weekend and refused to sign the Memorandum of Understanding previously executed by Chief Judge Jones for the Committee.

On Tuesday, October 16, Mr. Ellis notified the Committee of his withdrawal because of an "impasse with respect to the future course of my representation" of the judge. Mr. Ellis attached a copy of his resignation letter, which referred to "irreconcilable differences" between him and the judge on how to proceed, and which advised Judge Porteous to prepare for the October 29 hearing (Exhibits D-16 & 17).

On October 18, Committee counsel furnished to the judge updated, specific Charges of Judicial Misconduct, essentially a complete outline of the investigators' proposed proof at the hearing (Exhibit B). The principal subjects of the charges

are ethical and criminal violations related to the actions described at the beginning of this section.

Responding to this letter, which also offered additional witness statements, Judge Porteous requested a continuance of the October 29 hearing (Exhibit D-18).

The Committee denied any further continuance in a letter that recited detailed reasons for the denial (Exhibit D-19). In three additional letters addressed to Judge Porteous on October 19, the Committee listed all of the evidence that had been furnished to the judge or his counsel (Exhibits D-20-22).

On October 24, Committee counsel confirmed their delivery to Judge Porteous's chambers of documents including personal credit card records; financial analyses of his secretary's and his own bank accounts; casino records; and an FBI 302 for Edward F. Butler, former President of Regions Bank (Exhibit D-23).

Committee counsel sent Judge Porteous an exhibit list on Friday, October 26, and recited again the list of document disclosures previously made to Judge Porteous or his counsel (Exhibit D-24).

Members of the Committee, Special Counsel and Chief Judge Jones' assistant arrived in New Orleans over the weekend to complete preparations for the hearing. Evidence was taken on Monday and Tuesday, October 29-30. The Committee investigators presented ten live witnesses, the second of whom was Judge Porteous. 96 documents were admitted into evidence. Two attorneys from

DOJ represented the complainant at the hearing but did not submit oral or written argument. *See* 5th Cir. Misconduct Rule 12(c).

Judge Porteous represented himself. He presented oral argument and offered motions; he cross-examined witnesses; and he presented two defense witnesses (Claude C. Lightfoot, Jr. and Don Gardner). He represented himself competently.[7]

Throughout its investigation leading up to the hearing, the Committee fully apprised Judge Porteous of evidence that would be offered against him and afforded him all rights conferred by 5th Cir. Misconduct Rules 10 and 11.

Having compiled as complete information as it could on the allegations in the charge document dated October 18, the Committee files the following Findings of Fact and Conclusions of Law.

Any member of the Council is welcome to review any or all of the underlying files, which are available both in New Orleans and Houston.

III. Findings of Fact and Conclusions of Law

The Committee commenced its factual investigation following its receipt of the "Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr." on May 21, 2007. The Committee engaged the services of attorneys

[7] Although Judge Porteous continued to assert some type of disability during the hearing, he offered no further evidence of such, and the record belies any defects of memory or legal ability.

Ronald G. Woods and Lawrence D. Finder as Committee Counsel to assist its investigation.

Committee Counsel were tasked with numerous duties, including but not limited to: reviewing thousands of pages of documents which had been subpoenaed by the federal grand jury; reviewing reports of investigation created by the Federal Bureau of Investigation; reviewing the transcripts of numerous witnesses who were subpoenaed and testified before the federal grand jury; conducting numerous independent witness interviews; obtaining the assistance and cooperation of federal prosecutors and law enforcement agents who had worked on the criminal investigation; performing necessary legal research; requesting statutory immunity for witnesses, when appropriate; drafting the charge of judicial misconduct; calling witnesses in the hearing on judicial misconduct; assisting in the drafting of this report; and generally providing legal counsel to the Committee as needed.

The Committee herewith reports its factual findings based on the evaluation of the evidence and the credibility of the witnesses, and its conclusions of law in the following five substantive areas:

1. Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court;
2. Bank Fraud Involving a Loan at Regions Bank;
3. Receipt of Cash, Gifts and Other Forms of Remuneration;

4. Financial Disclosure Report Violations; and

5. Violations of the Canons of the Code of Conduct for United States Judges

Since the factual findings often involve acts of misconduct that simultaneously violated ethical canons, criminal statutes and financial disclosure obligations, there is unavoidably a certain amount of repetition among the five substantive categories of this report.

1. BANKRUPTCY FRAUD AND VIOLATIONS OF THE ORDER OF THE BANKRUPTCY COURT

Judge Porteous chose to be a public servant and support his family on his judicial income. He had a wife, Carmella (now deceased), with whom he had several children. He had a mortgage, car notes, private school tuition expenses, and other normal expenses associated with everyday living. Carmella did not have steady employment outside of the home and did not contribute much to the family's income. Porteous also succumbed to alcohol abuse and excessive gambling, and was not able to support his lifestyle on a judicial salary. By the end of 2000 his credit card debt exceeded his annual income as a United States District Judge.

In June or July of 2000 Porteous engaged bankruptcy counsel Claude Lightfoot (Hearing Transcript, pp. 442 – 448).[8] As will be seen below, Lightfoot

[8] Future references to Hearing Transcript are identified as "p. ___."

and Porteous attempted to "workout" a settlement with certain unsecured creditors (primarily credit card companies), while consciously preferring other unsecured creditors (not all of whom were disclosed to Lightfoot by Porteous). The "workout" attempt failed, and Lightfoot then advised Porteous to file Chapter 13 bankruptcy. When Porteous expressed concern that a public bankruptcy filing would be embarrassing, Lightfoot suggested that the original petition be filed with false names, and later amended with the correct names – an idea that Porteous embraced.

A debtor who files for Chapter 13 bankruptcy assumes certain responsibilities. The debtor must abide by the rules set by the Chapter 13 trustee (11 U.S.C. § 521(a) (2)) and by the order(s) of the Bankruptcy Judge.

A. <u>False Petition</u>

Porteous admitted that on March 28, 2001, he and Carmella filed a Voluntary Ch. 13 Bankruptcy Petition in the Eastern District of Louisiana Bankruptcy Court, Docket No. 01-12363 (from Ex 1; SC122).[9] The Chapter 13 Trustee was S.J. Beaulieu, Jr.

At his hearing before the Committee, Porteous did not dispute that his voluntary petition listed false names for the debtors, i.e., "Ortous, G.T." and joint

[9] On June 4, 2001, then Chief Judge Carolyn King assigned U.S. Bankruptcy Judge William Greendyke of the Southern District of Texas to preside over this case in the Bankruptcy Court for the Eastern District of Louisiana. See EX. 1, SC 65.

debtor "Ortous, C.A.," or that the debtors' listed address was "PO Box 1723, Harvey, LA." (Ex 23) (pp. 52 – 53) instead of the Porteous's home or office address. Porteous also agreed that his application for "PO Box 1723" was dated March 20, 2001, or about eight days prior to filing Chapter 13 (pp. 53 – 55).

Porteous acknowledged that the jurat to the original Chapter 13 petition reads, "I declare under penalty of perjury that the information provided in this petition is true and correct." He admitted that neither his name nor his wife's name is "Ortous" and conceded that the bankruptcy petition that he signed under penalty of perjury contained false information. (p. 55). Porteous filed an Amended Voluntary Chapter 13 Petition (Ex 1; SC 120) on April 9, 2001. This amended pleading contained the correct names of the debtors and the Porteous long-time residential street address.

Lightfoot testified, under questioning by Porteous, that the intentional inclusion of aliases (and presumably the misleading PO Box address) in the bankruptcy petition was his "stupid idea," but that Porteous signed the petition. Lightfoot also testified that the falsifications were not intended to be fraudulent, but to save Porteous the embarrassment of the public's knowing that he was bankrupt (pp. 435 – 436).

This explanation for filing a misleading and false petition in a federal bankruptcy case is inconsistent with Judge Porteous's ethical obligation.

Porteous agreed that under Canon 2A, judges must freely and willingly accept restrictions on their personal conduct and activities. Indeed, the law mandates that judges file annual financial disclosure reports for the very purpose of exhibiting transparency to the public. The scheme to obfuscate the true identities of the debtors not only contravened Porteous's ethical duty as a sitting Article III judge, but was also a false statement made under oath. Porteous's explanation for lying is as irrelevant as Lightfoot's attempt to take responsibility for Porteous's conduct. A lay person might argue that (s)he relied upon the advice of counsel when knowingly putting false information into a court document filed under penalty of perjury, but a federal judge cannot reasonably avail himself of such a defense.

The crime of perjury requires that Porteous willfully subscribed as true a material matter, i.e., his name and that of his wife, which he did not believe to be true. 18 U.S.C. §1621(2). The crime of conspiracy to commit perjury requires one to know of the illegal purpose of the agreement and willfully join it, with an overt act in furtherance of the agreement. 18 U.S.C. §371.

B. <u>Impermissible Debts</u>

Porteous was explicitly warned by the Chapter 13 trustee, S. J. Beaulieu, his own attorney, and Judge Greendyke that he could not incur more debt while in bankruptcy. Examples of incurring debt would include using credit cards

(including credit cards not disclosed to the trustee) and taking out gambling markers. A "gambling marker" is a form of credit.[10]

Following the filing of his Chapter 13 bankruptcy petition, Porteous received a pamphlet from Beaulieu titled, *Your Rights and Responsibilities in Chapter 13* (Ex. 11; SC 399 - 403). Page six of that pamphlet contained the admonition, "you may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy Court." (SC 402). Porteous testified that he recalled receiving the pamphlet from Beaulieu (p. 60). Similarly, Porteous testified that in his "§341 hearing" (first meeting of creditors) of May 9, 2001 (Ex. 22; SC 598), in the presence of Lightfoot, he recalled being told by Mr. Beaulieu that he could not use credit cards any longer and understood that he could not incur more credit while in bankruptcy (pp. 61 – 62). Porteous was also aware of Judge Greendyke's Order of June 28, 2001 (docketed July 2, 2001) confirming Porteous's Chapter 13 plan (from Ex. 1; SC 50), which plainly warned that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee." (p. 62).

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[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/her debt to the casino. The marker authorizes the casino to present it 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 (p. 64).

In spite of the clear directives against a Chapter 13 debtor incurring more debt, Porteous continued to incur debt through gambling and improper use of credit cards. In fact, according to lead FBI case agent Wayne Horner's testimony, Porteous took out approximately $31,000 in markers from August 20, 2001, through July 5, 2002, at various casinos, including Treasure Chest Casino in Kenner, Louisiana; Harrah's Casino in New Orleans, Louisiana; Beau Rivage Casino in Biloxi, Mississippi; Grand Casino in Gulfport, Mississippi. Out of the $31,000 in markers, Porteous left the casinos owing $14,000, which he paid back at later dates (pp. 294-315) (Ex. 49; SC 1131(Grand Casino); Ex. 51; SC 1198 (Beau Rivage); Ex. 52; SC 1314 (Harrah's); and Ex. 54; SC 1435-1439 (Treasure Chest)).

As further examples, Porteous admitted that from August 20 -21, 2001, he borrowed $8,000 by taking out eight $1,000 markers from the Treasure Chest Casino in Kenner, Louisiana (pp. 65 – 66). Porteous further admitted: taking out a $1,000 marker from Treasure Chest on August 21, 2001 (Ex. 54; SC1438) and not paying it back until September 9, 2001 (p. 67); taking out another $1,000 marker from Treasure Chest on August 21, 2001 (Ex. 54; SC1438) and not paying it back until September 9, 2001 (pp. 67 – 68); and taking out a $1,000 marker from Treasure Chest on August 21 but not paying it back until September 15, 2001 (Ex. 54; SC 1438). Porteous did not dispute that during October 17-18, 2001, he also

borrowed via markers in excess of $5,900 from the Treasure Chest Casino, $4,400 of which was not paid back until November 9, 2001 (p. 70).

Markers were not the only means by which he incurred more debt during the pendency of the bankruptcy. Porteous admitted that his co-debtor wife used a Fleet credit card on March 8, 2001, at Harrah's Casino in New Orleans (p. 73). The Fleet credit card was not listed in on the debtors' Schedule F (Creditors Holding Unsecured Nonpriority Claims, a list including credit cards) of the Amended Bankruptcy Petition, filed April 9 [2001] (from Ex. 1; SC 102-105). As will be discussed below, the balance of the Fleet card was paid in full immediately prior to bankruptcy by Porteous through his secretary, Rhonda Danos, thus making Fleet a preferred creditor and enabling Porteous and/or his wife to have a credit card available for gambling and other uses.[11]

Porteous did not dispute that the Fleet card (Ex. 21) was not listed among the fifteen disclosed credit cards appearing on Schedule F of his Amended Bankruptcy Petition (pp. 74 – 75). He also admitted that use of the Fleet credit card for any purpose post-bankruptcy was an extension of credit and the incurring of additional debt (p. 75). For example, Porteous admitted that the Fleet credit card was used for purchases and cash advances in the amount of $734.31 throughout May and June 2001 (Ex. 21; SC 592) (pp. 76 – 77). These extensions of credit, as indicated

[11] The Fleet credit card was in the name of Carmella Porteous.

by the billing statement, included use at the Treasure Chest casino on May 16, 2001 ($174.99) and the Oasis Hotel in Gulfport, Mississippi on May 28, 2001 ($105.65). Similarly, Porteous admitted that the Fleet credit card was used at Harrah's in New Orleans for $91.99 on June 24, 2001 and Treasure Chest for $68.99 on July 1, 2001 (Ex. 21; SC 593) (pp. 77).

The omission of the Fleet credit card from Schedule F could hardly have been inadvertent. Lightfoot sent out "workout" letters to thirteen unsecured creditors (from Ex. 1; SC 297 - 299) prior to Porteous filing bankruptcy. He notified Judge and Mrs. Porteous of the list of creditors and explicitly stated which credit card companies were contacted ("I enclose a copy of the letters and one copy of the attachments I included with each that I have sent to all of the unsecured creditors, with the exception of Regions Bank, which we wanted to exclude, proposing the workout of the debts to each by settlement and release as opposed to the filing of bankruptcy."). The thirteen unsecured credit card companies are then listed on the attachment (SC 298). Conspicuously absent from the list of thirteen is Fleet. Even had Porteous negligently missed Fleet on Schedule F, the Lightfoot workout letter would have given him prior notice of its omission, and would have created an earlier opportunity for Porteous to have called the omission to Lightfoot's attention.

Incurring additional debt via gambling markers and use of an undisclosed credit card were just two acts of concealment by Porteous during bankruptcy. He also failed to disclose other salient facts to the trustee, such as the impending receipt of a tax refund due and owing him and his wife, the existence of a Fidelity money market account, and the undervaluing of his Bank One checking account. This pattern of concealment is now addressed.

C. Other Bankruptcy Misrepresentations

Porteous admitted that his Amended Bankruptcy Petition of April 9, 2001 contained a "Chapter 13 Schedules and Plan," Schedule B, Question 17 (from EX 1; SC 95) requesting "other liquidated debts owing debtor including tax refunds . . ." and that he answered the question by checking the "**none**" box (pp 80 – 82). Question 20 on Schedule B also asks for disclosure of unliquidated claims, including tax refunds, to which Porteous similarly checked "**none**." The Schedules contain a declaration within the jurat (SC 111) that provides,

> I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 18 sheets plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief.

The jurat was signed by Porteous and his wife on April 9, 2001. In fact, Porteous knew he would be receiving a tax refund in excess of $4,000 when he went into

bankruptcy. On March 23, 2001, just five days before the original Chapter 13 filing of March 28, 2001, Judge Porteous and Mrs. Porteous filed for a federal tax refund on their 2000 1040 tax return in the amount of **$4,143.72** (EX 24; SC 600). Shortly thereafter, that exact amount was deposited into Porteous's Bank One checking account (EX 25) on April 13, 2001, or just four days after the filing of the Amended Chapter 13 Petition on April 9, 2001. Not only was this tax refund concealed from the Bankruptcy Court, but attorney Claude Lightfoot testified on direct examination to Judge Porteous that he had no recollection of discussing the refund with Porteous (p. 437)[12] and that he (Lightfoot) would never have checked off the box (indicating no refund) had he been advised by the client that a refund was expected (pp. 450 – 451).

Porteous testified that the concealment of the tax refund from his bankruptcy schedule, which was signed under penalty of perjury, was an unintentional oversight. What is certain is that if the existence of the refund was an oversight, that oversight was never rectified. The refund was never reported to the Chapter 13 trustee or made part of the bankruptcy estate.

Porteous admitted that Schedule B – Personal Property, Question 2 (from Ex. 1, SC 95), requested information on all "checking, savings or other financial

[12] Lightfoot's testimony seems at odds with Porteous's statement at the hearing that he (Porteous) discussed the receipt of the tax refund with Lightfoot, and that Lightfoot advised him to put the refund into his (Porteous') account (pp. 83 – 84).

accounts," but that he only listed a Bank One checking account valued at $100. (pp. 79 – 80; 85; 94 – 95). In fact, Porteous's Bank One monthly statement (Ex. 27; SC 606) showed a beginning balance of $559.07 as of March 23, 2001 (only five days before the filing of bankruptcy). Porteous also admitted that he owned a Fidelity money market account (Ex. 28; SC 611) that was not listed on his bankruptcy schedules. On March 28, 2001 – the date Porteous filed Chapter 13 – his concealed Fidelity money market account had a balance of $283.42 according to his Fidelity bank statement of April 20, 2001 (Ex. 28; SC 611). That bank statement also showed that Porteous's average balance for the previous 30 days was $320.29. Porteous testified that he thought he told his lawyer about the existence of the Fidelity account (p. 87), but Lightfoot testified that he was never told of other bank accounts (p. 449).

The Special Committee concludes that Porteous intentionally failed to disclose all his nonexempt property on the Schedules while undervaluing other property. His tax return requesting a refund in excess of $4,000 was signed days before bankruptcy. When that omission is considered with his failure to schedule the Fidelity money market account, and his failure to properly value the Bank One account, a pattern of misrepresentation becomes apparent. Each of these acts violated his oath on the "Declaration Concerning Debtor's Schedules" which he signed under penalty of perjury (from Ex. 1; SC 111).

The same pattern of misstatements is evident in the "Statement of Financial Affairs" portion of the Amended Bankruptcy Petition (Ex. 1; SC 112). In Question 3., "Payments to creditors," (Ex. 1; SC 112), debtors were to list all payments on loans and other debts aggregating more than $600 made within 90 days of filing bankruptcy. Instead of accurately identifying creditors, Porteous's response to Question 3. was "Normal Installments." In fact, the March 2001 monthly statement for the previously mentioned Fleet credit card (Ex. 29; SC 618) shows a balance of $**1,088.41**, due April 15, 2001. The following month's statement from Fleet (Ex. 29; SC 620) shows a payment in full of **$1,088.41** being *posted* by Fleet on March 29, 2001 – or one day after the filing of Chapter 13 bankruptcy. The source of that payment was a check from the personal checking account of Porteous's long-time secretary, Rhonda Danos. She wrote a check on her Hibernia Bank account (Ex. 29; SC 619) that was made payable to Fleet on March 23, 2001 (five days before the filing of bankruptcy), in the amount of **$1,088.41**. The notation on the bottom of the check names "Carmella Porteous" and the account number of the above-referenced Fleet credit card account.

Porteous admitted that Danos paid Fleet via a personal check five days prior to his filing bankruptcy, but he could not recall a reason (p. 97). Rhonda Danos later testified that Judge Porteous asked her to pay the bill, as she never spoke with Carmella Porteous about paying her bills (pp 401-403). This payment by Danos of

the Porteous Fleet credit card had several consequences. First, it was a preferred payment to an unsecured creditor (Fleet). Second, since Fleet was not listed as an unsecured creditor, it also was not listed as a creditor to whom more than $600 was owed within 90 days of filing bankruptcy. Third, the omission violated the jurat to the Statement of Financial Affairs, which was signed and dated by the debtors on April 9, 2001 (from Ex. 1; SC 116) provided,

> I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and they are true and correct.

Finally, the sustained post-bankruptcy activity in the Fleet credit card account demonstrates that Porteous or his wife was continuing to incur credit without the required approval of the trustee or bankruptcy court.

Another preferred payment that Judge Porteous made occurred in connection with two $1000.00 markers that Porteous took out February 27, 2001, from Grand Casino in Gulfport, Mississippi. Grand Casino records (EX 49; SC 1105) reflect that the two markers were taken out on February 27, 2001 and were dropped on, i.e., negotiated against, Porteous's account March 24, 2001. Grand Casino records (EX 49; SC 1131) reflect that Judge Porteous requested on March 27, 2001 (the day before Porteous filed for bankruptcy) that his account be changed to a 30 day hold, and that "he prefers to pick up [the markers] – do not deposit." This same

record reflects that the customer (Porteous) called on April 2, 2001 and asked that the fees be waived because the markers were dropped too soon and also to the wrong account number. Judge Porteous did not disclose this preferred payment in the bankruptcy schedules he filed with his Amended Petition on April 9, 2001.

Rhonda Danos was questioned about a $1,000 check she wrote to the Beau Rivage Casino in Biloxi, Mississippi, dated April 30, 2001. She identified it (Ex. 90; SC 403) as the $1000 check she had written to that casino on behalf of Porteous, and admitted that the check had her notation on it as payment for Judge Porteous (p. 402). She explained that Porteous asked her to pay for a marker he had outstanding since she was going to the Beau Rivage (pp. 402-404). Beau Rivage records (Ex. 51; SC 1197) reflect that Porteous had a balance due of $1000 after a two day trip to the casino on April 7 to April 8, 2001. It is important to note that April 8th was just one day before Porteous filed his Amended Chapter 13 Bankruptcy Petition. The casino record (Ex. 51 SC 1197) reflects that a $1000 payment was made at the cashier's cage by personal check on May 4, 2001. This transaction is yet another example of Porteous making an improper preferred payment to a creditor, and also was not reported on the bankruptcy schedules or Statement of Financial Affairs.

Porteous testified that he did not recall having gambling losses exceeding $12,700 during the one year prior to the commencement of filing bankruptcy, but

also did not dispute that fact. He also testified that he could have incorrectly answered "none" to Question 8 on the Statement of Financial Affairs, where debtors were directed to "list all losses from . . . gambling within one year immediately preceding the commencement of this case . . . " (from Ex.1, SC 113). In fact, Agent Wayne Horner testified that he had compiled a summary chart (Ex. 30; SC 621) that listed all of Porteous's losses and winnings for the period of one year prior to the bankruptcy filing of March 28, 2001, and the total gross losses were actually $12,895.35, and the total gross winnings were $5,312.15 (pp. 317-318), resulting in substantial unreported losses.

Judge Greendyke testified that had he been aware of the preferred payments, the omitted tax refund, the understated bank account balances, and the false names on the petition, he would not have signed the confirmation order and would have sua sponte objected to confirming a plan on the basis of good faith (p. 385). Judge Greendyke also testified that his Confirmation Order forbade the debtor from acquiring new debt and that the bankruptcy schedules were signed under penalty of perjury (p. 381).

FBI Financial Analyst Gerald Fink testified (pp. 365-374) that he performed an analysis of Porteous's financial affairs for the years leading up to the bankruptcy in March 2001, and for the period after bankruptcy in years 2001 and 2002. Mr. Fink testified that Porteous understated his income and overstated his

expenses on the bankruptcy schedules he provided to the Chapter 13 Trustee. Fink provided a summary exhibit (Ex. 72) and a detailed explanation of how Porteous had $24,825 available in 2001, over and above what he reported on his bankruptcy schedules, that should have gone to creditors. He provided another summary exhibit (Ex. 73) and a detailed explanation of how Porteous had $36,000 available in 2002, over and above what he reported in his bankruptcy schedules that also should have gone to creditors.

Porteous's bankruptcy lawyer, Claude Lightfoot, testified that Porteous never told him about the tax refund he applied for, or the actual receipt of that tax refund. Similarly, Lightfoot testified he had no knowledge of Porteous's preferred payments to Fleet credit card and to the casinos. Lightfoot testified that he was never aware of Porteous's casino debts or prior gambling losses, and that he was only aware of a single bank account in which Porteous told him had a balance of $100.

Porteous's misconduct leading up to and during the course of his Chapter 13 bankruptcy was not limited to perjury and ethical violations, but also constituted bankruptcy fraud. The evidence conclusively shows that he knowingly concealed property (or undervalued property) from his lawyer, the trustee and the Court. As a result, there were fewer reported assets in the bankruptcy plan for unsecured creditors, while other creditors were being preferred for payment. His pattern of

preferences, omissions and undervaluing assets was deceitful, in bad faith and acted as a fraud upon the Court and most of the unsecured creditors in violation of 18 U.S.C. §152(a). Similarly, his false declarations were not the result of a series of honest mistakes, but an attempt to continue a lifestyle he was no longer entitled to live while under the protection of bankruptcy laws. These false declarations were in violation of 18 U.S.C. §152(3).

2. BANK FRAUD INVOLVING A LOAN AT REGIONS BANK

Porteous had a longstanding relationship with Regions Bank in New Orleans. The bank's former president, Edward "Buddy" Butler (now retired), was a friend or social acquaintance of Porteous for approximately 20 years (p. 112; 274, 289). Butler had a history of providing Porteous with small, unsecured personal bank loans (for tuition and household expenses) in the range of $2,500 to $5,000 (p. 275). Until 2001, these loans had always been paid back (p. 288).

Butler testified that the difference between an unsecured loan and a secured loan is that a secured loan has collateral securing the debt, while an unsecured loan only has the personal signature endorsement of the customer (p. 275). Butler also testified that the reason to collateralize a loan depends on the size of the loan and the creditworthiness of the customer. He stated the bank is in a much better position if it has collateral (pp. 275 – 276)

Porteous contacted Butler for a $5,000 unsecured loan from Regions Bank. On January 27, 2000, Porteous signed an unsecured promissory note for the $5,000 loan that would mature on July 24, 2000. (Ex. 4; SC 277; 279). The loan documents indicate that the stated purpose of the loan was for "TUITION FOR SON" (Ex. 4; SC 274). As part of the loan package, Porteous signed a "Financial Condition" statement on January 17, 2000, that provided,

> By signing this authorization, I represent and warrant to lender that the information provided above is true and correct and that there has been no material adverse change in my financial condition as disclosed in my most recent financial statement to lender.

(Ex. 4; SC 274). Porteous also checked off the word "NO" in a box on the loan form that asked, "In the last ten years, have you been bankrupt or are you in the process of filing bankruptcy?" (Ex. 4; SC276).

On or about July 24, 2000, Porteous again contacted Butler to get the $5,000 promissory note extended or renewed for another six month term, maturing on January 17, 2001. (Ex. 4; SC 279 – 282).

Porteous admitted that bankruptcy attorney Claude Lightfoot was his lawyer by November/December, 2000 (p. 60). In fact, Lightfoot had been engaged to represent Porteous by the summer of 2000 (pp. 442 – 445). Porteous also admitted

that Lightfoot sent "workout" letters to unsecured creditors on December 21, 2000, that read,

> Dear Judge and Mrs. Porteous,
>
> I enclose a copy of the letters and one copy of the attachments. I included with each that I have sent to all of the unsecured creditors, ***with the exception of Regions Bank which we wanted to exclude,*** proposing the workout of the debts to each by settlement and release as opposed to the filing of bankruptcy (italics and boldface added).

(Ex. 5; SC 296).

On or about January 17, 2001, Porteous again contacted Butler to get the same $5,000 promissory note extended or renewed a second time for another six month term (p. 283). The date of the second renewal on January 17, 2001, followed the Lightfoot "workout" letter by 27 days. The January 17th loan renewal was slightly more than two months prior to Porteous filing for bankruptcy.

When filling out the paperwork for the second extension/renewal of the $5,000 promissory note, Porteous again checked off the "NO" box to the question, "In the last ten years, have you been bankrupt ***or are you in the process of filing bankruptcy?*** (italics and boldface added) (from Ex. 1; SC 290). Porteous also signed the "Financial Condition" statement on January 17th that provided,

> By signing this authorization, I represent and warrant to lender that the information provided above is true and correct and that there has been no material adverse change in my financial condition as disclosed in my most recent financial statement to lender.

Porteous defrauded and made false statements to Regions Bank by failing to disclose his deteriorating financial condition to Butler or anyone else at the bank. Porteous admitted that on January 17, 2001, when he signed the second renewal/extension of the promissory note, Regions Bank had no way of knowing he was discussing "workout" and bankruptcy options with attorney Lightfoot (pp. 111 – 112). Porteous admitted that neither Butler nor anyone else at the bank asked him for collateral to secure the note before approving it on January 17, 2001 (p. 112). As a consequence of this omission, Regions Bank failed to take steps to collateralize the loan. Ultimately, Regions Bank was listed among the unsecured creditors and was eligible for only 34.55 percent of its loan in Chapter 13, or $1,782.43 (per the Chapter 13 Trustee's Final Report and Account, dated May 18, 2004) (from Ex. 1; SC 27).

There is no question that by December 21, 2000, Porteous was considering bankruptcy, and no question that his financial condition had adversely changed since he had received the first renewal/extension of the $5,000 note in July 2000. First, the Lightfoot "workout" letter of December 21st twice references the

possibility of Porteous filing bankruptcy (from Ex. 1; SC 296, 297). Second, the "workout" letter listed $182,330.23 in unsecured credit card debt (from Ex. 1; SC 298). Common experience teaches that credit card interest compounds daily, and with the passing of each day Porteous's financial condition was getting worse. Third, the "workout" letter only listed thirteen credit cards, while Schedule F to the Amended Bankruptcy Petition, filed several months later on April 9, 2001, listed fifteen credit cards with unsecured debt totaling $191,246.73 (exclusive of the Regions Bank promissory note) (from Ex. 1; SC 102 –105). Porteous was in a downward financial spiral that existed well before January 17, 2001, yet he consciously failed to tell his friend "Buddy" Butler and Regions Bank about the severity of his situation (p. 112).

Butler admitted that he had never seen the Lightfoot "workout" letter of December 21, 2000, prior to testifying in court before the Special Committee (pp. 280 – 282). Butler stated that he had no knowledge of any adverse change in Porteous's financial condition as of January 17, 2001 (p. 284). Butler admitted that had he known in advance of Porteous's worsening financial condition, engagement of bankruptcy counsel and mailing of the "workout" letters, he would have followed his bank's loan procedures and would have tried to obtain collateral to secure the loan in order to improve the bank's financial position in the event of a bankruptcy (pp. 287; 291 – 292). When asked about other creditors being paid in

full as preferred creditors, Butler stated "well, I think I would have . . . I think we would have been upset if someone else had gotten paid in full, a hundred percent, and we had been partially paid or not paid at all."

Lightfoot testified that had Regions Bank known of the true financial situation of Porteous in January, 2001, it would have concluded that there was a material change in his financial condition (436-456).

In his testimony, Porteous absurdly suggested a "good faith" type defense in purposely excluding Regions Bank from the December 21, 2000 "workout" in order to benefit the bank. He testified that it was his desire, to the extent possible, "to try and pay Buddy back all of his money" (p. 159), while consciously deciding "in the workout agreements not to include the bank . . ." (p. 159). Porteous testified that the reason for excluding Regions Bank from the "workout" letter was to attempt to work out a solution with the other unsecured creditors in order to pay back Regions Bank 100 percent (p. 288). Stated another way, it was Porteous's plan to make the bank a preferred creditor by making it whole to the exclusion of the other unsecured creditors (p. 289). But it is illogical to suggest that Regions Bank was benefited by being kept in the dark, thus depriving it of the opportunity to collateralize Porteous's note before renewing same in January 2001.

Because Porteous made false statements on his January 2001 loan application, he committed bank fraud under 18 U.S.C. §1344, and made a false

statement on a loan application under 18 U.S.C. §1014. He also violated various judicial canons of ethics in the process.

3. RECEIPT OF CASH, GIFTS AND OTHER FORMS OF REMUNERATION

Porteous has a history of accepting cash, gifts and other forms of remuneration from individuals – mostly his lawyer friends – while sitting as a judge on the state and federal benches. These friends include Jacob "Jake" Amato, Warren A. "Chip" Forstall, Jr., Robert G. Creely, Don C. Gardner and Leonard L. "Lenny" Levenson.

A. The Creely & Amato Cash Infusions

Porteous admitted receiving cash from Jacob Amato, Robert Creely and/or their law firm, Creely & Amato, from the time he was a state judge, and continuing beyond the time he took the federal bench, but he could not recall how much he has received from them over the years (p. 119). The recollections of Creely and Amato were somewhat better. Creely testified that he started giving Porteous cash when Porteous was sitting as a state court judge. The money was ostensibly for things that Porteous needed in his personal life, like tuition expense payments (p. 199). Creely testified that Porteous started asking him for cash while Creely was a partner in the Creely & Amato law firm (p. 200). Creely admitted that when Porteous would ask for cash, the routine was for Creely and Amato to "take a draw" from the firm, i.e., they would go to the law firm bookkeeper, and each

would get a check in the same amount, and each would then cash their respective checks before turning over the money to Porteous (pp. 200 – 201). Creely testified that only cash, not checks, was given to Porteous (p. 201). Creely estimated that he and Amato gave Porteous no less than $10,000 cash over time (p. 201) and there was no expectation of Porteous ever paying the money back, i.e., the money was a gift (p. 202).

Amato's recollection of giving cash to Porteous differs from Creely's as to when the payments commenced as well as other details. However, Amato also recalls that he and Creely gave Porteous about $10,000 to $20,000 over a period of time (pp. 239, 247).

Porteous initially testified that he never considered the cash he received from Amato or Creely (or their firm) to be income; it was either a loan or a gift (p. 119). Porteous then admitted that since he never paid back the cash, any loan would become income to him unless it was forgiven as a gift (p. 119). Porteous then admitted that he neither reported the cash on his income tax return as income (p. 120), nor on his judicial Financial Disclosure Reports as gifts during years 1994 – 1999 (from Ex. 3, SC 215 – 238), despite the fact that Porteous certified each year's Financial Disclosure Report as being true and accurate.

B. <u>The Curatorship Scheme</u>

The manner and means of Amato, Creely and their law firm supplying Porteous with cash evolved over the years. Creely testified there came a time when Porteous was on the state bench that "we [Creely and Amato] just couldn't keep giving him money." (pp. 202 – 203). Porteous solved that problem by sending "curatorship" cases, or simply "curatorships" over to the Creely & Amato law firm, then exacted a kickback of sorts in cash. Creely explained that a curator "is a court appointed attorney that the . . . district court, Jefferson Parish . . . would appoint an attorney to represent an absentee defendant." (p. 204). These curatorships came to the firm "often," (p. 204), and each had a set fee of $175.00 per defendant plus expenses (p. 205). Creely testified that Porteous would then request back a "good portion" of the curatorship fees that were paid by the court, which he estimated to be more than 50 percent of the fees (pp. 206 – 209). Creely also characterized the curatorship arrangement as a method for him to give Porteous cash "without coming out of my pocket." (pp. 208 – 209). Although the curatorship fees were paid to Creely & Amato by the state district court, the sources of the money were the lending institutions that had filed the foreclosure lawsuits and had to post the curatorships (p. 210). On cross-examination by Porteous, Creely would not characterize the curatorships as "kickbacks," but instead characterized the arrangement as "a continuation of what had gone on the years or year before that, that you wanted money." (p. 229). When Porteous

attempted to get Creely to agree that the purpose of the curatorships he sent to the firm was to "help defray some" of the costs of employing a young lawyer named Gary Raphael,[13] Creely refused to agree with that characterization. (pp. 232 – 233).

Amato's recollection of the curatorship fee arrangement is similar to Creely's, except Amato does not recall Porteous ever asking for cash prior to the curator arrangement (p. 237). Amato testified that he learned of the curatorship scheme from Creely, and while he did not like the idea, he felt it was something they had to do (p. 239). Amato did not recall himself ever giving Porteous cash back from curatorships, as the payments were made through Creely as the conduit (p. 239).

C. <u>The Fishing Trip Request for Cash</u>

Porteous testified that he could not recall asking Amato for thousands of dollars during a fishing trip on a friend's boat around May/June 1999 to help pay for Timmy Porteous's wedding later that summer (p. 135). However, Porteous did admit sending Rhonda Danos to the Creely & Amato law firm during that time period to pick up an envelope with cash inside. Porteous did not dispute that the amount of cash could have been $2,000 (pp. 136 – 137). Porteous characterized this money as a loan (p. 137), but admitted that he never paid it back (p. 138). Porteous also admitted that when he filed for bankruptcy in 2001, he did not list

[13] Porteous suggested that Mr. Raphael was hired by Creely & Amato on his (Porteous') recommendation, but had not worked out to Creely's satisfaction.

the "loan" as an outstanding debt (p. 138). Porteous also admitted since the loan was never paid back, it became income; but that he never reported that "income" on his federal tax return and never reported the income as "other income" on his Financial Disclosure Report for calendar year 1999 (Ex. 3, SC 235 – 238) (p. 138). (If the "loan" was a "gift," Porteous did not list it in the gift section of that Financial Disclosure Report (SC 236).)

Creely and Amato have better recollections of the fishing trip request. Amato testified that he was fishing with Porteous around the time that one of Porteous's sons was getting married or had just been married (p. 240). Porteous became emotional about being "set back" financially for the wedding, and said that he needed help (p. 240). Within two or three days of that request, Amato cashed a check – or he and Creely each cashed checks – and then Amato handed Porteous $2,000 or $3,000 in cash (pp. 241, 244).

Creely recalls the incident differently, assuming it was the same incident. Creely testified that Amato told him that he (Amato) had been on an overnight fishing trip with Porteous in the May/June time frame. Porteous became emotional and asked Amato for financial help for assistance with the tuition payment for one of his (Porteous's) children (pp. 211 – 212). Creely and Amato agreed to take equal $1,000 draws from the firm and then make the cash available to Porteous (p. 213). Creely then testified that Rhonda Danos came to the firm to pick up an

envelope with the cash inside, and that he and Amato thereafter expressed their displeasure to Porteous for inappropriately sending over his secretary over to pick up money; that it was too "blatant." (pp. 214 – 215).

Amato testified that he believes the $2,000 or $3,000 that he gave Porteous may have been a different incident from what Creely recalled (p. 244), and was not even certain whether he told Creely about it or got a contribution from Creely (p. 244). If Amato is correct, and the incidents are separate, then in the May/June 2001 time period Porteous received somewhere between $4,000 - $5,000 from Creely and/or Amato and/or the Creely & Amato law firm.

As is discussed elsewhere in this Report, the cash payment(s) ranging from $4,000 to $5,000 that Porteous received in May/June 1999 from Creely and/or Amato and/or the Creely & Amato law firm occurred at a time when Amato was representing a party in the *Liljeberg* case, a hotly contested matter pending before Porteous.

D. <u>The Las Vegas Bachelor Party Trip</u>

In May of 1999, Porteous's son Timmy was having a three day bachelor party in Las Vegas. Among those who attended were Porteous's lawyer friends Creely and Don Gardner. Porteous admitted that he used an airline ticket provided by Warren A. "Chip" Forstall for his (Porteous's) transportation to his son's

bachelor party in Las Vegas in May 1999 (p. 139).[14] Porteous admitted the hotel room he stayed in at Caesar's Palace was paid for by Mr. Creely, and the value of that lodging exceeded $250 (p. 140). Porteous also admitted that he never reported that gift on his Financial Disclosure Report for calendar year 1999 (p. 140). Porteous admitted that the food he ate on that trip was also paid for by Creely "and maybe some other people . . ." (p. 141), but the value of the meals was not reported on his Financial Disclosure Report for calendar year 1999 (p. 141). Porteous admitted that the *Liljeberg* case was pending before him in May 1999 when he went to Las Vegas accompanied by Creely, Gardner and others (pp. 154 – 156). While Creely was not an attorney of record in *Liljeberg*, his partner Jacob Amato was a counsel for Liljeberg. Gardner was also an attorney in the *Liljeberg* case as a counsel for the another party, Tenant/Lifemark. (Ex. 82). Creely admitted attending the Las Vegas bachelor party with Porteous in May 1999, and did not dispute paying for Porteous's lodging (p. 219).

E. <u>Unexplained Cash Balances and Transactions</u>

FBI Financial Analyst Gerald Fink testified that he examined the subpoenaed bank records of Porteous and secretary Rhonda Danos. Fink testified that Porteous had cash deposits (over and above his direct deposit judicial salary) into his bank accounts of $80,429.08 for the years 1998, 1999 and 2000 (Ex. 94)

[14] It is important to note that the value of the airline ticket originally given to Porteous by Forstall is not reflected in any Financial Disclosure Report for calendar years 1994 through 1999 inclusive. See EX. 3.

(pp. 354 – 355). Fink testified that Rhonda Danos had cash deposits (over and above her direct deposit federal salary) into her account of $49,120.77 in 1999, and $10,907.03 in 2000 (Ex. 93) (pp. 353-354).

Since Porteous, Robert Creely, Joseph Amato, and Don Gardner all testified that there was cash given to Porteous, but few could remember with much certainty when cash was given or the amounts, Fink's testimony is probative in confirming that unexplained cash was deposited into the accounts of Porteous and Danos.

Danos testified that in 1999 and 2000 she was paying Porteous's bills and that he would reimburse her for those payments. When asked why the checks Porteous wrote to reimburse her did not match the total she had spent paying his bills, she testified that the balance was paid in cash (401-419).

Fink analyzed Rhonda Danos' bank account and produced summary exhibits (Ex. 91 and Ex. 92) showing that Danos paid $41,176.97 for Porteous's bills in 1999 and 2000. She was reimbursed by Porteous's checks in the amount of $32,555 in 1999 and 2000, thus leaving a shortfall of approximately $9000. Danos' take home pay as Porteous's secretary in 1999 was approximately $29,000 (pp 350-354).

4. FINANCIAL DISCLOSURE REPORT VIOLATIONS

Article III and other federal judges have statutory financial disclosure reporting obligations. Title 5, United States Code Appendix, §§ 101 et seq., the

Ethics in Government Act of 1978, or, the "Act," requires judges to file annual financial disclosure reports as of May 15 of the succeeding year.

Section 101 (f) (11) of the Act includes a "judicial officer" within its purview.

Section 102(a) (1) (A) of the Act provides in pertinent part, that each report filed -

> "shall include a full and complete statement with respect to . . . the source, type, and amount or value of income . . . from any source (other than from current employment by the United States Government) received during the preceding calendar year, aggregating $200 or more in value .."

Section 102 (a) (2) (A) of the Act provides in pertinent part that for each report filed there shall be disclosure of -

> "the identity of the source, a brief description, and the value of all gifts aggregating more than . . . $250 . . . received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of

> $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

Section 109 (10) of the Act defines "judicial officer" to include –

> "the . . . United States district courts . . . and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior."

Porteous is and has been statutory obligated to file complete, true and accurate annual financial disclosures since assuming Article III status in 1994.

Porteous acknowledged awareness of Canon 5(C)(1)'s proscription against a judge's financial and business dealings that reflect adversely on his impartiality or involve the judge in frequent transactions with lawyers likely to come before the judge; Canon 5(C)(4)'s proscription against a judge soliciting or accepting anything of value from anyone seeking official action or doing business with the court served by that judge; as well as a duty to endeavor to prevent a member of the judge's family from accepting such gifts except to the extent the judge is so allowed by the Judicial Conference gift regulations (pp. 43 – 44).

Porteous acknowledged his awareness of the requirement to report the value of any gift, favor or loan as required by statutes or the Judicial Conference as per Canon 6(C) (p. 45). Indeed, Porteous did report as gifts two hunting trips on his

Financial Disclosure Reports for calendar years 2004 (from Ex. 3; SC261) and 2005 (from Ex. 3; SC 267). But, he never reported any gifts prior to 2004.

Every one of Porteous's judicial Financial Disclosure Reports for calendar years 1994 through 2005 (Ex. 3) contain a jurat that reads as follows,

> I certify that all information given above (including information pertaining to my spouse and minor or 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 met applicable statutory provisions permitting non-disclosure.

Below the signature line for the subscribing judge is a cautionary note that provides,

> ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

The evidence detailed in the preceding sections of this report is incorporated herein by reference. That evidence includes the testimonial admissions by Porteous, as well as the testimonial admissions of Creely and Amato, of cash payments made to Porteous following the fishing trip of May/June 1999 (during the pendency of the *Liljeberg* case). Porteous received from $4,000

to $5,000 from Creely and/or Amato and/or the law firm of Creely & Amato. Had that cash been a loan, it should have been reported in the "LIABILITIES" section of the Financial Disclosure Report for Calendar Year 1999 (from Ex. 3; SC 236). Had that cash been a gift, it should have been reported in the "GIFTS" section of that same report. Had that cash been a loan that was made with expectation of repayment, and had not been repaid, then it would have become income and should have been reported in the "NON-INVESTMENT INCOME" section of that same report (and his federal 1040 income tax return). If Porteous could have divined another characterization for the cash that he surreptitiously received, he had the opportunity to report it in the catchall section of the report titled, "ADDITIONAL INFORMATION OR EXPLANATIONS." If Porteous needed advice from the Administrative Office for United States Courts or the Committee on the Code of Conduct on how or whether to report this cash, he could have requested an advisory opinion, but did not do so (p. 40).

Similarly, Porteous did not disclose the gifts he received leading up to and including his son's bachelor party in Las Vegas during May 1999. The airline ticket that was originally purchased by Warren Forstall and given to Porteous was not listed; the cost of the hotel room for the three-day stay courtesy of Robert Creely was not listed. The cost of the meals provided by any of the other hosts, including Don Gardner, was not listed. Anyone who might have examined

Porteous's Financial Disclosure Report for Calendar Year 1999 would have been ignorant that Porteous was treated to a three day sojourn in Las Vegas.

When Porteous signed the Financial Disclosure Report for Calendar Year 1999 on May 5, 2000, and certified that it was "accurate, true, and complete" to the best of his knowledge, he not only falsified the report in violation of Canon 6 (C), but also made a false statement to the judicial branch of the government of the United States in violation of 18 U.S.C. §1001.

Porteous's Financial Disclosure Report For Calendar Year 2000 suffers from other, but equally serious infirmities. Porteous signed and certified this official government report on May 10, 2001 (from Ex. 3; SC 242).

It should be remembered that Calendar year 2000 is the year immediately before Porteous filed Chapter 13 bankruptcy. As mentioned elsewhere in this report, Porteous was in a downward financial spiral by the time he had engaged Lightfoot in the summer of 2000, and was on the brink of bankruptcy when Lightfoot sent out the "workout" letter to unsecured creditors on December 21, 2000 (Ex. 5; SC 296). The "workout" letter listed thirteen separate credit card companies with balances ranging from $5,349.47 on the low end (First USA Bank) to $28,708.98 on the high end (MBNA America), for total liabilities of $182,330.23. When Porteous filed his Amended Bankruptcy Petition on April 9,

2001, he listed fifteen separate credit cards (excluding his debt to Regions Bank) with total liabilities of $191,246.73 (from Ex. 1; SC 105).

One would therefore have expected Porteous's Financial Disclosure Report For Calendar Year 2000 to reflect the liabilities and debt that he had accrued in the year immediately prior to filing bankruptcy. But such is not the case.

In the "LIABILITIES" section of that report (from Ex. 3; SC240), Porteous listed just two credit cards, a single MBNA account and a single Citibank account, each of which was ascribed a Value Code of "J," which according to the legend at the bottom of the page means $15,000 or less. (SC 240). In other words, Porteous reported that his total liabilities for calendar year 2000 did not exceed $30,000 (pp. 115 – 116).

Porteous admitted that Schedule F of the Amended Bankruptcy Petition (from Ex. 1; SC 102 – 103), filed April 9, 2001 (a month before Porteous signed and certified his Financial Disclosure Report for Calendar Year 2000), listed three separate Citibank credit card accounts in the amounts of $23,987.39, $20,719.58, and $17,711.35. Furthermore, each of these Citibank credit card accounts, standing alone, represented a liability greater than Value Code J ($15,000), and the total of the three Citibank credit cards represented liabilities of $62,418.86 (or at least $47,418.86 more in liability than Porteous reported as owing to Citibank on his certified Financial Disclosure Report).

Porteous also admitted that while he reported a single MBNA credit card liability on his Financial Disclosure Report for 2000, there were in fact three MBNA accounts (pp. 117 – 118).

The credit card accounts appearing on Schedule F of the Amended Bankruptcy Petition (from Ex. 1, SC 104-105) list three separate MBNA credit cards in the amounts of $3,212.80, $30,931.02 and $29,443.71, for total MBNA liabilities of $63,587.53. Only one of the these MBNA accounts was within the "J" range of "$15,000 or less," as reported by Porteous on his Financial Disclosure Report, while the other two MBNA credit cards each represented liabilities greater than $15,000. The total MBNA credit card liability was at least $48,587.53 greater than Porteous reported on his certified Financial Disclosure Report for Calendar Year 2000.

When Porteous was asked to agree that his certification for this report was "false," he replied that "it was not accurate" (p. 118). Whatever words are used to describe his false statements, it is beyond dispute that the report required its subscriber to provide "accurate, true and complete" information. Porteous provided inaccurate, false and incomplete information. In so doing, he not only falsified the report in violation of Canon 6 (C), but also made a false statement to the judicial branch of the government of the United States in violation of 18 U.S.C. §1001.

5. VIOLATIONS OF THE CANONS OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

The evidence detailed in the preceding sections of this report is incorporated herein by reference.

Judge Porteous was a Louisiana state trial judge for a decade before receiving his commission as a United States District Judge on October 11, 1994. Porteous admitted that as a state judge, he was subject to the strictures of the Louisiana Code of Judicial Conduct ("Louisiana Code") (Ex. 85), and that the Louisiana Code imposed obligations and restrictions upon his conduct and activities similar to its counterpart, the Code of Conduct for United States Judges ("the Code" or "the Canons") (pp. 49–51). This admission is important for two reasons: first, Porteous's state court experience placed him generally on notice of what constituted acceptable or unacceptable judicial conduct; and second, the state court experience precluded him from claiming ignorance of the general rules of judicial conduct which carried over to the federal realm.

Porteous testified that he was familiar with the July 1997 booklet published by the Administrative Office of the United States Courts, *Getting Started As A Federal Judge*, and (p. 36 / Ex. 80 for identification). During questioning about the substance of that booklet, Porteous was asked whether he agreed with certain of its instructions. For example, Porteous agreed that new judges should review the ethical guidelines set forth in the Code of Conduct. He agreed that a judge has

a continuing obligation to examine his/her personal/financial interests and those of the family (p. 38). He agreed that federal judges must be vigilant when continuing relationships with former colleagues (p. 39). He agreed that under Canon 3, judges are required to disqualify themselves in proceedings where their impartiality might reasonably be questioned (p. 39). He agreed that under Canon 2A, judges must freely and willingly accept restrictions on their personal conduct and activities (p. 39). He admitted that he was familiar with the Code of Conduct for United States Judges (p. 40 / Ex. 18).

Porteous admitted that he never asked for an ethical advisory opinion from the Committee on the Code of Conduct (p. 40).

Porteous admitted familiarity with **Canon 1**, which requires judges to uphold the integrity and independence of the judiciary (p. 40). He agreed that judges should comply with the law as well as the provisions of the Code (of Conduct) (p. 41).

Porteous agreed with **Canon 2** that a judge should respect and comply with the law (p. 41). He agreed with **Canon 2A** that judges must accept certain restrictions in their personal lives after taking the federal bench, and that actual improprieties include violations of law as well as court rules (pp. 41 – 42).

Porteous acknowledged familiarity with **Canon 3(C)**'s statement that a judge shall disqualify himself in a proceeding where his partiality might reasonably

be questioned, or in the alternative under **Canon 3(D)**, that the judge may disclose the basis of disqualification to the parties (42 – 43).

Porteous acknowledged awareness of **Canon 5(C)(1)**'s proscription against a judge's financial and business dealings that reflect adversely on his impartiality or involve the judge in frequent transactions with lawyers likely to come before the judge, and **Canon 5(C)(4)**'s proscription against a judge soliciting or accepting anything of value from anyone seeking official action or doing business with the court served by that judge; and required that a judge must endeavor to prevent a member of the judge's family from accepting such gifts except to the extent the judge is so allowed by the Judicial Conference gift regulations (pp. 43 – 44).

Porteous acknowledged his awareness of the requirement to report the value of any gift, favor or loan as required by statutes or the Judicial Conference as per **Canon 6(C)** (p. 45).

Of the numerous ethical violations committed by Porteous and detailed elsewhere in this report, arguably none was more egregious than Porteous's misconduct during the *Liljeberg* case.

In Re: Liljeberg Enterprises Inc., et al. v. Lifemark Hospitals, Inc., Case #2:93-cv-01784 was originally filed on June 1, 1993, and assigned to United States District Judge Marcel Livaudais (Ex. 82) (p. 147). After assignments to various other District Judges, the case was eventually reassigned to Porteous on January

16, 1996. This very complicated lawsuit concerned a property rights dispute between the owners of a pharmacy and a hospital.

To explain the context in which Porteous's ethical lapses occurred, a brief chronology of the case, along with the identity of some it its attorneys, is required. Prominent among the many lawyers that appeared in the case were Porteous's long-time friends, Jacob Amato, Don Gardner and Lenny Levenson. Amato and Levenson were on the Liljeberg side, while Gardner was hired by the Lifemark team only 3 months before trial. Notably, none of these three lawyers was considered a regular federal court practitioner. Porteous considered his friend Gardner to be a "divorce lawyer" (pp. 147, 152). Porteous admitted that his friend Jacob "Jake" Amato, elsewhere described as a personal injury lawyer, did not typically try this type of case in federal court (p. 149). Finally, Porteous admitted that Leonard "Lenny" Levenson, described elsewhere as personal injury lawyer, also did not typically try cases in federal court (p. 149). Attorney Joseph Mole, a lead counsel for Lifemark, was not a friend of Porteous (p. 59).

The relevant chronology for the *Liljeberg* case is as follows:

January 16, 1996 – the case is assigned to Porteous (Ex. 82, page 20).

April 4, 1996 - Joseph Mole became an attorney of record for Plaintiff Lifemark. (Ex. 82, page 21).

September 12, 1996 and September 19, 1996 – Leonard Levenson and Jacob Amato, respectively, became attorneys of record for Defendant Liljeberg. (Ex. 82, page 25). These lawyers first appeared 39 months into the case, just nine months after the case was reassigned to Porteous, and less than two months before the case was supposed to go to bench trial on November 4, 1996.

October 2, 1996 - Lifemark filed its motion to recuse Porteous based on Porteous's close relationship with Amato and Levenson (Ex. 19; SC 555) (Ex. 82; page 27).

October 16 or 17, 1996 - Porteous held a hearing on Lifemark's recusal motion, and denied it.

March 11, 1997 - Don Gardner became an attorney of record for Lifemark (Ex. 82; page 37). It is important to note that Gardner made his appearance 45 months into the case, and five months after Porteous ruled against Lifemark in its recusal motion. Joseph Mole testified that he sent a fee agreement letter (Ex. 10) to Don Gardner which had unusual contingencies and different fee levels but guaranteed a fee of at least $100,000 for Gardner. In explaining the fee agreement, Mole stated "I didn't want my client to be made a fool of, and I wanted his loyalty to be a hundred percent to us and not

distracted. I wanted him to be interested in the outcome." (pp. 177-181)

June 16, 1997 – The bench trial commenced before Porteous (Ex. 8; pages 39 – 41)

July 23, 1997 - Porteous took the case under submission.

May 1999 – While the *Liljeberg* case was under submission, Creely, Gardner and others took Porteous to Las Vegas for Timmy Porteous's bachelor party.

May/June 1999 – While the *Liljeberg* case was under submission, Porteous asked Amato for money to help pay for a child-related event (wedding or tuition). Creely recalled that he and Amato each took $1,000 draws from the law firm, placed the cash in an envelope, and Rhonda Danos picked up the cash on behalf of Porteous. Amato recalled directly paying Porteous $2,000 or $3,000 in cash, and believed this was a separate incident from any cash that Rhonda Danos may have picked up in an envelope from the firm.

April 26, 2000 - Porteous rendered findings of facts and conclusions of law (primarily in favor of Liljeberg) (Ex. 82; page 44).

Porteous admitted that it was unusual that three of his friends, who were not considered federal court practitioners, were appearing before him in *Liljeberg*. When asked whether he was concerned or troubled by their collective appearances, he replied, "No, only to the extent that somebody thought they needed to bring somebody else in." (p. 152).

One person who expressed alarm was Joseph Mole. In his Memorandum In Support Of Motion To Recuse, Mole wrote in pertinent part,

> (1) this litigation has a decade-long history; (2) trial in this matter, without a jury is set for **November 4, 1996**; (3) **the Liljebergs already had five long-standing counsel of record when, on September 12, 1996 they added Jacob Amato and Leonard Levenson, two of the Court's closest friends, as additional counsel;** (4) the Liljebergs seek at least $110 million as damages in this extremely complex case, and **they gave Messrs. Levenson and Amato an 11% contingency fee for less than three months involvement;** and (5) the Liljebergs have a documented and clear history of attempting to use political influence and they have accused others of attempting to acquire improper influence over the judiciary. (boldface added).

(from Ex. 19; SC 555-556).

Mole testified that after Amato and Levenson appeared in the lawsuit, he spoke to people in the legal community and in Jefferson Parish politics and his "concerns were substantiated that Jake and Lenny were close to Judge Porteous and that there was a risk that their presence in the case would be a problem for my client." (p. 168).

Porteous totally disregarded his ethical obligations. For example, he should have advised the parties of his financial relationship with Amato and the Creely & Amato law firm as soon as the recusal motion was filed. He should have granted the motion to recuse or given the parties the choice of keeping him as trial judge.

Porteous admitted that he did not disclose to any party in *Liljeberg* that Amato (and his partner Creely) had given him money in the past (p. 152). Amato also admitted that he never disclosed to Lifemark that he had given money to Porteous (pp. 245 – 246).

Mole testified that his client insisted he find another lawyer to add to his team that was close to Porteous in order to "level the playing field," and ultimately Mole was directed to Gardner (p. 174). Gardner and Porteous are still close friends, and Porteous is the godfather to Gardner's daughter (p. 154). Mole felt that having close friends on both sides of the lawsuit would make it more difficult for Porteous to (unfairly) decide the lawsuit (p. 186). Mole testified that he was unaware that Gardner accompanied Porteous to Las Vegas (for the bachelor party)

while the case was under advisement, and was troubled "with the whole system that allows that to happen" (p. 194).

There is nothing in the *Liljeberg* record to suggest that Porteous ever disclosed the closeness of his relationship with Levenson. In his testimony before the grand jury on April 7, 2006, Levenson admitted that he provided travel or living expenses to one of Porteous's sons who was serving a Congressional externship in Washington, D.C. (Levenson Grand Jury, p. 65). Levenson also admitted that during the times when he had matters pending before Porteous in federal court, he would continue to take Porteous out to lunch and pay for the meals (Levenson Grand Jury, pp. 33 – 34). Nevertheless, in the Liljeberg reply memorandum to Lifemark's motion to recuse, which Levenson signed, Levenson calls Lifemark's claims "unsubstantiated and cynical innuendos" and "wild speculation" (from Ex. 19; SC 581). Levenson revealed neither the fact that he often took Porteous to lunch or that he had helped subsidize a Washington, D.C. externship for Porteous's son (from Ex. 19; SC 581 - 584).

Mole testified that when he signed the recusal motion in *Liljeberg* (Ex. 19), he was unaware of any financial relationship between Amato and Porteous or between Levenson and Porteous (p. 169). He also testified that prior to ruling on the recusal motion, Porteous never disclosed his receipt of cash from Amato or Levenson (p. 170). The Canons pertinent to Porteous's misconduct surrounding

the recusal motion in *Liljeberg* are: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

Porteous's ethical lapses in the context of the *Liljeberg* recusal incident were compounded by Porteous's failure to disclose to the *Liljeberg* parties his trip to the Las Vegas bachelor party in May 1999 (in which Creely and Gardner participated), and his receipt of $4,000 - $5,000 from Amato and/or Creely and/or the Creely & Amato law firm in the same time period – all of which occurred while the *Liljeberg* case was in submission before him awaiting decision (pp. 154 – 156). (The evidence pertaining to these events is thoroughly covered above, in the section titled "Receipt of Cash, Gifts and Other Forms of Remuneration.") The Canons pertinent to Porteous's receipt of cash during *Liljeberg* and the Las Vegas trip during *Liljeberg* are: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court," which are incorporated by reference herein, show a flagrant disregard by Porteous of the Chapter 13 requirements, not the least of which was Judge Greendyke's court order to Porteous not to incur more debt. Porteous was generally contemptuous of the restrictions imposed upon him by Chapter 13 bankruptcy. William Heitkamp,

Chapter 13 trustee in the Southern District of Texas, testified that the Chapter 13 system depends upon the good faith of the debtor and the debtor's obligation to report his financial data truly and accurately (p. 399). Porteous did everything he could to show bad faith. He filed a petition under a fictitious name; used a newly obtained Post Office box instead of a residential address; failed to disclose the impending receipt of a tax return; omitted a money market account from the Schedules; undervalued a checking account listed in the Schedules; omitted gambling losses from the Statement of Financial Affairs; preferred certain creditors; understated income and overstated living expenses to the trustee; continued to incur debt through the use of gambling markers; continued to incur debt through the use of an undisclosed credit card; and committed perjury on the jurats of the Schedules and Statement of Financial Affairs. The Canons pertinent to Porteous's conduct leading up to and subsequent to the filing of Chapter 13 bankruptcy and his fraudulent activities include: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Receipt of Cash, Gifts and Other Forms of Remuneration," which are incorporated by reference herein, cover a long period of time. An undetermined amount of cash, as well as the curatorship kickback scheme, predate Porteous's

tenure as a federal judge. That Porteous undoubtedly violated the Louisiana Code of Judicial Conduct is relevant to show a common scheme and absence of mistake by Porteous when he continued business as usual after ascending to the federal bench. When Porteous's job changed, his receipt of cash payments from Creely & Amato continued as did the practice of trips and other forms of entertainment from his lawyer friends who sometimes practiced before him. The Canons pertinent to Porteous's receipt of cash, gifts and other forms of remuneration during his tenure as a federal judge, including favors received during *Liljeberg* include: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Bank Fraud Involving a Loan At Regions Bank" are incorporated herein by reference. Porteous's conscious decision to conceal from Regions Bank the adverse changes in his financial condition, while asserting that he intended to benefit the bank, is as disingenuous as it is absurd. The facts support the conclusion that in addition to violating the bank fraud statute and filing false statements on a loan application, Porteous also violated Canon 1, Comm. to Canon 1, Canon 2.A., and Comm. to Canon 2.A.

Another area of ethical violations, also explained above, concerns Porteous knowingly filing false and inaccurate Financial Disclosure Reports. See section

titled "Financial Disclosure Report Violations", which is incorporated herein by reference. Porteous never accounted for the Las Vegas jaunt or the cash ($4,000 - $5,000) he received from Amato and/or Creely and/or the Creely & Amato law firm on his disclosure report for calendar year 1999. In the disclosure report for calendar year 2000, Porteous seriously underreported liabilities by approximately $160,000. In addition to making a false statement when signing the jurats on these disclosure reports, Porteous also violated Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C. and Canon 6(c).

There are two other issues that should be addressed. The first has to do with Porteous's opinion that he properly fulfilled his judicial oath as a federal judge (p. 157). In support of that statement, he testified that, "I've been fair and impartial in every proceeding that comes before me." (p. 157). The lawyers who lost the recusal motion in *Liljeberg* would probably take issue with that statement.

The second issue has to do with Porteous's lack of contrition and almost total denial of judicial misconduct on his part. He testified that, "maybe I have breached a canon now; but I've not violated the laws of this country, and I've not committed any crime." (p. 483). Porteous did not specify which Canon he breached, although there are many from which he could have chosen. He made that statement on October 30, 2007, at the conclusion of his hearing before the

Special Committee. He made that statement after the testimony of a dozen witnesses, most of whom testified in corroboration of the allegations set out in the Charge of Judicial Misconduct. He made that statement after one of those witnesses, G. Thomas Porteous, Jr., made admission after admission in support of the allegations of misconduct as detailed in the Charge.

IV. CONCLUSION

As the foregoing findings of fact and conclusions of law demonstrate, the Special Committee strongly believes that grounds exist for the Judicial Council to refer this matter to the Judicial Conference of the United States, pursuant to 28 U.S.C. Sec. 354(b)(2)(A), because Judge G. Thomas Porteous has engaged in conduct "which might constitute one or more grounds for impeachment under Article II of the Constitution." Such conduct might also constitute grounds for impeachment pursuant to Article III because Judge Porteous has not demonstrated "good behavior" in his violation of laws, ethical standards, and financial disclosure requirements.

The Committee recommends that the Council so certify this matter and, in addition, that pending a ruling by the JCUS, Judge Porteous be removed from his handling or assignment of any cases involving the U. S. Government and, if necessary to the preparation of his defense to these charges, all other cases; and that Judge Porteous be publicly reprimanded for his misconduct. See 28 U.S.C,

Secs. 354(a)(1)(C), (a)(2)(i), and (a)(2)(iii). Judge Porteous should receive a copy of the Committee's report.

The Committee seeks the advice of the Council on the extent to which the order and statement of written reasons be made available to the public under 28 U.S.C. Sec. 360(b); whether the DOJ as "complainant" should receive a copy of the Committee's report pursuant to 28 U.S.C. 360(a)(1); and whether the Council should refer certain witnesses, including Amato and Gardner, to the Louisiana State Bar for professional discipline, notwithstanding their grants of immunity prior to their testimony to the Committee.

The foregoing report is respectfully submitted by the unanimous vote of the three members of the Special Investigatory Committee, as evidenced by their signatures below.

Edith H. Jones, Chief Judge

Jerry E. Smith

Sim Lake, U.S. District Judge *

Date of Signatures: November 19, 2007.

* Signature by permission