allows all of our people, regardless of their race, gender, creed, color, or background the opportunity to succeed or fail. And it ensures for us that unique expression ''only in America'' is not just a refrain from the past but an anthem for the future.

Can you imagine the tragedy if the downfall of the American experiment was caused by a failure of this Congress to control its spending? The challenge of this generation is before you and it is not beyond your grasp. There is nothing we as Americans cannot do. We have fought imperial Japan and Nazi Germany at the same time and beaten both. We have put a man on the Moon. We have mapped the human genome. And in the spare bedrooms and garages and dorm rooms of our people, our citizens have created the greatest inventions and the greatest businesses the world has ever known, which have employed millions of people and allowed them to pursue their dreams, all in the freest and most open society in the history of man.

We are that shining city on the hill. We are that beacon of freedom. We are that last best hope for mankind upon which God has shed his grace.

President Theodore Roosevelt said that one of the greatest gifts that life has to offer is the opportunity to do work that is worth doing. I can't think of a greater gift than the work that lies before you: righteous in its cause, noble in its purpose, and essential for the prosperity of our people.

I will always cherish the relationships I have gained here and the work we have done together. God bless you, God bless the U.S. Senate, and God bless our great country.

I yield the floor.

RECESS

The PRESIDENT pro tempore. The Senate stands in recess until 2:30 p.m.

Thereupon, the Senate, at 12:49 p.m., recessed until 2:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.—Continued

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 7]

Akaka	Coburn	Hatch
Alexander	Cochran	Inouye
Barrasso	Collins	Isakson
Begich	Crapo	Johanns
Bennet	Dorgan	Klobuchar
Bennett	Durbin	Kyl
Bingaman	Enzi	Leahy
Bond	Feingold	Levin
Brown (OH)	Franken	Lugar
Burr	Grassley	McCain
Cantwell	Gregg	McCaskill
Cardin	Hagan	Merkley
Mikulski	Sessions	Udall (NM)
Murray	Shaheen	Vitter
Nelson (NE)	Shelby	Voinovich
Nelson (FL)	Snowe	Warner
Pryor	Specter	Webb
Reed	Stabenow	Whitehouse
Reid	Udall (CO)	Wyden

Mr. REID addressed the Chair.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, is a quorum present?

The PRESIDENT pro tempore. A quorum is present.

The Senate will resume consideration of the Articles of Impeachment against Judge G. Thomas Porteous, Jr.

The Chair understands that final arguments for the House on the Articles of Impeachment will be presented by Representative SCHIFF and Representative GOODLATTE. Mr. SCHIFF has asked to speak first. Mr. SCHIFF, do you wish to reserve time for closing, and, if so, how much time?

Mr. Manager SCHIFF. Mr. President, if it is permitted, after I make some brief introductory remarks, I will turn it over to my colleague, Mr. GOODLATTE, to speak. When he is finished speaking, we would like to reserve the balance of our time unless we are required to set that up in advance.

The PRESIDENT pro tempore. You may proceed.

Mr. Manager SCHIFF. Mr. President and Members of the Senate, this is a case about a State court judge from Gretna, LA, who had a gambling problem and a drinking problem, and as a result of both of those problems also had serious financial problems. He was constantly short of money.

This judge entered into a corrupt scheme with lawyers and bail bondsmen who could help him lead a lifestyle he could not otherwise afford. He sent the lawyers cases. They kicked back money from those cases to the judge, and they paid for many of his meals, his liquor, his parties, even some of his son's expenses.

He set bonds for the bail bondsmen at the amounts that would maximize their profits. He expunged the convictions of their employees, and they also paid for many of his meals, his trips, his home repairs, his car repairs, and lavish gifts.

The White House was not aware of this corrupt activity and nominated the judge to the Federal bench. The judge misled the Senate about his background, concealed the kickbacks and graft, waited until after his confirmation hearing but before he was sworn in to expunge the conviction of another bail bond employee, and falsely told the Senate that there was nothing in his background that would adversely affect his confirmation.

Unaware of what the judge had been engaged in, he was confirmed. The very reason why the information sought by the Senate was so material—whether he had a drinking problem; whether he had a gambling problem; whether he lived beyond his means; whether he had engaged in conduct that would make him the subject of compromise or coercion—was to prevent the damage to the institution of the judiciary that would be caused by putting a corrupt man on the bench.

What happened when the judge took the Federal bench was all but predictable: The corruption continued. The judge declares bankruptcy; he files with a false name and signs under penalty of perjury; he hides assets; falsely states his income; secretly takes out a new credit card; violates the bankruptcy court order by incurring new debt; he files false judicial financial disclosures stating that he has no more than $30,000 worth of credit card debt when he owes over $100,000 on his credit cards; and, most pernicious to the interests of his creditors, he keeps on gambling.

The judge is assigned a complex case and a trial that has been years in the making, pitting a hospital against a pharmacy, and worth many tens of millions of dollars. Six weeks before trial, one of the lawyers who had been paying him kickbacks in the State court is brought in at the last minute to represent the pharmacy.

The hospital smells a rat. They do not know about the kickbacks, but they are suspicious about why an attorney with no experience in the case or complex bankruptcy litigation would be brought in. So they ask around, and they do not like what they hear. They ask the judge to recuse himself and he refuses, falsely representing that he never received money from the attorneys but once, and even that was only a campaign contribution that went to all of the judges of that parish.

The case goes to trial, and is taken under submission by the judge. While he is considering how to rule, he goes fishing with the lawyer who paid him the kickbacks and hits him up for $2,000 more in cash. The two partners at the law firm put the cash in an envelope, and the judge sends his secretary to pick it up. At the law firm, the judge's secretary asks: What is in the envelope? The lawyers' secretary rolls her eyes. ''Never mind,'' the judge's secretary says, ''I don't want to know.''

The relationship with the bail bondsman is not over either. He can no longer set bonds for them, but he can help them recruit other judges who will step into his shoes by vouching for their character, by bringing them together, and he does. And now we are here.

Everyone around the judge has fallen. The bondsmen have gone to jail. The other State judges he helped recruit have also gone to jail. The lawyers who gave him the cash have lost their licenses and given up their practices. Most of all, the institution itself has suffered greatly. Litigants and the public in New Orleans wonder, in seeing the example of this judge, whether they too must pay a judge in cash and under the table, do the home or car repairs or other favors for the judge to

win their case or have their conviction expunged.

Only the judge remains defiant, claiming his problems are no more than the appearance of impropriety, not actual wrongdoing. He retains his office, his title, his full salary, though he hears no cases and has not for years and, if he can just eke it out a little longer, a full retirement. The judge is a gambler, and he is betting he can beat the system just one more time.

In a moment, I will turn it over to my colleague, BOB GOODLATTE, to give a detailed presentation that what the House proved at trial were high crimes and misdemeanors committed by Judge G. Thomas Porteous. The remarkable thing about this case is that most of the pertinent facts are not in dispute. As the neutral, factual report prepared by the Senate Impeachment Trial Committee demonstrates, the evidence on most of the salient points was uncontested.

At the same time, the report is not a substitute for hearing from the witnesses themselves. Because that is not possible for the entire Senate, you are hearing from the Senators who did. The Senate impeachment committee of 12 conducted a remarkable trial, weighed the credibility of every witness, ruled on every objection, heard every argument, and they will be a great resource to you in your deliberations.

To give but one example, it is uncontested that Judge Porteous solicited and received $2,000 in cash secretly from an attorney and his partner while that attorney's case was under submission. Judge Porteous himself admits this before the Fifth Circuit. The judge called it a loan that he never paid back. But his counsel has taken to calling it a wedding gift, as if it were a piece of China from the Pottery Barn. Significantly, no one other than defense counsel has ever called this cash a wedding gift—not Amato and Creely, who paid it, not the secretary who delivered it, and not even the judge himself. This is at best defense counsel at his most creative. The 12 Senators who heard the testimony are in the best position to refute those characterizations which are so at odds with the evidence.

One last example before I turn it over to Mr. GOODLATTE. The defense has suggested many times during prior proceedings—and may today—that Judge Porteous has been impeached for nothing more serious than having lunch with attorneys or bail bondsmen. This was represented to the committee of 12 Senators after the pretrial deposition of Bob Creely, at which only Senator JOHANNS was present. But because Senator JOHANNS had heard the testimony, he was able to inform the other Senators of what Creely had really said. As JOHANNS admonished the defense:

> I sat through the Creely deposition, and to suggest that this was about a purchased lunch is really, in my personal opinion, very misleading.

He later went on to say:

> Again, I will emphasize, please don't try to convince my colleagues that the Creely deposition was just about a free lunch. It was not, and I can cite what I heard that day.

The 12 Senators who heard these witnesses can cite what they heard during that trial, and they will be a tremendous resource.

I would now like to introduce Mr. GOODLATTE of Virginia for a detailed presentation of the evidence the House presented. When he concludes, we will reserve the remainder of our time for rebuttal argument.

The PRESIDENT pro tempore. The Chair recognizes Representative GOODLATTE.

Mr. Manager GOODLATTE. Thank you, Mr. SCHIFF.

Mr. President, let me turn to what the evidence showed.

By way of background, in the early 1970s, Judge Porteous practiced law as a partner with Jacob Amato. Robert Creely was an associate who worked for them. Amato and Creely ultimately split off and formed their own law firm as equal partners. They each remained friends with Judge Porteous.

In 1984, Judge Porteous was elected judge of the 24th Judicial District Court in Jefferson Parish, LA, with its courthouse in Gretna, outside New Orleans. He served as a State judge from August 1984 through October 28, 1994, when he was sworn in as a U.S. district judge for the Eastern District of Louisiana.

Starting with article I, let me first describe what the evidence established concerning Judge Porteous's ''curatorship'' kickback scheme with Creely and Amato.

While he was a State court judge, Judge Porteous started to ask Creely for money. At first, he asked for small amounts—$50 or $100—money that Creely had in his wallet, which Creely would give him. At some point in the mid to late 1980s, Judge Porteous began to request more significant sums from Creely, amounts in the range of $500 or $1,000. Creely resisted giving Judge Porteous that sort of money. As Creely testified:

> I did tell him I was tired of giving him cash. . . . I felt put upon that he continued to ask—I thought it was an imposition on our friendship. . . . I told him a couple of times [''I'm tired of giving you money. I'm tired of you asking for money.''

Judge Porteous needed cash, and Creely would not give it to him. So what did Judge Porteous do? The evidence demonstrated that Judge Porteous came up with what was a kickback scheme. Judge Porteous used the power of his judicial office to assign Creely ''curatorships'' and then requested and received from Creely and his partner Amato a portion of the fees received by their law firm for handling those cases. Over time, Judge Porteous received approximately $20,000 from Creely and Amato as a result of this arrangement.

Let me show you what one of these orders looks like. As you see here—Mr. President, let me just say that I know it is difficult for some of the Senators to see these exhibits. At the conclusion of the closing arguments, we will leave all of these exhibits for the Senators to examine, if that is appropriate with the Senate.

As you see, here is an order signed by Judge Porteous assigning Robert Creely to be the curator for a missing party in a civil case.

Creely and his law firm received a fixed fee—$200—for handling each of these matters, and it was from those fees that Judge Porteous sought the cash from Creely and Amato. This corrupt scheme went on for years.

The proof of this series of events is evidenced by the interwoven and consistent testimony of Creely, Amato, and Judge Porteous himself in his testimony under oath before a special committee of the Fifth Circuit. It is also corroborated by the court records.

First, Creely testified that after Judge Porteous started assigning the curatorships, Judge Porteous then started calling over to his office and saying: ''Look, I've been sending you curators, you know, can you give me the money for the curators?'' Creely testified that even though he previously had resisted giving Judge Porteous cash, he now would give him cash in response to Judge Porteous's demand because it ''wasn't costing [him] anything.'' It did not cost Creely anything because the money Creely gave Judge Porteous came from the curatorship fees.

Amato—who split the payments to Judge Porteous with Creely 50–50—corroborated Creely's account of events. Amato testified that Creely informed him ''that the judge was sending curator cases to him and that he would, in turn, give money to the judge.'' Amato agreed to go along with the arrangement but told Creely that ''it was going to turn out bad,'' which it clearly has. Amato testified he knew the curatorship scheme was wrong but he was not ''strong enough'' to say no to what he understood to be a classic kickback arrangement.

Creely and Amato provided Judge Porteous cash every few months in response to Judge Porteous's requests. They gave him cash, as opposed to checks drawn on the firm's accounts. According to Amato's testimony, this was ''to avoid any kind of paper trail.'' As Creely testified, they gave him cash because ''that's what Judge Porteous wanted.'' In most instances, Creely gave the cash to Judge Porteous; however, both Amato and Creely testified that on occasion Amato personally gave Judge Porteous the cash as well.

Judge Porteous confirmed in his testimony under oath before the Fifth Circuit the essential aspects of this scheme. Judge Porteous admitted that, one, he received cash from Creely; two, at some point in time, Creely expressed his displeasure with giving Judge Porteous cash; three, thereafter, Judge Porteous started assigning Creely curatorships; and four, that Judge

Porteous's receipt of cash from Creely and Amato followed his assigning Creely curatorships.

First, Judge Porteous admitted he received cash from Creely and Amato.

Question. When did you first start getting cash from Messrs. Amato, Creely, or their law firm?

Answer. Probably when I was on the state bench.

Question. And that practice continued into 1994, when you became a federal judge, did it not?

Answer. I believe that's correct.

Judge Porteous confirmed that there came a time when Creely expressed resistance to giving Judge Porteous money before the curatorships started.

Question. Do you recall Mr. Creely refusing to pay you money before the curatorships started?

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

Judge Porteous admitted that his receipt of cash from Creely and Amato ''occasionally'' followed his assignment of curatorships to Creely. Although Judge Porteous refused to label the arrangement as a ''kickback,'' he accepted the description of the arrangement that he had with Creely and Amato as one where he gave ''Creely and Amato . . . curatorships and [was] getting cash back.''

What about the court records?

During its investigation, the House located close to 200 orders signed by Judge Porteous assigning Creely ''curatorships'' between approximately 1988 and 1994. All of these orders are in evidence. These curatorships generated fees of nearly $40,000 to the firm. Both Creely and Amato have testified consistently that they gave Judge Porteous about 50 percent of the proceeds of the curatorship fees or approximately $20,000 in total.

For his part, Judge Porteous testified at the Fifth Circuit that he had ''no earthly idea'' how much Creely and Amato gave him, though he did not deny the total could have been more than $10,000. Judge Porteous testified as follows:

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

Answer. I have no earthly idea.

* * * * *

Question. It could have been $10,000 or more. Isn't that right?

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

On October 28, 1994, Judge Porteous was sworn in as a Federal district judge. Judge Porteous was no longer in a position to assign curatorships to Creely and Amato, and he stopped asking them for cash—at least for the time being. The fact that Judge Porteous's requests for cash from Creely and Amato temporarily came to an end at the same time he stopped assigning them curatorships constitutes additional powerful evidence that those two actions were inextricably connected and that the cash payments from Amato and Creely to Judge Porteous were not merely gifts from the two men separate and apart from the curatorships.

Let me provide you with a little bit more flavor as to Judge Porteous's relationship with Amato and Creely. Although I have focused on the cash and curatorships, I should stress that Judge Porteous depended on the two men to provide for his entertainment and support his lifestyle in other major respects.

For example, while Judge Porteous was a State judge, both Amato and Creely frequently took Judge Porteous to lunch at expensive restaurants. Amato testified that he took Judge Porteous to lunch ''a couple of times a month,'' amounting to ''potentially hundreds of lunches,'' and that Judge Porteous paid only two or three times out of a hundred. At these lunches, Amato testified he typically paid for ''at least two'' Vodka drinks for Judge Porteous. Similarly, Creely also took Judge Porteous to lunch approximately twice a month. Creely testified that when he and Judge Porteous went to lunch, either Creely paid or someone else paid but ''[n]ot Judge Porteous.''

In addition, Amato and Creely hosted Judge Porteous on a variety of hunting and fishing trips and arranged those trips, some of which involved air travel to Mexico, so that Judge Porteous never paid.

They gave him cash on at least one other occasion at his request. In the summer of 1994, when Judge Porteous's son Timothy was in Washington, DC, for an ''externship,'' Judge Porteous had his secretary, Rhonda Danos, solicit and receive money from Creely and Amato to ''sponsor'' Timothy's position and pay for his expenses. This is all in the record.

Now let me turn to Judge Porteous's relationship with Amato and Creely after he became a Federal judge.

On January 16, 1996, Judge Porteous, now a Federal judge, was assigned a complicated civil action, Lifemark Hospitals v. Liljeberg Enterprises. The Liljeberg case involved a hospital—Lifemark—and a pharmacy—Liljeberg—and involved bankruptcy law, real estate law, and contract law. The matter was particularly contentious with tens of millions of dollars at stake.

The case was set for a nonjury trial before Judge Porteous in early November 1996. He was to be the trier of law and fact. In mid-September, just 6 weeks prior to the scheduled trial date, the Liljebergs filed a motion to enter the appearances of Amato and Leonard Levenson—another of Judge Porteous's friends—as their attorneys.

Amato was hired on a contingent fee basis, which meant his law firm would receive a percentage of any award. Amato estimated that if the Liljebergs prevailed in the case, he and his firm would have received between $500,000 and $1 million. If the Liljebergs lost, he would receive nothing.

Lifemark's lead counsel, Joe Mole, was alarmed when Amato was hired by the Liljebergs on the eve of the trial. Even Amato testified: ''I am sure my relationship with Judge Porteous had something to do with it.''

Mole was concerned that Judge Porteous would figure out some way of giving an award to the Liljebergs to benefit Amato. Mole feared that with Amato on the other side, he would not receive a fair trial. So Mole did the only thing he could do under the circumstances. He filed a motion asking Judge Porteous to recuse himself, which essentially requested that Judge Porteous have the case assigned to another judge. Mole drafted the motion based on his limited understanding of the facts, alleging in substance only ''that there was a close relationship between Judge Porteous and Mr. Amato and Levenson,'' that they were known to socialize together, that Amato and the judge had been law partners, and that the timing of Amato's entry into the case, just a few weeks prior to trial, ''created suspicion.''

Mole had no idea that Amato, along with his partner Creely, had actually given Judge Porteous approximately $20,000 pursuant to the curatorship kickback arrangement, nor did he know about the other things of value that Amato or Creely had provided to Judge Porteous.

Judge Porteous held a hearing on Mole's motion. Judge Porteous's statements at the recusal hearing are set forth in detail in our brief, and the hearing transcript is also in evidence. So I am not going to repeat all of them here.

In sum, Judge Porteous made a series of deceptive, misleading, and lulling statements in which he minimized his relationship with Amato, concealed the fact of a curatorship kickback scheme, and criticized Mole for filing an unfounded motion.

In essence, Judge Porteous portrayed the relationship with Amato as simply the same sort of unexceptional relationship that he would have had with any member of the bar. For example, Judge Porteous stated:

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

Even that is misleading because Judge Porteous had, in fact, accepted hundreds of meals at expensive restaurants from Amato and his partner Creely.

But, most significantly, Judge Porteous made no mention whatsoever of what he knew was really the issue; that is, that he had received approximately $20,000 in cash from Amato's law firm—money that he knew came from Amato as well as Creely.

When Mole, at great disadvantage, made a reference to the fact that Amato and Levenson had contributed to Judge Porteous's campaigns, Judge Porteous went on the offense:

Well, luckily, I didn't have any campaigns, so I am interested to find out how you know that. I never had any campaigns, counsel. I have never had an opponent.

He went on to say:

The first time I ran, 1984, I think is the only time they gave me money.

That blanket statement was, of course, a deliberate falsehood because Amato and his firm had given Judge Porteous approximately $20,000 in cash pursuant to the kickback scheme.

Judge Porteous concluded, with this self-serving comment in which he promises to notify counsel if he has any question that he should recuse himself, and concluded:

I don't think a well-informed individual can question my impartiality in this case.

So, in effect, what you have is Judge Porteous, who knows the facts, just not disclosing it, completely deceiving Lifemark and its counsel as to the true nature of his actual relationship with Amato, and Judge Porteous announcing to the world how honest he was—complete with the mock indignation.

Judge Porteous denied the recusal motion after the argument in open court on October 16, 1996. Lifemark appealed to the Fifth Circuit, seeking to overturn Judge Porteous's order. However, because of the false record created by Judge Porteous at the recusal hearing, that appeal was denied.

Trial was held without a jury in December of 1997, and Judge Porteous took the case under advisement. While the case was pending his decision, Judge Porteous continued to solicit and accept cash and things of value from Amato and Creely.

In May 1999, while Judge Porteous had not yet ruled on the case, he went to Las Vegas, NV, with several friends, including Creely, for his son's bachelor party. Creely paid for Judge Porteous's hotel room and some incidental room charges amounting to over $500. He also paid over $500 for a portion of Timothy Porteous's bachelor party dinner. These payments amounted to more than $1,100 and are set forth on Creely's American Express card, which is in evidence. After the dinner, Creely accompanied Judge Porteous and others to a strip club, where Creely gave an employee $200 to pay for a lap dance for Judge Porteous and a courthouse employee. Judge Porteous admitted in his Fifth Circuit testimony that Creely paid for his hotel room and a portion of the dinner.

In June of 1999, while Judge Porteous still had the Liljeberg case under consideration, the two men took a nighttime fishing trip together. On the fishing trip, Judge Porteous told Amato he needed cash for his son's wedding and requested that Amato give him approximately $2,000.

In response to that request, Amato agreed to give Judge Porteous the money he solicited. Amato supplied $1,000 and obtained approximately $1,000 from his partner Creely and gave Judge Porteous $2,000 in cash in an envelope. As Amato would later testify, it was ''a decision I'll regret until the day I die.''

As the Senate Impeachment Trial Committee Report found, the $2,000 was picked up by Judge Porteous's secretary, Rhonda Danos. When Danos asked the law firm secretary what was in the envelope, the secretary rolled her eyes. In response, Danos said: ''Nevermind, I don't want to know.''

Like much of the other evidence, the fact that Judge Porteous solicited and received money from Amato in 1999 while the Liljebergs case was pending is not contested. Here is how Judge Porteous testified under oath before the Fifth Circuit:

Question. [W]hether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2,000 shortly thereafter.

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

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

Answer. No. Money was received in [an] envelope.

Question. And had cash in it?

Answer. Yes, sir.

Question. And it was from Creely and/or——

Answer. Amato.

Question. Amato?

Answer. Yes.

Question. And would you dispute that the amount was $2,000?

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

At the time he made the request, Judge Porteous had significant financial leverage over Amato, and his solicitation of cash from Amato had a ''shakedown'' quality to it. Amato bluntly acknowledged that one of the factors that impacted his decision to give Judge Porteous the cash was that Amato stood to make a lot of money in connection with the Liljeberg case then pending in front of the judge, and that Amato was not willing to ''take the risk'' of not giving Judge Porteous the cash the judge solicited.

Judge Porteous's solicitation of cash from Amato demonstrates Judge Porteous's egregious misuse of his judicial power to enrich himself. A judge who engages in such conduct is unfit to hold the office of U.S. district judge.

In addition, Amato and Creely continued to take Judge Porteous out to expensive lunches on a regular basis and paid over $1,000 for a party in honor of his fifth year on the bench.

Mole knew nothing of Judge Porteous's relationships with Amato and Creely while the case was pending. Specifically, Judge Porteous did not inform Mole of the meals, the payments of expenses in Las Vegas, or the $2,000 cash payment.

On April 26, 2000, Judge Porteous issued a written opinion in the Liljeberg case. At that time, his financial situation was desperate, and he was just weeks away from meeting with a bankruptcy attorney. Judge Porteous, who had taken judicial actions in the past with Amato and Creely to enrich himself, had powerful financial motives to curry their favor, reward them for their past loyalty and generosity, and encourage it in the future.

Thus, it is not surprising that Judge Porteous ruled in all major aspects in favor of Amato's clients, the Liljeberg. Counsel for Lifemark testified that this was ''a resounding loss'' for Lifemark, and Lifemark appealed Judge Porteous's decision to the Fifth Circuit Court of Appeals.

In August of 2002, the Fifth Circuit reversed Judge Porteous's decision in most significant aspects. In doing so, the Fifth Circuit characterized various aspects of Judge Porteous's rulings as ''inexplicable,'' ''constructed entirely out of whole cloth,'' ''absurd,'' ''close to being nonsensical,'' and ''not supported by law.''

After the case was reversed by the Fifth Circuit and sent back to Judge Porteous, the parties settled because Lifemark understandably did not want to go back before Judge Porteous.

Article II.

Now let me turn to article II—Judge Porteous's relationship with bail bondsmen Louis Marcotte and his sister Lori Marcotte. For that, it is necessary to return to Judge Porteous's roots as a State court judge.

First, let me briefly describe how the bail bonds business worked in Jefferson Parish.

From the financial perspective of bail bondsman Louis Marcotte, he would make no money if the judge set bonds so high that the prisoner or his family could not afford to pay the premium or if a judge set bond so low that the premium was an insignificant sum. What Marcotte really wanted was for a bond to be set at the maximum amount for which the prisoner could afford to pay Marcotte the premium, which was typically 10 percent of the bond amount. That is how he maximized profits. He would interview the prisoner, know what the prisoner could afford, and attempt to have bond set at that profit-maximizing amount. If a prisoner or his family could scrape together $5,000, Marcotte would want a judge to set bail at ten times that amount, or $50,000, even if a lower amount would have been appropriate.

Now, in the Gretna Louisiana Courthouse where Judge Porteous sat, bail bondsmen like Marcotte dealt one-on-one directly with the judges and magistrates to have them set bonds. Prosecutors and defense attorneys were virtually never involved.

It is against this background that Judge Porteous's relationship with the Marcottes can thus be understood. Marcotte needed a judge who would be receptive to his bond request—to reduce bonds when they were too high and to set them in higher amounts if they were going to be set too low. As we know from Judge Porteous's relationship with Amato and Creely, Judge

Porteous needed and welcomed financial support from whomever would provide it and was more than willing to use his judicial power to obtain it. Judge Porteous and Marcotte each understood what the other could do for him, and they formed a mutually beneficial corrupt relationship.

First, as to what the Marcottes gave Judge Porteous, the evidence establishes the Marcottes frequently took Judge Porteous to high-end restaurants for lunch, paying for meals and drinks. Over time, these lunches may have occurred as much as twice per week. These lunches seemed to have started in or about 1992 and are corroborated by several witnesses. The Marcottes let Judge Porteous invite whomever he wanted, especially other judges, and Judge Porteous's presence as the Marcottes' guest helped the Marcottes establish their legitimacy.

The Marcottes also paid for car repairs and routine car maintenance for Judge Porteous. On occasion these repairs were substantial and included things such as buying new tires or engine and transmission repairs or installing a new radio. In addition, Marcotte employee Aubrey Wallace would routinely pick up Judge Porteous's car to wash it and fill it with gas.

Wallace testified that Judge Porteous gave him his security code so that he could go into the judge's parking lot at the courthouse. Judge Porteous would leave the key under the mat. Wallace would pick up Judge Porteous's car and return it washed, gassed, and occasionally with a gift such as liquor left inside.

No fewer than five witnesses corroborated the fact that the Marcottes paid for Judge Porteous's car repairs.

In addition, Marcotte also paid for home repairs for Judge Porteous when an 80-foot section of fence had to be replaced. Testimony at trial from Marcotte employees Duhon and Wallace established the project took 3 days to complete.

The Marcottes also paid for a trip to Las Vegas for Judge Porteous. On this trip, Judge Porteous's secretary, Rhonda Danos, had paid for the judge's transportation up front. The evidence is clear that Lori Marcotte later paid for this trip by giving Danos cash—in Judge Porteous's chambers. Both Louis Marcotte and Lori Marcotte testified that the payment was in cash to conceal the fact that the Marcottes had paid for this trip. There is no pretense that this was some sort of legitimate act of generosity. It was obviously improper and hidden by the parties for that reason.

In return, Judge Porteous willingly became Marcotte's ''go-to'' judge for setting bonds. Marcotte went directly to Judge Porteous with recommended bond amounts—bond amounts that would maximize their income. Judge Porteous was receptive to them and signed countless bonds at their request. They would go to his chambers and tell him how much the prisoner could afford as part of the discussions where they requested that he set bail.

As Senator RISCH observed during the trial, it was really the poorest families who were hurt by Judge Porteous's relationship with Marcotte. An inherent aspect of their corrupt dealings was that bonds would be set at a higher amount than might have been set by a neutral judge who was not on the take.

And the opposite is also true: the public interest was potentially compromised when Judge Porteous reduced a bond at the Marcottes' request which thereby led to the release of someone who otherwise should have been confined. The Marcotte-Porteous relationship perverted what should have been a neutral, detached process.

In addition to setting bonds as requested, Judge Porteous took other judicial acts of significance for the Marcottes. In 1993, at Louis Marcotte's request, Judge Porteous expunged the felony conviction of a Marcotte employee—Jeff Duhon—so Duhon could obtain his bail bondsman's license.

In 1994, again at Marcotte's request, Judge Porteous set aside the conviction of another Marcotte employee, Aubry Wallace. This took place during Judge Porteous's last days on the State bench and evidences the extent to which Judge Porteous was beholden to the Marcottes. As I will get to in a few moments, Judge Porteous timed this judicial action to occur after the Senate's confirmation of him for the Federal judgeship so as to conceal his corrupt relationship with the Marcottes and thereby not jeopardize his lifetime appointment.

There was one more thing that Marcotte did for Judge Porteous as part of their corrupt relationship when Judge Porteous was a State judge. In the summer of 1994, when Judge Porteous was undergoing his background check, the FBI interviewed Marcotte. In that interview, Marcotte lied for Judge Porteous on three specific points. First, he stated that Judge Porteous would have ''a beer or two'' at lunch, when, in fact, Marcotte knew that Judge Porteous was a heavy vodka drinker with an alcohol problem who would, on occasion, have five or six drinks. Second, Marcotte stated that he had no knowledge of Judge Porteous's financial circumstances, when, in fact, he knew that Judge Porteous struggled financially.

Finally, and most importantly, when interviewed by the FBI, Marcotte denied that there was anything in Judge Porteous's background that could subject the judge to coercion, blackmail or leverage. This was also not true, because Marcotte himself knew that he had a corrupt relationship with Judge Porteous and that he himself had leverage over Judge Porteous because of that relationship. In fact, Marcotte testified bluntly in September before the Senate Impeachment Trial Committee that he could have ''destroyed'' Judge Porteous had he chosen to do so. Marcotte told the FBI what he believed Judge Porteous wanted him to say. In effect, Marcotte acted as Judge Porteous's agent in lying to the FBI. Marcotte then reported back to Judge Porteous as to the contents of the interviews, and told Judge Porteous he gave him a clean bill of health.

Indeed, there can be little pretense that the Judge Porteous-Louis Marcotte relationship was anything other than a corrupt business relationship. They were brought together by their financial needs. Marcotte was clear that the only reason he took Judge Porteous to lunch, took him to Las Vegas, fixed his cars, or fixed his house was because the judge was assisting them in setting bonds, and using the prestige of his office to help them with other judges. Marcotte testified: ''[Judge Porteous] would do more when we would do more for him.''

After Judge Porteous became a Federal judge, he could no longer set bonds for the Marcottes. Nonetheless, the Marcottes would continue to take Judge Porteous to lunch, particularly when they sought to recruit other State judicial officers to take his place in a similar corrupt scheme, or to impress business executives. Louis Marcotte explained that Judge Porteous ''brought strength to the table'' by his presence and his assistance. Marcotte testified: ''It would make people respect me because, you know, I am sitting with a Federal judge.'' As Lori Marcotte described: ''[State court judges] would view us as trusted people because we were hanging around with a federal judge.''

Thus, Judge Porteous used the power and prestige of his office as a Federal judge to help the Marcottes expand their corrupt influence in the Gretna courthouse by vouching for their honesty, vouching for their practices, and helping to recruit a successor. Our post-trial brief details several instances of Judge Porteous providing assistance to the Marcottes as a Federal judge.

Let me talk about one of those instances in particular. In 1999, at Louis Marcotte's request, Judge Porteous spoke to newly elected State judge Ronald Bodenheimer. Prior to that conversation, Bodenheimer ''stayed away from Louis Marcotte'' because he had concerns about Marcotte's character and believed that Marcotte was doing drugs. During his conversation with Bodenheimer, Judge Porteous—then a United States District Court Judge—vouched for Louis Marcotte's integrity. Bodenheimer took Judge Porteous's statements seriously, and as a result of that conversation, Bodenheimer began to set bonds for the Marcottes.

The Marcottes and Bodenheimer developed a relationship that took on the characteristics of the relationship that had previously existed between Judge Porteous and the Marcottes. The Marcottes began providing Bodenheimer meals, house repairs, and a trip to the Beau Rivage casino, and

Bodenheimer in return began to set bonds that would maximize profits for the Marcottes. Bodenheimer was eventually criminally prosecuted, pleaded guilty, and was sentenced to prison on a Federal corruption count arising from his corrupt relationship with the Marcottes.

Let me now get to one final act of the Marcotte-Porteous relationship. In the early 2000s, the FBI was investigating State court judges—including Bodenheimer—for corrupt misconduct arising out of their relationship with the Marcottes. On April 17, 2003, Louis Marcotte signed an affidavit prepared by Judge Porteous's attorney in which he falsely denied that he and Judge Porteous had a corrupt relationship.

I mention this 2003 affidavit for two reasons. First, this 2003 affidavit reflects that the corrupt relationship between the Marcottes and Judge Porteous continued during his tenure as a Federal judge. Second, just as Marcotte's 1994 false statements to the FBI helped obstruct the background check investigation, Marcotte's 2003 false affidavit—prepared by Judge Porteous's attorney—was a part of an effort to obstruct a criminal investigation. In both instances Marcotte lied to the FBI to assist Judge Porteous by concealing their corrupt relationship. It reflects how even in 2003, Judge Porteous was compromised by his relationship with Louis Marcotte.

In March 2004, Louis Marcotte pleaded guilty to a racketeering conspiracy charge involving his corrupt relationship with State judges. He was sentenced to 38 months in prison. His sister Lori Marcotte pleaded guilty at the same time as her brother and was sentenced to 3 years probation, including 6 months of home detention.

In his House testimony, his deposition, and at trial, Louis Marcotte repeatedly described Judge Porteous's overall impact on the Marcottes' business as even more significant than two other State judges who were federally prosecuted and were sentenced to jail.

Question. Mr. Marcotte, you testified in response to Mr. Turley that you did things for lots of judges.

Answer. Yes, I did.

Question. And some of those judges went to prison, did they not?

Answer. Yes, they did.

Question. Of all the judges that you did things for, who was the most important judge to you, ever?

Answer. Thomas Porteous.

Now let me turn to article III involving Judge Porteous's bankruptcy while he was on the Federal bench.

The evidence demonstrated that throughout the 1990s and into 2001, Judge Porteous's financial condition deteriorated, largely due to gambling at casinos, to the point that by March of 2001, when he filed for bankruptcy, he had over $190,000 in credit card debt. His credit cards and bank statements in the years preceding his bankruptcy reflect tens of thousands of dollars in cash withdrawals at casinos.

Before discussing how Judge Porteous deceived the bankruptcy court, I want to stress that for the years leading up to his bankruptcy, Judge Porteous had concealed his debts in the financial statements that he filed with the courts. Let me show you an example.

This is a little detailed, so let me walk you through it. What you see here is the portion of Judge Porteous's 1999 Financial Disclosure Report in which he was required to disclose his year-end liabilities. Judge Porteous reported two credit cards with the maximum liability being $15,000 each—''Code J''—for a total maximum liability of $30,000.

In fact, he had five credit cards with debts amounting to over $100,000. These should have been reported on the form in the Liabilities box as Code ''K''—debts over $15,000. This form was blatantly false.

Judge Porteous filed false financial statements that failed to honestly disclose the extent of his credit card debts for each of the 4 years—1996 through 1999. Those forms are in evidence.

Even though Judge Porteous has not been charged in any article with filing false financial reports, these reports constitute powerful evidence as to Judge Porteous's intent. These false financial reports make it clear that the false statements in bankruptcy were part of a conscious course of conduct involving his concealment of financial activities, and not some set of innocent mistakes or oversights as claimed by counsel.

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

The two men decided that Lightfoot would attempt to work out Judge Porteous's debts owed to his creditors, and then, if that failed, that Judge Porteous would consider filing for bankruptcy. Lightfoot's attempt at a ''workout,'' failed, and, in about February of 2001, Lightfoot and Judge Porteous commenced preparing for chapter 13 bankruptcy.

Prior to filing for bankruptcy, Judge Porteous, in consultation with Lightfoot, agreed that he would file his bankruptcy petition under a false name. To further this plan, Judge Porteous obtained a post office box, so that his initial petition would have neither his correct name nor a readily identifiable address.

If you look at this exhibit, you will see that ultimately, on March 28, 2001, Judge Porteous—a sitting Federal judge—filed for bankruptcy under the false name ''G. T. Ortous'' and with a post office box that Judge Porteous had obtained on March 23, 2001, listed as his address. Judge Porteous signed his petition twice, once under the representation: ''I declare under the penalty of perjury that the information provided in this petition is true and correct,'' the other over the typed name ''G.T. Ortous.''

On April 9, 2001, Judge Porteous submitted a ''Statement of Financial Affairs'' and numerous bankruptcy schedules. This time, they were filed under his true name. However, they were false in numerous other ways, all reflecting his desire to conceal assets and gambling activities from the bankruptcy court and his creditors.

While I am not going through all his false statements during the bankruptcy—they are detailed in our post-trial brief—I want at least to point out some to you:

He falsely failed to disclose that he had filed for a tax refund claiming a $4,143.72 refund, even though the bankruptcy forms specifically inquired as to whether he had filed for a tax refund.

As you see, this chart sets forth his tax return, dated March 23, 2001—5 days before he filed for bankruptcy.

It also shows the place on the form where he was required to list any anticipated tax refund. The copy here is not as clear as we would like, but question 17 required Judge Porteous to disclose ''other liquidated debts owing debtor including tax refunds.'' As you see, the box ''none'' is checked. Judge Porteous never disclosed the fact of this refund—not to his attorney, not to his creditors, and not to the bankruptcy court. Instead, he kept it secret, and the money went right into his pocket.

He deliberately failed to disclose that he had gambling losses within the prior year, even though the forms specifically asked that question. In fact, Judge Porteous has admitted before the fifth circuit that he had gambling losses. In the days immediately prior to filing for bankruptcy, he paid casinos debts that he owed them in order to avoid listing those casinos as unsecured creditors. Additionally, he failed to record those preferred payments to creditors in the bankruptcy forms which required their disclosure, and failed to tell his attorney about them. Thus, casinos to which Judge Porteous owed money in March of 2001 received 100 cents on the dollar while other creditors received but a fraction of that amount. Judge Porteous favored casinos over other creditors because he did not want to jeopardize his ability to take out credit and gamble at the casinos while in bankruptcy.

He had his secretary pay off one of his wife's credit cards 5 days prior to filing for bankruptcy. Judge Porteous then reimbursed his secretary and failed to disclose this preferred payment to the credit card company on his schedules that he filed under oath with the court.

He reported his account balance in his checking account as $100, when on the day prior to filing for bankruptcy he had deposited $2,000 into the account. He deliberately failed to disclose a Fidelity money market account that he regularly used in the past to pay gambling debts. This particular nondisclosure demonstrates Judge Porteous's determination to have a secret account available with which to

pay gambling debts while in bankruptcy. This nondisclosure clearly was not inadvertent, since the evidence is clear that he wrote a check on that account on March 27, 2001, the day prior to filing for bankruptcy.

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

At a hearing of creditors on May 9, 2001, Judge Porteous, under oath, testified that the schedules were accurate. That statement, like so many of Judge Porteous's other statements under oath, was false. At that hearing, the bankruptcy trustee also informed Judge Porteous that he was on a ''cash basis'' going forward.

At the end of June 2001, bankruptcy Judge William Greendyke issued an order approving the chapter 13 plan, specifically directing Judge Porteous not to incur new debt without the permission of the court. Notwithstanding Judge Greendyke's order, Judge Porteous did incur additional debt without the permission of the court. He applied for and used a credit card.

Here is a blowup that includes a copy of Judge Porteous's application for a credit card and the statement showing its use in September of 2001—in violation of the order of the court.

More particularly, Judge Porteous continued to borrow from the casinos without the court's permission. This chart, which was used at trial, lists 42 times that he took out debt at casinos to gamble in the first of the 3 years he was in bankruptcy.

Further, as Judge Porteous had planned, in some instances, he paid these casino debts through the Fidelity money market account that he concealed. Here, at the top of this blowup, is a check he wrote on the concealed Fidelity money market in the amount of $1,800 to the Treasure Chest Casino in November of 2001. Below it is a check in the amount of $1,300 to Grand Casino Gulfport also drawn on the undisclosed money market account in July of 2002. Both of these checks repay the outstanding debts to the casinos. In short, he engaged in a pattern of deceitful activity designed to frustrate and confound the bankruptcy process.

The harm wrought by Judge Porteous's conduct in bankruptcy is really incalculable. The bankruptcy process depends totally on the honesty and candor of debtors. The trustee does not dispatch investigators to check on a debtor's sworn representations. Judge Porteous's display of contempt for the bankruptcy court is little more than a display of contempt for his own judicial ofice. A Federal judge who in fact heard bankruptcy appeals in his court should be expected to uphold the highest standards of honesty. It is inexcusable that Judge Porteous manipulated this process for his own benefit.

Let me now discuss article IV, and for that I need to return to the summer of 1994. Let me set the stage. At that time, while Judge Porteous was being considered for a Federal judgeship, he was engaging in two corrupt schemes: first, the curatorship kickback scheme with Creely and Amato that I previously described in connection with article I; and second, the corrupt relationship with the Marcottes I described in connection with article II.

Judge Porteous knew if the White House and the Senate found out about his relationships with either Creely and Amato or the Marcottes, he would never be nominated, let alone confirmed. In the course of the background investigation, and during the confirmation process, Judge Porteous was asked questions on four separate occasions that, if he were to answer the questions truthfully and candidly, required him to disclose his relationships with Creely and Amato and the Marcottes. On each instance, Judge Porteous lied. Because those four statements are at the heart of article IV, let me show you exactly what Judge Porteous was asked and exactly what he answered.

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

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

To which Judge Porteous answered: No.

Judge Porteous signed that document under warnings of criminal penalties for making false statements. This statement was a lie.

On July 6 and July 8, 1994, Judge Porteous was personally interviewed by an FBI agent as a part of the background check process. Judge Porteous was asked by the agent the same sort of questions I discussed in connection with the SF–86. His answers were incorporated in a memorandum of the FBI agent that summarized the interview. Let me show you the relevant portions of the memorandum. Judge Porteous was recorded as saying that:

> [He was] not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgment, or discretion.

These statements were also a lie.

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

So on August 18, 1994, the FBI conducted a second in-person interview with Judge Porteous, this time probing possible illegal conduct on his part in connection with bond setting. Again, the FBI writeup of the interview records Judge Porteous as stating that he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgment or discretion.

And again he lied.

Finally, after he was nominated, the United States Senate Committee on the Judiciary sent Judge Porteous a questionnaire for judicial nominees. Again, I am showing you the document. Judge Porteous was asked the following question and gave the following answer:

> Question. Please advise the committee of any unfavorable information that may affect your nomination.
>
> Answer. To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

The signature block is in the form of an affidavit that the information provided in the document is true and accurate. Judge Porteous lied for a fourth time.

The questions Judge Porteous was asked are clear and unambiguous. In each of the four instances, the questions called for Judge Porteous to disclose his relationship with Amato and Creely and the Marcottes. There is additional evidence that suggests Judge Porteous would have well understood the reach of those questions.

First, the second of his two FBI interviews addressed Judge Porteous's bond-setting practices. It is hard to imagine he could have been put on more specific notice that his relationship with Marcotte and his conduct in setting bonds was relevant and should be disclosed.

Second, Judge Porteous's understanding of the materiality of his relationship with Marcotte and his intent to conceal it is further evidenced by his statements and conduct associated with setting aside of Aubry Wallace's felony conviction, which I referenced earlier. As I mentioned, Marcotte had an employee named Aubry Wallace, who had helped take care of Judge Porteous's cars and also fixed his house. At around the time of his confirmation, Marcotte went to Judge Porteous and asked him to set aside Wallace's burglary conviction, to take the first step in getting rid of his felony convictions, so that Wallace would ultimately be allowed to obtain a bail bonds license.

Judge Porteous agreed to do it, but informed Marcotte that he would do so only after he was confirmed by the Senate, because he did not want to jeopardize his ''lifetime appointment.'' When asked to describe Judge Porteous's response to his request, Marcotte testified:

Answer. He kind of put me off and put me off. And he said look, Louis, I'm not going to let anything stand in the way of me being confirmed and my lifetime appointment, so after that's done I will do it.

Marcotte went on to explain the nature of Judge Porteous's concern.

If the government would have found out some of the things that he was doing with me, it would probably keep him from getting his appointment.

Senator MCCASKILL specifically asked Marcotte as to whether Judge Porteous used the ''lifetime appointment'' phrase. In response, Marcotte's answer was clear:

That was the words of Judge Porteous.

In substance, Judge Porteous said that he would set aside Wallace's conviction but that he was going to hide it from the Senate. It is hard to conceive of a clearer, more explicit expression of intent to deceive the Senate.

Judge Porteous's actions corroborate Marcotte's recollection of the conversation. He was confirmed by the Senate on October 7, 1994, and set aside Wallace's conviction, as he said he would, after that on October 14, 1994.

The timing of the Wallace set-aside confirms that Judge Porteous calculated and plotted to conceal material facts concerning his relationship with Louis Marcotte from you, the United States Senate. The procedural history of Wallace's case is discussed in our post-trial brief. But the salient fact is that Judge Porteous could have set aside the conviction, if he chose to do so, weeks prior to his confirmation. Absolutely nothing in Wallace's case occurred that explains his delay in waiting until after the confirmation. The only event of significance that explains the timing is that Judge Porteous was confirmed in the interim.

Moreover, Judge Porteous's willingness to set aside Wallace's conviction at Marcotte's request constitutes proof positive that Judge Porteous was in fact subject to coercion, leverage, and compromise—the very fact as to which Judge Porteous was questioned and which Judge Porteous denied.

Because of the fraud committed by Judge Porteous on the FBI and the Senate, Judge Porteous was in fact confirmed and was sworn in on October 28, 1994. He has been a Federal judge, enjoying the fruits of his deceit and the power of the position since that date.

In conclusion, the House has proved each of the four Articles of Impeachment. The evidence demonstrates that Judge Porteous is dishonest and corrupt and does not belong on the Federal bench. He has signed false financial forms, false questionnaires, and even signed documents under a false name under penalty of perjury. He has engaged in corrupt schemes with attorneys and bail bondsmen. He has betrayed his oath in handling a case dishonestly and with partiality and favor, characterized by making false statements at a hearing concerning his financial relationship with one of the attorneys, and then soliciting cash from that attorney while the case awaited Judge Porteous's decision. He has brought disgrace and disrepute to the Federal bench.

The evidence demonstrates he has committed high crimes and misdemeanors, and the House requests that you find him guilty on each of the four counts and remove him from an office he is not fit to occupy.

Thank you for your time and attention.

We reserve the balance of our time.

The PRESIDENT pro tempore. Thank you very much.

Professor Turley, you may proceed on behalf of the judge.

Mr. TURLEY. Thank you, Mr. President, Members of the Senate. For those who were not present this morning, I am Jonathan Turley, the Shapiro Professor of Public Interest Law at George Washington University and counsel to Judge G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana. Joining me again at counsel's table are my colleagues from the law firm of Bryan Cave: Daniel Schwartz, P. J. Meitl, and Daniel O'Connor.

Sitting here, listening to my esteemed opposing counsel, one is easily put in mind of another trial held almost 220 years ago—almost to this very day.

In a case that proves to be one of the turning points in American law, eight British soldiers were accused of murder in what Americans call the Boston Massacre and what the English call the Boston Riot.

Columnists demanded that the soldiers be executed and everyone came to the trial expecting less of a trial as much as a hanging. Adams himself saw the case differently. In fact, John Adams saw not just another case but the very cause for which he was already fighting, the creation of a new nation based on due process and principles of justice.

As in today's case, many of the facts were not in dispute in 1770. It was clear the British soldiers fired into the crowd, but Adams stopped the jury and challenged them to consider two questions: No. 1, whether the soldiers had acted with the required intent and malice; and, No. 2, whether the requested punishment—death—fit the crime.

It was also one of the earliest uses of the reasonable doubt standard ever recorded in our country. Proof and proportionality became the touchstone of that case and later cases that Adams helped bring into existence. In words that would echo through the ages, Adams warned the jury:

Whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence. The law will not bend to uncertain wishes, imagination or wanton tempers of men.

When the Framers turned to the Constitution, they sought to protect the judiciary from wanton and imagined offenses. In cases of impeachment, the Framers expressed fears that Congress would yield to passions over proof in the removal of Federal judges. James Madison, George Mason, and others carefully crafted the standard of impeachment to protect the independent judiciary, and Madison said expressly that they wanted to avoid standards ''so vague as to be the equivalent of tenure during the pleasure of the Senate.'' That is what they wanted to avoid.

They rejected ''corruption'' because they knew the term ''corruption'' could be used to mean most anything. For that reason, that term was adopted by the House in this case. It hasn't changed.

The Framers explicitly debated and rejected this vague standard of maladministration and instead demanded that a Federal judge could not be removed absent proof of treason, bribery or other high crimes and misdemeanors. Applying that standard, this Congress has refused to remove judges not because they agreed with their actions—every judge whose case was brought before Members of this esteemed body was worthy of condemnation, they had few friends—but this body drew a distinction between judges who have done wrong and judges who committed removable offenses.

I would like to tell you about the man who is on trial today, G. Thomas Porteous, Jr. He has spent virtually his entire life as a public servant. He served as an assistant district attorney, a State judge, and then a Federal judge. He served a total of 26 years, the past 16 as a Federal judge. When asked, all the witnesses in this case, without exception, described him as one of the best judges of Louisiana. As I will discuss later, however, his skills as a judge do not excuse his failings as a person. To the contrary, he has not contested many of the facts in this case and ultimately accepted severe discipline for the poor decisions he has made. He is here for you to judge now, to judge him, but he is not the caricature that has been described by the House.

Indeed, I don't know how the man described by the House avoided a criminal charge. After all, the Department of Justice got waivers to look into all these crimes. They investigated him and many other judges with ''wrinkled robes.'' When I was sitting here, I was thinking: My Lord, how on Earth could he avoid a criminal charge? The reason is because in the Department of Justice are professionals. They look for crimes, and they didn't find any crime that could be proven at trial; any crime, great or small, against this judge.

His son, Timothy, in the hearing, expressed the toll this has cost him and his family, ranging from the death of his wife, loss of his home in Katrina. One way or the other, this man is going to come to closure now. He will either be convicted or he will retire in a matter of months as he has already promised. What is clear, either way, Thomas Porteous will not return to the bench.

He has, however, remained silent for many months as newspapers and commentators have said grossly false things about his case and about his character. He waited for this moment for his defense to be presented, as have so many defenses in his courtroom, for impartial judgment—and he gave impartial judgment. Even the House's own core witnesses said Judge Porteous gave them a fair hearing, gave everyone a fair hearing. You can disagree with actions he took, but you don't have to turn him into a grotesque caricature. He is not. He may have been many things in the eyes of others, but he was never corrupt, and he loved being a Federal judge and, despite his failings, he never compromised his court, and he never broke the oath he took as a Federal judge in October 1994. That may seem a precious distinction to some, but he is here to fight for that legacy. He has accepted his failings, but he will not accept that.

This case is not, however, just about Thomas Porteous. All impeachments speak to all judges. This case presents Articles of Impeachment that are novel and they are dangerous. We discussed some of those issues this morning. Of course, the Constitution puts that incredible burden on you. It requires you to ignore the dictates of passion and wanton tempers described by John Adams. You must decide, after considering all the evidence, whether the actions that were taken in this case rise to the level of treason, bribery or other high crimes and misdemeanors.

I would like to return to something Senator DURBIN had asked about, which is the standard of proof. As we mentioned, in the past, many have cited ''beyond a reasonable doubt'' as the most obvious standard for impeachments because impeachment has many criminal terms that are incorporated and also many impeachments are crafted on articles taken directly from prior criminal cases.

We also noted and stressed that the Members of this body have two determinations to make. First, you must find these facts occurred and, second, you must find that those facts that did occur to your satisfaction rise to the level of removable offense. It is the first part of that determination that is difficult in this case because, as we noted, this is the first modern impeachment that has come to this body without a prior trial. This judge has never been allowed review from a judge. He has never challenged the things that have been said against him. Indeed, most of the things you just heard wouldn't be allowed in a Federal court, and we challenge the factual accuracy, as you will see. But that is part of the value of having criminal charges brought, because usually when this body has looked at a case, it has been siphoned through that filter of process and fairness.

Each Senator does have to establish what he or she will use as a standard of proof. But I have to say, I do not agree with Mr. SCHIFF when he says it is just up to you, whatever you decide is enough. Where I disagree with Mr. SCHIFF from this morning is where we distinguish between ''could'' and ''should.'' There is no question you can adopt any standard. The question is whether you should.

Obviously, the Framers did not want people just to take an arbitrary gut check on facts, particularly when there has been no criminal trial. They expected something more from you. What is expected is that you apply some consistent, cognizable standard, and we have talked about that standard applied in the House, which is ''clear and convincing.'' This body, in the past, has talked about a strict standard.

Indeed, Senator ARLEN SPECTER, who was vice chair of the Senate impeachment trial, at an earlier time stated the following to his colleagues—and I commend it to you:

> Where you have a judge up for removal, the issue of judicial independence requires a very strict standard. This is not a question of whether you would confirm him if he were before us today. It is not a question of whether we feel comfortable in going before him. But it is a question of whether we are going to oust him from office that comes into play.

What I believe Senator SPECTER was saying is that you do have an obligation to apply some objective standards because this is a legal proceeding. It might not be a criminal case, but you are sitting as the world's most unique jury and judges.

In this case, the Fifth Circuit itself did not consider the allegations in article II and article IV. The reason is simple, as the five judges I mentioned earlier wrote:

> Congress lacks jurisdiction to impeach Judge Porteous for any misconduct prior to his appointment as a Federal judge.

Plain and simple. The Federal judges of the Fifth Circuit wrote a detailed, 49-page opinion on the evidence in this case. Those judges declared the following:

> This is not one of those rare and egregious cases presenting the possibility of an impeachable offense against the nation.

They didn't approve of the decisions made, but they drew a line, and this fell far on the other side of an impeachable offense. Those judges, which included appellate and district judges, said:

> The evidence here does not support a finding that Judge Porteous abused or violated the Federal constitutional judicial power entrusted to him. Instead, the evidence shows that in one case he allowed the appearance of serious improprieties but that he did not commit an actual abuse, in violation of constitutional power entrusted to him.

These appearance controversies are routine in court. They are used here, however, as the basis for removal, to wipe away centuries of precedent. Perhaps for that reason the House managers are quoted in the media as encouraging the adoption of a new standard, to treat the impeachment process as merely an employment termination case. They would literally have this body adopt the standard Madison rejected, for judges simply to serve at the pleasure of the Senate, similar to at-will employees.

Unfortunately, this case proves one thing, the old military adage that if all you have is a hammer, every problem looks like a nail. It is not enough that Judge Porteous accepted sanctions from his court—unprecedented sanctions. It is not enough that he announced his resignation in a matter of months from the bench. It is not enough that no one has ever been removed for pre-Federal conduct. Staff and resources of impeachment had been committed and the House demanded removal.

Let's look at the basis for removal and let's turn to article I. In article I, the House impeached Judge Porteous on the theory that he deprived the public and litigants of his honest services, as we discussed this morning. We discussed the unique problem of the fact that it was crafted around a theory the Supreme Court rejected. It was a bad bet.

You will notice that in the opening statements again today, both Mr. SCHIFF and Mr. GOODLATTE kept on bringing up kickbacks again. I actually counted up to 20 and then I stopped. I pose the question to you. I don't know how many times you count the word ''kickbacks,'' but I ask you to look at articles and see how many times it is mentioned in the actual Articles of Impeachment, and that number would be zero. They allege a corrupt scheme and then came to you and said: You know what. This is going to be kickbacks.

But the reason the Framers rejected corruption is precisely because of what is occurring right now in front of you in the well of the Senate. Corruption can mean anything. Mr. SCHIFF could have stood and said: You know what this is? This the mail fraud or, you know, actually this is conspiracy. He could have said anything that constitutes corruption and rewrite the article here—not fulfilling the will of the House but fulfilling whatever is the passing will of the managers of the House.

That is a violation of the process the Framers created. In fact, we now hear five references to the signing of financial statements that were inaccurate. I suggest the Members look at the articles. How many times is that mentioned in the articles? Zero. But when you use ''corruption'' as a term, you just go to the well of the Senate and say: That is what this is all about. What that does for defense attorneys like myself and my colleagues is, we just stand here and try to keep track of what it is, the crime we are supposed to be defending against. It could be anything under the Criminal Code. Anything under the Criminal Code can form corruption.

Now it is financial records. That is why the House has the sole responsibility to articulate those articles.

When Mr. SCHIFF says they have a lot of discretion, they do. When they use that discretion poorly, Articles of Impeachment get rejected. That is what this body has said repeatedly in history. You cannot bring to us articles that present any possible crime, a crime de jour. That is what you are seeing today.

Notably, in article I, there is one fact that literally all of the House witnesses agree on: Judge Porteous was never bribed. But, more importantly, Judge Porteous was not bribable. Article I seeks to remove a judge based on a decision in a single case, and that decision was a single motion not to recuse himself in 16 years as a Federal judge.

The Lifemark recusal motion was the first and only such motion Judge Porteous was faced with in three decades as a judge. Now, allow me, please, to cut to the chase, and to deal with one allegation in article I which deals with this single gift to Judge Porteous by his longtime friend, Jake Amato. That is, in my view, the most serious allegation in article I. It was a colossal mistake. But I need to correct the record. The House stood up and said, you know, nobody called this a wedding gift except defense counsel. That is news to me.

In the hearing before the committee, Jake Amato described how he and the judge were on a boat on a fishing trip late at night drinking, and the judge got very emotional and was talking about the fact that he could not cover the expenses for his son Timothy's wedding. Amato was very close to Timothy. That was the context of this discussion.

But, more importantly, I asked Amato: In fact, the only money you recall ever going to Judge Porteous was this wedding gift? Right?

Amato's answer was: Correct.

Now, Judge Porteous never disputed that gift. What he disputes is the implications of the gift. Judge Porteous accepted responsibility because it created an appearance of impropriety, and it did. Accepting a very severe punishment by the Fifth Circuit, he publicly apologized and gave his ''sincere apology and regret'' that his actions had brought the court to address this matter. He also later said he would, in fact, retire from the bench.

Before delving into that gift, let me be clear what we are discussing. I think it is important to call things for what they are or in this case what they are not. This was not a bribe. All of the parties agree. This was not a bribe. It was not a kickback. They do not even allege in article I this was a kickback. So what was it if it was not a bribe and it was not a kickback? It was a gift.

Was it a dumb gift? Was it a gift he should not have accepted? You bet. But the Framers thought it was important to define things as they are. This is not a bribe and it is not a kickback. That is the key thing in looking at this impeachment.

The appearance of impropriety is a standard raised in Federal courts. Not uncommonly, courts of appeals will disagree with trial judges who refuse to recuse themselves. Hundreds of judges are faced with recusal motions. Sometimes they make mistakes. Recusals are usually based upon past relationships, financial interests. They extend under the entire waterfront of conflicts. When a judge gets it wrong, usually that is it; it is just a reversal.

Sometimes you will have a reprimand. Very rarely will you have any discipline at all. But consider the implications of accepting an appearance of impropriety as a standard of removal. This could be so easily used to strip our courts. An appearance of impropriety? Is that what we are going to substitute other high crimes and misdemeanors for, something that hundreds of judges are accused of. All of them would be capable to be brought before this body.

We talked a lot about this Lifemark case. I must tell you, it is exceedingly complex as a commercial case. It is between a subsidiary of a giant corporation called Tenet Healthcare or Lifemark and a family of pharmacists from Louisiana. I will tell you, I see no need to delve into the specifics, which I think you would be happy to know. It is sufficient to say this was a long running dispute between these two parties.

Lifemark was accused of delaying the case at any cost. It bounced from judge to judge and ultimately was assigned to over a dozen judges, one dozen in 3 years. That is the Lifemark case. Then, in 1996, it was randomly assigned to Judge Porteous. Defense witnesses stated, when asked, that Judge Porteous had a reputation for moving cases to verdict. He was a judge from Gretna. He was a State judge. He was a lawyer's judge. They tended to get cases done, and when he looked at this docket and saw a dozen judges in and out of this case and no trial, he promptly announced to the parties: I am the last judge you are going to see in this case. We are going to try this case.

I want to emphasize something. He said that to the parties before any friends were lawyers in this case, before anyone he had a friendship with was counsel in the case.

He said: I will be the last judge in this case, and we are going to go to trial.

So he was. Seven district court judges, three magistrates, and he ended that. They went to trial.

When he said that, lead counsel for Lifemark, Joe Mole, wanted to have him recused and to go to get another judge. He filed a motion to recuse, and he cited the fact that Judge Porteous was close friends with Jake Amato and Lenny Levenson. And indeed he was.

What we heard in testimony from witnesses is in Gretna, a very small town, like many small towns in which lawyers practice, judges preside in, most judges know the attorneys in their courtroom. If judges had to recuse themselves because they knew a lawyer in the courtroom, there would be no cases in these courts. These are small communities.

In Gretna, judges did not recuse themselves. In fact, our witnesses—actually, not our witnesses. Let me correct that. The House's witnesses said they had never heard of a judge recusing themselves in Gretna because they could not. That was the tradition that Judge Porteous came from, and many judges agree with that—that as long as you acknowledge you have a relationship, the relationship is not being hidden, you do not have to recuse yourself.

He was friends with Amato and Creely and Don Gardner. I will be returning to Mr. Gardner in a second. He was friends with Amato and Creely since the 1970s. Both Amato and Creely said they were best friends. They practiced law together. They hunted and fished together. They knew each other's families.

Timothy testified they were known as Uncle Jake and Uncle Bob. Creely taught him how to fish; Amato taught him how to cook. They were close friends. So was Don Gardner. In fact, Gardner was even closer. Gardner asked Porteous to be the godfather to one of his daughters.

Now, with this uncontested background, I would like to reexamine article I. First, the House asserts that Judge Porteous failed to disclose while he was a State judge that he engaged in a ''corrupt'' scheme with these attorneys. This is, of course, predicated on the fact that there is a corrupt scheme.

The problem with the House's case is the House's own witnesses denied the scheme. Both at trial and in a Senate deposition, Bob Creely expressly disavowed—expressly disavowed—that he had an agreement with Judge Porteous where he received curatorships in exchange for loans or gifts. Instead, Creely was adamant that there was no relationship between the gifts and the curatorships.

He said: I gave him gifts because we were friends. And he said: I gave him gifts before I ever got curatorships. Not only that, but he said he did not like the curatorships. He said he told Porteous that. Creely was a very successful lawyer. These curatorships were bringing in a few hundred dollars here and there. He said he hated them because they were more trouble than they were worth.

It is true, the House has portrayed Judge Porteous, frankly, as something of a moocher. I mean, that, I guess, was Congressman GOODLATTE's point when he pointed out with great emotion to you, Judge Porteous went to a lot of lunches with these men and he did not pay for his share of the lunches; he just paid for some of them.

Let me ask you, did you ever think you would be sitting on the floor of the Senate trying to decide whether that is

an impeachable offense, being a moocher? He paid for a few lunches; he did not pay for most of them. The witnesses said judges in Gretna routinely had lunches paid for them. In fact, the House's own witnesses said they could not remember—actually, that is not true; they could remember one judge on one occasion buying her own lunch. That is the record in this case.

So Creely is the guy in the House report who is the linchpin between this alleged scheme, between curatorships, and these gifts. Only problem? Creely came to the Senate and said: There was no agreement. He said he never gave any money to Judge Porteous as a bribe, never gave him a kickback, never expected to receive anything in return for the gifts. They were just friends. Not only that, he said he would have given those gifts without question regardless of the curatorships.

To drive the point further, he said Judge Porteous never asked him for any percentage or return from the curatorships. Not only that, but then the House's own witnesses said: By the way, all the judges in Gretna give curatorships to friends and acquaintances—all of them.

This has been discussed in Louisiana. But the Louisiana officials have decided they would allow that. Judges routinely would give curatorships to former partners, friends, acquaintances. It has been reviewed. We heard from the only expert in this case on Louisiana ethics, and that was Professor Ciolino, Dane Ciolino. He told the Senate: This is perfectly ethical under the rules. It is well known. It is a practice that has existed for a long time, and it still exists today. This does not mean that every judge in Louisiana is corrupt. It is just they do not view this as corruption.

Witnesses said that Judge Porteous gave curatorships to new attorneys, and he gave curatorships to Creely. The House never went and actually found the records of all the curatorships. You will notice, there is no discussion of any other curatorships. They had the ability. They could have come to you and said: Here are all the curatorships that were issued during this period of time. Here are the curatorships that went to Creely—or not. They did not do that.

But even if 100 percent of the curatorships went to his friends, it was perfectly ethical under the rules. The only testimony that the House was able to present attempting to establish a connection between the curatorships and gifts was Jake Amato. What the problem was is Creely saying there was not any relationship. That is a problem because the House report said Creely said that. So they went and got Amato, and Amato said on one occasion many years ago he remembers Creely saying there was a relationship. But the House was not deterred by the fact that Amato was giving this testimony with Creely in Washington denying he ever said that. But that did not deter the House. They just went ahead and had Amato say what they wanted Creely to say.

Then Amato said these figures that are being thrown around by the House were not figures he came up with. He said they were what he referred to as guesstimates—guesstimates—of the gifts and their relationship to the curatorships.

Now, Amato said actually the number you have heard here today did not come from him, did not come from Creely. In fact, they denied they could recollect. There is no record to establish this conclusively. Amato said the number actually came from FBI Agent Horner, who came up with an estimate of total gifts and just assumed—just assumed—that Porteous must have received half of it. They started pressing them to say: Wouldn't that be accurate?

So there is a Madisonian nightmare for you. The government gets guesstimates from witnesses, based on the figure that was just extracted by one of the investigators without documentary proof.

The second factual allegation in this article is that the judge should be removed for intentional misleading statements at the recusal hearing. I can simply end this by encouraging you: Please read the recusal hearing. It is not very long. Reach your own conclusions. Don't listen to me. Don't listen to the House. I think it speaks for itself. You will see that Judge Porteous actually gives them a hearing. A lot of judges don't. They just deny it. Instead, he gave them a full hearing, told them he understood why he was bringing this issue, acknowledged he had a relationship with these lawyers, and then he went and said: Tell me what I need to do to make sure you can appeal me because you have a right to appeal me, and he stayed the case to allow an appeal. Most judges just won't do that.

He did not say in detail what the relationship was. He understood that Mole was going to appeal. One thing he did want to correct on the record is that Mole said, incorrectly, that he had received campaign contributions from these individuals. He said that is just not true, and he corrected it on the record. He never denied the relationship. From his perspective, having a relationship, a friendship, particularly from his time in Gretna, was not a problem. It was just not a recusable issue. So he left it at that.

The third allegation is that Judge Porteous should be removed from office because he denied Lifemark's recusal motion. That is the most dangerous allegation in article I because that would remove a judge for the substance of his decision—in this case, a recusal motion. Can you imagine if you start to remove judges because you disagree with their recusal decisions? Judges are constantly appealed on recusal decisions. Sometimes they are upheld; sometimes they are not. But when you start to remove judges because you disagree with their conclusion, even though many judges share this view of recusal, then you open the Federal bench to virtually unlimited manipulation.

The evidentiary hearing in the Senate I do not want to tell you was a total bust. It was not. For those of you who were looking for a conspiracy, we found one, and it came out in live testimony—a scheme, a very corrupt scheme—but in that scheme Judge Porteous was the subject, not the beneficiary. The hearing saw extraordinary testimony from Mr. Mole, whom you heard the House repeatedly refer to as this paragon of a witness.

Mr. Mole brought this issue that he should recuse himself, and Mr. Mole was shocked he did not. In fact, I think Mr. GOODLATTE said Mr. Mole had no alternative but to proceed the way he did. But the House Members did not mention how Mole proceeded. After he lost the recusal motion, Mole decided he had to get this judge off the case. He was not going to have this West Bank judge rule in this case of Lifemark. It was going to be bounced to get another judge—a 14th reassignment of the case—if Mole had anything to do about it.

So he went and he talked to a guy by the name of Tom Wilkinson. Now, Tom Wilkinson is the brother of the magistrate who was assigned to the Lifemark case. So he went to the brother of the magistrate, and this is the former Jefferson Parish attorney. He was known as someone who could solve problems like this. He was known as the go-to guy to fix a problem with a judge you did not want. Wilkinson is now reportedly under investigation for corruption in Louisiana.

So Mole met with him, and then Wilkinson got Mole to meet with one of Judge Porteous's closest friends, Don Gardner. He went to Gardner and offered him an extraordinary contract, which we have put in the RECORD. That contract promised Mole $100,000 if he joined the case and offered him another $100,000 if he could get Porteous to recuse himself—$200,000. But that was not all. The contract actually said: By the way, once Porteous is gone, you are gone. So if you get him to recuse himself, I will give you $200,000 and you go away and we can then merrily go on bouncing this case through the court system.

The problem with this scheme by Mr. Mole is that it did not work because Don Gardner said: You do not want to go to Tom Porteous. You do not want me to go to Tom Porteous and tell him to recuse himself because he will react very negatively, and he refused to go—this is his own testimony—refused to go to Porteous to ask for his recusal.

Ultimately, the judge's decision cost his closest friend $200,000. Mole himself admitted he had never seen a contract like the one he wrote, and witnesses testifying said they were shocked to learn of a contract where someone actually put a bounty on a Federal judge

and offered $200,000 if you could get him off the case.

Nevertheless, when Gardner lost that case, he said the judge gave him a fair hearing. He said: Look, this judge is just not bribeable. He gave us a fair hearing. He disagreed with us, and we lost.

By the way, this is not mentioned by the House: Creely also practiced before the judge. By the way, he was not the counsel in Lifemark. But Creely actually did have a couple of cases in front of the judge, and the judge ruled against him and cost him a huge amount of money. In one case where he lost a great deal of money, Creely actually took his best friend on appeal and got him reversed. But his friendship did not stop the judge in one of Creely's biggest cases from ruling against him. He did not feel the need to recuse in those cases, and it did not influence his decision.

The article also talks about ''things of value,'' another general term. These are small, common gifts that both Creely and Amato admitted they gave to Porteous and said were very common in Gretna, as in many small towns. Yes, they had lunch together. They had lunch together for their whole 30-year relationship. A few of those lunches did continue while Lifemark was pending in front of the judge. The judge paid for an occasional meal, but Representative GOODLATTE is absolutely correct. He did not pay for enough meals. The House did not contest the only ethics expert in this case who said those lunches are permitted under State law, and they still are permitted today. Back then, they had the same rule the Senate had. Back then, the Senate allowed Senators to be bought lunches, not because it invited corruption. A lot of Senators did not view it as a source of corruption. Neither did the people of Louisiana when it came to lunches being bought for judges. It was just a courtesy.

There has been talk about Creely attending Tom Porteous's bachelor party in May 1999. I am simply going to note, if you look at the testimony, Creely said he was friends with Timothy. Timothy is a lawyer. He was very close to Timothy, and he had great love for Timothy. He expressed that in a hearing. He went to his friend's wedding. By the way, when he bought the lunch at his table, Porteous was not at the table, and he threw in with the other attorneys at that time.

Now, as I mentioned earlier, the wedding gift is, frankly, the most serious problem. It occurred 3 years after the recusal hearing. I am not trying to excuse it, but I do wish you would keep that in mind because these dates do get blurred. It was 3 years after the recusal hearing when this wedding gift was handed over.

And, yes, he went on this fishing trip. It was a very emotional thing. He was having trouble paying for his son's wedding, and it was a huge mistake. The judge admitted it. It was not a bribe, not a kickback; it was a gift. It was dumb to be offered, dumb to be accepted. But both Creely and Amato made clear it was not a bribe or a kickback.

In fact, Jake Amato testified he ''felt [Judge Porteous] was always going to do the right thing'' in the case. He did not see any connection in terms of influencing the outcome of the case.

Now, one question the House has never been able to answer—one which maybe the Senate would want to put to the House—that is, if Judge Porteous could be influenced for $2,000 and for some other ''small things of value,'' as the House alleges, why did he not just recuse himself so his close friend could collect $200,000? Why didn't he rule for Creely in those other cases? He had two friends in the case of Lifemark. He cost one $200,000. Why didn't he accept money like those other judges who were nailed in Wrinkled Robe?

The appearance of impropriety is a dangerous choice for this body to import in the impeachment standards. Professor Ciolino—this is not contradicted by the House—has said that State bars have continued to move away from the appearance of impropriety because they view it as a standard that is virtually meaningless. It basically says: Don't be bad. That is almost a direct quote from what Professor Ciolino said. He is a big critic of that standard. He said State bars are moving away from it at the time the House is asking you to adopt it as an impeachment standard.

Let's turn to article II.

Article II, we have already discussed, is the article that is the pre-Federal conduct allegation. I will leave that to your discretion. Since you have not ruled on the motion, I will try to address a few of the facts in this case.

But if the Senate agrees with the defense that a judge cannot be removed for pre-Federal conduct, then most of article II is gone. There is virtually nothing there in terms of Federal conduct. The evidence that is supported in article II in terms of Federal conduct is six lunches—six lunches—that took place over 16 years. So let me make sure we understand that. The evidence in article II of Federal conduct that you can remove a judge for is six lunches.

I should note that Judge Porteous attended several of these lunches, but there is no record that he attended all the lunches, so the six might be a high number. You see, the House had no record that he actually attended some of these lunches, but somebody at the lunch had Absolut vodka. I kid you not. So what the House is saying is that because Judge Porteous drank Absolut vodka, you should just assume he was at those lunches and use that as part of the evidence to remove a Federal judge. I am not overstating that.

Asked the committee just to take judicial notice that Judge Porteous is not the only human being in Louisiana who drinks vodka or even Absolut vodka. What they are inviting you to do again is to remove a judge on pure speculation.

By the way, the value of these lunches over 16 years was also not mentioned. They are less than $250 over 16 years. The individual meals benefited Judge Porteous—the average was $29.

As I mentioned, experts testified in this case, and were not contradicted, that judges were allowed and they are still allowed to have lunches purchased for them in this respect. The most the House could come up with is that by attending these lunches, Judge Porteous ''brought strength to the table''—that is one of the statements of their witness, Louis Marcotte, that he ''brought strength to the table''—and that is enough. Imagine if that was enough. If you are permitted to have lunches bought for you but someone at the lunch benefited from your being present, a third party, because you ''brought strength to the table,'' that would be enough for a charge of impeachment under this approach. The record shows that Senator John Breaux went to some of these lunches with the Marcottes. Does the House suggest that because Senator Breaux went to a lunch, he should be expelled from this body? That would be ridiculous.

Virtually every witness called by the House and the defense testified that judges dealt exclusively with the Marcottes as bail bondsmen. You heard the House say bail bondsmen would often deal individually with the judges. I just need to correct that. There weren't bail bondsmen—plural—at any practical level. This is a small town, and the Marcottes were it. The witnesses testified that the Marcottes controlled over 90 percent of the bonds. They were the bail bondsmen for Gretna. It is not a huge town. So, by the way, if you think about that, it means that every judge who signed a bond was almost certainly signing it for the Marcottes because they were the only bail bondsmen on a practical level.

Now, here is the thing you might find confusing. At the evidentiary hearing, the House conceded not only that they could not prove a linkage on these bonds but that they did not specifically allege a relationship between the size of the bonds and this relationship with the Marcottes. The House stated:

> The House does not allege that Judge Porteous set any particular bond too high or too low.

So all of the references just now about setting things too high and too low, how they benefited the bail bondsmen, the House stated that it was not alleging that they set these things too high or too low. So once again we find that the articles are being redesigned here in the well of the Senate irrespective of what was previously said by the House.

The House does little beyond noting that Judge Porteous often approved bond amounts by the Marcottes, and, as detailed in our brief, the House's

own witnesses demolish that allegation. The amount of a bond is set to reflect the assets of the defendant. The Senate staff summed this up in its own report in front of you on page 18: In many cases, the highest bond a defendant can afford may also be the socially optimum level so as to eliminate unnecessary detention while providing maximum incentive for the defendant to appear. That is the point of bond. You set it high enough that they are going to come back to court. There was very good reason.

The witnesses in this case testified that Judge Porteous was a national advocate for the use of bonds, and he connected the use of bonds to overcrowded systems. Gretna was subject to a series of Federal court orders that were releasing people, dangerous people, from their jails. Judge Porteous spoke nationally on the need for judges to use bonds, and he was correct. As we submitted in the record, studies have proven him correct, that if you get a bond on an individual, the chances that they will return and not recidivate are much, much higher. And Judge Porteous did speak to every judge he could find to say: Start issuing bonds because people are not showing up. Get them under a bond and they will.

You also saw that the House suggested somehow the Marcottes got special treatment from the judge. The fact is, they were the only bail bondsmen on a practical basis, so if you wanted to get bonds, you got bonds with the Marcottes. But, by the way, his secretary, Rhonda Danos, testified that the judge often told her not to let the Marcottes into his office. She said that on occasion he would say not to let them in. And she said they were not given any special treatment in access to the judge. She said Judge Porteous is a very popular judge and lawyers would gather in his office.

Let's turn very quickly to these two cases. I am afraid I am running short on time, so I will have to ask you or your staff to look at our position in our filing.

I want to note that on the Duhon expungement that has suddenly resurrected like a Phoenix on the floor of the Senate—we thought it was dead. The reason we thought it was dead is because it had been downgraded in the trial, because of testimony from witnesses, where the House simply referred to it as noteworthy. By the end of the trial, it had gone from a matter for removal to a noteworthy case. The reason is that witnesses testified that this was a routine administrative process. The witnesses showed—and there were no witnesses called by the House who were experts in this area. We called witnesses to talk about these types of setasides and expungements, and those witnesses said this was perfectly ethical and appropriate. Not only that, in the Duhon matter, Judge Porteous was following the lead of another judge. That was never revealed to the House. We revealed it in the hearing. It turns out that a prior judge had already taken steps in the case.

Louis Marcotte testified that he wasn't even sure he asked Judge Porteous for assistance on the Duhon matter. Nevertheless, the managers included the allegation in the article.

As for the Wallace setaside, the House could not call any expert to testify that it was improper, and we did call people who said it was perfectly proper. It was both legal and appropriate under Louisiana law.

Now, I want to address one thing about the Wallace setaside. The government, once again, is coming here—the House is coming here and saying: You know, he did this so you wouldn't know about it. He waited to take actions in the Wallace case after he was confirmed. And what do you think of that?

Well, I suggest what you think of that is it is not true. As we said here, this is why we were surprised to find it being mentioned on the floor of the Senate today. It is just not true. The judge held a hearing before confirmation and stated in the hearing: I intend to set aside this conviction. That is a pretty weird way to hide something. Before confirmation, he said: I am going to do this, and I need you to put a motion together. Why? Because it was the right thing to do. It is routine in this area. These types of things are very routine. What the attorney said is they just walk around with these forms in their briefcases.

Do you know what Mr. Wallace said? He said that Judge Porteous was a judge who was known as someone who would give someone a second chance, and he gave Wallace a second chance, and Wallace went on to become a minister and he is now a respected member of his community.

Now, a lot of this turns, of course, on Louis Marcotte, who also, by the way, admitted at trial—this is Louis Marcotte—he explained why he lied on one occasion, and he simply said: Well, I wouldn't have any reason to tell the truth. That is Louis Marcotte. Indeed, one of the witnesses told the committee that the House staff told them that the reason he was being called is because people wouldn't believe Louis Marcotte, that he lacked credibility.

Now, the Marcottes ultimately said that lunches would occur sometimes once a month; car repairs that were discussed here lasted about 6 to 8 months and consisted of a few minor repairs. We suggest you simply look at the testimony. You have to look at the testimony because there are not any documents of exactly what repairs were done. It is all testimonial. So this isn't a debate over the standard of proof; there is no proof.

Finally, the House has continually referred to other State judges who were convicted of crimes, including Judge Green and Judge Bodenheimer. I simply want to note that Judge Porteous, of course, never accepted cash or campaign contributions from the Marcottes. That put him in a small group, from what I can see. They gave as much as ten grand to judges, including judges who are still on the bench. They never gave Judge Porteous any cash. Why? They handed out cash to other judges. If he was so corrupt, if he was this caricature the House makes him out to be, why didn't he take the cash and run?

Judge Porteous, of course, was never accused of a crime, let alone convicted, and those men, Judge Green and Judge Bodenheimer—you just heard the House say: Look at these people; judge Judge Porteous by their conduct. They were convicted of mail fraud and planting evidence on a business rival.

Article II is a raw attempt to remove a judge for conduct before he was a judge. Article II, I submit to you, is nothing more than what Macbeth described as a ''tale full of sound and fury, signifying nothing.''

Article III is the only article that does not rely on pre-Federal conduct. What it relies on are a series of errors made in a bankruptcy filing that the judge made with his wife Carmella. I am not going to dwell on the intricacies of the Bankruptcy Code, which may be a relief to many. What the record establishes is not some criminal mastermind manipulating the Bankruptcy Code; it basically shows people who had bad records, little understanding of bankruptcy, which, by the way, is usually the type of people who go bankrupt. They sought a bankruptcy attorney of well-known reputation, Mr. Claude Lightfoot, and they were given bad legal advice.

But one thing the House doesn't mention today and did not mention to House Members when they got the unanimous vote: Judge Porteous paid more in bankruptcy than the average person in this country. He succeeded in bankruptcy. They filed a chapter 13 bankruptcy in 2001, and they paid $57,000 to the trustee, $52,000 repaid to their creditors. The only difference is that he was scrutinized a lot more. He had two bankruptcy judges, a chapter 13 trustee, and the Federal Bureau of Investigation and the Department of Justice.

By the way, I mention the FBI and DOJ because they raised these issues you just heard about while the case was pending. They didn't come into this case after it was done; they actually went to see the trustee and raised these issues with the trustee, and the trustee said he didn't feel any action would be appropriate, necessary. So he found that these actions actually wouldn't warrant an administrative action by a bankruptcy trustee, but the House managers would say that is still enough to remove a Federal judge under the impeachment standard.

By the way, after the DOJ and the FBI went to the bankruptcy trustee and said, look at all these things, and the trustees said, I don't think this really warrants any action on my part, the DOJ and FBI didn't take action either. All the sinister stuff about how

they found this, it was found before the case was closed.

None of Judge Porteous's creditors ever filed a complaint or an objection. That was also not mentioned in the case.

When they retained Mr. Lightfoot, they had never met him before, and it is true that Mr. Lightfoot did suggest that they file with the fake name ''Ortous'' instead of ''Porteous.'' That was a dumb mistake. To his credit, Mr. Lightfoot said: This was my idea. He said: I was trying to protect him.

Particularly, Judge Porteous's wife was upset about the embarrassment of the bankruptcy and the fact that, at that time, the Times Picayune published everyone's names in bankruptcy in the paper, and she was very embarrassed. And he thought he would help that by using ''Ortous,'' and then that was just for the first filing, correcting it so that no creditor would actually get that document or get that false name, and he did. Roughly 10 to 12 days later, he corrected it, and no creditor did get the misleading information.

By the way, in that first filing, he used the information, including the Social Security number, which is the primary way you track people, so he didn't falsify that.

It was a dumb mistake, but it was a mistake done by Mr. Lightfoot, at his suggestion, because he thought he could avoid embarrassment.

He said he regrets this. But it was his idea. In the fifth circuit, you are allowed to follow the advice of counsel. Should Judge Porteous have followed this advice? No. He should have known better. This is one of those things where yielding to temptation at a time like this was a colossal mistake.

But when the trustee was presented with this, with the FBI and the DOJ coming to his office, he said that he felt this was no harm, no foul. Why? Because nobody was misled, and because they changed it. No creditors were misled. He finished his bankruptcy filing. He did what most people don't do, he succeeded. He paid his creditors.

Henry Hildebrand, who is a standing chapter 13 trustee in Tennessee, said that he has seen bankruptcy petitions filed with incorrect names. He has seen it. He said that what you do is you require them to correct it, and you give notice to the parties. In this case, they didn't have to do that because the creditors already got the correct information.

Former U.S. bankruptcy Judge Ronald Barliant said that on the basis of the facts of that use of the pseudonym Ortous, he would not find any intent to commit fraud or otherwise impair the bankruptcy. He didn't see it. Neither did the trustee, and neither did the FBI or the DOJ, to the extent that they didn't charge it.

The House further alleged other errors and inaccuracies in the bankruptcy schedule as part of this dark and sinister plan to co-opt the bankruptcy system. Two empirical studies that were introduced at trial show that 95 to 99 percent of bankruptcy cases contain certain errors and inaccuracies. In fact, we had testimony from Mr. Hildebrand, who says he actually didn't believe that he had ever seen, in his 28 years as a chapter 13 trustee, a perfect filing.

Bankruptcy law professor Rafael Pardo also said that it has never been the standard to be perfect, that requiring these things to be perfect is unrealistic and unworkable, and that people make errors. The people who are filing bankruptcy are people who couldn't handle their records before. It is not surprising when they file bankruptcy and they have errors.

I want to talk quickly about these errors, where the judge is alleged, in the summer of 2000, to have given Mr. Lightfoot his May of 2000 pay stub, but he did not later supply an updated pay stub. What they left out was that the difference between those two pay stubs was $173.99 a month. Trustee Beaulieu said that it was such a small amount, and it ''would not [have] substantially increased the percentage paid to unsecured creditors.''

Mr. Lightfoot's file shows that Judge Porteous actually told his bankruptcy counsel that his net income was higher than listed on the pay stub, but that Mr. Lightfoot was using the information on the stale pay stub. He testified at trial that he failed to ask the Porteouses for the updated pay stub prior to preparing the bankruptcy filings. But now that is going to be part of a basis for the removal of a Federal judge.

Let's talk about that Bank One account. On that one, Mr. Lightfoot testified that he simply asked the Porteouses to approximate how much money they had in their account. The bankruptcy lawyer said, ''Give me a ballpark figure,'' and they did. There was no sinister plan here. How about the Fidelity Homesteads Association checking account just referred to? That account was omitted inadvertently. Judge Porteous testified before the fifth circuit that he thought he told Mr. Lightfoot there was this Fidelity account. However, it is undisputed that the value of that account was $283.42. That was the account that was mentioned here.

There is also reference to the fact that it said that occurred during the bankruptcy. There is no bar to incurring such debt by statute during bankruptcy. There is no bar to it.

Yes, the House made a great deal out of the fact that the Porteouses gambled. Gambling is legal. It was a problem. For Judge Porteous, it was an addiction. He dealt with it in a public way that few of us would want to deal with. He dealt with his drinking and addiction problems by going to seek professional help. Like many of us, he didn't do that until his life exploded on him. He went and got treatment for depression. Should he have done it before? Yes. But gambling is not unlawful.

More important, what was described to you about these markers is what the judges, Judge Dennis and his colleagues, objected to when they said that, ''Under Louisiana commercial law, markers are considered 'checks' as defined by Louisiana statute.''

Markers are uncashed checks, not debts for purposes of bankruptcy.

At trial, an FBI agent called by the House confirmed this interpretation—that a marker was a ''temporary check.'' In other words, these judges, who are not part of the sinister plan to undermine the bankruptcy laws of our country, all said they agreed with the interpretation that this is not debt. Some people might disagree with their interpretation. But at most, it is equipoise. They didn't believe it constitutes that, period. Should they have gambled in their bankruptcy? Of course not. That is not a failure as a judge. That was a personal problem that the judge overcame.

Let's move on to the last article. The fourth Article of Impeachment is the deliberate attempt by the House to resuscitate the pre-Federal charges, by trying to recycle them through the confirmation process. By the way, Senator LEAHY had asked about perjury in the confirmation process. I said that I do believe that perjury is a removable offense. Mr. SCHIFF stood up and said: Aha, then you do believe in the pre-Federal basis for removal. The answer is no. The confirmation process is part of the Federal process. It is part of your service as a judge. It is not pre-Federal in terms of what we are discussing. It is directly related to your being put on the Federal bench.

Obviously, if you acquit Judge Porteous on articles I and II, you have to acquit on IV, because that is basically article I and II recycled—the confirmation issue.

There are three questions that the House focuses on. I want to read you that question from the SF–86: ''Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause you an embarrassment to you or the President if publicly known?'' That is just one; it is a compound question.

I want you to put yourself in the shoes of Judge Porteous. He just answered 200 questions, and 100 of his closest friends had been interviewed, along with family, neighbors, and colleagues. This was the final question. I would like you to ask yourself how you would answer that question. Is there anything in your life someone could say that could be used to coerce or blackmail you? Would you answer that yes, would you answer it no, because you know you wouldn't be coerced and blackmailed? I am sure all of us have things we are not proud of, or that we don't want to be made public. That is the case with Judge Porteous. But we heard uncontradicted testimony that if

you just now said no to that question, you would not be alone. The FBI agent who testified said that in his 25 years in the FBI, he had never seen anyone answer yes to that question.

We brought in a leading expert on the confirmation process. He said that he was unaware of a single person ever saying yes to that question. It is so ambiguous that most people just say no. People have to sit there and wonder what would be embarrassing to President Clinton, and you are supposed to say, well, I can think of this or that. Maybe that would embarrass President Clinton. They don't say, look, I don't think my life is embarrassing to people.

These lunches that they keep citing were in public places, not in a house or underneath a car; they were held in open restaurants. He never tried to hide them; they were legal. There was actually a table set aside by the restaurant for lawyers and judges. The witnesses testified they had never seen any judge but one ever pay for those meals.

By the way, this was raised about Porteous's 2000 tax refund check. That was raised regarding things he was trying to hide. I believe the expression was, you know, that the 2000 refund check went right into his pocket. You know what. It is supposed to. Refund checks are not part of a bankruptcy filing in cases such as this. They always go into your pocket.

What they are asking you to do is to assume that Judge Porteous was embarrassed, and then remove him for that. Let me state that again. He was asked that question if anything would embarrass himself or the President, and they want you to say I think he was embarrassed and then you can remove a Federal judge on that basis—even though he didn't hide these things.

They keep on talking about these relationships. They are public relationships. Does that track with the constitutional standard, in your view? It is now down to embarrassment. He didn't hide the Creely relationship because Creely said there was no relationship of gifts to curatorships. Why would he hide that? Creely said it never happened. Once again, they are asking you to assume that and say the assumed facts must have embarrassed him, and therefore his answer to a compound question of ''no'' must be enough to remove him. This is not new.

All of you have been involved in the confirmation process. There are plenty of circumstances where facts have come forward that were embarrassing to a nominee that were not revealed. We saw that Bernard Kerick, who was nominated to be a member of the Cabinet, was actually criminally charged for saying there was nothing that would be embarrassing. He said: Not to my knowledge. The prosecutor said: You know what, that is a lie; we found something that would be embarrassing. That went to a Federal court and the Federal court said: ''Where a question is so vague as to be fundamentally ambiguous, it cannot be the predicate of a false statement, regardless of the answer given.''

The court went on to say: ''Plainly, the meaning of the word embarrassing is open to interpretation and that it's hard to believe that a Federal prosecution would follow.''

Here's my question: If it is hard to believe that a Federal prosecution would follow, how about an impeachment based on embarrassment? You cannot even use this in that Federal court. The judge cannot even base a charge on it. They are arguing you should now base the removal of a Federal judge on it. A judge in the third circuit was found to have lied in his confirmation hearing, but the third circuit said for discipline to be warranted, there had to be a showing of intent. The House didn't attempt to make that showing.

U.S. District Court James Ware had told people that his brother had been shot and killed in a racially motivated incident in Alabama in 1963. In 1997, when Ware was nominated to the ninth circuit, he listed family members, including Virgil Ware, who existed; it just wasn't his brother. A Ware had been killed, but it wasn't his brother. It was a lie. He was severely reprimanded by the court, and he should have been, but it is not an impeachable offense. He still sits on the district court in California. Also Hugo Black was mentioned.

We have plenty examples in the record. The fact is that if you start to remove judges for embarrassment, there will be no end to it. You will have House Members lining up to this open door to bring forth things that should have been mentioned in confirmations by judges that they disliked—and not just judges, but Presidents, Vice Presidents, and Cabinet members—if that is the standard. If you read the newspapers, you will see what I mean. There are articles in the newspaper, the Washington Post, where you have Members of Congress starting to make their case for the impeachment of Supreme Court Justices Thomas, Roberts, Kagan, and Sotomayor.

In fact, Congressman Peter Fazio said, ''They have opened the floodgates, and personally, I am investigating Articles of Impeachment against certain justices.''

If that is the standard, a President would have to raise nominees hydroponically in the White House basement if they have any hopes of surviving on the bench. You cannot possibly, I hope, consider replacing the impeachment standards with the wrong answer on that embarrassment question in confirmation.

Article IV is an open demand for Senators to engage in pure conjecture. If Senators can simply assume embarrassment to remove a nominee, there is no standard of proof, our day is over, and there is no standard of removal. They will serve at your pleasure, just as Madison feared. It is precisely what Adams worried about—uncertain wishes and imagination as a substitute for proof.

Before I sit down and I rest this case in the defense—before my voice gives out—I want to conclude by addressing one thing about this case, and that is the fact that Judge Porteous didn't testify, as some of you may be wondering about that. The reason can be found in the fifth circuit testimony. When the fifth circuit sought to question Judge Porteous about the allegations in article I and article III, Judge Porteous took the stand and did not deny many of the factual allegations. Somehow the House keeps citing that as if that is a major, sinister thing; that he actually said, I am not contesting these facts. And you know what, the House seemed to make fun of the fact that he couldn't remember details about what occurred with the $2,000. What was the point of that?

You had a judge who had, obviously, addictions. He had depression. He dealt with them. And when he showed up in the fifth circuit, his memory was not clear. But he didn't say that to say, and therefore these things didn't happen. He said the opposite. He said, if I were you, I wouldn't rely on my memory. If Creely and Amato were saying that, they are friends of mine. I don't think they lied. What is bad about that? He just is disagreeing with the implications of these things. So when they quote him and make fun of the fact that he tried to answer what happened with that money, he was doing his best. They seemed to leave out the fact that at the end he said, just assume it occurred and hold me to that standard. Ultimately, he accepted severe discipline from the fifth circuit for his poor decisions, and he announced that he will retire some months from today.

Did he betray his office? No. Maybe he betrayed himself, maybe his family, but not his office. His failings were that of being a human being—a man who was overwhelmed by addiction, the death of his wife, and financial troubles. Did he help bring those on? Perhaps. Whatever Judge Porteous may appear to you during this period, he was and he is proud of his nearly 30 years of public service as judge, but he believes that is for others to judge—judge now. He didn't feel it was appropriate in the fifth circuit to be contesting things that his friends had remembered, and he also doesn't think it is appropriate for him to beg you to excuse any of his actions. He wants you to judge his actions. He believes he can be judged harshly and he was judged harshly. He tainted his own legacy.

Judges are humans, and that humanity can make some of them the best of their generation. The life experiences of jurists such as Thurgood Marshall and Louis Brandeis made them towering symbols for lawyers and law students and the public. Others, such as

Judge Porteous, that humanity showed frailties and weakness. Some of the men and women who don these robes have those frailties and weaknesses. This is going to happen again. Judges will have bankruptcy problems. They only look inviolate in those robes. We elevate them in the courtroom. But beneath those robes are human beings, and some of them have problems and some of them make mistakes. But they shouldn't end up here on the Senate floor debating whether he was a moocher or whether he paid for enough lunches.

He will let the record stand and you judge him for it. He felt he deserved to be disciplined. Maybe he felt he deserves to be here, I don't know. But he doesn't deserve to be removed. He didn't commit treason, he didn't commit bribery or other high crimes and misdemeanors. He committed mistakes. But in the end, only a U.S. Senator can say what is removable conduct. It comes to you along a road that has been traveled by two centuries of your predecessors—a road that began with people such as James Madison, George Mason.

One Senator who sat where you sit now was Senator Edmund Ross of Kansas, who stood in the judgment of President Andrew Johnson. Many of what Ross's Republican colleagues wanted was Johnson out of office, for good reason. The public demanded his removal. He was viewed as a political enemy by Ross. He was the subject of John F. Kennedy's book ''Profiles in Courage.'' He was one of those profiles. Kennedy explained:

> The eleventh article of impeachment was a deliberately obscure conglomeration of all the charges in the preceding articles, which had been designed by Thaddeus Stevens to furnish a common ground for those who favored conviction but were unwilling to identify themselves on basic issues.

Does that sound familiar at all? While the record was filled with abuses and poor judgment by Johnson, Ross was forced to consider whether they amounted to an impeachable offense. And as the rollcall occurred, he found himself a key vote standing between Johnson and removal from office. Ross described the sensation as,

> Almost literally looking down into my open grave . . . as everything that makes life desirable to an ambitious man was about to be swept away by the breath of my mouth, perhaps forever.

He then jumped into that grave and he uttered the words of ''not guilty'' to the shock of his colleagues. His career ended. He was chastised at home, but he became a profile in courage not just for John F. Kennedy but, I hope, for many people in this Chamber.

No career will be lost with your vote today. Indeed, in a week of votes—of sweeping immigration changes and nuclear treaties—I think the world is in a bit of amazement and awe that we would have so many of you here today to just stop and decide the facts and the future of a Federal judge. It is a testament to this system. No matter what you do today, Judge Porteous will not return to the bench. He will be convicted or he will retire. No senatorial career will turn on his vote. But of course impeachment has never been about one president or one judge but all presidents and all judges. The Framers understood that.

What will be lost today is not a career but a constitutional standard that has served this Nation for two centuries—a standard fashioned by the very men who laid the foundation of this Republic; a standard maintained by generations of Senators who sat where you now sit in this very Chamber. We ask you to do as they have done and hold the constitutional line.

We ask you to acquit Judge G. Thomas Porteous.

The PRESIDENT pro tempore. Thank you very much, Professor. Representative SCHIFF will conclude the case for the House managers, and the House has 26½ minutes remaining.

Mr. Manager SCHIFF. Mr. President, Senators, let me begin this conclusion by some agreement with my colleague—this is a remarkable proceeding, and the true import of it is demonstrated by the fact of how much you have going on this week and the amount of time we are devoting to this today. It is a reflection of the seriousness, it is a reflection of the fact that these cases come around very rarely, and for good reason. The Constitution sets the bar high. It doesn't want either the House or the Senate to take the process of impeachment lightly. We in the House certainly do not, and we know in the Senate you don't take that responsibility lightly either.

We have set out the facts about why this judge needs to be removed from the bench, and I wish to take this opportunity to rebut some of the points my colleague has made. I think when you go through the evidence, and when you discuss it with the Senators who sat through the trial, you will find, on each of the articles as charged, that G. Thomas Porteous must be removed from office.

Counsel began by stating that the judge wasn't prohibited from being prosecuted for many of these crimes; that he signed tolling agreements with the Department of Justice. But this is what the Department of Justice said in its letter transmitting the case:

> Although the investigation developed evidence that might warrant charging Judge Porteous with violations of criminal law relating to judicial corruption, many of those instances took place in the 1990s and would be precluded by the relevant statute of limitations.

The tolling agreements that Judge Porteous signed contained this clause:

> I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

So anything that was gone by then was gone for good, and he made no agreement to revive it. So the case was referred to the fifth circuit. The fifth circuit had 2 days of hearings and, according to Judge Porteous's counsel, provided unprecedented sanctions on the judge.

Do you know what those unprecedented sanctions are? That he has heard no cases and earned his entire salary for 3 years. He was paid his full salary for doing nothing. That is an enormous sanction that was placed upon him—a sanction I think many Americans would love to have, to be paid a Federal judicial salary for doing nothing. That was the sanction.

Counsel says he offered to retire. Well, why didn't he? Why didn't he 3 years ago retire from the bench? He could have. But the Judge's whole intent—which has been demonstrated throughout the procedural history by changing attorneys and moving for delays and continuances—has been to draw out the clock, to go another month with another Federal paycheck, to see if he can eke it out a little longer until he can get his full salary, his full retirement for life. There was nothing preventing this judge from retiring 3 years ago.

Turning to the claims made by counsel in article I, that the articles don't charge a kickback scheme, let me read from article I.

> While he was a State court judge in the 24th Judicial District in the State of Louisiana, he engaged in a corrupt scheme with attorneys Amato and Creely whereby Judge Porteous appointed Amato's law partner as a curator in hundreds of cases, and thereafter requested and accepted from Amato and Creely a portion of the curator fees.

It says right here, he sent them the cases and thereafter requested and received a portion of money from those cases. If that is not a kickback, I don't know what is.

I guess counsel's real argument is, well, why didn't they use the term kickback? And because they didn't use the term that counsel would use in the charging instrument, therefore, you must acquit. That is not the law in impeachment cases, that we have to charge using a particular word. What we do have to do is set out the conduct.

Senator LEAHY asked: Well, what about perjury? We don't use the word perjury in the fourth article, but we set out in the fourth article that he made material false statements before the Senate, knowingly, willfully, and deliberately. That is perjury. So we don't use that particular word. We don't have to use that word. We don't have to charge a particular criminal statute. When we do use particular words, counsel takes issue; when we don't use particular words, counsel takes issue. What is the requirement here? That we charge him with high crimes and misdemeanors. And yes, those words do appear in the articles.

Now the gift. The wedding gift, as counsel calls it. You will notice from the portion he read to you, Mr. Amato never calls it a gift. Mr. Turley does, in his question. In fact, after Mr. Turley

asked those questions, I asked both Creely and Amato: Was this a wedding present? Was this a wedding gift? And their answer was: Of course not.

Counsel has just said: Well, back in the fifth circuit, when Judge Porteous was explaining what happened, he didn't want to contradict his friends, or maybe he didn't have such a good recollection. So 3 years ago, during the fifth circuit when he said—he called it then a loan that he never paid back. But he didn't have as good a recollection 3 years ago as counsel does now when he calls it a wedding gift. Well, no one has ever referred to this as a wedding gift. It was not a wedding present. It wasn't something they registered for.

In fact, the conversation in the testimony at trial was, Amato says: We are out on a fishing trip and he says, look, I invited too many guests to the wedding—this is where the wedding comes in. I invited too many guests to the wedding. I can't afford this. You got to help me out. Can you get me 2,000. Can you give me 2,000. Can you find me a way to get 2,000?

Does that sound like a gift to you? And you don't have to take my word for this or counsel's word. There were 12 Senators who sat through these days of testimony. Ask them if this was a wedding gift.

Counsel says: Well, these were just really close friends of the Judge. This was Uncle Jake and Uncle Bob. These were just close friends. Yet, look at the transcript of that recusal hearing where the judge says—because at that point he wants to distance himself—I don't really know these attorneys. Have we had lunch? Yes. But I have lunch with all the lawyers in the courthouse.

Have I ever been to their house? No.

Well, that is odd. This is Uncle Bob and Uncle Jake. They are that close, according to counsel, but the judge has never been to their house? Clearly, from the point of the recusal hearing, where he is trying to show—trying to mislead the parties, he doesn't know these attorneys any better than any other attorneys he has lunch with. Then, it is one thing, but here it is Uncle Bob and Uncle Jake now.

Counsel says Creely denied that this was a relationship between the cash and the curators. That is simply not the case. If you look at Creely's testimony, he says the judge called him and was hitting him up for the curator money. When Creely says—the reason Creely doesn't like calling it a kickback, apart from the very self-serving and obvious reason, is, he says: I didn't ask for these curator cases; therefore, it can't be a kickback because I didn't want them. They were a nuisance. He says: The judge sent them to me because he wanted to hit me up for the money, but because we didn't have an agreement in advance, because he basically forced me to take these cases and then forced me to give him some of the money, therefore, it wasn't a kickback. I don't think that is how the definition of a ''kickback'' works.

Plainly, Creely testified that the judge understood the money was coming from the curatorships. Plainly, the judge knew it was a kickback, and if Creely doesn't want to admit it or call it that himself, that is exactly what it was. In fact, Amato testified that Creely came to him and said: Look, the judge is hitting me up for the curator money. What do we do?

Amato said: Well, let's just give it to him.

Basically, it wasn't going to cost them much. They are getting these cases. They are kicking back a portion of it, so they decide to do it.

Counsel makes the suggestion, again, he is being charged with being a moocher, he is being charged with having free lunches. Again, I encourage you to talk to the Senators who were there. As my comments about Senator JOHANNS earlier make clear, they are not about whether the judge was a moocher or had too many free lunches. This is about getting money from attorneys, this is about setting bonds not with the public interest in mind but to maximize the profit of a bail bondsman and get a lot of gifts and favors and trips and car repairs and everything else out of it.

Counsel makes the astounding claim that everybody in the case agreed that this is the best judge in Louisiana. God, I hope not. If that is the case, we are in much more serious trouble than any of us can imagine. But that was certainly not the testimony in this case.

Counsel says: Why weren't there records produced by the House of the curatorships? They could have gone and gotten the records. This is somewhat inexplicable because we did get the records. We went into the courthouse and got the boxes and found the record of these curator cases and we introduced records of hundreds of curator cases that were, in fact, assigned to Creely that were the subject of these thousands and thousands of dollars that were returned.

Counsel says: Well, the witnesses couldn't specify exactly how much—was it $20,000, was it $19,000, was it $21,000—and, therefore, you can't believe they actually got the money.

The judge himself doesn't deny getting the money. You know why we can't be precise about whether it was $19,000 or $21,000 or $20,000? Because as the witnesses said during the trial, they paid in cash so there would be no paper trail. I guess counsel is saying, if you pay in cash, you can never be charged or impeached because then the government can't prove exactly how many dollars went into your pocket.

Counsel then makes the claim that if you impeach him because he lied and misled people during the recusal hearing, what you are doing is impeaching a judge because of a judicial decision, and that erodes judicial independence, as if it were a disagreement with the case law on the motion, the case law on the opinion or his judicial philosophy. That is not what this is about. This is about taking money during a case. This is denying a motion, when you know you received money from the attorneys and lying about it. It is not about the merits of the cases you cite or your judicial philosophy or what the standard ought to be.

The judge set the right standard during the hearing. He understood exactly what was required of him. That is what makes it so egregious. He set out the standard, if you read that transcript, perfectly, and he said if anything should come up during the trial that should require me to take myself off the case, I will let you know and give you that opportunity.

So what happens? The case is under submission. As counsel points out, it was under submission for 3 years, and during that period does something happen that would cause an objective person to question his impartiality? Yes. He hits them up for 2,000 bucks and they give it to him. Does he do what he said he would do during that recusal hearing and give the parties a chance to ask him to get off the case? Of course not.

No, instead, counsel paints Porteous as a victim of this conspiracy to go through judge after judge in this hospital case. But, no, he is a hero. He is going to stay in there. He will not recuse himself. He will not let those parties manipulate the system. This is Judge Porteous as hero, occasionally as victim, but never as the abuser of the public trust that, in fact, he is. The fact that the opposing counsel who loses the recusal motion has to bring in another crony of the judge with an agreement that says: If you get the judge off the case, we will give you one hundred—100,000 bucks to start and 100,000 more if you get him off the case, it shows you how the system is corrupted by this judge. The other party has to bring in a crony for his side of the case.

Counsel says Mr. Amato testified that, well, he thought that Porteous was going to do the right thing—as if that makes it OK. I guess you have to ask: Well, what did Mr. Amato think the right thing was? I am sure he thought the right thing was he was going to rule for him. In fact, that is, of course, exactly what Judge Porteous does. He rules for Mr. Amato in an opinion that is excoriated by the court of appeals as being made out of whole cloth.

Counsel asks: Why didn't he recuse himself and that way his other crony would have gotten 100,000 bucks? If he did that, then Mr. Amato would lose $500,000 to $1 million because that is how much he stood to make in fees on the case. If he lost the case, he made nothing. If he won the case, he made $½ million to $1 million. So here the judge had to decide: Do I favor my one crony who stands to make 100 grand or my other crony who stands to make

$500 million. Well, he chose to stand by the crony who would make $500 million.

Article II, this is about six lunches, counsel claims. This is the same issue that was raised with Senator JOHANNS. This is not about six lunches. Not even the portion of article II which deals with Federal conduct is about six lunches. It is about a judge recruiting his successor into the same corruption scheme he was engaged in while he was a State judge, a recruitment that was successful. Judge Bodenheimer was recruited. He then went to work with the Marcottes, so he wouldn't deal with it until he was vouched to work by Judge Porteous, and then Judge Bodenheimer goes to jail. This is the character witness Judge Porteous calls during the trial, Judge Bodenheimer, who went to jail for almost 4 years for the same charges. If you look at the charges Judge Bodenheimer pled guilty to, it was having this arrangement with the bail bondsmen, where he would set bonds to maximize the profits of the bondsmen in exchange for these favors and gratuities.

Counsel says: Well, the House has said at one point it was not going to show that any particular bond was set too high or too low. Counsel did not mention the fact that what we were saying is, we weren't going to say this particular bond, in the case of Joe Smith, should have been $50,000 higher or $20,000 lower. No, we were not going to say in a particular case. What we were going to say was the arrangement with the bondsmen, as the evidence showed during trial, was that in each of the cases that went before the judge, the bondsman would say: This is where I can make the most money, set it at this point. That is what we said we would prove, and that is what we showed during the trial.

Counsel then says something to the effect that the Duhon expungement was downgraded. I don't know what that means. Mr. Duhon was called to testify. He testified about the fact—just like Wallace, the other expungement—he didn't hire an attorney, Mark Hunt did. He didn't tell the attorney anything. Mark Hunt arranged the whole thing. If you look at the transcripts of the expungements and the set-asides between the judge—when the judge sets aside these convictions of these two Marcotte employees, do you know what is striking about them? There is nothing said during the hearing. There is nothing said. There is no case made about why this person deserves to have their conviction set aside. The lawyer doesn't say: Judge, he has lived a good life, he has never had a problem with the law, he deserves this. It is silent. The judge just says: I am going to do this. I am setting aside this conviction under code section blah, blah, blah. There is no discussion; the judge doesn't want there to be. He doesn't want anybody listening or watching to read the transcript and to know what is going on.

Counsel can say: Well, there is nothing, per se, illegal about setting aside a conviction. In fact, the evidence during the trial showed the judge lacked the power to set aside one of the convictions because Louisiana law says you can't set aside a conviction where the person has already started their sentence, and this person, Wallace, had already finished the sentence. But regardless of that, even if you believe somehow he had the power to ignore Louisiana law, the question is why? Why did he exercise that power? On this issue, counsel has never had an answer. The uncontradicted testimony was, the reason he exercised that power was because Marcotte asked him to, because Marcotte was doing him favors, and more than that, Duhon and Wallace were doing him favors, picking up his car, getting it washed, filling it with gas, and fixing the transmission, leaving $300 buckets of shrimp for him, when he got back in his car, and bottles of vodka.

That is why he expunged the convictions, because Marcotte asked him to, because he was doing favors for the judge.

Counsel continues to make the assertion, which I can't understand, that somehow the conviction was not set aside after confirmation. The record is plain, that is exactly what happened. The conviction was set aside right after he was confirmed. There is no reason why that couldn't have been done before, except for the fact he didn't want you to find out about it. He didn't want you to know about his relationship with the Marcottes. That is the reason it was delayed, that is the reason it was concealed, that is the reason he said nothing about it, and that is the reason why the record corroborates exactly what Mr. Marcotte testified.

In article III counsel says: Yes, he filed under a false name. Variously, during the proceedings earlier, in his written pleadings, counsel calls it a pseudonym. He filed under a pseudonym, as if it is a romance novel and he is using a pen name. During the trial, counsel said it was a typographical error. Now he says it is the lawyer's mistake.

This is not a situation where you have a layperson going to an expert lawyer and being advised of some arcane provision of bankruptcy law. This is a Federal judge with 20 years of experience and the lawyer concocts this scheme: Well, let's use a false name, and why don't you go out and get a P.O. box so we don't have to list your address, and the judge does this.

This is not advice of counsel. This is collusion. What is the judge's explanation for why he is entitled to file under a fake name? He doesn't want to embarrass himself, and I guess he doesn't want to embarrass his wife.

What does this mean; that if you are a Federal judge, you have a right to file under a false name under penalty of perjury because you don't want to be embarrassed? If you are an ordinary citizen, you don't have that right. Is it only judges who are embarrassed by bankruptcy? You don't think a teacher who files bankruptcy is embarrassed or a banker who files bankruptcy or a baker or anyone else would be embarrassed if their neighbors or their employer or someone else finds out they have had to file bankruptcy? It is a very painful, embarrassing process for anyone, and a Federal judge doesn't have any more right than anyone else to use a fake name.

Counsel says: Well, no harm, no foul because he finished his bankruptcy proceeding and creditors got paid. He didn't want the notice in the paper, but the creditors all found out about it anyway.

Yes, the creditors found out about it because it went public. The hope was it never would. What the judge also wanted, in addition to avoiding the embarrassment, he didn't want the casinos to know. He didn't want the casinos to know because if the casinos knew—and they weren't listed as creditors, even though he continued to hand out his gambling chits and gamble—if they knew, they would deny him credit, and they wouldn't let him keep gambling, which is exactly what he did during the rest of the bankruptcy.

On article IV, counsel concedes that prior conduct can be impeached as long as it is during the confirmation process. So I guess they have waived any objection constitutionally to impeach on prior conduct for the purpose of article IV because, of course, article IV, the lying to the Senate, is during the confirmation process.

He says: Well, these questions were brought out, though. They were about embarrassing facts. He is focused on one word ''embarrassing.'' But when you look at those forms and the questions you asked in the Senate, it is not just about embarrassment, it is: Are you aware of any negative information that may affect your confirmation? He answers: To the best of my knowledge, I am not aware of any negative information that might affect my confirmation. That is what he told you, and it will be your decision: Is that truth or is that a lie?

Now, counsel implies that it is impossible to know what that question really means. So I asked his own expert this during the trial: If information came out before confirmation that a candidate for judge took kickbacks from attorneys in exchange for the official act of sending curator cases, would, in your expert opinion, that be unfavorable information that would affect that nomination?

This was Professor Mackenzie:

If it were true, yes, it would be.

Question. It would kill the nomination, wouldn't it?

Answer. I think it probably would, yeah.

Question. And a reasonable person would understand that, wouldn't they?

Answer. Yes, I think so.

Question. That wouldn't require a level of insight of which no ordinary person is capable?

No, I agree with that. Yeah.

Question. If information came up before confirmation that the candidate set bail at amounts to maximize the profits of a bail bondsman—et cetera

Same answer to each of those questions. Their own expert said plainly that information is called for by that question. Their expert said: You have no right to lie. If you do not want to suffer the humiliation of revealing that you are corrupt, you know what you do—you withdraw your nomination. And, in fact, that is why these cases are rare. It is rare, frankly, that you do not find this information during the vetting process. But when it comes out, when the White House nominates someone and it comes out that there is a problem, do you know what happens? They withdraw. Now, they may withdraw and say, I have had second thoughts, or, I want to spend more time with my family, or for whatever reason. They do not have to say why. But that is what happens.

The confirmation process should not be a game of hide and seek with the Senate where if you can keep your illicit conduct or your corruption hidden from the Senate and get by that confirmation hearing, you are set for life. That is not the precedent we want to set. That was the view, the unanimous view, of the House of Representatives.

It will be for all of you to decide to what degree you want nominees in the future to feel that they can mislead the Senate, that they can conceal information about corrupt activity; if they can just get through the confirmation, they will be home free, they will be beyond the reach of impeachment. I think that is a careless path to go down as well.

When counsel summed up, he asked: Did he betray his office? I think that is the right question. I think hitting up attorneys, when you have a pending case worth millions, for $2,000 cash, that is betraying your office. I think recruiting other judges into a corrupt scheme is betraying your office. I think lying to the Senate is a betrayal. I think lying to the bankruptcy court is a betrayal.

In the most plain terms, what does this mean, to violate the public trust? Let's say you do not impeach. What is someone walking into Judge Porteous's courtroom or any other judge in New Orleans or California or anywhere else to think? Do they think: Well, I guess I can file something under a false name because the judges do and that is all right. I guess maybe I need to see if I can pay the judge some cash or fill up his car or fix his radiator if I want them to rule in my favor.

Can anyone seriously go into Judge Porteous's courtroom after this without wondering those very things? Is that not the kind of abuse of the public trust the Framers intended to provide a remedy for so that we would not have to continue to suffer someone on the bench who would damage the institution in that way?

We believe this conduct is beneath the dignity of anybody to serve on the bench. That is not only toward Judge Porteous, but it is toward all who serve with him and has raised profound questions certainly in one courthouse and probably many others about just who is sitting on the bench.

The remedy of impeachment is not punitive. It is not designed to punish Judge Porteous. Instead, it is designed to protect the institution. And I believe, on behalf of the House, it is not possible to protect the institution by deciding that this level of corruption is OK, that solicitation of cash is OK, that striking deals with bail bondsmen that don't take official acts in the public's best interest or public trust but on how to enrich the judge is OK. These things are not OK. These things are not just an appearance problem, as counsel suggests. This is unethical. This is criminal. And for the purposes of an impeachment proceeding, it is also a high crime and misdemeanor warranting removal.

Thank you.

The PRESIDENT PRO TEMPORE. All time has expired.

Questions have been submitted in writing. The clerk will now report the questions.

The legislative clerk read as follows:

Senator Franken to Mr. Turley: Isn't what happened before he was a Federal judge relevant if he subsequently lied about it?

Mr. TURLEY. Senator FRANKEN, what I would say is that we have agreed that if those lies occurred during a confirmation hearing, it was an act of perjury, then certainly you would have a potential impeachable offense.

I think that the line being drawn here is—I think this may be the thrust of your question—that if it is pre-Federal conduct, the answer is no. This body has stated in cases like Archbald that it will not consider pre-Federal conduct for a very good reason. The Constitution guarantees life tenure for good behavior in office. That is how the Framers defined it.

If you allow for the House to go back in this case three decades—three decades—and say: Look at all of these things you did before you became a judge, we are going to have a do-over. We think that now you should be removed because of those things, not because of what you did as a Federal judge. And I think there is a distinction. I believe that if there was perjury in the confirmation hearing—I don't think Mr. SCHIFF and I would disagree on that point. But there is a big difference. That is the constitutional Rubicon. That is where this body has never gone. And I do believe, if you look at it objectively, you can see that the perils on that path are obvious and that this body should not go there. There are articles here that refer to Federal conduct, and you have every right to judge this man, but you should judge him as a judge for what he did to the office you gave him, and I think that is what the Framers intended.

The assistant legislative clerk read as follows:

Senator Specter to Mr. Turley: Why did Judge Porteous waive the statute of limitations? Did he think the move was a realistic possibility that he would have been exonerated?

Mr. TURLEY. Thank you, Senator SPECTER. I want to emphasize that with regard to statute of limitations, he waived the statute of limitations he was requested to waive. And the House has come forth and said:—they said they still could not proceed in this area or that area. As I mentioned, they were able to do that with Bodenheimer. The statute of limitations was not a limitation.

The reason he did it is the same reason he went to the Fifth Circuit and said: I am not going to contest these facts. Whether I remember specifically how the money was given to me, as I recall, I was given money, and it was a gift, and it was a mistake. He said: I am not going to contest that, I am not going to fight that because it was wrong. And the same thing with the statute of limitations. He said: I am a judge, and if you can find a crime to charge me with, then you should do it.

That is the point of waiving a statute of limitations. There is no other point of waiving a statute of limitations. You take a risk. And, you know, you yourself, as a well-known defense attorney—well, a well-known litigator, I should say, as are many people in this room, usually you encourage people not to waive a statute of limitations because you don't know where it will lead. This judge decided he would. And ultimately, the Justice Department found that, in looking at all of the evidence, they couldn't bring a charge, and they certainly could not secure a verdict on that basis.

But I don't think there was anything sinister about waiving a statute of limitations. I mean, to the extent that you believe he waived it because he didn't think he could be charged with a crime, the answer, I think, is yes, he doesn't think he did commit a crime, and he waived it.

The legislative clerk read as follows:

Senator Merkley to Mr. Turley. Judge Porteous, while he had the Lifemark case under advisement, solicited a cash gift from an attorney (Amato) who represented one side of the dispute. He then accepted a $2,000 gift from this attorney.

You have referred to this gift as only an appearance of a conflict of interest. How can parties to a case expect fair treatment from a judge if the judge solicits and receives a gift from an attorney on one side in a case?

Doesn't such a solicitation during a trial constitute a complete abandonment of impartiality and a fundamental abuse of the judge's position and a betrayal of the public trust?

Mr. TURLEY. Senator, first of all, I believe I agree with the sentiments that were expressed in that question. He should not have accepted the gift. That is why he accepted discipline. But it was an appearance of impropriety. That is how the court treated it. You

can read the opinion by the dissenting judges and look into whether an appearance of impropriety should be an impeachable offense.

There is no suggestion it was a bribe. It is not alleged it was a bribe. And so what you have then is something that is classified as an appearance of impropriety, and an appearance of impropriety does all of the things that the question suggests. That is why you do not want appearances of impropriety, because it makes people uncertain as to whether the judge is being fair and unbiased. And he admitted to that. It was a mistake. But it was not during the trial. The trial was long over. This was years after the trial. But it was still a mistake. The case was still pending. And he should have realized that.

And, yes, we do refer to it as a wedding gift. I am not so sure why we are having the dispute because it was Amato who said—he raised the fact that he needed money to pay for his son's wedding, and the result of that is that Amato and Creely gave him $2,000 cash. And it is true that they are friends with Timothy. It is true, you know—I am not surprised to hear a suggestion that Creely—that there might be an overstatement of the relationship. I suggest that you read the record. But they were very close to Timothy. But it does not excuse anything. That is why he accepted the punishment.

But words mean things in impeachments. You know, Mr. SCHIFF points out, why did we have to actually say ''kickback''? Why are you making us say ''kickback''? Just look at how these words hold together. Is this not what a kickback is? Well, yeah. And it can also be conspiracy, it could be mail fraud, it could be wire fraud, it could be a number of other things when you talk about corruption.

The reason we want you to say ''kickback'' or ''bribe'' is because it is a specific allegation. And one of those is mentioned actually in the Constitution itself.

By the way, the House managers knew that the issue before the Supreme Court was whether you are going to allege a kickback. So they knew that courts, in fact, turn down honest services for the failure to allege kickbacks, and they still did not mention it. Why? Because they wanted to use corruption.

So the point is, in answer to this question, that if it is not a kickback and it is not a bribe, it is what the Court said it was in the Fifth Circuit—an appearance of impropriety. And that is not good. And Mr. SCHIFF and I will agree on this. No attorney wants a judge to do what was done in this case, and that is why he was disciplined, and he was disciplined harshly. That is the most severe discipline this court has handed down.

Mr. SCHIFF might, in fact, say: What is that? You do not get to be a judge? That is a lot because you are reprimanded by your colleagues. You are held up for ridicule. And I got to tell you, it is not something most people would want for themselves. It was an appearance of impropriety, and he was severely disciplined for it.

The PRESIDENT pro tempore. Are there any more questions?

The Chair recognizes the majority leader.

CLOSED SESSION

Mr. REID. Mr. President, I move that pursuant to impeachment rule 10, the Senate now close its doors to commence deliberations on the motions and impeachment articles and ask unanimous consent that floor privileges during the closed session be granted to the individuals listed on the document I now send to the desk.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The list is as follows:

IMPEACHMENT CLOSED SESSION

FLOOR PRIVILEGES

Parliamentarians: Alan Frumin, Elizabeth MacDonough, Peter Robinson, Leigh Hildebrand.

Legislative Clerks: Kathie Alvarez, John Merlino, MaryAnne Clarkson.

Journal Clerks: Scott Sanborn, William Walsh, Ken Dean.

Official Reporters: Valentin Mihalache, Pam Garland, Joel Breitner, Mark Stuart, Rebecca Eyster, Patrick Renzi, Julie Bryan and Paul Nelson.

Executive Clerk's Office: Jennifer Gorham.

Majority Leader: Gavin Parke, Mike Castellano, Serena Hoy, Gary Myrick.

Republican Leader's Office: John Abegg.

Democratic Secretary's Office: Tim Mitchell, Tricia Engle, Meredith Mellody.

Republican Secretary's Office: Laura Dove, Jody Hernandez.

The PRESIDENT pro tempore. The Senate will now close its doors and only Members and staff granted floor privileges shall remain.

The Sergeant at Arms will ensure the Chamber, the galleries, and the adjoining corridors are cleared of unauthorized persons.

(At 5:45 p.m., the doors of the Chamber were closed.)

At 7:56 p.m., the doors of the Chamber were opened, and the open session of the Senate was resumed.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate now move to legislative session.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO WALT RULFFES

Mr. REID. Mr. President, I rise today to recognize the lasting achievements of the Walt Rulffes. His recent retirement from the post of Superintendent of Clark County School District means that southern Nevada is losing one of its most versatile leaders. Walt's impressive ability to lead, while often having to make tough decisions, has garnered the respect of all Nevadans. His guidance of one of the Nation's fast-growing school districts through good times and bad, will never be forgotten.

Born in Long Island, NY, Walt was raised on a ranch in Washington State. He grew up with a love for literature and learning. Although childhood dreams revolved around becoming a cowboy, he went on to obtain his M.B.A. from Gonzaga. Walt developed a background in Finance, which laid the foundation for later success. He also developed the ability to act decisively in a moment of need. Serving first as deputy superintendent of finance, then as interim superintendent, Walt eventually became the superintendent for the Clark County School District.

The Clark County School District is one of the country's largest local education agencies, serving over 300,000 students from a variety of backgrounds. Its superintendent, therefore, must be able to proficiently manage immense day-to-day activities as well as oversee financial affairs. Mr. Rulffes not only met these demands, but in fact exceeded all expectations. His success is mainly due to this fact: Walt has never forgotten the most important part of his job—the students. In one occasion, unsatisfied with the inconsistency of math teaching practices and tests, he implemented districtwide math textbooks and uniform testing to equip students with necessary mathematics skills for college. Scores improved and students are now much better prepared for college and careers. His focus on the development of career and technical schools likewise improved students' possibilities for education. Walt further implemented English language learning, ELL, programs and was a champion of the ''Empowerment Schools,'' a program that grants school principals greater autonomy.

Serving as the head of Clark County School District, Walt was also forced to master the art of adaption. From year to year, the issues faving the school district were never quite the same. CCSD went from building over 100 new schools to accommodate new