United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, TUESDAY, DECEMBER 7, 2010 *No. 160*

Senate

The Senate met at 10:01 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Lord God, You are our refuge and strength, a very present help in trouble. Because of You, we need not fear, though the Earth be removed and though the mountains be carried into the midst of the sea.

On this day when we remember Pearl Harbor, we thank You for the protection of Your loving providence. You protect us from dangers seen and unseen. You sustain this Nation through seasons of distress and grief. You raise up leaders who possess the strength, wisdom, and courage we need to meet challenges. You are a generous and awesome God. May the memories of Your watch care infuse us with optimism about what the future holds. Keep us from fearing impending storms by reminding us about the way You have led us in the past.

Today, use our lawmakers, the members of their staff, and the thousands who work on Capitol Hill for Your glory. Especially guide our Senators during this impeachment process.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 7, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, Senators should be prepared to be in the Chamber throughout the day on the impeachment trial of Judge G. Thomas Porteous, Jr. At 12:30 p.m., the Senate will proceed to legislative session for a period of morning business, with Senator LEMIEUX permitted to speak for up to 15 minutes. Following his remarks, the Senate will recess until 2:30 p.m. to allow for the weekly caucus meetings. When the Senate reconvenes, there will be a mandatory live quorum to resume the court of impeachment. There may be another live quorum at 5:30 this evening to begin the closed session deliberations.

IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.

CALL OF THE ROLL

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

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

[Quorum No. 6]

Akaka	Dorgan	McConnell
Alexander	Durbin	Menendez
Barrasso	Enzi	Merkley
Begich	Feingold	Mikulski
Bennet	Feinstein	Murkowski
Bennett	Franken	Murray
Bingaman	Gillibrand	Nelson (NE)
Bond	Grassley	Nelson (FL)
Boxer	Gregg	Pryor
Brown (MA)	Hagan	Reed
Brown (OH)	Hatch	Reid
Bunning	Inouye	Risch
Burr	Isakson	Roberts
Cantwell	Johanns	Rockefeller
Cardin	Johnson	Schumer
Carper	Kerry	Sessions
Casey	Kirk	Snowe
Chambliss	Klobuchar	Stabenow
Coburn	Kyl	Tester
Collins	Leahy	Thune
Conrad	LeMieux	Udall (NM)
Coons	Levin	Vitter
Corker	Lugar	Voinovich
Cornyn	Manchin	Warner
Crapo	McCain	Webb
DeMint	McCaskill	Wyden

Mr. REID addressed the Chair.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Is a quorum present?

The PRESIDENT pro tempore. A quorum is present.

COURT OF IMPEACHMENT

The PRESIDENT pro tempore. Under the previous order, the hour of 10:12 a.m. having arrived and a quorum having been established, the Senate will resume its consideration of the Articles of Impeachment against Judge G. Thomas Porteous, Jr.

The House managers and Judge Porteous and counsel will please make their entry before the proclamation is made.

(The House managers, Judge Porteous, and counsel proceeded to the seats assigned to them in the well of the Chamber.)

THE JUDGE AND HIS COUNSEL

1. Judge Gabriel Thomas Porteous, Jr.
2. Jonathan Turley
3. Daniel Schwartz

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

4. P.J. Meitl
5. Daniel O'Connor

THE HOUSE OF REPRESENTATIVES MANAGERS

6. Adam Schiff (D–CA)
7. Bob Goodlatte (R–VA)
8. Henry C. ''Hank'' Johnson, Jr. (D–GA)
9. Jim Sensenbrenner (R–WI)
10. Zoe Lofgren (D–CA)

SPECIAL IMPEACHMENT COUNSEL TO THE HOUSE MANAGERS

11. Alan Baron
12. Harold Damelin
13. Mark Dubester
14. Kirsten Konar

STAFF TO THE HOUSE MANAGERS

15. Jeffrey Lowenstein (Schiff)
16. Branden Ritchie (Goodlatte)
17. Elisabeth Stein (Johnson)
18. Michael Lenn (Sensenbrenner)
19. Ryan Clough (Lofgren)

SENATE LEGAL COUNSEL

20. Morgan Frankel
21. Pat Bryan
22. Grant R. Vinik
23. Thomas E. Caballero

SENATE STAFF

24. Derron R. Parks
25. Thomas L. Lipping
26. Justin Kim
27. Rebecca Seidel
28. Erin P. Johnson
29. Paul Lake Dishman IV
30. Susan Smelcer
31. Stephen Hedger
32. Chris Campbell
33. Paige Herwig
34. Stephen C.N. Lilley
35. Justin G. Florence
36. Matthew T. Nelson
37. Thomas J. Maloney
38. Nhan Nguyen
39. Erica Suares
40. Bryn Stewart
41. Emily Ferris
42. Michelle Weber
43. Jason Bohrer
44. Lori Hamamoto
45. Van Luong
46. Marie Blanco

The PRESIDENT pro tempore. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Terrance W. Gainer, made the proclamation, as follows:

Hear ye, hear ye, hear ye, All persons are commanded to keep silent, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States Articles of Impeachment against G. Thomas Porteous, Jr., judge of the United States District Court for the Eastern District of Louisiana.

The PRESIDENT pro tempore. The Chair recognizes the majority leader.

Mr. REID. Mr. President, on March 17, 2010, the House of Representatives exhibited to the Senate four Articles of Impeachment against U.S. District Judge G. Thomas Porteous, Jr., of the Eastern District of Louisiana. Judge Porteous was summoned to answer, which he did on April 7, 2010, and the House of Representatives filed a reply to the answer on April 17, 2010, and amended the reply on April 22, 2010.

On the same day that the Articles of Impeachment were exhibited to the Senate, Members present in the Chamber were administered the oath, as required by the Constitution for impeachment trials. Those Senators who were not present to take the oath and those who had been elected to this body since the oath was administered, should be sworn today.

However, before the oath is administered to these Senators not yet sworn, there is one preliminary matter to be addressed. The Senator from Illinois, Mr. KIRK, was a Member of the House of Representatives during this Congress when the House voted on the Articles of Impeachment. If the Senator wishes to make a statement about his participation in the Senate phase of this impeachment, this would be an appropriate time to do so.

The PRESIDENT pro tempore. The Chair recognizes the junior Senator from Illinois.

Mr. KIRK. Mr. President, I was a Member of the House of Representatives at the time the Articles of Impeachment were proffered against Judge G. Thomas Porteous, Jr. On March 11, 2010, I voted in favor of all four Articles of Impeachment in the House, as recorded in rollcall votes 102, 103, 104, and 105. I have given careful consideration to this matter and consulted with other Members of the Senate about the Senate's historical practice. Because I believe the judge is entitled to a full and fair hearing in the Senate and to avoid any possible conflict of interest, I have concluded that under the circumstances, it would be inappropriate for me to participate in the Senate trial and vote again on matters related to the impeachment, having already done so as a Member of the House of Representatives.

Therefore, I request that I be recused from sitting as a Member of the Senate while it hears the matter of impeachment proceedings against Judge Porteous.

The PRESIDENT pro tempore. Mr. KIRK is excused from further participation in this impeachment for the reasons stated.

The majority leader is recognized.

Mr. REID. Mr. President, I would first ask that the House managers and Judge Porteous and counsel will take their seats. There is no reason, at this time, to remain standing.

OATH ADMINISTERED TO NEWLY ELECTED MEMBERS

Mr. President, the remaining preliminary matter is to administer the impeachment oath to the other newly elected Members of the Senate and any Member of the Senate who did not take the oath when the Articles of Impeachment were first exhibited.

Article I, section 3, clause 6 of the Constitution provides, in part:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation.

The impeachment oath that was taken by Members of the Senate earlier in this session remains in effect. The four current Members who did not take the oath at that time have been so advised by the Secretary of the Senate. The two newly elected Senate Members also should be sworn now.

The PRESIDENT pro tempore. Those Senators who have not taken the oath will now rise, raise their right hands, and be sworn.

Do you solemnly swear that in all things appertaining to the trial of impeachment of G. Thomas Porteous, Jr., Judge of the United States District Court for the Eastern District of Louisiana, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

SENATORS. I do.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Thank you, Mr. President.

The Secretary will note the names of the Senators who have just taken the oath, and if these Senators will now present themselves to the desk, the Secretary will present to them for signature the book, which is the Senate's permanent record of the taking of the impeachment oath by Members of this body.

Mr. President, on March 17, 2010, the President pro tempore appointed, pursuant to S. Res. 458, Senators MCCASKILL, HATCH, KLOBUCHAR, WHITEHOUSE, UDALL of New Mexico, SHAHEEN, Kaufman, BARRASSO, DEMINT, JOHANNS, RISCH, and WICKER to perform the duties provided for by rule XI, the Senate's impeachment rules.

Under the leadership of its chairman, the Senator from Missouri, Mrs. MCCASKILL, and its vice chairman, Mr. HATCH, the committee heard 5 days of testimony between September 13 and September 21. During that time, the committee heard from 26 witnesses, 14 who were called by the House of Representatives and 12 witnesses who were called by Judge Porteous. The committee also conducted pretrial depositions of four witnesses and admitted into evidence the testimony of a number of witnesses, including Judge Porteous, who had testified in prior proceedings, more than 300 factual stipulations and hundreds of exhibits.

The Senate is indebted to all of the members of this committee who so conscientiously discharged their responsibility in this important constitutional matter. In addition to the committee's leadership, I would like to take particular note of the contribution of Senator Kaufman, who actively participated in the committee's proceedings, although his tenure in the Senate concluded before the committee filed the report of its proceedings in the Senate.

The committee filed its report on November 15, and the report was received as Senate report 111–347. In accordance with impeachment rule XI, the committee certified the Senate hearing report 111–691, which reprints the committee's proceedings, is a transcript of the proceedings and testimony had and given before the committee.

Before proceeding further, I would like to verify with the Presiding Officer that the evidence and the testimony received by the Senate from the

committee shall, as prescribed in rule XI:

be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy and materiality, as having been received and taken before the Senate . . .

Will the Presiding Officer advise the Senate whether this is correct?

The PRESIDENT pro tempore. The majority leader is correct. The testimony and other evidence reported by the committee will be considered, in accordance with impeachment rule XI, as having been received and taken before the Senate.

The majority leader is recognized.

Mr. REID. Thank you again, Mr. President. Rule XI provides that the Senate's receipt of evidence reported by the committee is subject to the Senate's right to determine competency, relevancy, and materiality. Further, the same rule explicitly provides that nothing in it prevents the Senate from sending for any witness and hearing that witness's testimony in open Senate or, by order of the Senate, having the entire trial before the full Senate.

I would ask the Presiding Officer to advise the Senator whether, following the report of the committee, any motions have been filed asking that any witnesses be heard in open Senate.

The PRESIDENT pro tempore. In response to the majority leader, neither party, following the report of the committee, has moved that any witness be called in open Senate, and the Senate may now proceed to hear final arguments on the basis of the record reported by its committee.

The majority leader is recognized again.

Mr. REID. Mr. President, the parties have filed their final written briefs and the Senate is now ready to hear arguments.

Prior to consideration of the Articles of Impeachment, Judge Porteous has requested time to present argument on three motions that take issue with the sufficiency under the Constitution of several aspects of the Impeachment Articles framed by the House. First, Judge Porteous has moved to dismiss Article II, or for alternative relief, based on the House's inclusion of allegations of misconduct occurring prior to the commencement of the Judge's Federal service as a U.S. district judge. Second, Judge Porteous has moved to dismiss article I, or for alternative relief, based on the House's inclusion of unconstitutionally vague allegations that Judge Porteous's conduct deprived the public of its right to the honest services of his office. Third, Judge Porteous objects to the manner in which each Article of Impeachment was framed to aggregate discrete allegations of misconduct. He accordingly moves to dismiss the Articles of Impeachment or seeks alternative curative relief. The parties' written arguments on those legal issues are addressed in their post-trial briefs, as well as the motion papers submitted by the parties to the committee, which are on the desks of all Members. In accordance with the unanimous consent agreement, each side will be permitted no more than 1 hour to present its argument on the motions.

Upon the conclusion of argument on the motions, the Senate will then turn to hearing final arguments by the parties on the Impeachment Articles. Under impeachment rule XXII, final argument will be open and closed by the House. By unanimous consent, each party shall have up to 1½ hours to present final argument on the merits.

As the Senate has done in the past, we have provided that counsel may face the full Senate during these presentations. They should remain mindful, nevertheless, that the proceedings are under the direction of the Presiding Officer. On their part, Senators should recall that any questions they have of counsel should, pursuant to impeachment rule XIX, ''be reduced to writing, and put by the Presiding Officer.'' There is assistance available in the respective cloakrooms to aid Members in putting the questions in writing. Questions may be sent to the Chair during the argument, for reading by the Chair at the appropriate times.

The managers, on behalf of the House of Representatives—Representative SCHIFF, Representative GOODLATTE, and Representative JOHNSON, Representative SENSENBRENNER, and special impeachment counsel to the House Alan Baron are present at the managers' table. Jonathan Turley, Daniel C. Schwartz, P.J. Meitl, Daniel T. O'Connor, and Ian Barlow are counsel to Judge Porteous and are present with him.

Mr. President, motions will be argued first by Jonathan Turley, counsel to the judge, who is the moving party. By the unanimous consent order, argument on the motions on behalf of the House will be divided between Representative SCHIFF and Representative GOODLATTE. Mr. Turley may, under the unanimous consent agreement, reserve a portion of Judge Porteous's time for rebuttal.

For the argument on the articles, the managers will likewise divide their time between the two managers, and Mr. Turley will present argument on behalf of Judge Porteous. Under impeachment rule XXII, the House will open and close final argument in the impeachment articles.

The PRESIDENT pro tempore. We are now ready to hear motions. Mr. Turley will open the arguments in support of the motions to dismiss.

Mr. Turley, how much time do you wish to reserve for rebuttal?

Mr. TURLEY. We would like to reserve 10 minutes for rebuttal.

The PRESIDENT pro tempore. Ten minutes. It is so ordered. You may proceed.

Mr. TURLEY. Thank you. Mr. President and Members of the Senate, my name is Jonathan Turley, and I am the Shapiro Professor of Public Interest Law at George Washington University and counsel to the Honorable G. Thomas Porteous, Jr., a judge of the U.S. District Court for the Eastern District of Louisiana. Joining me at counsel's table with Judge Porteous are my colleagues from the law firm of Bryan Cave: Daniel Schwartz, P.J. Meitl, and Daniel O'Connor.

As the majority leader has told you and as many of you know, the Porteous impeachment has raised a number of constitutional issues that are rather unique and of considerable concern among law professors and legislators alike. The three motions before you today are designed to put these issues squarely before you.

We understand that the Members can choose not to vote on these motions and you can, in fact, reject an article or an allegation in light of these constitutional concerns. However, these are issues that do not turn on the facts of this case. Rather, they present threshold questions for each Senator in deciding whether to establish new precedent in the scope and the meaning of impeachable offenses.

The first motion before you today is a motion to exclude, as a basis for the removal of a Federal judge, any so-called pre-Federal allegations; that is, conduct that allegedly occurred before Judge Porteous became a Federal judge. This motion primarily deals with article II, which is widely recognized as a pre-Federal claim and the focus of much discussion nationally.

Second is a motion to exclude, as a basis for removal, that Judge Porteous deprived litigants and the public of the right to his so-called honest services. The Supreme Court recently rejected that very theory as unconstitutionally vague. We believe the Senate should do likewise.

Third, and finally, there is a motion for preliminary votes on each of the multiple allegations contained in the House's Articles of Impeachment. As we will discuss, those articles are grossly aggregated, meaning that each article contains numerous separate allegations. This long-simmering dispute between the House and the Senate came to a boiling point in these articles with the unprecedented use of what we refer to as the ''aggregation tactic.''

Equally important to the relief that Judge Porteous is requesting is what he is not requesting. We have tailored these motions so we are not requesting the dismissal of any articles in their entirety. Instead, Judge Porteous requests that Senate deliberation be confined only to those allegations that constitute valid bases for removal under the U.S. Constitution.

Throughout history, Senators have expressed their primary concern over the precedent set by impeachment cases and the implications of their decisions that are reached in this Chamber for future cases. This care is shown in the fact that in 19 impeachments to reach this body in history, only 7 ended

in convictions. Your predecessors accepted that the impeachment clauses contain an implied Hippocratic Oath under the Constitution. Your duty, first and foremost, is to do no harm—to do no harm—to the courts and to do no harm to the Constitution. Indeed, in all of the impeachment cases resulting in acquittal, the Senators found much to condemn in the conduct of the accused. They simply didn't find impeachable offenses.

With that brief introduction, I would like to turn to the first motion before the Senate in which Judge Porteous asks for the exclusion of pre-Federal allegations.

The first motion deals with the most dangerous aspect of the Articles of Impeachment. The House, through article II, and to some degree through article I, is seeking to have Judge Porteous removed on the basis of conduct that allegedly occurred before he became a Federal judge.

The House's pre-Federal charges in this case are in direct contradiction with decades of precedent from this body and would, in fact, violate the text of the U.S. Constitution.

In the history of this Republic, no one has ever been removed from office on the basis of pre-Federal conduct—no one.

The pre-Federal claims are an attempt by the House to secure impeachment at any cost, at the cost of the constitutional standard itself to remove a previously disciplined judge just months before his retirement.

The logic of this article is much like the story my father used to tell me about a man who comes across a stranger on his hands and knees one night looking for his wedding ring under a lamppost. He joins the man, searches for an hour, and then turns to him and says: ''You know, Mister, I don't see it anywhere. Are you sure you dropped it here?''

And the stranger responds, ''Oh, no, no, no, I lost it down the street, but the light is better here.''

Unable to find a crime during Federal service, the House managers just decided to look elsewhere down the road, before he became a Federal judge.

It does not appear to matter that experts and the Congressional Research Service warned that no individual—not a President, not a Vice President, not a Federal judge, not a Cabinet member—has ever been removed on this basis.

In order to open the Federal bench to removals for pre-Federal conduct, you must ignore the express language of the Constitution itself, which refers to conduct during Federal service, during service in office. A judge is guaranteed life tenure under the Constitution ''during the behavior'' in office. It is not a standard of good behavior in life. It is a standard of good behavior in office. It requires misconduct during Federal service that justifies removal from that Federal office.

The standard fashioned by James Madison and others has stood for centuries, largely because of the work of your predecessors, who have rejected articles that allege pre-Federal conduct.

In 1912, in the impeachment of Judge Robert Archbald, the Senate explicitly rejected the theory of removing an individual for conduct occurring before he took Federal office for which the House was seeking removal.

In the Archbald case, there were 13 Articles of Impeachment. The first six dealt with alleged misconduct in the office for which he was being sought to be removed. The next six dealt with conduct that allegedly occurred before he entered that office. And the last article was something that is called a ''catch-all'' provision. That combined all of the 12 earlier provisions into one.

Archbald was acquitted on all six articles that focused on conduct prior to his assuming a seat on the circuit court. All six were defeated in this Chamber.

These were not close votes, with the House receiving no more than 29 votes for conviction on those pre-Federal articles and averaged a rather high 64-percent rate for acquittal. Many Senators rose to amplify the reasons they rejected those articles.

Senator Bryan of Florida stated:

I am convinced that articles of impeachment lie only for conduct during the term of office being filled.

Senator Brandegee of Connecticut stated:

I vote not guilty because it alleges offenses, some of which are alleged to have been committed by the respondent while he was in an office he does not hold at the present and did not hold at the time the articles were adopted.

Senator DuPont of Delaware said:

My vote of not guilty upon the article of impeachment was based upon the fact that the offenses were alleged to have been committed when he was not holding his present office.

Senator Works of California said:

I am of the opinion that the respondent can not be impeached for offenses committed before his appointment to the present office.

Senator Catron of New Mexico said:

I do not believe the House of Representatives had the right to go back of the present office held by Judge Archbald to hunt up any of his acts to charge against him so as to remove him from the office he now holds.

Senator Crawford of South Dakota stated:

I find the respondent guilty of misconduct, but it occurred before he became the incumbent in his present office. I do not believe impeachment can be sustained for the reason stated.

Finally, Senator M'Cumber, North Dakota, stated:

Impeachment proceedings cannot lie against a person for an act committed while holding an official position for which he is separated.

I could read more, but I think the point is clear. The Senate specifically dealt with this issue of pre-Federal conduct before and rejected it by a large margin. A large percentage of Senators at the time felt strongly enough about the issue to publicly speak about the impropriety of seeking pre-Federal causes for removal.

Thirty-two Senators sat out the vote on that catch-all article 13 in the Archbald case, and many publicly stated the reason they were sitting out that vote was because it contained in that whole list some of the pre-Federal conduct. However, the judge had already been convicted of six articles that contained Federal conduct. So by a vote of just two, with these Senators sitting out the vote, that article was approved.

Article II would eradicate over two centuries of precedent, and for what purpose? The House alleges Federal rather than pre-Federal conduct in article III and article IV. Even article I has some Federal claims. We are eager to reach those issues, and they offer an ample basis for the review and, yes, possible removal of a judge without opening the Federal bench—and all other Federal offices—to pre-Federal attacks.

One statement in the Archbald case stands out particularly prophetic and relevant. When confronted with the pre-Federal conduct, Senator Stone of Missouri rose to give the following warning to his colleagues, and by extension to you, his successors:

It would not be difficult to conceive a case where under great pressure, when the country was in the state of high political excitement and when some supposed political exigency was influencing a partisan public opinion, a hostile partisan majority might hark back to some alleged misbehavior of a judge.

Now, one can certainly imagine a period of ''high political excitement'' if you tried hard enough. The point is that despite the rhetoric and passions of periods of great political upheaval, Senators have stepped forward to protect our core constitutional values and standards. This is why the Framers gave Senators long terms and large constituencies—to allow them to resist the passions and distemper of contemporary politics.

Once the Senate allows the House to cross this constitutional Rubicon for the first time, Congress would be able to dredge up any pre-Federal conduct to strip the bench of unpopular judges or to remove other Federal officials at the whim of the House. It would raise the very real possibility that an unpopular opinion issued by a Federal judge or a Supreme Court Justice could trigger an impeachment based on alleged acts from decades of practice before taking office. Moreover, other Federal officials, such as the Vice President, or a Cabinet member, could be similarly confronted with pre-Federal conduct as a basis for removal.

I expect my esteemed colleagues from the House to raise again a rather old saw that if you accept the defense's argument, the Senate would be precluded from removing someone who committed murder before taking office. Of course, an extreme hypothetical

like this points out the absurdity of the case against Judge Porteous. In this case, the Justice Department did not even find evidence to bring a single charge of criminal wrongdoing. Once again, the House simply wants to go where the light is better. In this case, it wanted to go to a hypothetical place.

But to be blunt, in deference to my colleagues, I must say this is an nonsensical argument from a constitutional standpoint. The reason is that in a case of a pre-Federal murder, the judge would likely be subject to trial during his or her Federal term. If convicted, a judge would likely be sentenced to life in prison. While the crime may have predated his confirmation, he became a convicted felon during his Federal service. That is the basis for the removal. Further, the judge could not possibly serve in a time of good behavior given his conviction and presumed incarceration.

The House, I believe, will also argue the reasons for the lack of any precedent of removals for pre-Federal conduct. The record is rather telling. There hasn't been such a case. Why? The House will argue that the reason is that people who are charged with pre-Federal misconduct simply resign if it is serious. History repudiates that argument. It is simply not true. A number of individuals have had information about misconduct in their pre-Federal lives revealed after they took office and yet never faced impeachment. For example, Supreme Court Justice Hugo Black admitted after his confirmation that he was in fact at one time a member of the Ku Klux Klan. There was outrage with that disclosure; that controversy had not been raised before confirmation.

As our filings document, numerous other Supreme Court Justices, as well as a bevy of other Federal officers, have had damaging information of this kind revealed. Hugo Black did not face impeachment.

This body has removed only seven judges in 206 years through the impeachment process and has never removed anyone for pre-Federal conduct.

If you believe Judge Porteous committed removable offenses as a Federal judge, so be it—and he is here to be judged himself—but do so on that basis of the remaining articles, not on article II.

It is a great burden and responsibility to stand before you not just as counsel for Judge Porteous, but as a constitutional law scholar. The importance of article II transcends this case and, frankly, transcends this judge. It is a direct attack on a constitutional standard that has guaranteed an independent judiciary for two centuries. Whatever you do today, please do no harm. Judge Porteous stands ready to be judged for his conduct on the Federal bench. However, like so many scholars and commentators, I ask you to hold the constitutional line, as did your predecessors, and reject pre-Federal claims as the basis for his removal.

I would like now to turn to perhaps the most novel problem raised in this impeachment: the reliance in article I on a theory that was rejected by the Supreme Court after the impeachment vote in the House.

At issue is the honest services claim that is at the heart of article I. Even before this impeachment, honest services claims were controversial in Federal court. Various judges, in fact, rejected this claim.

While experts were predicting a rejection in whole or in part of the theory, the Supreme Court accepted three cases dealing with honest services. The House was fully aware those cases had been accepted by the Supreme Court. The House was fully aware that lower court judges had rejected this theory. They simply took a gamble and decided to take a risk and structured article I as an honest services claim. They lost that gamble. When the court ruled in Skilling v. United States and two related cases, rejecting the use of this theory in cases without express allegations of bribery and kickbacks, neither bribery nor kickbacks are alleged in article I.

In fact, they are not mentioned in any of the articles.

Indeed, the House's own witnesses testified that there was no such bribery or kickback scheme to influence Judge Porteous on the Federal—or, for that matter, on the State—bench. House managers are now going to ask the Senate to cover their bad bet on Skilling and ignore that the stated theory of article I was rejected by the Supreme Court as a viable criminal claim. The dangerous implications of such a vote are difficult to overstate.

The Senate has never removed a Federal judge on the basis of a legal theory specifically rejected by the Supreme Court. If allowed, Congress could remove Presidents, judges, Cabinet members on theories that they are barred as invalid in Federal court. Ironically, if Judge Porteous were presiding in that case, he would be bound by the rule of law to reject an indictment of a public official on this identical claim that is now being offered as the basis for his removal.

House managers crafted article I around the same theory of honest services as was advanced by the Federal Government in the Skilling case. Article I alleges that Judge Porteous is ''guilty of high crimes and misdemeanors and should be removed from office'' because, in connection with a recusal motion—a recusal motion in a single case—before him, he ''deprived the parties and the public of the right to the honest services of his office.''

The House asserts that Judge Porteous caused this deprivation of honest services in three ways: First, that he failed to disclose certain information during the recusal hearing held in the so-called Lifemark case about his relationship with one of the attorneys in the case—Jake Amato—and Amato's partner Bob Creely. Second, he made misleading statements at the recusal hearing about his relationship with these two attorneys; third, that he ultimately denied a motion to recuse.

Now, the reason the House did not allege either bribery or kickbacks became obvious when the defense was allowed to cross-examine the House witnesses before the Senate committee concerning article I, all of whom denied any bribe or kickback scheme by Judge Porteous. Faced with various House witnesses who insisted, universally, that Judge Porteous was not and could not be bribed, the House turned to a claim of ''a scheme or artifice to deprive another of the intangible right of honest services.''

In basing its allegations on this provision of the Criminal Code—which is title 18, section 1346—the House followed a longstanding precedent of crafting articles to reflect actual crimes. That, however, happened to be the provision that was rejected in Skilling. The House finalized and approved article I in March 2010. That means for months the House knew an honest services claim could be rejected by the court and decided to rely on it because it could not expressly claim a Federal bribe or kickback.

The reason for the House's 'honest services' gamble was obvious: Beginning in the early 1990s—actually more in the late 1990s—the Justice Department began what was called the Wrinkled Robe investigation. In the course of that investigation, they conducted a long-running grand jury investigation, with plea bargains, countless subpoenas and searches of judges in Louisiana. In the end, some judges were indicted. However, the government, which looked specifically at Judge Porteous, as well as some of the other judges, found the evidence did not support bringing an indictment against Judge Porteous for any crime.

Permit me to repeat: Judge Porteous had agreed to waive the statute of limitations to allow the government to bring a criminal charge against him. He decided that it would not be appropriate for a Federal judge to rely on the statute of limitations to protect himself from criminal charge. He signed three waivers to permit those charges, even though they could have been blocked under the statute of limitations.

The Department of Justice then investigated and found insufficient evidence to bring a charge of any kind—big or small—against Judge Porteous. In declining to prosecute, the DOJ specifically cited a host of rather fundamental problems in bringing such a case. It said that it did not believe it could carry the burden of proof, it did not believe it could secure a verdict of conviction from a jury, and that there was a general lack of evidence to show ''mens rea and intent to deceive.'' That only left the soon-to-be-rejected theory of honest services, without a specific charge of bribery or kickback.

The House's gamble failed in June when the Supreme Court issued its trio of decisions, led by the Skilling v. United States decision, where the court directly—and by the way, unanimously—rejected the theory of the underlying article I. The court expressly held that absent specific allegations of a bribe or kickback, ''no other misconduct falls within the statute's province.'' In direct relevance to this case, the court expressly rejected the notion that ''nondisclosure of a conflicting financial interest can constitute criminal deprivation of 'honest services.' '' Nondisclosure of a conflicting financial interest: That should sound familiar because that is article I.

As noted earlier, article I does not include any allegation of a bribe or kickback. Instead, it refers to a ''corrupt scheme'' that existed when Judge Porteous was a State—not a Federal—judge. It alleges a ''corrupt scheme'' that he had with attorneys Amato and Creely. As we will address in greater detail in our closing argument, there was, in fact, no corrupt scheme. Our proof is the testimony of the House's witnesses, not our witnesses—the attorneys themselves who denied a scheme of bribery or kickback.

The greatest irony of the House's use of the honest services claim is that the very concern stated by the Supreme Court was that it was so ambiguous that it would not give citizens notice of what it is they could be charged with criminally. Yet that is the same concern James Madison raised when crafting an impeachment standard. Madison said Congress should not be able to use a standard that was so vague as to make removal easy or to rob people of knowledge of what they could be removed for.

So after the Supreme Court in Skilling rejects this very theory as so ambiguous, so vague it cannot be used in a Federal court, the House picked up that very theory and said: But we think you should use it as the basis to remove Federal officers—from Presidents to judges to Cabinet members.

Simply put: Deprivation of honest services is the modern equivalent of ''maladministration.'' Many of you know that James Madison and the Framers rejected maladministration as a standard for impeachment. By the way, they also rejected corruption. The term ''corruption'' was viewed as far too vague to allow the Members of the Senate to remove a judge on that basis. So what the House is doing is taking a standard of honest services, which was rejected for the same reason, and effectively making it a standard of the United States for the basis of removal of a Federal judge.

Since article I does not allege a bribe or kickback, it is constitutionally invalid under Skilling, and this body should not import that standard into the U.S. Constitution. While an Article of Impeachment does not have to be coextensive with a crime to be valid, an article must give fair notice of what conduct can result in removal. An impeachment speaks not just to one judge, it speaks to all judges. They need to know because they need to know that they can perform their duties without having a Damocles sword dangling over their head, not knowing if an unpopular decision will trigger removal. They deserve fair notice.

It is worth noting that after the court's decision, Senator LEAHY introduced a bill that was committee sponsored by Senator WHITEHOUSE and former Senator Kaufman to amend the Federal honest services statute in response to Skilling. That bill—known as the Honest Services Restoration Act—would revise the honest services statute to prescribe what is defined as ''undisclosed self-dealing'' by a public official.

Notably, even under the new statutory definition of honest services, the allegations in article I would not meet that standard any more than it would meet the standard under Skilling. Senator LEAHY's bill defines ''undisclosed self-dealing'' as a public official performing an official act ''for the purpose'' of benefiting either himself or others and their financial interests.

Article I doesn't allege that Judge Porteous denied the recusal motion for the purpose of benefiting himself. Indeed, the House doesn't allege that he was at that time receiving gifts from Mr. Creely or Mr. Amato. Those gifts—which we will talk about later—occurred years before. But, of course, that is not the prior and it is not the current standard. The Senate must decide if a Federal judge can be removed on the alleged claim of a corrupt scheme despite the Supreme Court ruling.

To allow such a removal would be to sever any connection between the viability of a criminal claim and the basis for the removal of a Federal judge. Indeed, it would establish a Federal judge can be removed for conduct that is demonstrably not criminal and a theory so vague it can't actually be used in a Federal court. The House made a bad gamble in Skilling. The Senate should not now make a bad gamble and a bad law.

I would like now to turn to the final motion before the Senate, which is a defense request that the Senate take preliminary votes on the numerous and separate allegations in the four Articles of Impeachment. The House managers, in drafting these articles, used a tactic called ''aggregation.'' It is not new. It has often been the subject of criticism by both Senators and scholars.

Aggregation is a method by which House Members, when drafting Articles of Impeachment, can circumvent the high vote required in the Constitution. They can essentially remove a Federal judge even though less than two-thirds of you agree on any specific allegation. This is accomplished by combining different claims in one article so that no single act is subject to a stand-alone vote. By lumping together or aggregating issues, you can secure total votes even if only 5 or 10 Senators might agree that any given act is sufficient to remove a Federal judge. That negates article I, section 3, which says ''no person shall be convicted without Concurrence of two-thirds of the members present.''

The aggregation tactic converts this exacting process into an undefined and fluid process where neither history nor the public will know what was the grounds by which you removed a Federal judge.

Let me try to explain this with an example. Let's say you go back into your deliberations and 20 of you might agree that one allegation in a particular article was worthy of removal, while another 30 might reject that allegation but agree on a different allegation as sufficient for removal. Two other groups of Senators of 10 might focus on a third and fourth allegation. When it came to the final vote, you would have 70 Senators voting for removal even though no more than 30 actually agree on what should be the basis for removal—what actually satisfied the constitutional standard.

One does not have to be a strict constructionist to see the violence that approach does to the express language of the Constitution. Honestly, do Members of this body believe the Framers would establish a two-thirds majority vote to remove a Federal judge but allow a House to simply aggregate and achieve that with just 20 or 30? The Framers of the United States might have been many things, but they were not stupid and they were not frivolous. They created a two-thirds vote for a purpose. They wanted two-thirds of you to agree together that at least one act committed by a Federal judge is sufficient to satisfy this extraordinary measure of removal. Such aggregation of claims wouldn't even be allowed in a criminal or a civil trial. A judge wouldn't permit it. This judge wouldn't permit it.

Senators have repeatedly objected to the aggregation of claims in past cases. However, the House knows Senators are reluctant to dismiss an article that has been duly submitted by the House. It is a game of constitutional chicken. They aggregate knowing that it would be difficult institutionally to simply dismiss an article, and for that reason we are not asking you to do that. All we are asking for you to do is to take preliminary votes on the separate allegations that have been combined in these articles to assure for yourself and for history that the constitutional standard has been met.

The House itself has conceded that the Senate can, in fact, do this—and conceded it may be necessary to do this—when we last had this discussion before the committee and Chairman MCCASKILL. Congressman SCHIFF stated at that time:

The Senate can, when it deliberates, say we want to have a separate vote internally

on each of the facts that are alleged in article I, on each of the facts that are alleged in article II. You can make that decision and, if the vote internally is that you don't agree, and you have a further discussion and say, well, unless we agree on these pieces we don't think the conduct rises, you can make that decision.

You will find that quote on page 1861 in the green books before you. Congressman SCHIFF further noted that:

You will have every opportunity when the evidence is provided to you to vote on it in any way, shape or form you decide. Nothing we do here will prejudice that.

Later in the hearing, when Senator KLOBUCHAR asked Congressman SCHIFF whether ''we could decide on our own to individually vote on each one or both of them as a group, and would we be allowed to do that,'' Congressman SCHIFF said ''That's exactly right, Senator.''

I commended Congressman SCHIFF because I believe that is an honorable and correct position. We would encourage, however, that those votes be made public. I say this not as much for the interest of my client as in the interest of history. What you say this week will speak to the remaining judges on the bench, and you should speak clearly as to what you think is sufficient to remove a Federal judge.

I also want to mention that the need for clear records is particularly important in this case because there was no criminal trial in this case. This is the first modern impeachment to come to you as a body without a prior trial and, more important, a prior trial record so the evidence, the witnesses in this case were not subject to the procedures and review of a criminal case. It was raw evidence that came in. For that reason, you will be the first to evaluate this evidence in terms of an impeachment that did not occur in a criminal case, and we believe that in light of that, you should take particularly strong steps to isolate what it is that will be the basis for removal or acquittal.

I have to point out that the problems of the House were unnecessarily created by itself, not by this body and not by the defense. The House decided to abandon good practices in the drafting of articles, good practices that were applied in prior cases. For example, in the Hastings impeachment case, where some of you, in fact, were involved, if you recall, there were 17 Articles of Impeachment. Each of those articles isolated one false statement that Hastings allegedly made. Articles II through XIV were all short and they were largely identical. The first and third paragraphs of those articles were, in fact, identical. The only difference was the specific false statement. The House did that so you would have the opportunity to say—to vote whether you believed this was a false statement and whether that specific statement justified removal. That has been the approach of the House in prior cases.

It is correct, and I believe the House is likely to mention, there are some prior cases that have multiple claims, but those are different from an aggregation case. As I mentioned before, on some occasions, the House has submitted to you what is called a catchall provision, so what they would do is they would have, for example, six articles of impeachment, with specific acts that they believed should be subject to removal, and then the seventh article was a catchall article that combined all the previous alleged acts. The difference between this and a catchall provision is that you or, in this case, your predecessors had the ability to vote on those first six claims so you knew as a body if in fact two-thirds of you agree that any of those prior six actually did occur and actually did constitute removable conduct. That is not the case with aggregation.

What we are suggesting today is a simple process that we believe would protect the constitutional standard in this body, not just in this case but in the future. We have suggested that you simply vote preliminarily, as was discussed with Congressman SCHIFF, on each of these insular allegations. If you look at our motion, we have laid them out. There is not a great number in each of the articles. But you could vote simply on those specific allegations and determine if two-thirds of you agree that, first, they occurred and that you believe they would be the basis for removal.

You would then vote on the article as a whole, in compliance with rule XXIII. Rule XXIII requires you to take a final vote on an article that has not been divided. But by the time you took that vote, you would know whether the standard of the Constitution had been satisfied.

As we note in our filing—and I will not take your time by quoting them again—many Senators have objected to the aggregation of claims in history. In the Archbald indictment, for example, George Sutherland of Utah objected to his colleagues and stated, in exasperation: ''I cannot consistently vote upon this article one way or the other,'' because of aggregation.

The PRESIDENT pro tempore. The Chair would like to advise you that you have consumed 40 minutes.

Mr. TURLEY. Thank you very much, Mr. President. As a law professor, I am trained to speak in 50-minute increments. I will try to wrap-up.

In conclusion, I ask that the Senate adopt this simple approach to deal with aggregated claims. We have suggested this way to deaggregate the claims. We believe it is useful, not in just this case but in future cases.

We would like to reserve the remainder of our time for rebuttal.

Thank you very much.

The PRESIDENT pro tempore. I thank you very much. The Chair has not received any written questions. Accordingly, the Senate will now hear from Representative SCHIFF in opposition to the motions.

Representative SCHIFF.

Mr. Manager SCHIFF. Mr. President, Members of the Senate, I am Representative ADAM SCHIFF of California. I am joined by fellow House managers BOB GOODLATTE of Virginia, JIM SENSENBRENNER of Wisconsin, and HANK JOHNSON of Georgia, as well as our counsel, Alan Baron, who has been assisted by Mark Dubester, Harry Damelin, and Kirsten Konar.

When the impeachment trial began in this case some weeks ago, we acknowledged the historic significance of an impeachment proceeding and how rarely they are undertaken. This is for good reason. The overwhelming majority of men and women appointed to the bench have great integrity and uphold the enormous trust the public places in them. Very seldom does someone corrupt get nominated for the bench and, in those cases where a significant problem is discovered during the confirmation process, most withdraw from further consideration or their confirmation is denied. It is very rare that a corrupt official is nominated and his corruption escape discovery until after he is appointed, but it does happen. It happened here with the appointment of G. Thomas Porteous, who is not only a corrupt State judge but would become a corrupt Federal judge as well.

By means of the impeachment and removal process, the Framers of the Constitution sought to protect the institutions of government by allowing Congress to remove persons who are unfit to hold positions of trust. As Alexander Hamilton noted when referring to jurisdiction to impeach an official in Federalist 65: ''There are those offenses which proceed from the misconduct of public men or, in other words, from the abuse or violation of some public trust.''

The charges against Judge Porteous here, in the view of the House of Representatives, are precisely that, abusive and violative of the public trust, and he must be removed.

As a Federal district judge in New Orleans, the first proceedings against Judge Porteous began before a disciplinary panel of the Fifth Circuit Court of Appeals. After taking evidence and conducting 2 days' worth of hearings in which Judge Porteous testified under a grant of immunity, the Fifth Circuit concluded that Judge Porteous's misconduct ''might constitute one or more grounds for impeachment'' and referred the matter to the judicial conference of the United States headed by Chief Justice Roberts. The Chief Justice, in conference, also concluded that impeachment may be warranted and referred the case against Judge Porteous to the House of Representatives. The case was also recommended for potential impeachment by the Department of Justice which, in part, because the statute of limitations had run on many of Judge Porteous's offenses, felt that impeachment might be the more appropriate remedy.

Although Judge Porteous signed an agreement when in discussions with the Justice Department, it did not reset the clock on the vast majority of

potential charges, from the kickbacks from the lawyers or the bail bondsmen, corrupt activity, which were already time-barred from prosecution. In the House Judiciary Committee, we undertook a thorough investigation, interviewing a great many witnesses, taking depositions, acquiring documents never found by the Justice Department, including the very revealing transcript of the recusal hearing in the hospital case mentioned by my opposing counsel, where Judge Porteous so grievously misled and deceived the parties. At the conclusion of our investigation, the Committee considered carefully whether Judge Porteous's conduct was so morally repugnant, so violative of public trust, and whether he had so demeaned himself in office that he was guilty of high crimes and misdemeanors and should be removed from the bench.

Unanimously, the committee concluded he was guilty of high crimes and misdemeanors and must be impeached.

Our committee then studied the very issues implicated in this morning's three motions to dismiss. We considered carefully how many articles should be crafted, whether his conduct naturally divided itself into coherent schemes and, if so, how many, so as to give the public clear knowledge of what he was charged with and to give Judge Porteous a fair opportunity to defend himself and to give the Senate clear articles to vote upon. We concluded that the judge's conduct could be divided quite logically into four parts: One article based on his corrupt scheme with the lawyers, one article based on his corrupt scheme with the bondsmen, one based on his false bankruptcy petition, and one based on his deception of this very body, the Senate. We did not wish to pile on charges against Judge Porteous by dividing any of these articles into unnatural pieces, something a prosecutor might refer to as ''loading up'' an indictment.

There were other charges we considered as well, the evidence of which was introduced at trial, such as his many serious false statements on mandatory judicial disclosure forms, but opted instead to introduce that as evidence of his willingness to perjure himself when it suited his interests, something very relevant to both his statements to the Senate and in the bankruptcy proceeding.

The House has great discretion in how it drafts an Article of Impeachment, which is why the Senate Impeachment Trial Committee in this case ruled against precisely this same motion counsel makes only 2 months ago, finding that the schemes charged were very straightforward.

We also considered whether a charge of a violation of a specific criminal statute, that the judge violated 18 U.S. C, section X,Y or Z, but rejected that approach. Most impeachments do not charge specific crimes, some charge no crimes at all, and impeachment precedent is very clear—no particular statute need be referenced, only the conduct that constitutes a high crime or misdemeanor, which is why, as I will explain later, Judge Porteous's motion to dismiss article I, claiming that it charges a violation of 18 U.S.C. section 1346, is so fatally flawed. The article charges no such violation of that statute and, indeed, makes no reference to that code section whatsoever.

The House Judiciary Committee considered how to view the illicit conduct of Judge Porteous, not only while he was on the Federal bench but prior to his appointment, and, indeed, during the very confirmation procession itself. We concluded we could not ignore the judge's corrupt prior conduct or his conduct during the confirmation because it was so interwoven with his corruption on the Federal bench. His deplorable handling of the hospital case while a Federal judge, his lies during the recusal hearing, his hitting up the lawyers for cash—the very reason the lawyer was brought into that hospital case to begin with. Although all that conduct occurred while Judge Porteous was on the Federal bench, none of it can be fully understood without considering the judge's prior conduct in relationship with those same attorneys.

It was also the unanimous view of the Judiciary Committee that, whether a high crime or misdemeanor occurs before or after someone is appointed to the bench, if it is such a violation of the public trust that the institution of the judiciary will be harmed, that the public will lose confidence in the decisions of the court and of that judge, then he must be impeached. To reach the opposite conclusion would be to countenance a continuing injury to the judiciary, which would be forced to retain judges proved to be corrupt. Even where a judge is indicted and convicted on conduct that occurred before his appointment, the Senate would be powerless to remove him from office or from lifetime salary though he sits in prison. Nothing in the language of the Constitution or 200 years of precedent supports such an absurd result.

This was the unanimous view not only of the House Judiciary Committee, but when the matter was brought before the full House, it was the unanimous view of that body as well.

The Senate can decide to convict Judge Porteous on articles I, II, and III on the basis of corrupt conduct on the Federal bench alone, if it chooses—and count 4 addresses the concealment and false statements to the Senate during the confirmation itself—or the Senate may, as I will discuss later, convict Judge Porteous on the basis of his prior conduct as well consistent with the Constitution, with precedent, with a considered opinion of experts, and with sound public policy reasons as well.

But first, let me turn to each of the judge's three motions. In considering Judge Porteous's motions to dismiss, let me begin with a discussion of his arguments that the charges against him are improperly aggravated. In order to do so, it may be useful to provide a brief summary of the evidence charged in each article so that the full Senate can see, just as the Senate Impeachment Trial Committee concluded, that the House was well within its discretion in how it drafted the articles. Each contains a coherent scheme of conduct giving the judge, the Senate, and the public a clear understanding of the charges against him, and the motion must be denied. It is also worth pointing out, as the Senate Impeachment Trial Committee report demonstrates so clearly, none of the really salient facts in this case are in dispute.

Article I. Article I alleges and the evidence at the trial has now established that Judge Porteous, while a State judge, initiated and implemented a corrupt kickback scheme with attorney Robert Creeley and his partner, Jacob Amato. The essence of the scheme was that Judge Porteous, in his judicial capacity, assigned curatorship cases to Creeley, and thereafter the firm of Amato & Creeley gave Judge Porteous approximately half of the legal fees generated by those cases. A curatorship is a small case where the appointed lawyer represents a missing party and has to do some minor administrative work. The payments to the judge were always made in cash, as Amato testified at trial, to avoid a paper trail. Contrary to what counsel has just represented, Amato testified that it was a classic kickback scheme.

Prior to Judge Porteous's initiation of this curator kickback scheme, he had asked Creeley for small sums of money from time to time. Creeley gave him the money until Judge Porteous asked for larger amounts—$500 or $1,000 at a time. At this point, Creeley balked. It was then that Judge Porteous began assigning Creeley the curatorships and seeking the cash back from Creeley and his partner, Amato.

The evidence is undisputed that Judge Porteous assigned Creeley over 190 of these cases from 1988 to 1994, resulting in fees to the firm of about $40,000. Both Creeley and Amato independently estimated they gave Judge Porteous a total of about $20,000 in cash. They both testified that they understood that the cash they gave Judge Porteous was funded by these curatorships.

By initiating and implementing this curatorship kickback scheme, Judge Porteus abused his position of trust as a judge by corruptly taking actions in his official capacity designed and intended to enrich himself. This is judicial misconduct and abuse of power, and it is most venal. But this was only the beginning of Judge Porteous's egregious misconduct. It gets worse.

Thereafter, when Judge Porteous became a Federal judge, he presided over a complex, high-stakes, nonjury case. You will hear it referred to as the Liljeberg case, the hospital case.

Amato enters his appearance in this case as an attorney for the Liljebergs. Even though this case has been around for years—tens of millions are at stake—he enters the case 6 weeks before trial.

When opposing counsel filed a motion to recuse Judge Porteous, because he was concerned about the late introduction of this attorney, seeking that Judge Porteous reassign the case to another judge based on what counsel understood to be the judge's close relationship to Amato, Judge Porteous deliberately misled counsel and the parties, concealing his previous corrupt financial relationship that had existed between himself, Amato, and Creeley.

In fact, Judge Porteous did something much worse. The transcript of that hearing was truly revealing and sets forth a series of misleading statements, half-truths, and outright lies by Judge Porteous. As but one example, Judge Porteous steered the colloquy of a discussion of whether Amato had ever given Judge Porteous campaign contributions. In that discussion, Judge Porteous stated:

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

That statement was clearly false and deceptive and concealed many thousands—indeed, tens of thousands of dollars—in cash that Amato and his partner had given Judge Porteous.

Judge Porteous denied the recusal motion, and the order was appealed. The court of appeals, based on the false record Judge Porteous had created, affirmed the denial. So counsel for the other party, Lifemark, was unwillingly forced to represent his client against an opposing counsel who had given Judge Porteous thousands of dollars as part of a corrupt scheme.

In one of the most appallingly corrupt acts among many by Judge Porteous, after the case is tried but has not been decided—and again, a nonjury case; the judge is the trier of fact as law—the judge solicits and receives a secret cash payment of $2,000 from Amato.

Amato would testify during the Senate trial that it was the worst decision of his life and would acknowledge that he worked on this case for 2 years, stood to make $500,000 to $1 million in fees if he prevailed, and if he lost, he would make nothing, and that this was one of the reasons he gave the judge the cash—because the judge was presiding over this very important case.

Judge Porteous decides the Liljeberg case very favorable to Amato's client. This decision is later reversed in scathing terms by the U.S. Court of Appeals for the Fifth Circuit in an opinion by the appellate court which characterized Judge Porteous's central rulings as ''inexplicable,'' ''apparently constructed out of whole cloth,'' and ''close to being nonsensical.''

Not until the case was long over and the parties had moved on would they learn that the lawyer for the prevailing side at trial had given the judge thousands in secret cash.

That is article I.

Article II alleges and the evidence has shown that Judge Porteous, while a State judge and extending into his tenure as a Federal judge, had a corrupt relationship with local bail bondsman Louis Marcotte and his sister Lori Marcotte. The essence of the relationship was that Judge Porteous would take official acts to financially benefit the Marcottes by setting bail in amounts that they requested to maximize their profit—not in the best interest of the public, not what was necessary to secure the defendant's appearance in court but would maximize their profit. In addition, he would set aside the criminal convictions of the Marcottes' employees.

The way the bond arrangement worked was this: Louis Marcotte would interview the defendant and their family to figure out the most expensive bond they could possibly afford and would ask Judge Porteous to set the bond at precisely this amount, and the judge would do so. If the bond was set too low, below what the family could afford, Marcotte would lose money. If the bond was set too high, then the defendant could not use Marcotte at all, and Marcotte would lose money. It had to be set just right to maximize their profit. And Judge Porteous was their go-to bond-setter.

Although other judges would later go to jail for precisely this same relationship with the Marcottes, Louis Marcotte testified at the Senate trial that no one—no one did more for them than Judge Porteous. And Marcotte said further that the more they did for Porteous, the more he did for them.

The Marcottes supported Judge Porteous's lifestyle in numerous ways. In response to Judge Porteous's request, they frequently took Judge Porteous out to expensive restaurants, paying for his food and copious amounts of liquor. They sent their employees to pick up his cars at the courthouse, repair them, fill them up with gas, detail them, and leave buckets of shrimp or bottles of liquor in them when they were done. They sent their employees to his house to do home repairs, where they spent 3 days repairing 85 feet of damaged fence—digging the holes, laying the concrete, picking up the fence boards, doing the construction. And they paid for one or more trips to Las Vegas for the judge and his secretary.

As we proved during the trial, Judge Porteous was also asked by Louis Marcotte to expunge or set aside the felony convictions of two Marcotte employees so they could be licensed as bail bondsmen. Judge Porteous obliged but, significantly, told Marcotte that he would not set aside one of the convictions until after Senate confirmation of his position as a U.S. district judge because Judge Porteous did not want to jeopardize what was, in the judge's words, his lifetime appointment. In essence, Judge Porteous told Marcotte that he would set aside the conviction but that he needed to hide the corrupt relationship from the Senate. In fact, this is exactly what he did. Shortly after Senate confirmation but before he was sworn in as a Federal judge, Judge Porteous did, in fact, set aside the conviction of Marcotte's employee. It had to be done precisely then, after confirmation, so you would not learn about it, but before he was sworn in because once he was sworn in, it was too late, he could no longer expunge the conviction.

What the articles allege and the evidence establishes is that this was a classic quid pro quo relationship between a judge with his hand out and a corrupt bondsman who was willing to pay for what the judge could do for him.

Judge Porteous's corrupt relationship with the Marcottes did not come to an end after Judge Porteous became a Federal judge, although he no longer had the power to set bonds or expunge convictions for the Marcottes. The Marcottes continued wining and dining Judge Porteous because they needed his help to recruit a successor—other State judges—to assume Judge Porteous's former role in setting bonds at the amounts necessary to maximize their profits. Once again, Judge Porteous agreed, meeting with State judges and vouching for the Marcottes and using the prestige and power of his office to foster these new, corrupt relationships.

One of the judges Porteous helped the Marcottes recruit while he was a Federal Judge was a State judge named Ronald Bodenheimer. Bodenheimer testified that he did not hold Louis Marcotte in high regard and would not deal with him because he had a low regard for Marcotte's character and believed he was a drug user. Bodenheimer testified that when Judge Porteous vouched for Marcotte's integrity, it was critical to his decision to form a relationship with Louis Marcotte.

Judge Bodenheimer would later be convicted and incarcerated on Federal corruption charges, in part because of his corrupt relationship with the Marcottes, setting bonds in the amounts they requested in return for financial favors. Both the Marcottes also would plead guilty to corruption charges premised on these same relationships.

Now let me turn to article III.

By 2001, Judge Porteous had close to $200,000 in credit card debt, a substantial portion of which resulted from his gambling problem. For years, Judge Porteous had dishonestly concealed his debts and the extent of his gambling by filing false annual disclosure forms.

Ultimately, in March of 2001, Judge Porteous filed for bankruptcy. His filings were replete with dishonest representations. First, to conceal his identify, Judge Porteous filed and signed the petition under penalty of perjury using a fake name: G.T. Ortous. Further, just a few days prior to filing, as part of his plan to conceal his identity,

he obtained a post office box which he listed as his residence on the bankruptcy petition. He concealed assets so he could gamble, such as a $4,100 tax refund, even through the bankruptcy form asked him specifically whether he was expecting a tax refund. He concealed a money market account that he used the day before filing bankruptcy and that he used while in bankruptcy to pay for his gambling. He lied under oath about preferential payments to creditors, particularly casinos. He falsely denied under oath having gambling losses in response to a question on the form that asked just that. He had his secretary pay off a credit card account shortly before filing and then failed to report the transaction.

After the bankruptcy judge issued an order confirming Judge Porteous's chapter 13 plan, which prohibited him from incurring new debt without permission, Judge Porteous violated the order by secretly incurring additional debt at several casinos and by obtaining and using a new credit card, all without the permission of the bankruptcy trustee.

In sum, his bankruptcy was replete with deliberately false statements made under penalty of perjury in an effort to avoid public disclosure of his bankruptcy and his gambling problem.

Now, let me turn to article IV.

I previously mentioned that while he was a State judge, Judge Porteous had corrupt schemes going on with attorneys Amato and Creeley and with the Marcottes. How, then, did he ever get confirmed in the first place?

Article IV alleges and the evidence establishes at Judge Porteous repeatedly lied to the Federal Bureau of Investigation and to the U.S. Senate in responding to questions posed to him as part of the confirmation process on no less than four occasions—particularly in response to the very questions that would have required that he disclose his corrupt relationships with Creely, Amato, and the Marcottes. He was interviewed twice by FBI agents, and filled out two separate questionnaires, one of which was sent directly to the Senate Committee on the Judiciary.

There is perhaps no question more important of an applicant for a Senate-confirmed position than that which seeks information concerning the candidate's integrity. Judge Porteous's responses to these questions were false given his corrupt relationship with attorneys Amato and Creely and his corrupt relationship with the Marcottes and their bail bond business.

There is a wealth of evidence that makes clear that Judge Porteous understood the questions as calling for his disclosure of his corrupt relationship with the Marcottes. Most critically, as I mentioned, in the summer of 1994, Louis Marcotte asked Judge Porteous to set aside the felony conviction of one of his employees named Aubry Wallace—a Marcotte employee who had taken care of Judge Porteous's cars and had performed house repairs for Judge Porteous. Marcotte testified that Judge Porteous responded to Marcotte's request by telling Marcotte:

> Louis, I am not going to let Wallace get in the way of me becoming a Federal judge and getting appointed for the rest of [my] life. . . . Wait until it happens, and then I'll do it.

In short, Judge Porteous would set aside the conviction as Marcotte requested, but he would hide that act from the Senate so as to not jeopardize his confirmation. Judge Porteous knew that he had to conceal his corrupt relationship with Marcotte if he had any hope of being confirmed as a U.S. District Judge—and that is exactly what he did.

Almost all of the salient facts in this case I have just mentioned are not seriously contested. In connection with article I and his relationship with Creely and Amato, Judge Porteous admitted the critical facts during his sworn testimony before the Fifth Circuit—where he was given immunity from the use of his testimony in any criminal proceeding He admitted Creely gave him money and then balked at continuing to do so. He was asked about the curator moneys, and he admitted sending the curatorships to Creely and getting cash from Amato and Creely after he assigned them the curatorships. Though he will not call it a kickback, Judge Porteous does not deny getting the cash back from the attorneys after sending them the curatorships.

When he was asked how much money he got back from Creely and Amato during the Fifth Circuit proceedings, his answer was: ''I have no earthly idea.'' I have no idea. Not ''I didn't get the money''; not ''I don't know what you're talking about.'' but in terms of how much: ''I have no idea.'' The payments of cash to Judge Porteous occurred so often and for such a prolonged period of time, he could not, or would not, estimate how many thousands of dollars he received from them.

Does he admit getting the $2,000 in cash in an envelope after soliciting it from Amato during the pendency of the Liljeberg case? Yes, he admits to that in the Fifth Circuit. He takes issue, strangely enough, with the envelope itself. He can't remember whether the money was delivered in bank envelope or a regular envelope, but he doesn't deny getting an envelope with cash during the pendency of this multi-million-dollar litigation. He doesn't renember whether he got it personally or whether he sent his secretary to pick it up, but he doesn't deny getting the cash.

The record is absolutely clear that Judge Porteous did not disclose his receipt of curatorship money when he was asked to recuse himself from the Liljeberg case. He admits filing bankruptcy under a false name, saying only it was his lawyer's idea. He admits not disclosing his pending income tax refund on the forms as required. He admits not disclosing his gambling losses on the forms as required. He admits not disclosing a bank account he used for gambling. And as to the Judge's false statements to the FBI and Senate, the defense's own expert testified that if the judge had received kickbacks while on the State bench, and if he had a corrupt relationship with bail bondsmen, he would have understood that this must be disclosed in answer to the questions he was asked by the FBI and the Senate.

These were the facts the House considered in unanimously approving four articles of impeachment. The House determined that the corrupt conduct by Judge Porteous fell into four discrete schemes, one involving his corrupt relationship with Amato and Creely, another pertaining to the Marcottes, a third reflecting his false filings in bankruptcy, and the final concerning his deception of the Senate and the FBI.

Notwithstanding the historic precedent of giving the House broad discretion in the drafting of articles of impeachment and the plain logic of this division, Judge Porteous complains that the articles contain allegations that, in counsel's words, are improperly ''aggregated.'' The Senate has never ordered an article passed by the House to be divided up according to the accused's desires, or required multiple votes on an article, a proposal prohibited by the Senate's own rules.

Unlike his motions to dismiss articles I and II, this motion was heard and decided by the Senate Impeachment Trial Committee on the merits, which rejected it completely.

Judge Porteous claims that the structure of the Articles of Impeachment aggregates a series of a disparate allegations. He argues further that the Senate should dismiss all of the articles in its pleadings or, in so many words, vote on each separate factual predicate claim within each article. Judge Porteous mischaracterizes the articles in this case, and misstates the impeachment precedent on this issue. There is no basis for granting the relief he seeks, and the motion should be denied.

First, as a factual matter, the articles simply do not contain a series of unrelated, discrete acts as Judge Porteous contends. Each article describes a course of conduct in pursuit of a unitary end, pursued through a combination of means. Article I describes Judge Porteous's improper conduct while presiding over the Liljeberg case, arising from his concealed corrupt financial relationships with attorneys Creely and Amato; article II describes Judge Porteous's corrupt relationship with Louis and Lori Marcotte and provides the details of what he received from them and what he did for them; article III describes the numerous dishonest acts and false statements under oath by Judge Porteous to deprive his creditors and the bankruptcy court of the truth surrounding his financial circumstances; and article IV

describes Judge Porteous's false statements during the confirmation process when he concealed his corrupt relationships with attorneys Creely and Amato and the Marcottes. Even though each of these separate schemes comprised discrete acts, each article describes a single coherent scheme.

Second, as such, each of the articles easily withstand scrutiny under long-settled Senate precedent. The Nixon Impeachment Committee ruled that Articles of Impeachment are properly framed if they give ''fair notice of the contours of the charges against the judge and (2) contained an intelligible, essential accusation, thus providing a fair basis for conducting the evidentiary proceedings.''

There is no reason for the Full Senate to set aside the analysis and decision of the Senate Impeachment Trial Committee in this case, which found the Nixon standard persuasive and consistent with the Constitution and ruled that ''Each of the four Articles against Judge Porteous meets the Nixon standard.'' In reaching this conclusion, the committee summarized the articles, and stated: ''Each Article provides Judge Porteous with fair notice of the contours of the charges against him and makes clear, intelligible allegations.''

Each article contains a series of factual allegations comprising the charged ''course of conduct'' that constitutes that article. Although the requirements for how a count is charged in a criminal indictment do not apply in an impeachment, we think that Senator WHITEHOUSE—a former U.S. Attorney—got it right when he said during the proceedings:

> Let's say you were looking at a case say involving a scheme and artifice to defraud, and a whole bunch of conduct is alleged in that particular scheme and artifice to defraud. The jury doesn't have to agree on every single piece of that having been done; they have to look at the evidence and conclude ['']yep, based on what we see, we do see a scheme and artifice to defraud in this particular case.['']
>
> Isn't that the case here, as well? Because the course of conduct [is] integrated enough [it] can fall within the general impeachment standard of high crime and misdemeanor?

That analysis hits the nail right on the head—each of the four articles describes integrated schemes, integrated courses of conduct. Looking at article I, for example, defense counsel argues in his brief that the recusal hearing alone should be three separate counts—one stating the recusal motion was improperly denied, another charging that during the recusal hearing he should have disclosed the kickbacks from Creely and Amato, and a third, that he made false and misleading statements during the same recusal hearing. One hearing—three articles. Had we charged it the way counsel suggests, is there any question in your mind that counsel wouldn't be here before you today arguing that the House improperly disaggregated one corrupt scheme to pile on three separate charges?

In fact, none of these articles constitutes what in the past has been occasionally referred to as an ''omnibus'' article—where articles involving discrete spheres of misconduct are joined in a single article. Had we drafted a fifth article, that set out his relationship with Amato and Creely, and the Marcottes, and the bankruptcy and the deception of the Senate and said that because of all these acts together he should be removed, that would be considered an omnibus article. The House chose not to do so, although we note that the House has frequently returned omnibus articles summarizing the prior counts, and the Senate has not only deemed them proper but repeatedly voted to convict on such omnibus articles.

Judge Porteous has suggested that the consideration of the articles as drafted is unfair or would lead to confusion. According to Judge Porteous, Senators would not really understand what they were voting on in voting to convict. This, however, is hardly a serious contention. In article I, there is no credible reason to believe that a Senator would not convict unless he or she were satisfied with the core factual theory set forth in that count, and the same as with articles II, III, or IV.

Counsel for Judge Porteous has argued that the cases of Judges Hastings and Archbald support his claim, pointing to the comments of some individual Senators. But as the Senate Impeachment Trial Committee in this case so correctly pointed out: ''This, however, was not the adopted view in either instance as both judges were convicted on the aggregated articles.'' So in both the cases cited by counsel, the Senate voted to convict on the omnibus or aggregated articles.

Judge Porteous's arguments are no different, in substance, to those raised in the Hastings impeachment. In that case, there was a parliamentary inquiry as to whether, in order to find Judge Hastings guilty, a Senator had to find that he committed each of the four allegations in a given article. The President pro tempore of the Senate responded:

> This is for each Senator to determine in his own mind and in his own conscience and in accordance with his oath that he will do impartial justice under the Constitution and law. It is the Chair's opinion, if the Senator in his own conscience and based on the facts as he understands them determines that, in any one of the paragraphs, Judge Alcee L. Hastings has undermined confidence in the integrity and impartiality of the judiciary and betrayed the trust of the people of the United States, he should vote accordingly.

And so it is here. It certainly is not necessary for the Senate to proceed sentence by sentence or paragraph by paragraph, so long as you are able to find, based on the facts as you understand them, that Judge Porteous, by his conduct in the given article, has undermined confidence in the integrity and impartiality of the judiciary and betrayed the trust of the people of the United States.

The alternate request of counsel, to require multiple votes on each article, was also rejected by the Senate Impeachment Trial Committee and should be rejected here. As the committee ruled: ''The impeachment Rules do not permit Judge Porteous's suggestion that the Senate vote separately on the individual impeachable allegations within each Article. Impeachment Rule XXIII states that an article of impeachment 'shall not be divisible for the purpose of voting thereon at any time during the trial.' ''

Now, let me turn to Judge Porteous's motion to dismiss article I. Judge Porteous acknowledges in his written pleadings, that for the purpose of this motion all the facts alleged in article I should be accepted as true. Judge Porteous urges the Senate to dismiss article I on three grounds—first, that it charges a violation of title 18, U.S.C. section 1346, the mail and wire fraud statute, claiming that under the Supreme Court's decision in Skilling, an honest services claim cannot be made under that code section. Second, he argues that Judge Porteous could not have known that taking kickbacks, lying during a recusal hearing, or soliciting thousands in cash from an attorney with a case before him could constitute grounds for his impeachment. Most remarkably, he claims that he did nothing wrong and that taking secret cash from an attorney whose case is under submission in your courtroom is, at most, only an appearance problem. It is just such an argument which demonstrates his unfitness for the bench.

First, as to his ''honest services'' argument it is helpful to provide some background on what an honest services charge is in a criminal case. 18 U.S.C. Section 1346 and 7 are the wire and mail fraud statutes. Under those laws, a defendant in a criminal case can be charged with defrauding someone of money, property or honest services. Judge Porteous argues here that he has been charged with a violation of the mail and wire fraud statutes, and if this were a criminal case, he would seek to dismiss the charge on the basis that it did not adequately set out a crime under that statute. The problem with the Judge's argument is that he is not charged with mail or wire fraud under section 1346 or 7, this is not a criminal case, and even if it were, he would still lose under the very case he cites—for in Skilling, the Court found that you could be charged with honest services fraud in any case involving a kickback scheme.

It is plain from a reading of article I that the House has not charged, nor is it required to charge, that Porteous is guilty of mail or wire fraud in violation of title 18. The article I described by Judge Porteous's counsel bears little resemblance to the article that was actually charged in this case, which consists of six paragraphs that describe how Judge Porteous received kickbacks from attorneys Amato and Creely, how he dishonestly presided

over the Liljeberg case by concealing these kickbacks and making intentionally misleading statements at the recusal hearing, and by secretly soliciting and accepting cash from Amato while the case was pending.

Article I, despite defense counsel's claim, is not patterned after the mail fraud or wire fraud statutes—or any other criminal statute—and it does not otherwise allege a ''scheme or artifice to defraud,'' or any other language that would be necessary to charge a criminal ''honest services'' fraud offense. Article I is written in non-technical language and focuses on Judge Porteous's receipt of kickbacks and his acts of concealment of corrupt financial relationships in the course of presiding over a case. Article I concludes that Judge Porteous ''brought his court into scandal and disrepute, prejudiced public respect for, and confidence in, the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.'' Whether the conduct alleged in article I also violated criminal laws, or could have resulted in an indictable offense for ''honest services fraud,'' simply has no bearing on any issue before the Senate, and no plausible reading of article I as actually drafted suggests that it intended to import Supreme Court interpretations of a Federal statute.

It is for the Senate to determine whether charged conduct demonstrates that the individual is not fit to be a judge. That determination does not turn on whether the conduct at issue constitutes a Federal criminal offense. Indeed, one of the first impeachments was of a judge for drunkenness, and, for most of this Nation's history, Federal judges have been impeached, and convicted, and removed pursuant to articles that have not alleged the commission of Federal criminal offenses. As the Senate committee in this case repeatedly pointed out, this is not a criminal case. Impeachments in this country, as opposed to the British example, are not punitive in nature and threaten the judge with no loss of liberty or jail time. They are designed to protect the institution from the ill effects of having a corrupt officer destroy the public trust in that institution.

Finally, if this were a criminal case, and he were charged with mail or wire fraud, and you were judges rather than Senators, and the judge stood to go to jail rather than lose his office, he would still lose under the very precedent he cites, Skilling. Skilling, the former CEO of Enron, was charged with mail and wire fraud on the theory that he deprived shareholders of truthful information about the value of the company. The Supreme Court held, as to these counts, that if Congress wanted the statute to apply this broadly, it would need to do a better job saying so, because the charges against Skilling didn't involve bribery or kickbacks. If the scheme did involve kickbacks, as alleged in article I, the Court said the charges would be fine. As the Court stated: ''A criminal defendant who participated in a bribery or kickback scheme, in short, cannot tenably complain about prosecution under section 1346 on vagueness grounds.''

Finally, Judge Porteous argues that article I should be dismissed because it charges only the appearance of impropriety, not actual wrongdoing, as if no judge can be expected to know that he cannot receive secret cash from an attorney with a pending case, or that he cannot receive kickbacks from attorneys after sending them cases. That is truly a remarkable assertion. Judges are on notice from the day they are sworn that they may be convicted and removed if they commit high crimes and misdemeanors—that is the constitutional standard to which judges must adhere, and Judge Porteous and every other judge ought to understand that it requires a very basic level of integrity.

When Judge Porteous—or any judge—is exposed as having accepted things of value from attorneys appearing before him and then ruling in favor of the client represented by those same attorneys, he damages the judicial system and brings the Federal courts into disrepute. This is especially so here, where Judge Porteous's ruling for his financial benefactors was reversed on the central issues in the litigation, in an opinion that excoriated the judge. Whether the House proved these facts is a matter you must decide when you deliberate on the case after closing arguments. The Senate report makes clear most of these facts are beyond dispute. But accepting the allegations in article I as true, as defense counsel concedes you must for the purpose of this motion, there is no question that they set out a chargeable high crime and misdemeanor. For these reasons, Judge Porteous's second motion must be denied. Let me now turn to his motion on article II.

Judge Porteous argues that article II must be dismissed on three grounds: First, because it alleges conduct both before and after his appointment to the Federal bench and dismissal is constitutionally required as shown by the Senate's precedent in Archbald. Second, because House experts testified that a judge could never be impeached on the basis of prior conduct. And finally, because the article only alleges Judge Porteous socialized with the wrong people.

Judge Porteous, in his moving papers, again concedes that the allegations in article II, for the purpose of this motion, must be accepted as true. Those allegations are, in summary, this: That Judge Porteous, while a State judge, began a corrupt relationship with the Marcottes in which the judge solicited and accepted numerous things of value, meals, trips, home repairs, car repairs for his personal use and benefit and in return, took official actions benefiting the Marcottes, setting bail in a way to maximize their profits, expunging the convictions of Marcotte employees both before and after his confirmation for the Federal bench, and using the power and prestige of his office as a Federal judge in helping recruit other State judges to form the same corrupt relationship with the Marcottes.

As you can see, article II by its own terms charges conduct which occurred before confirmation to his Federal judgeship, after his confirmation but before he was sworn in, and after he was sworn in and while serving on the Federal bench. The conduct charged in article II, while he was a Federal judge is egregious, using the power of his office to help recruit other State judges to form the same corrupt relationship with the Marcottes that he had—a relationship these other judges would later go to jail for. We proved this at trial, but more than that, this conduct, for the purpose of this motion, and much as defense counsel may forget, must be accepted as true. Just as in article I, the Senate may convict on article II if it chooses solely on the basis of what Judge Porteous did as a Federal judge.

The only article that charges pre-Federal bench conduct alone, is article IV, which charges Judge Porteous with making false statements to the Senate and FBI during the confirmation process. Interestingly, although Judge Porteous takes other issue with article IV, he does challenge the constitutionality of the fact that only prior conduct is alleged in article IV. And in fact, as I will discuss in a moment, even defense counsel recognize that it is not only constitutional to impeach a judge on prior conduct in certain cases, but that it is inevitable as well.

The Constitution itself is silent on when a high crime of misdemeanor warranting impeachment must take place. The Constitution describes certain types of conduct for which impeachment is warranted, such as bribery or treason, but does not say when the misconduct must have been committed. Plainly, had the Framers wished to confine the time the conduct must have taken place, it would have been easy to do so. They could have provided that an officer could be removed for a high crime or misdemeanor committed while in that office. But they chose not to so limit the scope of impeachment, and for good reason.

The deliberations of the Framers who were focused on the impeachment clause make it clear that it was the institution they sought to protect from the destructive influence of an officer who violates the public trust and brings the institution into disrepute. Whether the high crime or misdemeanor occurs before or after appointment to a particular office, if the conduct of that official has brought the institution into ill repute, it stands to reason that the Framer's intended that conduct to warrant impeachment. There is certainly no indication, that in a charge such as article II, which describes conduct before, during and after

appointment, that anything in the text of the Constitution presents a grounds for dismissal.

The one precedent in which a judge was charged in a single count with both pre and post office conduct is the 1913 impeachment of Judge Robert W. Archbald. There were 13 Articles of Impeachment brought against Archbald. Six articles accused him of misconduct on the Commerce Court where he was then assigned at the time of his impeachment and trial; six accused him of misconduct on the district court—his prior judicial appointment. Article 13 set forth allegations that involved his conduct on both courts and is therefore directly analogous to both articles II in the case against Judge Porteous. And on this article, the Senate convicted Judge Archbald.

Because debate was closed during the floor vote in the Archbald impeachment, there was no formal debate or discussion about the Senate's jurisdiction to impeach over prior conduct. The Senators were not required to state their reasons for their votes, although some did. Senator Owen, for example, stated:

> Whether these crimes be committed during the holding of a present office or a preceding office is immaterial if such crimes demonstrate the gross unfitness of such official to hold the great offices and dignities of the people.

Another Senator specifically noted that he was voting not guilty on all but one of the prior court counts because he felt the evidence did not support conviction on those counts, but that his vote should not be misinterpreted as suggesting that charging prior conduct was improper. In fact, five Senators did not feel the evidence was sufficient on any count, pre or post.

More than a quarter of the Senate was absent in the Archbald case, and it is impossible to determine what motivated the votes of every Senator in Archbald. We do know that of the 68 Senators who believed there was sufficient evidence to convict on at least one count, a full 34 of them expressed unequivocally that they believed a judge should be impeached on the basis on misconduct preceding their appointment to their current position. How do we know this? Because 32 of them said so, by voting to convict on purely prior conduct, and 2 others publicly stated that they would have done so, if the evidence of guilt were stronger. Only seven expressed the view advocated by Judge Porteous.

But one conclusion is beyond question: the Senate voted to convict Archbald on the one count that most closely resembles article II against Judge Porteous and alleged conduct both prior to and during his tenure in the current office.

Defense counsel argues that constitutional experts who testified before the House Impeachment Task Force took the position that prior conduct could not be considered by the Senate as a basis for impeachment. This is a rather incredible claim, since each of the experts testified precisely to the contrary, that the timing of the misconduct was not a constitutional impediment or the standard, but rather the effect of retaining a corrupt official on the institution.

Distinguished constitutional scholars who testified before the House Impeachment Task Force were unequivocal in their views that the Constitution permits impeachment, conviction and removal of a Federal judge for pre-Federal bench conduct. They noted that the Constitution provides no limitation, and that the principles underlying the reasons for the impeachment process—protecting the integrity of the Federal judiciary—compel this conclusion.

Professor Michael Gerhardt explained in his written statement:

> Say, for instance, that the offence was murder—it is as serious a crime as any we have, and its commission by a judge completely undermines both his integrity and the moral authority he must have in order to function as a Federal judge. The timing of the murder is of less concern than the fact of it; this is the kind of behavior that is completely incompatible with the public trust invested in officials who are sufficiently high-ranking to be subject to the impeachment process.

Professor Akhil Amar stated at the hearing:

> Let's take bribery. Imagine now a person who bribes his very way into office. By definition, the bribery here occurs prior to the commencement of office holding. But surely that fact can't immunize the bribery from impeachment and removal. Had the bribery not occurred, the person never would have been an officer in the first place.

Moreover, defense counsel himself concedes in his written statement of the case to the full Senate that prior conduct can be an appropriate grounds for impeachment. In discussing a case where a judge might be indicted and convicted of a murder that he committed before appointment to the Federal bench—that was only discovered later—the defense conceded impeachment would be appropriate, writing: ''There would be little controversy about removing a judge from office who was convicted of murder during his term of office, and the precedential value of such an action would be limited.''

Nor has defense counsel taken the position that impeachment for prior conduct should be limited to cases of murder. The Senators from Illinois may recall the case of Judge Otto Kerner. He had been the Governor of Illinois before his appointment to the Seventh Circuit Court of Appeals. While on the court of appeals, he was indicted and convicted for accepting bribes while governor, long before he was put on the bench. In writing about the case of Otto Kerner, defense counsel not only asserted that Kerner could be impeached for the bribes he took as governor, but that his impeachment was inevitable. To quote Mr. Turley, ''Judge Otto Kerner, Jr., of the United States Court of Appeals for the Seventh Circuit, resigned before inevitable impeachment after he was convicted for conduct that preceded his service.

Let us assume that the statute of limitations had not barred prosecution of Judge Porteous on the kickbacks, or his corrupt scheme with the Marcottes, and like Judge Bodenheimer, he had been sent to jail based on that prior conduct. Would it be any less inevitable that he must also be impeached and removed from office?

Although Judge Porteous's counsel acknowledges the appropriateness of impeaching for prior conduct in murder, bribery, and other cases—indeed its inevitability—he evidently seeks to distinguish this case because Judge Porteous was not first convicted during a criminal trial. Of course, the Constitution does not require a criminal conviction prior to impeachment. The Framers didn't want to delegate to the Department of Justice the power to remove a judge, which would be the effect of saying it requires a conviction to remove someone on that basis. The language of the Constitution presumes, when it says that a prosecution may follow not precede impeachment, when it provides in article I, section 3 that a party convicted in an impeachment trial ''shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to our criminal law.''

In many prior impeachments, there has been no criminal trial and, in fact, in the Hastings case impeachment followed acquittal in a criminal case. So, plainly, the Constitution doesn't require a prior criminal trial or conviction to impeach, whether the conduct occurred or not.

Nonetheless, counsel argues it is unfair here, because a criminal trial would have more fully brought out the facts in the case, and provided a more detailed record. But this ignores the very full record in the fifth circuit proceeding, the depositions in this case, as well as the comprehensive trial before the Senate Committee. It is worth pointing out that during that trial, Judge Porteous has been represented not only by the very capable Mr. Turley, but at least 8 attorneys from the law firm of Bryan Cave. Moreover, this team of attorneys did not feel it was necessary to use the entire amount of time they were permitted to put on their case and simply rested. You would think, if counsel really felt that there was more to the case that needed to be illuminated, it would have used the full opportunity it was given to present witnesses.

Finally, there is a policy argument advanced by Judge Porteous, that if the Senate convicts him on the basis of conduct that occurred in part before he was on the federal bench, even though it is intertwined with his appointment and service on the bench, it will open the impeachment process to abuse by partisan interests. These partisan interests, upset with a judge's decision or

judicial philosophy, might conjure up some prior misconduct and use it to urge the impeachment of a judge.

It is true that the power to impeach a judge based on prior conduct could be abused, like any other power. If partisan interests wish to urge the impeachment of a judge whose decisions they don't like, they could just as well conjure up misconduct which occurred while the judge was on the bench, as before. The protection against that abuse rests in two places: it rests with the House to reject any impeachment charge which is a mere subterfuge for attacking a judge's decision of philosophy. And it rests here, in this chamber, where you must never remove a judge for partisan reason and erode independence of the judiciary.

Importantly, there is no allegation, no suggestion, not by defense counsel or anyone else, that this is the case with Judge Porteous. There is no claim that this impeachment is based on some illicit partisan interest.

There is a more serious consequence, however, of concluding that judges cannot be impeached for prior conduct, that confirmation is a safe harbor against all removal for all prior offenses be they undiscovered at the time. And that is the destruction to the public trust that would accompany a constitutional or policy determination that a judge who has so disgraced his office, by committing a high crime or misdemeanor, though they sit in jail, must continue to be called ''judge,'' must continue to be paid their full salary for life, and rest beyond the reach of this body.

Whether the Senate concludes that prior conduct alone should be the basis of an impeachment, article II alleges impeachable conduct that occurred not just before but while he was a Federal judge, and for the purpose of this motion to dismiss those allegations are accepted as true, this final motion must be denied.

For these reasons, Judge Porteous's motion to dismiss should be denied. I would be happy to respond to any questions.

The PRESIDENT pro tempore. Thank you very much. Mr. Turley.

Mr. TURLEY. Mr. President, I thank you for allowing me a chance to rebut some of what my esteemed colleague told you today.

I have to begin by making an observation, and perhaps you noticed what happened. We were told we were going to speak to you this morning about constitutional issues. The first thing the House did was start to go through these specific allegations against Judge Porteous, the merits of the case. Maybe I am a bit sensitive, but the way I heard it made it sound as if, if you don't like this guy, don't like what the merits say, it should influence how you read the Constitution.

As many of you know—and I believe all of you know—constitutional interpretations don't depend on how you feel about someone. It doesn't depend on how you feel about a case. It depends on how you read the Constitution. So my opposing counsel took you up 10,000 feet, had you look down at these articles, and said: Look at all the bad things we say this guy did. He is asking you to interpret the Constitution.

He is not asking you to interpret the Constitution. You are required to do that. That is your job. It doesn't matter if he was guilty of all these things. He is not guilty, and we will make that argument. That doesn't have any bearing on how you interpret these clauses.

I also have to object to the use by the House of testimony by law professors in the House proceedings. As some of you know, the House of Representatives submitted a post-trial brief that contained statements from law professors on the merits of impeachment basically telling you what you should do in this case. The committee and Chairman MCCASKILL, correctly in our view, ruled that is not appropriate. It would not be allowed in a court of law. So the House was told to redo their brief and resubmit it. The House then proceeded to introduce that very same information in today's presentation. I simply have to object.

I also have to object that, when they did so, the House didn't actually quote the law professors fully on the issue of pre-Federal conduct. Professor Omar actually dismissed it as just all that State stuff. Professor Gerhardt said nobody should be convicted of pre-Federal conduct, which completely contradicts what the House has said. The reason we objected to the inclusion of these professors—and if I could testify, I think my testimony should have been excluded—is that it is your decision. Judges don't hear experts on the merits of decisions.

I wish to actually address the constitutional issue. I will, however, take the liberty to deal with one factual assertion that the House has made because it was in direct response to something I had said. I told the Members of this body that Judge Porteous agreed to waive all the statutes of limitations that he was asked to waive. He did not think it was appropriate to stand behind the statutes of limitations. The House proceeded to suggest that he had not, that there were some statutes of limitations that he did not waive. The record will show, if you look at some of the material we have already submitted to you in our post-trial brief, that, in fact, Judge Porteous agreed to every waiver of the statutes of limitations put in front of him. He did not refuse any waiver of a statute of limitation.

When they said to him: We want the ability to charge you, even if you could block charges as to limitations, he said: So be it. I am a Federal judge. If you find crimes, charge me. Just make sure we understand this, DOJ began its investigation in the mid to late nineties. The statute of limitations on the Articles of Impeachment ran 5 to 10 years. So no statute of limitations had passed for anything he did as a Federal judge, which is what we are discussing today.

But putting that aside, the prosecutors had a problem with the statute of limitations with regard to Judge Bodenheimer, and it didn't stop them from charging. All they did was charge conspiracy and said there were ongoing acts, so the statute of limitations had to run. It wasn't even a speed bump on their way to charge Judge Bodenheimer.

Specifically, Judge Porteous waived, among others, the right to charge him with bankruptcy fraud, bribery, illegal gratuities, criminal conflict of interest, criminal contempt, false statements, honest services or wire fraud. Those were requested of him and that is what he signed. I think it would have been unfair to suggest somehow he hasn't done that.

The Senate has heard from the House that they were simply showing considerable restraint and deference to this body by aggregating counts. By aggregating counts, my esteemed colleague on the other side said that, after all, you wouldn't want us to break these up into what he calls unnatural pieces. I wish to talk about those unnatural pieces in a second. I cannot allow in the past when the House said: Do any of you doubt that if we had disaggregated, the defense would not be here today complaining that they were facing individual articles on individual claims? I will simply represent to you, if you look at the record, no one—no criminal defense attorney in history has objected to having specific defined charges. But more important, if you look at the history of this body, defense attorneys and Members of this body have objected to the aggregation that is being used in these articles.

Indeed, the House of Representatives, in Hastings, separated specific false statements so you could make a decision whether a judge gave a false statement, a specific one, before you reached your decision to remove them. Those weren't unnatural pieces. Those were stand-alone charges. Those would be in an indictment as separate counts.

My esteemed colleague also has objected that we are asking you to set up a situation where some judge is going to sit in a prison, and I believe the expression was ''force people to call him judge.'' Once again, just as the response was to go into the merits instead of constitutional issues, clearly, the light is better by directing your attention to a mythical judge sitting in a Federal prison making people call him judge. I will argue that case if you want me to. But I have to tell you, I lose. The judge cannot serve in office in good behavior in prison. I don't know of anyone who is credible who has said at any time that a judge could insist on being treated as a judge in that instance. I don't know about being called a judge, but to be a judge, that would not be possible, in our view.

I wish to address a couple points about aggregation. The House obviously walked back from Mr. SCHIFF's statement to the committee that you have the authority to do preliminary votes. That was very clear. At the time, I commended Mr. SCHIFF for that position. I have no idea what the authority is for saying that you cannot organize your deliberations any way you want. What you are required to do under rule XXIII is have a final vote on the article, and it cannot be divided. We suggest you do that. All we are proposing is that the Senate know what it is voting on, to look at the individual issues presented in these articles.

Furthermore, the House said this was already rejected by the committee. We were given a fair hearing by the committee in the pretrial motion, and I thank the chair and I thank the vice chair for that opportunity. If you look at the record, what occurred was that some Senators agreed that they had difficulties with the aggregation issue. And Mr. SCHIFF stood up and said: You don't have to decide it because you have the authority to do this. You can go ahead and make determinations on individual issues.

Some Senators raised this question, and it was ultimately not granted at that time. Instead, we have submitted it to you.

I will only submit to you that it makes no sense, honestly, for the Framers to go through the trouble of establishing a two-thirds vote requirement but allow the House to simply aggregate charges that virtually guarantees that, in many cases, two-thirds of you will not agree on the reason you are removing a Federal judge. That can't possibly be what the Framers intended because they weren't stupid men. They were very careful and deliberate men, and they set up a standard that was exacting.

The House also says: In addition to our being able to do this—to aggregate—because it would be so exhaustive to turn one article into three, even though they did that in Hastings and prior impeachment cases—that, by the way, these aren't individual claims; they are actually all related. So they do not have to be separate because the House says it wouldn't make any sense; you wouldn't understand it.

I direct your attention to article II.

In article II, Judge Porteous is accused of using his power and prestige of Federal office to assist bail bondsmen in making relationships and acting corruptly. All right, I understand that. I don't think it is an impeachable offense, seeing that ''corruption'' is the exact word Madison rejected. But still, that is a stand-alone issue. You can make a decision if that happened. I will simply say—because I will not argue the merits at this time; I was told to argue the motions—that we have very strong disagreements with the factual representations made by the House. But that is one of the claims in article II. In the same article, he is charged with knowing that Louis Marcotte, a bail bondsman from Gretna, LA, lied to the FBI in an interview.

Those are two very distinct charges. One is saying that he essentially procured someone to testify or make statements falsely, and one is that he used his office to assist in a corrupt relationship. As you can imagine, if you were standing here in my place, could you defend against both those points with the same argument? I don't think so. Those two points raise two different issues. They actually refer to two different issues in the Criminal Code.

What I am asking from you, with all due respect, is to give this judge the process you would want for yourself if, God forbid, you were accused of anything like what the Judge is accused of. Would it be fair, if you stood here accused, to have the House say: You know what, we don't have to separate allegations; we can just pile them all together because, after all, they have one thing in common: Judge Porteous.

That is not enough.

We have submitted a motion that showed no discernible connection between some of these aggregated claims, and we will leave it to that because we have limited time, and I know the Members of this body have somewhere to go, and I will try to wrap up as quickly as possible. I would simply note on the Skilling issue that if you listen carefully, the House, on Skilling, said that it is not a problem after Skilling because you can read in a kickback scheme into these articles. If you want to, you could read these facts and say: Well, that is a kickback, so Skilling applies.

Isn't the danger to that argument obvious? The Senate would be changing an Article of Impeachment. That is what they are being invited to do. The House of Representatives has the sole authority and obligation to define what it is that a judge should be removed for. It is not just their power, it is their obligation. Now the House says: Look, we are given great discretion to give you whatever we want. No one tells us what has to be in an article. We can do it because we have the authority to do it. That is true. And the Constitution gives you great authority to turn down an article from the House of Representatives. That is what you can do.

So this idea that the House would produce four articles that don't even mention bribery or kickbacks but that you can read it into those articles is unbelievably dangerous. It means you could get any article and transform it here on the floor of the Senate. You could remove someone for something the House Members did not agree should be submitted to you. Isn't that danger obvious?

The House had the opportunity to state that there was a bribe or a kickback. Bribery is in the standard. It was used by the Framers. They rejected corruption, but they put bribery in. So the question is, Are you allowed to do a do-over here on the floor of the Senate and simply ask the Members of the Senate to make the article fit like it is close enough for jazz? That is not the standard under the Constitution.

Now, the House says the Constitution is silent on when conduct has to occur in order for it to be the basis for the removal of a Federal judge. In fact, I thought I heard the House say that the Framers chose not to put in a statement in the Constitution when it occurred. Like many in this room, I have spent a lot of time with those debates—probably more than I should. I don't remember ever seeing that. My understanding is the Framers never addressed this issue, but they did address it in the Constitution. They just didn't put it in the impeachment clause. But when they defined life tenure, they said you have life tenure during good behavior. During good behavior in what? There wasn't good behavior in life. They said good behavior in office. It was a reference to the office that they held because they wanted to make sure people would not abuse their Federal office.

The life tenure guarantee under article III of the Constitution was to guarantee an independent judiciary by saying that you could not be denied life tenure as long as you served with good behavior in that office. What the House would have you believe is that the Framers would allow you—even though it refers to good behavior in office—to remove a judge for anything they did in life. Once again, does that track with what you know about article III? Does that make sense in terms of the only seven judges who were removed by this body; that all the time, it turns out that for 206 years Congress could have removed someone for anything they did in life?

Now, the House says you shouldn't be scared by the implications of all of this; that if you allow pre-Federal conduct, if you allow anything done in life to be the basis of removal of a Federal judge, don't be concerned about abuse. God knows Congress would never abuse any authority under the Constitution. And basically the argument was, trust us, we are the House. That is not what the Framers said in the Constitution. They didn't say to trust them because of the House.

And yes, you are here. The House said: Don't worry, you are here. So even if we abuse this, it has to go through you. Now, that is true. God knows this body has stopped a lot of impeachments. It has only agreed to seven removals. But is that the constitutional standard, that the House can go ahead and just impeach anyone for anything they did in life and seek the removal and hope you correct their actions?

The PRESIDENT pro tempore. The time has expired.

Mr. TURLEY. Thank you, Mr. President. And thank you, Members of Congress—Senate.

The PRESIDENT pro tempore. The Chair has received two questions for

both sides, one from Senator DURBIN and the other from Senator LEAHY.

The clerk will report.

The legislative clerk read as follows:

Senator Durbin's question to both sides: What is the standard of proof for the movant or petitioner in impeachment proceedings such as the extant case?

The PRESIDENT pro tempore. Do you wish to respond, Mr. Turley?

Mr. TURLEY. Senator DURBIN, the standard which we will be addressing when we get to the merits of the case has been subject to considerable historical debate. I will give what I believe is the weight of that historical record.

It is true that the Constitution does not enunciate a specific standard in terms of a burden of proof. We do not agree with the House that they refer to high crimes and misdemeanors as a standard. That is not a standard of proof; that is the definition of a removable offense. There is a difference.

So what we would suggest is that the Senate can look at a known standard, such as beyond a reasonable doubt. Beyond a reasonable doubt, of course, is the standard for a criminal case. The Constitution is written in criminal terms of high crimes and misdemeanors. That is one of the reasons why historically you have had these articles crafted closely to the Criminal Code. In fact, many impeachments actually took directly from a prior indictment and made the indictable counts the Articles of Impeachment.

The House has argued that standard is not necessary and too high. Well, we would submit to you—and we will certainly argue this when we get to the merits—that in the House recently, when they held a Member up for censure, they had a clear and convincing standard, that you must at least be satisfied with clear and convincing evidence. In my view, as an academic, it must be somewhere between clear and convincing and beyond a reasonable doubt.

What is more clear, Senator, is what it is not; that is, if you read the impeachment clauses, the clear message is that you can't just take facts that are in equipoise—allegations supported by one witness and denied by another—and just choose between them; that the facts have to, in your mind, go beyond a simple disagreement and be established, in our view, at a minimum by clear and convincing evidence.

The PRESIDENT pro tempore. Representative SCHIFF.

Mr. Manager SCHIFF. Mr. President, Senators, the Senate has considered and rejected the adoption of any particular standard, such as beyond a reasonable doubt. What the Senate has determined in the past in these cases is that, essentially, each Senator must decide for themselves, are they sufficiently satisfied that the House has met its burden of proof, are they convinced of the truthfulness of the allegations and that they rise to a level of high crimes and misdemeanors.

It is a decision where—and we can get into precise language the Senate has used in the past, but the Presiding Officer has instructed each Senator to look to their own conscience, to look to their own conviction, to be assured they believe that the judge in this case has committed the acts the House has alleged. So it is an individual determination, and the Senate has always rejected adopting a specific Criminal Code-based standard, such as beyond a reasonable doubt or a civil standard of convincing or clear and convincing proof because it is an individual Senator's decision.

It also reflects the fact that, as the Framers articulated, this is a political process—not political in the partisan sense but political in that it is not a criminal process. It is not going to deprive someone of their liberty. What it is designed to do is to protect the institution.

So I think the question for each Senator is, Has the House sufficiently proved the case that, in the view of each Senator, to protect the institution, there must be a removal from office? So it is an individual determination.

The PRESIDENT pro tempore. Thank you very much.

And now will the clerk read the question from Senator LEAHY.

The assistant legislative clerk read as follows:

Senator Leahy's question to both sides: The Senate Judiciary Committee requires a sworn statement as part of a detailed questionnaire by a nominee. Until this questionnaire is filed, neither the Judiciary Committee nor the Senate votes to advise and consent to the nomination. Would not perjury on that questionnaire during the confirmation process be an impeachable offense?

The PRESIDENT pro tempore. Professor Turley.

Mr. TURLEY. Thank you, Mr. President. Thank you, Senator LEAHY.

In my view, yes, that is if you commit perjury in the course of confirmation, that would be basis for removal. In fact, I believe Mr. SCHIFF made reference to perjurious statements by Judge Porteous. We will be addressing that because that is not charged.

What would have to be done is the House would have to accuse someone of perjury as in the Hastings case and have perjurious statements, and then I could stand here and tell you why there is no intent to commit perjury or why the statements were, in fact, true.

While Mr. SCHIFF referred to perjury, once again, perjury is not one of the Articles of Impeachment. And what I would caution—even though it can be, I would again caution this should not be an ad hoc process by which you can graft on actual criminal claims by implying them in language issued by the House.

The PRESIDENT pro tempore. Congressman SCHIFF.

Mr. Manager SCHIFF. Thank you, Mr. President, Senators. This essentially is what article IV is about which charges Judge Porteous with making false statements to the FBI and to the Senate during his confirmation process, and the answer is yes, absolutely. But I think what is very telling here is that counsel has conceded that, yes, if someone perjures themselves in the confirmation process they can and should be impeached but by definition that is conduct which has occurred prior to their assumption of Federal office. If someone can never be impeached on the basis of prior conduct, his answer should have been no, but plainly counsel recognizes there are circumstances where impeachment is not only appropriate but inevitable and essential. And where someone lies to get the very office that they are confirmed to, to deprive him of that office, to deprive him of the ill-gotten gain of that deception I think is not only constitutional but essential to uphold the office as well as to uphold the confirmation process itself.

The PRESIDENT pro tempore. Thank you very much. That concludes the argument on the motions.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to legislative session for a period of morning business with the Senator from Florida, Mr. LEMIEUX, recognized to speak therein for up to 15 minutes.

Senator LEMIEUX.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Tennessee.

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

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

FAREWELL TO THE SENATE

Mr. LEMIEUX. Madam President, I rise to pay tribute to the body with which I have had the privilege of serving for the past 15 months. Being a U.S. Senator, representing 18½ million Floridians, has been the privilege of my lifetime, and now that privilege is coming to an end. As I stand on the floor of the Senate to address my colleagues this one last time, I am both humbled and grateful, humbled by this tremendous institution, by its work, and by the statesmen I have had the opportunity to serve with, who I knew only from afar but now am grateful that I can call those same men and women my colleagues.

No endeavor worth doing is done alone. And my time here is no exception. In the past 16 months, I have asked the folks who worked with me to try to get 6 years of service out of that time, and they have worked tirelessly to achieve that goal.

My chief of staff Kerry Feehery, my deputy chief of staff Vivian Myrtetus, my State director Carlos Curbelo, Ben Moncrief, Michael Zehy, Ken Lundberg, Melissa Hernandez, Maureen Jaeger, Danielle Joos, Brian Walsh, Frank Walker, Spencer Wayne, Vennia Francois, Victor Cervino, Taylor Booth, and many, many others have made our time here worthwhile, and I thank all of them. I specially thank Vivian and Maureen who left their families and gave up precious time with their children to come to Washington to support me in these efforts.

I am also thankful to the people who work in our State office. Time and time again when I travel around Florida I am encountered by people who have received such a warm reception from the men and women who serve us in Florida and help people deal with problems with the Federal Government. I am grateful for their work.

Senator MCCONNELL has provided me with opportunities beyond my expectations. He is a great leader, and I am grateful to him. Senators ALEXANDER, BURR, CORNYN, KYL, MCCAIN, CORKER, and many others have taken me under their wings and mentored me, and I am appreciative of them.

Chairmen ROCKEFELLER and LEVIN, we have had the opportunity to do great work together in your committees. I thank you for that. Senators CANTWELL, KLOBUCHAR, LANDRIEU, WHITEHOUSE, and BAUCUS, we have worked together in a commonsense way to pass legislation that is good for the American people, and I am appreciative of your efforts.

Senator Mel Martinez, who ably held the seat before me, has been generous in his advice and counsel. Senator NELSON and his wife Grace have been warm and welcomed Meike and I to Washington. I am thankful for your courtesy. I thank Governor Crist. He has afforded me tremendous opportunities for public service, and I am grateful.

I want to say a special thank you to my parents. My grandfather, in 1951, drove his 1949 Pontiac from Waterbury, CT, to Fort Lauderdale, FL, with his wife and five kids piled in the back. He didn't know anybody. He didn't have a job. But he went there to make a better life for his family. He worked in the trades, in construction. He built houses and he taught my father the same thing. And as my father worked in the hot Florida Sun, his ambition for his son was that he would one day get to work in air-conditioning. I have achieved that goal and so much more because of their sacrifice. Mom and Dad didn't go to college but they sent me to college and law school, and I will be forever grateful for what they have done for me.

My most heartfelt appreciation goes to my wife Meike. When I learned of this appointment, I met her at the door of our home in Tallahassee and she was crying. She was not just crying because she was happy; she was crying because she was worried. We at the time had three small sons—Max, Taylor and Chase, 6, 4, and 2. She knew something that others didn't know—that we were going to have another baby and that baby was born here in Washington, our daughter Madeleine.

Throughout all of my travels, she has been an unfailing support for me, I love her dearly, and I am appreciative to her.

It has been the privilege of my life to serve here, but I would not be fulfilling my charge in my final speech if I did not tell you what weighs on my mind and lays upon my heart about the direction of this country. So what I say to you now is with all due respect, but it is with the candor that it deserves.

The single greatest threat to the future of our Republic and the prosperity of our people is this Congress's failure to control spending. In my maiden speech, I lamented a world where my children would one day come to me and say they would find an opportunity in another country instead of staying here in America because those opportunities were better there. In 1 year's time that lament has proven to be too optimistic, because the challenge that confronts us will not wait until my children grow up.

When I came to Congress just 15 months ago, our national debt was $11.7 trillion. Today, it stands at $13.7 trillion. It has gone up $2 trillion in 15 months. It took this country 200 years to go $1 trillion in debt. Our interest payment on our debt service is nearly $200 billion now. At the end of the decade, when our debt will be nearly $26 trillion, that interest payment will be $900 billion.

When that interest payment is $900 billion, this government will fail. And long before that time the world markets will anticipate that and our markets will crash. This is not hyperbole; it is the truth. Not since World War II has this country faced a greater threat. Not since the Civil War has this threat come from within.

How has Congress arrived at this moment? For the past 40 years, Congress has spent more than it could afford. It has borrowed from Social Security and foreign governments, delaying making honest choices and prioritizing on what it should spend. Budgeting in Washington seems to be nothing more than adding to last year's budget. We are funding the priorities of the 1960s, 1970s, 1980s, and 1990s without any real evaluation of whether those are still good priorities and certainly not to see whether they are being done efficiently and effectively: It is as if a teenage child received not only all the gifts on their Christmas list this year but the gifts on all their Christmas lists going back to when they were three.

It is clear Congress is capable of solving this problem with business as usual. What is needed is across-the-board spending caps to right the ship. An across-the-board spending cap will necessitate oversight and require prioritization. Congress will finally have to do what businesses and families do all across this country: Make tough choices, make ends meet.

I have proposed such a cap. I have proposed going back to the 2007 level spending across the board. Was our spending in 2007 so austere that we could not live with it just 3 years later? If we did, we would balance the budget in 2013 and we would cut the national debt in half by 2020 and you would save America.

Unlike most problems that Congress addresses, this problem is uniquely solvable by Congress. Congress can't win wars. Only the brave men and women in our military, who we especially remember on this day, December 7, of all those who have served for our country in all of our wars to keep us safe and free, only those men and women can win a war. Congress cannot lead us out of recession. Only job creators and businesses can create jobs. But this problem is solely of Congress's making and uniquely solvable by this body.

What Congress should do is strengthen its oversight. The lack of oversight in Washington is breathtaking. Evaluate all Federal programs. Keep what works; fix what you should; get rid of the rest. Return the money to the people and use the rest to pay down this cataclysmic debt.

The recent work of the Debt Commission is a good start, and I commend my Senate colleagues who voted for this measure. It was courageous for them to do so.

But out-of-control spending is not just a threat because it is unsustainable; it is also changing who we are as Americans. Remember, our Founders told us that the powers delegated to the Federal Government were ''few and defined,'' the powers to the State ''numerous and indefinite,'' extending to ''all the objects which in the course of affairs, concern the lives, liberties and properties of the people.''

The current size and scope of the Federal Government is corrosive to the American spirit. The good intentions of Members of Congress to solve every real or perceived problem with a new Federal program, and the false light of praise that attaches to the giving away of the people's money, endangers our Republic. Every new program chips away at what it means to be an American, harms our spirit, and replaces our self-reliance with dependency, supplants an opportunity ethic with an entitlement culture. It is at its base un-American.

It is not the Government's role to deliver happiness. Rather, it is its role to stay clear of that path to allow our people to pursue that God-given right.

What has created our prosperity, after all, is not our government, it is our free market system of capitalism. It is through the healthy cut and thrust of the marketplace that new technologies, new jobs, and new wealth are created. Through that dynamic process some win and some lose, but it

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 district-wide 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

residents, to dealing with over $250 million in budget cuts when the economic downturn hit. Through the highs and lows, Walt Rulffes has worked to give the school district, its teachers, and students the consistency that must accompany a quality education.

The recognition of his work has gone far beyond the borders of the Silver State. Just this year, he was one of the four finalists for National Superintendent of the Year, awarded by American Association of School Administrators. In making their selection, the judges cited student achievement, his empowerment program, fiscal responsibility, and staff development in the nation's fifth largest school district. I congratulate him on this honor and appreciate all the improvements he has brought to the district.

I join with my fellow Nevadans in honoring Walt for his great work as Superintendent of Clark County Schools. ''My whole obsession in Nevada has been to increase the number and quality of our graduates,'' he once noted. For that, we will always be grateful.

DREAM ACT

Mr. CORNYN. Mr. President, I rise today to discuss the upcoming cloture vote on the motion to proceed to the DREAM Act. I have great sympathy for students brought to the United States at a very young age who have no moral culpability for being in this country in violation of our laws. I have listened to many stories about how our broken immigration system has failed these students, and I have discussed this issue with many Hispanic leaders in Texas and across the Nation.

Last week, we learned that the unemployment rate went back up to 9.8 percent in November—and more than 15 million Americans cannot find a job. In the Hispanic community, things are even worse. The unemployment rate is up to an astonishing 13.2 percent the highest rate in 27 years. And it has been above double digits every month since the stimulus bill became law in February 2009.

That's why I agree with my Republican colleagues that the only items on our agenda during this lameduck session should be time-sensitive issues focused on the economy. Those time-sensitive issues include passing a continuing resolution to keep the government running, as well as preventing the largest tax hike in U.S. history. Everything else that can wait should wait until the new Congress convenes in January.

Nevertheless, I do have sympathy with students who would benefit from the DREAM Act. And that is why I voted for a version of this legislation in the Judiciary Committee in 2003. But as I said then and continue to say today: it is important to get the details right with sensitive legislation like this.

Unfortunately, the version of the DREAM Act before us has several problems we have identified previously over the last several years. Under this version of the DREAM Act, a 30-year-old illegal immigrant with only 2 years of post-high school education would be eligible for a green card—regardless of whether he or she ever earned a degree.

Under this version of the DREAM Act, a thirty year old illegal immigrant who has been convicted of two misdemeanors would be eligible for a green card—and let's remind ourselves that many misdemeanors are not minor offenses. In many States, they include: driving under the influence; drug possession; burglary; theft; assault; and many other serious crimes. In New York, ''sexual assault of a minor in the third degree'' is a misdemeanor offense. Someone with two convictions for any of these crimes would be eligible for a green card under this legislation. And that doesn't even include people who are prosecuted for felonies—but who plead guilty to a misdemeanor as part of a plea agreement.

This version of the DREAM Act also has very weak protections against fraud. As we saw in 1986, any time we expand eligibility for an immigration benefit we will create a new opportunity for fraud if we are not careful. Yet this bill actually protects the confidentiality of a DREAM Act application—even if it contains false information.

These are just some of the problems in this version of the DREAM Act that should have been debated in the Judiciary Committee, and subject to amendment under the regular order. None of these concerns with the DREAM Act are new, by the way. Like other Senators, I have made clear for years my concerns about loopholes for convicted criminals as well as protections against fraud.

Washington's credibility is the obstacle to broader immigration reform and rushing a flawed version of the DREAM Act in a lameduck session will only weaken Washington's credibility even further.

I also believe that these tactics show a lack of respect for those of us who want to see credible immigration reform. We all know that the majority—as well as the White House—have not kept their promises on immigration reform. They clearly hope a last-minute push for the DREAM Act during a lameluck session will outweigh 2 years of inaction and broken promises on this issue. These tactics clearly represent political gamesmanship: a cynical attempt to play on the hearts and minds of those who want real reform.

I continue to believe that our Nation would benefit from the DREAM Act being introduced and debated in committee; amended to address concerns with the bill; and incorporated into a credible immigration reform package that begins with border security and can win the support of the American people.

That is the kind of approach we need—the kind of approach I hope we can get once the new Congress takes up its responsibilities in January.

TAX CUTS

Mr. CASEY. Mr. President, last weekend I voted for legislation that would extend tax cuts for all Pennsylvanians. This legislation also included a continuation of expired unemployment insurance, a series of tax incentives that have created jobs in Pennsylvania like the R&D tax credit, the biodiesel tax credit which is essential to companies like Hero BX in Erie, the new markets tax credit and the payroll tax credit known as the HIRE Act. I also voted for permanent extensions of the enhanced child tax credit and earned income tax credit and the expanded adoption tax credit that I included in the health care reform law, all of which place money back into the pockets of working people across the Commonwealth.

According to the Pennsylvania Department of Revenue, out of 6.5 million filers in the Commonwealth in 2008, 98 percent had adjusted gross income below $250,000. There is a consensus in Congress to extend tax cuts for these families. We should pass the middle income tax cuts, renew the job creation tax cuts and preserve unemployment insurance. We can then have a debate about the upper income tax breaks without using middle-income families and those laid off through no fault of their own as political bargaining chips. However, a long-term extension of tax cuts for upper income taxpayers, multimillionaires and billionaires, is not fiscally responsible for one reason: it adds hundreds of billions to the deficit without creating jobs or stimulating economic growth.

In recent months, I spoke to both business owners and economists to get their views on how Congress should handle the expiring tax provisions. What I learned is that certainty and consistency are needed when the economy is in such a fragile condition. We must reach a compromise. At most however, this might entail a short-term extension of upper income tax cuts and other ideas that could bring certainty without unduly increasing the deficit.

BOYS & GIRLS CLUBS

Mr. LEAHY. Mr. President, November and December bring with them a contagious holiday spirit. During a time when many Vermonters are struggling to feed their families and heat their homes, community members across Vermont are stepping forward to provide a helping hand to their neighbors. I am proud that Vermont takes to heart our country's great tradition of offering a helping hand to those in need.

While many of us were at home with our families this Thanksgiving, the

staff and volunteers at the Vermont Boys & Girls Clubs of America were busy organizing food donations and cooking meals for the holiday to provide hot meals to those who might not otherwise have had a Thanksgiving dinner at all. In Rutland alone, the Boys & Girls Club cooked enough food to feed 100 people, with many of the ingredients donated by local farms. In Montpelier, the Washington County Youth Service Bureau and Boys & Girls Clubs staff and volunteers prepared turkey dinners to feed homeless Vermonters and financially secure residents alike, producing a real community dinner.

In these tough economic times, community resources are vital to the well-being of all Vermonters. As these resources become scarcer, donations and volunteers become indispensible. Rutland and Montpelier are just a few examples of where Vermonters are volunteering in their communities this holiday season. I am proud to call Vermont home and to count these volunteers among my friends and neighbors. I commend them and all those who donated food for Thanksgiving meals, and I applaud all those who voluntarily step forward throughout the year to take the time to attend to the support and safety of Vermont's children and families.

I ask unanimous consent that press articles detailing the work of the Vermont Boys & Girls Clubs and volunteers be printed in the RECORD. These articles include ''Boys and Girls Club serves local Thanksgiving dinner'' published by the Rutland Herald on November 24, 2010, and ''Thanksgiving Volunteers deliver—with community spirit—in Montpelier,'' published by the Times Argus on November 26, 2010.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rutland Herald, Nov. 24, 2010]

BOYS AND GIRLS CLUB SERVES LOCAL THANKSGIVING DINNER

(By Lucia Suarez)

The Boys and Girls Club of Rutland County hosted the annual Thanksgiving dinner as part of its food program, serving traditional Thanksgiving foods using local ingredients on Tuesday. Chef Ian Vair, food coordinator for the Boys and Girls Club, used mostly local ingredients donated through the Rutland Area Farm and Food Link as part of this year's Localvore Challenge.

Radical Roots Farm, Boardman Hill Farm in West Rutland, and Clark Farm in Wells donated all the food, he said.

Vair served roasted turkey, garlic mashed potatoes, stuffing, kale au gratin (in bechamel cream sauce), butternut squash casserole and Dutch apple pie to more than 50 hungry kids and their families. ''We made enough for leftovers, enough food to feed about 100 people.'' Vair said. ''It's two days of work.''

Using the local ingredients for the dinner is part of the club's Localvore Challenge in collaboration with Sustainable Rutland. The challenge for Thanksgiving is to see how much of people's holiday dinner is from local ingredients, said Jim Sabataso, coordinator for Sustainable Rutland. Local is defined as a 100-mile radius. ''Thanksgiving is so much about the harvest,'' Sabataso said.

Thirty families have signed up for the Localvore Challenge in Rutland, Sabataso said. Using local foods is key for Vair, who tries to incorporate healthy carbohydrates and fresh vegetables to the meals he prepares at the club every day, he said. ''I try to have fresh veggies in every meal,'' Vair said. ''A lot of these kids are used to canned crap and they try fresh stuff and like it more.''

Vair said the casserole is traditionally made with sweet potatoes but he used the butternut squash because it was available locally. Twelve-year-old Chyna Cast thought the food was great, her favorite being the garlic mashed potatoes, she said. ''I think it's really good,'' Chyna said. ''Actually, I think it's amazing.''

The mashed potatoes seemed to be the biggest hit of the night. ''I can have a mountain of potatoes on my plate for Thanksgiving,'' said Brooke Nuckles, director of the Center, an outreach program for 16-to-21-year-old members.

Through the food, Vair teaches the club's youths, especially those from the ages of 16 to 21, skills about cooking and the importance of healthy eating, he said. For the Thanksgiving dinner, kids from the 6-to-15-year-old group helped chef Vair make the pies and slice the bread for the stuffing. ''It's great to see the kids, with their aprons on five nights a week in the kitchen,'' Nuckles said. ''We are so thankful to the farmers of Vermont and lucky to have access to all the food.''

[From the Times Argus, Nov. 26, 2010]

THANKSGIVING VOLUNTEERS DELIVER—WITH COMMUNITY SPIRIT—IN MONTPELIER

(By Peter Hirschfeld)

Montpelier—For 364 days a year, the Washington County Youth Service Bureau/Boys and Girls Club operates programs that bring stability to the lives of local children and teenagers. But every Thanksgiving, the organization's 40-member staff transforms into a full-service catering crew.

Since 1972, the Youth Service Bureau has cooked up one of the best-attended free dinners in the state on a holiday devoted to food. On Thursday, in the festively decorated basement of the Bethany Church in Montpelier, diners enjoyed a meal made possible by hundreds of hours of volunteer labor.

''Look at this place—it's absolutely full,'' said Montpelier City Councilor Jim Sheridan. ''Especially in these times, there's a need for something where the disabled, the disadvantaged, the needy, can come together, socialize and enjoy a good meal. It's just a wonderful thing.''

Karena LaPan, a receptionist at the Youth Service Bureau, was the organizing force behind this year's meal. More than 200 people ate turkey and all the traditional fixings at Bethany Thursday afternoon. The Youth Service Bureau delivered another 290 prepared dinners to residents across the city. ''It's unbelievable how many people are willing to donate time, money or food to making this possible,'' LaPan said ''We all get a lot of enjoyment out of it.''

Volunteers roasted about 35 turkeys this week to get ready for the event. On Wednesday, Youth Service Bureau staff spent the day in the Bethany kitchen over steaming kettles of potatoes, squash and other Thanksgiving standbys. Kreig Pinkham, executive director of the Youth Service Bureau, said the all-inclusive meal draws financially secure residents eager to break bread with neighbors, as well as more vulnerable people who wouldn't be able to afford it otherwise.

''It's a wonderful mix we get here,'' Pinkham said. ''We get the homeless population coming in as well as families who don't want to make a full meal at home. It creates a really rich environment that's satisfying to be a part of.''

Washington County Senator Bill Doyle had a full turkey leg with lots of gravy on his plate shortly after noon Thursday. It was his 12th consecutive Thanksgiving dinner at Bethany and he said that difficult economic times have made efforts like these even more important. ''You can see the difficult times reflected in the number of people here today and the enthusiasm they have for a meal like this,'' Doyle said. ''It says something about the community, this church and the Washington County Youth Service Bureau that this is available for whoever wants to come enjoy it.''

Sheridan said events like the one Thursday are part of what make him proud to live in the Capital City.

NATIONAL ALZHEIMER'S PROJECT ACT

Mr. BAYH. Mr. President, I rise today to commend members of the Senate Committee on Health, Education, Labor, and Pensions and Members of the Senate for their support of the National Alzheimer's Project Act, S. 3036. In particular, the committee was helpful in strengthening the National Alzheimer's Plan and the annual reporting requirements to Congress that include the articulation of goals, benchmarks, priorities, recommendations, and tracking outcomes.

This legislation is focused on changing the devastating trajectory of Alzheimer's disease for our families and our economy. Alzheimer's disease is a debilitating illness that affects more than 5 million Americans and their families every day. The growing number of Americans expected to be affected by this disease, which is estimated to reach up to 16 million people by 2050, will continue to place an enormous burden on families and loved ones, not to mention the serious fiscal consequences to consider if we do not act now to address this disease. If nothing is done, studies report that Alzheimer's disease will cost the United States $20 trillion over the next 40 years.

With no current plan to address Alzheimer's, this important piece of legislation would lay the foundation to coordinate all Federal Alzheimer's programs and initiatives, including research, clinical care, institutional cared home- and community-based programs. The bill also ensures that a national Alzheimer's plan will be implemented by the agencies and Congress.

This bill will leverage existing leadership to offer real solutions to the Alzheimer's crisis. The National Alzheimer's plan called for in this bill will, for the first time, articulate what outcomes the Federal Government is seeking to reduce the impact of this crisis. It would allow Congress to assess whether the Nation is meeting the challenges of the disease for families, communities, and the economy. It

would give all stakeholders an answer the fundamental question, ''Was this a good or a bad year in the fight against Alzheimer's?''

The National Alzheimer's Plan will include appropriate performance measures and benchmarks to allow legislators to evaluate progress in the fight against Alzheimer's. The assessment and priority recommendations will likely address issues such as the underinvestment in Alzheimer's research. By addressing Alzheimer's disease and dementia directly, the National Alzheimer's Plan will also call attention to the many steps that can be taken to improve recognition, diagnosis and care for people with these conditions, reduce symptom severity, support family caregivers, and encourage ''healthy brain'' behaviors that may reduce risk for these conditions.

With the leadership of the Federal Government and input from all stakeholders, including Alzheimer's patient advocates, health cafe prodders, State health departments, voluntary health associations, and researchers, this bill would allow an opportunity for all worthy entities addressing Alzheimer's, including organizations at the State and at the national level, to come together on advisory council to make recommendations and implement a national strategic plan to overcome this dreadful disease. The advisory council will also ensure buy-in, leadership, and coordination of all related Federal agencies conducting Alzheimer-related care, services, and research.

One of the principal objectives of the advisory council is to represent a broad range of expert stakeholders within the Alzheimer's community to provide input and recommendations to the Federal Government on a national strategic direction for combating Alzheimer's disease. When crafting this legislation, the sponsors were careful to include patient advocates, caregivers, and providers who serve at the front lines of Alzheimer's care and who understand on a personal level the toll of this disease on patients and their families. Additionally, sponsors of S. 3036 included representatives of State health departments and Alzheimer's researchers who have expertise regarding the impact of this disease on public health as well as the state of the science in discovering prevention methods, treatments, and cures. Lastly, sponsors sought to include national voluntary health associations on the council, who provide invaluable research, care, support services, and advocacy tools for patients, caregivers, and local organizations throughout the country. It is our intent that two national organizations have representation on the council.

The threat that Alzheimer's disease poses to the health and wellbeing of our Nation demands an aggressive and well-coordinated response. This bill creates the first-ever national plan to combat Alzheimer's and ensures that every dollar spent on the disease will be used to get the best possible care for patients. At a time when medical research funds are too scarce and we are struggling to provide quality health care for all Americans, for the first time we will be able to assess all Federal efforts related to Alzheimer's disease, ensure existing resources are maximized, enhance the delivery of quality care, and support the kind of research that will one day result in a cure for this devastating disease.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8339. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report relative to the continuation of a national emergency declared in Executive Order 13222 with respect to the lapse of the Export Administration Act of 1979; to the Committee on Banking, Housing, and Urban Affairs.

EC–8340. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Spiroxamine; Pesticide Tolerances'' (FRL No. 8850–9) received in the Office of the President of the Senate on November 30, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8341. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Metrafenone; Pesticide Tolerances'' (FRL No. 8854–6A) received in the Office of the President of the Senate on December 1, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8342. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''N,N,N',N,'-Tetrakis-(2-Hydroxypropyl) Ethylenediamine (NTHE); Exemption from the Requirement of a Tolerance'' (FRL No. 8851–8) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8343. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Polyoxyalkylated Glycerol Fatty Acid Esters; Tolerance Exemption'' (FRL No. 8852–2) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8344. A communication from the Director, National Institute of Food and Agriculture, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Establishment of New Agency; Revision of Delegations of Authority'' (RIN0524–AA63) received in the Office of the President of the Senate on December 6, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8345. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, five Selected Acquisition Reports (SARs) for the quarter ending September 30, 2010; to the Committee on Armed Services.

EC–8346. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, transmittal number: DDTC 10–113, of the proposed sale or export of defense articles, including technical data, and defense services to a Middle East country regarding any possible affects such a sale might have relating to Israel's Qualitative Military Edge over military threats to Israel; to the Committee on Armed Services.

EC–8347. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Atlanta, Georgia 1997 8-Hour Ozone Moderate Nonattainment Area'' (FRL No. 9234–2) received in the Office of the President of the Senate on November 30, 2010; to the Committee on Environment and Public Works.

EC–8348. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Georgia: Stage II Vapor Recovery'' (FRL No. 9234–4) received in the Office of the President of the Senate on November 30, 2010; to the Committee on Environment and Public Works.

EC–8349. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; North Carolina: Hickory-Morganton-Lenoir; Determination of Attaining Data for the 1997 Fine Particulate Matter Standard; Correction'' (FRL No. 9235–5) received in the Office of the President of the Senate on December 1, 2010; to the Committee on Environment and Public Works.

EC–8350. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; North Carolina: Greensboro-Winston-Salem-High Point; Determination of Attaining Data for the 1997 Fine Particulate Matter Standard; Correction'' (FRL No. 9235–4) received in the Office of the President of the Senate on December 1, 2010; to the Committee on Environment and Public Works.

EC–8351. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Addition of National Toxicology Program Carcinogens; Community Right-to-Know Toxic Chemical Release Reporting'' (FRL No. 9231–5) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8352. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards'' (FRL No. 9230–4) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8353. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution'' (FRL No. 9230–3) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8354. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Industrial Solvent Cleaning Operations; Withdrawal of Direct Final Rule'' (FRL No. 9231–9) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8355. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio Portion of the Cincinnati-Hamilton Area; 8-hour Ozone Maintenance Plan'' (FRL No. 9232–2) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8356. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Indiana; Clean Air Interstate Rule'' (FRL No. 9232–3) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8357. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Idaho'' (FRL No. 9231–1) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8358. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Oklahoma; State Implementation Plan Revisions for Interstate Transport of Pollution, Prevention of Significant Deterioration, Nonattainment New Source Review, Source Registration and Emissions Reporting and Rules of Practice and Procedure'' (FRL No. 9230–2) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8359. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Disapproval and Promulgation of Air Quality Implementation Plans; Indiana; Addition of Incentive for Regulatory Flexibility for its Environmental Stewardship Program'' (FRL No. 9231–8) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8360. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Idaho'' (FRL No. 9231–2) received in the Office of the President of the Senate on November 29, 2010; to the Committee on Environment and Public Works.

EC–8361. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards'' (FRL No. 9234–6) received in the Office of the President of the Senate on November 30, 2010; to the Committee on Environment and Public Works.

EC–8362. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Mandatory Reporting of Greenhouse Gases'' (FRL No. 9234–7) received in the Office of the President of the Senate on November 30, 2010; to the Committee on Environment and Public Works.

EC–8363. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the Department's Office of Inspector General's Semiannual Report for the period of April 1, 2010 through September 30, 2010; to the Committee on Homeland Security and Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

H.R. 2142. To require quarterly performance assessments of Government programs for purposes of assessing agency performance and improvement, and to establish agency performance improvement officers and the Performance Improvement Council.

By Mr. HARKIN, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1275. A bill to establish a National Foundation on Physical Fitness and Sports to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. MENENDEZ (for himself, Mr. LUGAR, and Mr. LEAHY):

S. 4011. A bill to establish the Western Hemisphere Drug Policy Commission; to the Committee on Foreign Relations.

By Mr. KOHL:

S. 4012. A bill to improve the employability of older Americans; to the Committee on Finance.

By Ms. KLOBUCHAR (for herself, Mr. THUNE, and Ms. STABENOW):

S. 4013. A bill to direct the Secretary of Transportation to promulgate a rule to improve the daytime and nighttime visibility of agricultural equipment that may be operated on a public road; to the Committee on Commerce, Science, and Transportation.

By Ms. CANTWELL (for herself, Mrs. MURRAY, Ms. MURKOWSKI, and Mr. BEGICH):

S. 4014. A bill to provide for the replacement or rebuilding of a vessel for the non American Fisheries Act trawl catcher processors that comprise the Amendment 80 fleet; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MCCONNELL:

S. Res. 696. A resolution making minority party appointments for certain committees for the 111th Congress; considered and agreed to.

ADDITIONAL COSPONSORS

S. 2982

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 2982, a bill to combat international violence against women and girls.

S. 3039

At the request of Mr. UDALL of New Mexico, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 3039, a bill to prevent drunk driving injuries and fatalities, and for other purposes.

S. 3797

At the request of Mrs. GILLIBRAND, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 3797, a bill to amend the Foreign Assistance Act of 1961 to provide assistance for developing countries to promote quality basic education and to establish the achievement of quality universal basic education in all developing countries as an objective of United States foreign assistance policy, and for other purposes.

S. 3881

At the request of Mr. CARDIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 3881, a bill to require the Secretary of State to identify individuals responsible for the detention, abuse, or death of Sergei Magnitsky or for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and to impose a visa ban and certain financial measures with respect to such individuals, until the Russian Federation has thoroughly investigated the death of Sergei Magnitsky and brought the Russian criminal justice system into compliance with international legal standards, and for other purposes.

S. 3919

At the request of Mr. HATCH, the names of the Senator from Utah (Mr. BENNETT) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 3919, a bill to remove the

gray wolf from the list of threatened species or the list of endangered species published under the Endangered Species Act of 1973, and for other purposes.

S. 3978

At the request of Mr. JOHNSON, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 3978, a bill to ensure that home health agencies can assign the most appropriate skilled service to make the initial assessment visit for home health services for Medicare beneficiaries requiring rehabilitation therapy under a home health plan of care, based upon physician referral.

S. 3984

At the request of Mr. REED, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 3984, a bill to amend and extend the Museum and Library Services Act, and for other purposes.

S. CON. RES. 63

At the request of Mr. JOHNSON, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Con. Res. 63, a concurrent resolution expressing the sense of Congress that Taiwan should be accorded observer status in the International Civil Aviation Organization (ICAO).

S. RES. 680

At the request of Mr. KERRY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Res. 680, a resolution supporting international tiger conservation efforts and the upcoming Global Tiger Summit in St. Petersburg, Russia.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. CANTWELL (for herself, Mrs. MURRAY, Ms. MURKOWSKI, and Mr. BEGICH):

S. 4014. A bill to provide for the replacement or rebuilding of a vessel for the non American Fisheries Act trawl catcher processors that comprise the Amendment 80 fleet; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, I rise today to introduce a technical corrections bill relating to the replacement of vessels in the Washington and Alaska non-pollock groundfish trawl catcher-processor fleet.

In Washington State, our history is based on a rich maritime tradition that contributes as much as $3 billion to the State's economy each year. There are 3,000 vessels in Washington's fishing fleet that employ 10,000 fishermen. Seafood processors employ another 3,800 Washingtonians. And fish wholesalers employ an additional 1,000 people.

Each year thousands of fishermen risk their lives on the high seas attempting to provide food for American families and for the world. All too often, however, the vessels fishermen use are old, antiquated, and sometimes even unsafe.

It's that very concern about fishing safety that moved this Congress to pass new, more stringent fishing vessel safety requirements through the Coast Guard Authorization Act of 2010, which was signed into law by President Obama on October 15 of this year.

Our work, though, is far from done.

The bill I am introducing today is designed to clarify an ambiguity in the law that some believe could prevent fishermen in the Washington and Alaska non-pollock groundfish trawl catcher-processor fleet from replacing old, unsafe vessels with new ones. The North Pacific Fishery Management Council and U.S. Department of Commerce are currently taking action to promulgate regulations that would allow vessel replacement in this fleet. The Federal Government believes it has that authority, and I agree with that conclusion. Because of ambiguity in the law, however, my colleagues and I are introducing this legislation today to erase any uncertainty or ambiguity on whether the Government has the legal authority and ability to embark on its current course of action. Congress certainly never meant to prevent the replacement of old, unsafe vessels with new or refurbished ones, and where additional clarity is sought on that question, Congress should provide it.

By adopting this bill, we can improve fishing safety by providing the legal and financial clarity necessary for these vessels to be rebuilt and replaced. In a rapidly-aging fleet that has already experienced the tragedy of ships and men lost at sea, it is the least that we owe them—the means to prevent such tragedies from happening again in the future.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the additional material was ordered to be printed in the RECORD, as follows:

S. 4014

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPLACEMENT VESSEL.

Notwithstanding any other provision of law, the Secretary of Commerce may promulgate regulations that allow for the replacement or rebuilding of a vessel qualified under subsections (a)(7) and (g)(1)(A) of section 219 of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 188 Stat. 886–891).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 696—MAKING MINORITY PARTY APPOINTMENTS FOR CERTAIN COMMITTEES FOR THE 111TH CONGRESS

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 696

Resolved, That the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Brown, Mr. Burr, Mr. Vitter, Ms. Collins, and Mr. Kirk.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS: Ms. Collins, Mr. Coburn, Mr. Brown, Mr. McCain, Mr. Voinovich, Mr. Ensign, Mr. Graham, and Mr. Kirk.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Burr, Mr. Isakson, Mr. Wicker, Mr. Johanns, Mr. Brown, Mr. Graham, and Mr. Kirk.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4735. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill S. 3991, to provide collective bargaining rights for public safety officers employed by States or their political subdivisions; which was ordered to lie on the table.

SA 4736. Mr. CARDIN (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 3454, to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table.

SA 4737. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3454, supra; which was ordered to lie on the table.

SA 4738. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3454, supra; which was ordered to lie on the table.

SA 4739. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3454, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4735. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill S. 3991, to provide collective bargaining rights for public safety officers employed by States or their political subdivisions; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. GUARANTEEING PUBLIC SAFETY AND LOCAL CONTROL OF TAXES AND SPENDING.

Notwithstanding any State law or regulation issued under section 4, no collective-bargaining obligation may be imposed on any political subdivision or any public safety agency, and no contractual provision may be imposed on any political subdivision or public safety agency, if either the principal administrative officer of such public safety agency, or the chief elected official of such political subdivision certifies that the obligation, or any provision would be contrary to the best interests of public safety; or would result in any increase in local taxes, or would result in any decrease in the level of public safety or other municipal services.

SA 4736. Mr. CARDIN (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 3454, to authorize appropriations for fiscal year 2011 for

military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title III, add the following:

SEC. 349. USE OF NONAPPROPRIATED FUND INSTRUMENTALITY ACTIVITIES OF THE UNITED STATES NAVAL ACADEMY BY THE PUBLIC.

(a) USE OF ACTIVITIES AUTHORIZED.—Section 6971 of title 10, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e), as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

''(c) USE OF ACTIVITIES BY THE PUBLIC.—(1) Except as provided in paragraph (2), the Superintendent may authorize the utilization by non-Department of Defense persons of the Naval Academy activities referred to in subsection (b), and any other nonappropriated fund instrumentalities of the Naval Academy, to the extent that the utilization of such activities or instrumentalities by such persons does not interfere with the mission of the Naval Academy.

''(2) A Naval academy activity or nonappropriated fund instrumentality may not be utilized by a person under paragraph (1) for any fund-raising activities.

''(3) Any use of a Naval Academy activity or nonappropriated fund instrumentality by a person under paragraph (1) shall be on a reimbursable basis.''.

(b) CREDITING OF REVENUE.—Subsection (e) of such section, as redesignated by subsection (a)(1) of this section, is further amended by inserting '', including any reimbursements under subsection (c),'' after ''in subsection (b)''.

(c) CONFORMING AMENDMENT.—Subsection (e) of such section, as so redesignated, is further amended by striking ''subsection (c)'' and inserting ''subsection (d)''.

SA 4737. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3454, to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title III, add the following:

SEC. 349. REPORT ON ACTIONS TO ADDRESS FORCE PROTECTION DEFICIENCIES AT THE JOINT SPECTRUM CENTER.

(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the actions taken to address vulnerabilities and other force protection deficiencies identified at the Joint Spectrum Center in the Balanced Survivability and Integrated Vulnerability Assessment (BSIVA) conducted by the Defense Threat Reduction Agency in January 2010.

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of the actions taken to address vulnerabilities and other force protection deficiencies identified at the Joint Spectrum Center in the assessment referred to in subsection (a).

(2) A listing of each action proposed in the assessment that has not been completed as of the date of the report, and, for each such action, a plan to complete such action and a schedule for the completion of such action.

(3) A description and estimate of the costs of various options to ensure adequate levels of antiterrorism protection and force protection for military personnel and civilians at the Joint Spectrum Center, including appropriate adjustments of leases and the relocation of the functions of the Joint Spectrum Center onto a military installation.

(4) A certification by the Secretary of Defense whether the antiterrorism and force protection measures undertaken at the Joint Spectrum Center, and the associated risks, are consistent with the levels of protection, and associated risks, of other Department of Defense personnel.

(5) A description of actions taken to implement the finding of the Defense Base Closure and Realignment Commission that increased military value would be realized through the relocation of the Joint Spectrum Center to Fort Meade, Maryland, including, as applicable, an explanation of the reasons such relocation has not occurred.

(6) A description of any long-term plans to relocate the Joint Spectrum Center.

SA 4738. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3454, to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XXVII, add the following:

SEC. 2704. TRANSFER OF NEW BEGINNINGS YOUTH DEVELOPMENT CENTER AS PART OF REDEVELOPMENT OF WALTER REED ARMY MEDICAL CENTER.

(a) FINDINGS.—Congress makes the following findings:

(1) The Walter Reed Army Medical Center in the District of Columbia is scheduled to close by September 15, 2011, as part of the 2005 round of defense base closure and realignment, and will be divided into three sections for transfer out of Army control.

(2) Approximately 34 acres of the Walter Reed Army Medical Center are scheduled to transfer to the Government Services Administration and approximately 18 acres are scheduled to transfer to the Department of State as part of the closure.

(3) The remaining approximately 61 acres will transfer out of Federal control via the local redevelopment authority (LRA) process.

(4) The District of Columbia Office of the Deputy Mayor for Economic Development is acting as the LRA for the Walter Reed Army Medical Center, with all actions overseen by an LRA board consisting of public officials and private citizens.

(5) The District of Columbia LRA is in the process of developing a redevelopment plan that recommends how the buildings and land at the Walter Reed Army Medical Center are to be reused. The redevelopment plan is required to be submitted to the Army for approval by December 5, 2010.

(b) TRANSFER OF NEW BEGINNINGS YOUTH DEVELOPMENT CENTER.—

(1) REQUIREMENT TO INCLUDE TRANSFER AS PART OF REDEVELOPMENT PLAN.—Not later than December 5, 2010, the Office of Deputy Mayor for Economic Development of the District of Columbia, in its capacity as the local redevelopment authority in connection with the closure of the Walter Reed Army Medical Center as part of the 2005 round of defense base closure and realignment, shall include as part of the redevelopment plan for such facility the complete transfer to the facility of the New Beginnings Youth Development Center, operated by the Department of Youth Rehabilitation Services of the District of Columbia, currently located in Laurel, Maryland.

(2) SECRETARY OF THE ARMY APPROVAL.—The Secretary of the Army may not accept or approve a redevelopment plan for the Walter Reed Army Medical Center that does not provide for the transfer described in paragraph (1).

SA 4739. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3454, to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle J of title V, add the following:

SEC. 594. EXTENSION OF DEADLINE FOR SUBMISSION OF FINAL REPORT OF MILITARY LEADERSHIP DIVERSITY COMMISSION.

Section 596(e)(1) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4478) is amended by striking ''12 months'' and inserting ''18 months''.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that on Wednesday, December 8, upon the conclusion of the impeachment trial, the Senate stand in recess subject to the call of the Chair; that upon reconvening, the Senate then resume consideration of the motion to proceed to Calendar No. 661, S. 3991, and that the time until 12:30 p.m. be equally divided and controlled between the leaders or their designees; that at 12:30 p.m., the Senate stand in recess until 3:30 p.m.; that upon reconvening at 3:30 p.m., there be an additional 30 minutes of debate, divided as specified above; further, that upon the use or yielding back of time, the Senate proceed to vote on the motion to invoke cloture on the motion to proceed to Calendar No. 661; further, if there are back-to-back votes with respect to the cloture motions, that there be 4 minutes of debate equally divided and controlled in the usual form prior to each vote.

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

EARLY HEARING DETECTION AND INTERVENTION ACT OF 2010

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to Calendar No. 673.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3199) to amend the Public Health Service Act regarding early detection, diagnosis, and treatment of hearing loss.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Early Hearing Detection and Intervention Act of 2010''.

SEC. 2. EARLY DETECTION, DIAGNOSIS, AND TREATMENT OF HEARING LOSS.

Section 399M of the Public Health Service Act (42 U.S.C. 280g–1) is amended—

*(1) in the section heading, by striking ''**INFANTS**'' and inserting ''**NEWBORNS AND INFANTS**'';*

(2) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''screening, evaluation and intervention programs and systems'' and inserting ''screening, evaluation, diagnosis, and intervention programs and systems, and to assist in the recruitment, retention, education, and training of qualified personnel and health care providers,'';

(B) by amending paragraph (1) to read as follows:

''(1) To develop and monitor the efficacy of statewide programs and systems for hearing screening of newborns and infants; prompt evaluation and diagnosis of children referred from screening programs; and appropriate educational, audiological, and medical interventions for children identified with hearing loss. Early intervention includes referral to and delivery of information and services by schools and agencies, including community, consumer, and parent-based agencies and organizations and other programs mandated by part C of the Individuals with Disabilities Education Act, which offer programs specifically designed to meet the unique language and communication needs of deaf and hard of hearing newborns, infants, toddlers, and children. Programs and systems under this paragraph shall establish and foster family-to-family support mechanisms that are critical in the first months after a child is identified with hearing loss.''; and

(C) by adding at the end the following:

''(3) Other activities may include developing efficient models to ensure that newborns and infants who are identified with a hearing loss through screening receive follow-up by a qualified health care provider, and State agencies shall be encouraged to adopt models that effectively increase the rate of occurrence of such follow-up.'';

(3) in subsection (b)(1)(A), by striking ''hearing loss screening, evaluation, and intervention programs'' and inserting ''hearing loss screening, evaluation, diagnosis, and intervention programs'';

(4) in paragraphs (2) and (3) of subsection (c), by striking the term ''hearing screening, evaluation and intervention programs'' each place such term appears and inserting ''hearing screening, evaluation, diagnosis, and intervention programs'';

(5) in subsection (e)—

(A) in paragraph (3), by striking ''ensuring that families of the child'' and all that follows and inserting ''ensuring that families of the child are provided comprehensive, consumer-oriented information about the full range of family support, training, information services, and language and communication options and are given the opportunity to consider and obtain the full range of such appropriate services, educational and program placements, and other options for their child from highly qualified providers.''; and

(B) in paragraph (6), by striking '', after rescreening,''; and

(6) in subsection (f)—

(A) in paragraph (1), by striking ''fiscal year 2002'' and inserting ''fiscal years 2011 through 2015'';

(B) in paragraph (2), by striking ''fiscal year 2002'' and inserting ''fiscal years 2011 through 2015''; and

(C) in paragraph (3), by striking ''fiscal year 2002'' and inserting ''fiscal years 2011 through 2015''.

Mr. REID. I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 3199), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

MUSEUM AND LIBRARY SERVICES ACT OF 2010

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 671.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3984) to amend and extend the Museum and Library Services Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 3984) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3984

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Museum and Library Services Act of 2010''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Museum and Library Services Act (20 U.S.C. 9101 et seq.).

TITLE I—GENERAL PROVISIONS

SEC. 101. GENERAL DEFINITIONS.

Section 202 (20 U.S.C. 9101) is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(2) by inserting after paragraph (1) the following:

''(2) DIGITAL LITERACY SKILLS.—The term 'digital literacy skills' means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.''.

SEC. 102. RESPONSIBILITIES OF DIRECTOR.

Section 204 (20 U.S.C. 9103) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) DUTIES AND POWERS.—

''(1) PRIMARY RESPONSIBILITY.—The Director shall have primary responsibility for the development and implementation of policy to ensure the availability of museum, library, and information services adequate to meet the essential information, education, research, economic, cultural, and civic needs of the people of the United States.

''(2) DUTIES.—In carrying out the responsibility described in paragraph (1), the Director shall—

''(A) advise the President, Congress, and other Federal agencies and offices on museum, library, and information services in order to ensure the creation, preservation, organization, and dissemination of knowledge;

''(B) engage Federal, State, and local governmental agencies and private entities in assessing the museum, library, and information services needs of the people of the United States, and coordinate the development of plans, policies, and activities to meet such needs effectively;

''(C) carry out programs of research and development, data collection, and financial assistance to extend and improve the museum, library, and information services of the people of the United States; and

''(D) ensure that museum, library, and information services are fully integrated into the information and education infrastructures of the United States.'';

(2) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively; and

(3) by striking subsection (e) and inserting the following:

''(e) INTERAGENCY AGREEMENTS.—The Director may—

''(1) enter into interagency agreements to promote or assist with the museum, library,

and information services-related activities of other Federal agencies, on either a reimbursable or non-reimbursable basis; and

''(2) use funds appropriated under this Act for the costs of such activities.

''(f) COORDINATION.—The Director shall ensure coordination of the policies and activities of the Institute with the policies and activities of other agencies and offices of the Federal Government having interest in and responsibilities for the improvement of museums and libraries and information services. Where appropriate, the Director shall ensure that such policies and activities are coordinated with—

''(1) activities under section 1251 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6383);

''(2) programs and activities under the Head Start Act (42 U.S.C. 9831 et seq.) (including programs and activities under subparagraphs (H)(vii) and (J)(iii) of section 641(d)(2) of such Act) (42 U.S.C. 9836(d)(2));

''(3) activities under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) (including activities under section 134(c) of such Act) (29 U.S.C. 2864(c)); and

''(4) Federal programs and activities that increase the capacity of libraries and museums to act as partners in economic and community development, education and research, improving digital literacy skills, and disseminating health information.

''(g) INTERAGENCY COLLABORATION.—The Director shall work jointly with the individuals heading relevant Federal departments and agencies, including the Secretary of Labor, the Secretary of Education, the Administrator of the Small Business Administration, the Chairman of the Federal Communications Commission, the Director of the National Science Foundation, the Secretary of Health and Human Services, the Secretary of State, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment of the Humanities, and the Director of the Office of Management and Budget, or the designees of such individuals, on—

''(1) initiatives, materials, or technology to support workforce development activities undertaken by libraries;

''(2) resource and policy approaches to eliminate barriers to fully leveraging the role of libraries and museums in supporting the early learning, literacy, lifelong learning, digital literacy, workforce development, and education needs of the people of the United States; and

''(3) initiatives, materials, or technology to support educational, cultural, historical, scientific, environmental, and other activities undertaken by museums.''.

SEC. 103. PERSONNEL.

Section 206 (20 U.S.C. 9105) is amended—

(1) by striking paragraph (2) of subsection (b) and inserting the following:

''(2) NUMBER AND COMPENSATION.—

''(A) IN GENERAL.—The number of employees appointed and compensated under paragraph (1) shall not exceed ⅕ of the number of full-time regular or professional employees of the Institute.

''(B) RATE OF COMPENSATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), the rate of basic compensation for the employees appointed and compensated under paragraph (1) may not exceed the rate prescribed for level GS–15 of the General Schedule under section 5332 of title 5, United States Code.

''(ii) EXCEPTION.—The Director may appoint not more than 3 employees under paragraph (1) at a rate of basic compensation that exceeds the rate described in clause (i) but does not exceed the rate of basic pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.''; and

(2) by adding at the end the following:

''(d) EXPERTS AND CONSULTANTS.—The Director may use experts and consultants, including panels of experts, who may be employed as authorized under section 3109 of title 5, United States Code.''.

SEC. 104. BOARD.

Section 207 (20 U.S.C. 9105a) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking subparagraph (D); and

(ii) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;

(B) in paragraph (2)—

(i) in the matter preceding clause (i) of subparagraph (A), by striking ''(1)(E)'' and inserting ''(1)(D)''; and

(ii) in the matter preceding clause (i) of subparagraph (B), by striking ''(1)(F)'' and inserting ''(1)(E)''; and

(C) in paragraph (4)—

(i) by inserting ''and'' after ''Library Services,''; and

(ii) by striking '', and the Chairman of the National Commission on Library and Information Science'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''Except as otherwise provided in this subsection, each'' and inserting ''Each''; and

(ii) by striking ''(E) or (F)'' and inserting ''(D) or (E)''; and

(B) in paragraph (2), by striking ''INITIAL BOARD APPOINTMENTS.—'' and all that follows through ''The terms of the first members'' and inserting the following: ''AUTHORITY TO ADJUST TERMS.—The terms of the members'';

(3) in subsection (d)—

(A) in paragraph (1), by striking ''relating to museum and library services, including financial assistance awarded under this title'' and inserting ''relating to museum, library, and information services''; and

(B) by striking paragraph (2) and inserting the following:

''(2) NATIONAL AWARDS AND MEDALS.—The Museum and Library Services Board shall advise the Director in awarding national awards and medals under section 209.''; and

(4) in subsection (i), by striking ''take steps to ensure that the policies and activities of the Institute are coordinated with other activities of the Federal Government'' and inserting ''coordinate the development and implementation of policies and activities as described in subsections (f) and (g) of section 204''.

SEC. 105. AWARDS AND MEDALS.

Section 209 (20 U.S.C. 9107) is amended to read as follows:

''SEC. 209. AWARDS AND MEDALS.

''The Director, with the advice of the Museum and Library Services Board, may annually award national awards and medals for library and museum services to outstanding libraries and museums that have made significant contributions in service to their communities.''.

SEC. 106. RESEARCH AND ANALYSIS.

Section 210 (20 U.S.C. 9108) is amended to read as follows:

''SEC. 210. POLICY RESEARCH, ANALYSIS, DATA COLLECTION, AND DISSEMINATION.

''(a) IN GENERAL.—The Director shall annually conduct policy research, analysis, and data collection to extend and improve the Nation's museum, library, and information services.

''(b) REQUIREMENTS.—The policy research, analysis, and data collection shall be conducted in ongoing collaboration (as determined appropriate by the Director), and in consultation, with—

''(1) State library administrative agencies;

''(2) national, State, and regional library and museum organizations; and

''(3) other relevant agencies and organizations.

''(c) OBJECTIVES.—The policy research, analysis, and data collection shall be used to—

''(1) identify national needs for and trends in museum, library, and information services;

''(2) measure and report on the impact and effectiveness of museum, library, and information services throughout the United States, including the impact of Federal programs authorized under this Act;

''(3) identify best practices; and

''(4) develop plans to improve museum, library, and information services of the United States and to strengthen national, State, local, regional, and international communications and cooperative networks.

''(d) DISSEMINATION.—Each year, the Director shall widely disseminate, as appropriate to accomplish the objectives under subsection (c), the results of the policy research, analysis, and data collection carried out under this section.

''(e) AUTHORITY TO CONTRACT.—The Director is authorized—

''(1) to enter into contracts, grants, cooperative agreements, and other arrangements with Federal agencies and other public and private organizations to carry out the objectives under subsection (c); and

''(2) to publish and disseminate, in a form determined appropriate by the Director, the reports, findings, studies, and other materials prepared under paragraph (1).

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $3,500,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.

''(2) AVAILABILITY OF FUNDS.—Sums appropriated under paragraph (1) for any fiscal year shall remain available for obligation until expended.''.

SEC. 107. HEARINGS.

Subtitle A (20 U.S.C. 9101 et seq.) is amended by adding at the end the following:

''SEC. 210B. HEARINGS.

''The Director is authorized to conduct hearings at such times and places as the Director determines appropriate for carrying out the purposes of this subtitle.''.

SEC. 108. ADMINISTRATIVE FUNDS.

Subtitle A (20 U.S.C. 9101 et seq.), as amended by section 107, is further amended by adding at the end the following:

''SEC. 210C. ADMINISTRATIVE FUNDS.

''Notwithstanding any other provision of this Act, the Director shall establish one account to be used to pay the Federal administrative costs of carrying out this Act, and not more than a total of 7 percent of the funds appropriated under sections 210(f), 214, and 275 shall be placed in such account.''.

TITLE II—LIBRARY SERVICES AND TECHNOLOGY

SEC. 201. PURPOSES.

Section 212 (20 U.S.C. 9121) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) to enhance coordination among Federal programs that relate to library and information services;'';

(2) in paragraph (2), by inserting ''continuous'' after ''promote'';

(3) in paragraph (3), by striking ''and'' after the semicolon;

(4) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

''(5) to promote literacy, education, and lifelong learning and to enhance and expand the services and resources provided by libraries, including those services and resources relating to workforce development, 21st century skills, and digital literacy skills;

''(6) to enhance the skills of the current library workforce and to recruit future professionals to the field of library and information services;

''(7) to ensure the preservation of knowledge and library collections in all formats and to enable libraries to serve their communities during disasters;

''(8) to enhance the role of libraries within the information infrastructure of the United States in order to support research, education, and innovation; and

''(9) to promote library services that provide users with access to information through national, State, local, regional, and international collaborations and networks.''.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

Section 214 (20 U.S.C. 9123) is amended—

(a) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out chapters 1, 2, and 3, $232,000,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016; and

''(2) to carry out chapter 4, $24,500,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.''; and

(b) by striking subsection (c).

SEC. 203. RESERVATIONS AND ALLOTMENTS.

Section 221(b)(3) (20 U.S.C. 9131(b)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking ''$340,000'' and inserting ''$680,000''; and

(B) by striking ''$40,000'' and inserting ''$60,000'';

(2) by striking subparagraph (C); and

(3) by redesignating subparagraph (D) as subparagraph (C).

SEC. 204. STATE PLANS.

Section 224 (20 U.S.C. 9134) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(B) after paragraph (5), by inserting the following:

''(6) describe how the State library administrative agency will work with other State agencies and offices where appropriate to coordinate resources, programs, and activities and leverage, but not replace, the Federal and State investment in—

''(A) elementary and secondary education, including coordination with the activities within the State that are supported by a grant under section 1251 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6383);

''(B) early childhood education, including coordination with—

''(i) the State's activities carried out under subsections (b)(4) and (e)(1) of section 642 of the Head Start Act (42 U.S.C. 9837); and

''(ii) the activities described in the State's strategic plan in accordance with section 642B(a)(4)(B)(i) of such Act (42 U.S.C. 9837b(a)(4)(B)(i));

''(C) workforce development, including coordination with—

''(i) the activities carried out by the State workforce investment board under section 111(d) of the Workforce Investment Act of 1998 (29 U.S.C. 2821(d)); and

''(ii) the State's one-stop delivery system established under section 134(c) of such Act (29 U.S.C. 2864(c)); and

''(D) other Federal programs and activities that relate to library services, including economic and community development and health information;''; and

(2) in subsection (e)(2), by inserting '', including through electronic means'' before the period at the end.

SEC. 205. GRANTS.

Section 231 (20 U.S.C. 9141) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting before the semicolon the following: ''in order to support such individuals' needs for education, lifelong learning, workforce development, and digital literacy skills'';

(B) in paragraph (2), by striking ''electronic networks;'' and inserting ''collaborations and networks; and'';

(C) by redesignating paragraph (2) (as amended by subparagraph (B)) as paragraph (7), and by moving such paragraph so as to appear after paragraph (6);

(D) by striking paragraph (3);

(E) by inserting after paragraph (1) the following:

''(2) establishing or enhancing electronic and other linkages and improved coordination among and between libraries and entities, as described in section 224(b)(6), for the purpose of improving the quality of and access to library and information services;

''(3)(A) providing training and professional development, including continuing education, to enhance the skills of the current library workforce and leadership, and advance the delivery of library and information services; and

''(B) enhancing efforts to recruit future professionals to the field of library and information services;'';

(F) in paragraph (5), by striking ''and'' after the semicolon;

(G) in paragraph (6), by striking the period and inserting a semicolon; and

(H) by adding at the end the following:

''(8) carrying out other activities consistent with the purposes set forth in section 212, as described in the State library administrative agency's plan.''; and

(2) by striking subsection (b) and inserting the following:

''(b) SPECIAL RULE.—Each State library administrative agency receiving funds under this chapter may apportion the funds available for the priorities described in subsection (a) as appropriate to meet the needs of the individual State.''.

SEC. 206. GRANTS, CONTRACTS, OR COOPERATIVE AGREEMENTS.

Section 262(a) (20 U.S.C. 9162(a)) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

''(1) building workforce and institutional capacity for managing the national information infrastructure and serving the information and education needs of the public;

''(2)(A) research and demonstration projects related to the improvement of libraries or the enhancement of library and information services through effective and efficient use of new technologies, including projects that enable library users to acquire digital literacy skills and that make information resources more accessible and available; and

''(B) dissemination of information derived from such projects;''; and

(2) in paragraph (3)—

(A) by striking ''digitization'' and inserting ''digitizing''; and

(B) by inserting '', including the development of national, regional, statewide, or local emergency plans that would ensure the preservation of knowledge and library collections in the event of a disaster'' before ''; and''.

SEC. 207. LAURA BUSH 21ST CENTURY LIBRARIAN PROGRAM.

Subtitle B (20 U.S.C. 9121 et seq.) is amended by adding at the end the following:

''CHAPTER 4—LAURA BUSH 21ST CENTURY LIBRARIANS

''SEC. 264. LAURA BUSH 21ST CENTURY LIBRARIAN PROGRAM.

''(a) PURPOSE.—It is the purpose of this chapter to develop a diverse workforce of librarians by—

''(1) recruiting and educating the next generation of librarians, including by encouraging middle or high school students and postsecondary students to pursue careers in library and information science;

''(2) developing faculty and library leaders, including by increasing the institutional capacity of graduate schools of library and information science; and

''(3) enhancing the training and professional development of librarians and the library workforce to meet the needs of their communities, including those needs relating to literacy and education, workforce development, lifelong learning, and digital literacy.

''(b) ACTIVITIES.—From the amounts provided under section 214(a)(2), the Director may enter into arrangements, including grants, contracts, cooperative agreements, and other forms of assistance, with libraries, library consortia and associations, institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), and other entities that the Director determines appropriate, for projects that further the purpose of this chapter, such as projects that—

''(1) increase the number of students enrolled in nationally accredited graduate library and information science programs and preparing for careers of service in libraries;

''(2) recruit future professionals, including efforts to attract promising middle school, high school, or postsecondary students to consider careers in library and information science;

''(3) develop or enhance professional development programs for librarians and the library workforce;

''(4) enhance curricula within nationally accredited graduate library and information science programs;

''(5) enhance doctoral education in order to develop faculty to educate the future generation of library professionals and develop the future generation of library leaders; and

''(6) conduct research, including research to support the successful recruitment and education of the next generation of librarians.

''(c) EVALUATION.—The Director shall establish procedures for reviewing and evaluating projects supported under this chapter.''.

SEC. 208. CONFORMING AMENDMENTS.

The National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 951 et seq.) is amended—

(1) in section 4(a) (20 U.S.C. 953(a)), by striking ''Institute of Museum Services'' and inserting ''Institute of Museum and Library Services''; and

(2) in section 9 (20 U.S.C. 958), by striking ''Institute of Museum Services'' each place the term appears and inserting ''Institute of Museum and Library Services''.

TITLE III—MUSEUM SERVICES

SEC. 301. PURPOSE.

Section 272 (20 U.S.C. 9171) is amended—

(1) in paragraph (3), by inserting ''through international, national, regional, State, and local networks and partnerships'' after ''services'';

(2) in paragraph (5), by striking ''and'' after the semicolon;

(3) in paragraph (6), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

''(7) to encourage and support museums as a part of economic development and revitalization in communities;

''(8) to ensure museums of various types and sizes in diverse geographic regions of the United States are afforded attention and support; and

''(9) to support efforts at the State level to leverage museum resources and maximize museum services.''.

SEC. 302. DEFINITIONS.

Section 273(1) (20 U.S.C. 9172(1)) is amended by inserting ''includes museums that have tangible and digital collections and'' after ''Such term''.

SEC. 303. MUSEUM SERVICES ACTIVITIES.

Section 274 (20 U.S.C. 9173) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting '', States, local governments,'' after ''with museums'';

(B) by redesignating paragraphs (5) through (10) as paragraphs (6) through (11), respectively;

(C) by striking paragraphs (3) and (4) and inserting the following:

''(3) supporting the conservation and preservation of museum collections, including efforts to—

''(A) provide optimal conditions for storage, exhibition, and use;

''(B) prepare for and respond to disasters and emergency situations;

''(C) establish endowments for conservation; and

''(D) train museum staff in collections care;

''(4) supporting efforts at the State level to leverage museum resources, including statewide assessments of museum services and needs and development of State plans to improve and maximize museum services through the State;

''(5) stimulating greater collaboration, in order to share resources and strengthen communities, among museums and—

''(A) libraries;

''(B) schools;

''(C) international, Federal, State, regional, and local agencies or organizations;

''(D) nongovernmental organizations; and

''(E) other community organizations;'';

(D) in paragraph (6) (as redesignated by subparagraph (B)), by striking ''broadcast media'' and inserting ''media, including new ways to disseminate information,''; and

(E) in paragraph (9) (as redesignated by subparagraph (B)), by striking ''at all levels,'' and inserting '', and the skills of museum staff, at all levels, and to support the development of the next generation of museum leaders and professionals,''; and

(2) in subsection (c)—

(A) by redesignating paragraph (2) as paragraph (3);

(B) by inserting after paragraph (1) the following:

''(2) GRANT DISTRIBUTION.—In awarding grants, the Director shall take into consideration the equitable distribution of grants to museums of various types and sizes and to different geographic areas of the United States''; and

(C) in paragraph (2)—

(i) in subparagraph (A), by striking ''awards''; and

(ii) in subparagraph (B), by striking '', but subsequent'' and inserting ''. Subsequent''.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

Section 275 (20 U.S.C. 9176) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GRANTS.—For the purpose of carrying out this subtitle, there are authorized to be appropriated to the Director $38,600,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 through 2016.'';

(2) by striking subsection (b);

(3) by redesignating subsection (c) as subsection (b); and

(4) by adding at the end the following:

''(c) FUNDING RULES.—Notwithstanding any other provision of this subtitle, if the amount appropriated under subsection (a) for a fiscal year is greater than the amount appropriated under such subsection for fiscal year 2011 by more than $10,000,000, then an amount of not less than 30 percent but not more than 50 percent of the increase in appropriated funds shall be available, from the funds appropriated under such subsection for the fiscal year, to enter into arrangements under section 274 to carry out the State assessments described in section 274(a)(4) and to assist States in the implementation of such plans.''.

TITLE IV—REPEAL OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE ACT

SEC. 401. REPEAL.

(a) IN GENERAL.—The National Commission on Libraries and Information Science Act (20 U.S.C. 1501 et seq.) is repealed.

(b) TRANSFER OF FUNCTIONS.—The functions that the National Commission on Libraries and Information Science exercised before the date of enactment of this Act shall be transferred to the Institute of Museum and Library Services established under section 203 of the Museum and Library Services Act (20 U.S.C. 9102).

(c) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel and the assets, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available for the functions and activities vested by law in the National Commission on Libraries and Information Science shall be transferred to the Institute of Museum and Library Services upon the date of enactment of this Act.

(d) REFERENCES.—Any reference to the National Commission on Libraries and Information Science in any Federal law, Executive Order, rule, delegation of authority, or document shall be construed to refer to the Institute of Museum and Library Services when the reference regards functions transferred under subsection (b).

TRUTH IN FUR LABELING ACT OF 2010

Mr. REID. Mr. President, I ask unanimous consent that we now discharge the Commerce Committee from further consideration of H.R. 2480 and have that matter now brought before the Senate for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2480) to improve the accuracy of fur product labeling, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (H.R. 2480) was ordered to a third reading, was read the third time, and passed.

AMENDING THE WATER RESOURCES DEVELOPMENT ACT OF 2000

Mr. REID. Mr. President, I ask unanimous consent that we proceed to H.R. 6184.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6184) to amend the Water Resources Development Act of 2000 to extend and modify the program allowing the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (H.R. 6184) was ordered to a third reading, was read the third time, and passed.

MAKING MINORITY PARTY COMMITTEE APPOINTMENTS

Mr. REID. Mr. President, I now ask unanimous consent that the Senate proceed to consideration of S. Res. 696, which was submitted earlier today.

I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 696) was agreed to, as follows:

S. RES. 696

Resolved, That the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Brown, Mr. Burr, Mr. Vitter, Ms. Collins, and Mr. Kirk.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS: Ms. Collins, Mr. Coburn, Mr. Brown, Mr. McCain, Mr. Voinovich, Mr. Ensign, Mr. Graham, and Mr. Kirk.

COMMITTEE ON VETERANS' AFFAIRS: Mr. Burr, Mr. Isakson, Mr. Wicker, Mr. Johanns, Mr. Brown, Mr. Graham, and Mr. Kirk.

ORDERS FOR WEDNESDAY, DECEMBER 8, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, December 8; that following the prayer and

the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that following any leader remarks, the Senate resume the Court of Impeachment of Judge G. Thomas Porteous, Jr.

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

PROGRAM

Mr. REID. Mr. President, Senators should be on the floor at 9:30 tomorrow morning for a mandatory live quorum to resume the impeachment proceedings. Once a quorum is established, there will be a series of up to five rollcall votes on the motions and Articles of Impeachment.

Under a previous order, the Senate will recess from 12:30 to 3:30 p.m. to allow for the Democratic caucus meeting. At 4 p.m. the Senate will proceed to a series of up to four rollcall votes.

Mr. President, it will be a courteous thing to do for all Senators for everybody to be here on time or close to it; otherwise, we are waiting around to get a quorum established.

We need to get those votes out of the way because we have a ton of votes tomorrow evening also after we do the caucuses.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate adjourn under the previous order.

There being no objection, the Senate, at 8:17 p.m., adjourned until Wednesday, December 8, 2010, at 9:30 a.m.