



Impeachment Trial of Federal Judge Raises Issue of ‘Kickbacks’

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The impeachment trial of U.S. District Judge G. Thomas Porteous Jr. is continuing before a U.S. Senate committee. Porteous, a federal judge in New Orleans, is accused of four counts of corruption. Each count is referred to as an article of impeachment.

The first article of impeachment involves [what some have described as a “kickback” scheme](#). Porteous, as a state court judge before he was named to the federal bench by President Clinton in 1994, frequently appointed lawyers from the firm of Amato & Creely as “curators” in cases. In Louisiana, curators are assigned by judges to represent civil defendants whom a plaintiff cannot locate, such as targets of home foreclosures. In exchange for these small legal assignments, the firm allegedly gave Porteous small amounts of money. This article alleges that the firm received about \$40,000 for the curatorships and paid the judge a total of about \$20,000.

The article of impeachment, notably, does not use the term “kickback,” which implies a corrupt quid pro quo payment – i.e., one made to the judge in exchange for a judicial act. The two lawyers involved, Jacob Amato and Robert Creely, who were called as prosecution witnesses in the impeachment case, testified that they gave money to the judge out of friendship, not in exchange for the curatorships.

However, it seems possible to us that Porteous could be convicted on this count without any need for the impeachment prosecutors, who are members of the House of Representatives, to prove such a direct link.

The way the article is written, Porteous is accused not of any purported kickback but of failing to disclose his “corrupt financial relationship” with the law firm when he denied a motion to recuse himself, as a U.S. district judge, from a case in which the firm



represented a party. The “scheme” is described as one in which Porteous appointed a lawyer as a curator in hundreds of cases and “thereafter requested and accepted” a portion of the curatorship fees. No quid pro quo is alleged.

This first article of impeachment also charges that Porteous continued to take money from the law firm even as a U.S. district judge – at a time, of course, when he was no longer giving out curatorships under state law. The article does not outline a reason why these payments continued even when Porteous was a federal judge. He ruled in favor of the law firm’s client without disclosing his relationship with the firm, the article alleges. Again, even when no direct quid pro quo was alleged, if Porteous was receiving thousands of dollars from the firm, he can be seen as having a statutory obligation to disclose this before ruling in the case.

The article concludes that by not making these disclosures, Porteous “deprived the Fifth Circuit Court of Appeals of critical information for its review of a petition for a writ of mandamus” that was seeking to reverse his denial of the recusal motion. His conduct, the article says, “deprived the parties and the public of the right to the honest services of his office.” Ordinary federal law is not binding in an impeachment case, but it’s interesting that under the Supreme Court’s interpretation of “honest services” fraud in the Skilling case earlier this year, a kickback scheme remains an instance of the deprivation of honest services.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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