



The Impeachment of Judge Porteous

The impeachment of Judge G. Thomas Porteous of the U.S. District Court for the Eastern District of Louisiana appeared initially to be an “open and shut” case of bad behavior, with the House of Representatives voting unanimously on four articles of impeachment.

Rep. Adam Schiff (D-Calif.), Chairman of the House Judiciary Committee Task Force on Judicial Impeachment, [seemed to think so](#): “Our investigation found that Judge Porteous participated in a pattern of corrupt conduct for years. Litigants have the right to expect a judge hearing their case will be fair and impartial, and avoid even the appearance of impropriety. Regrettably, no one can have that expectation in Judge Porteous’ courtroom.” Schiff and Rep. Bob Goodlatte (R-Va.) were named lead impeachment managers for the upcoming impeachment trial in the Senate. Goodlatte amplified Schiff’s remarks, saying, “Today’s vote marks only the second time in over 20 years that this has occurred. However, whenever evidence emerges that an individual is abusing his judicial office for his own advantage, the integrity of the entire judicial system becomes compromised.” The Senate is expected to vote on the matter before the end of the year.



Porteous’ difficulties [first went public](#) when the Department of Justice in 2007 concluded “that Judge Porteous may have violated federal and state criminal laws, [transgressed] controlling canons of judicial conduct, [and] rules of professional responsibility, and conducted himself in a manner antithetical to the constitutional standard of good behavior required of all federal judges.” But then the DOJ decided not to seek criminal charges in the case and referred it instead to the House of Representatives.

Article II, Section 4 of the Constitution says, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” Article III, Section 1 says, in part, “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior.” Since the founding of the Republic, the House of Representatives has impeached 14 federal judges and the Senate has convicted just six of them. And [only 64 times](#) has the House initiated impeachment proceedings against any



Written by [Bob Adelman](#) on September 15, 2010

federal official, including President Bill Clinton in 1998. The House impeached Clinton on two charges, perjury and obstruction of justice, but in 1999 the Senate failed to convict and remove him from office.

The four articles in the Porteous case are:

Article I: engaging in a pattern of conduct that is incompatible with the trust and confidence placed in him as a Federal judge

Article II: engaging in a longstanding pattern of corrupt conduct that demonstrates his unfitness to serve as a United States District Court Judge

Article III: knowingly and intentionally making false statements, under the penalty of perjury, related to his personal bankruptcy filing and violating a bankruptcy court order

Article IV: knowingly [making] material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation in order to obtain the office of United States District Court Judge.

All four articles passed the House [unanimously](#).

According to David O. Stewart, author of [The Summer of 1787](#) and [Impeached](#), and defense counsel in the last judicial impeachment trial back in 1989, the Senate isn't likely to be so clear in rendering its verdict. He [wrote](#) in *Huffington Post* that each of the four articles raises important constitutional questions. He says that the case against Porteous will "turn on the meaning of high crimes and misdemeanors,' a term that was archaic and poorly understood when adopted in 1787." The Senate has been inconsistent in applying this standard, being opaque about whether a crime had actually been committed or whether the defendant's conduct was impeachable or not.

Stewart points out that Article I relates to his behavior as a state judge in the 1980s, well before he became a federal judge. Although the judge's failure to recuse himself in cases where he was "on the take" from the defense attorneys was an "odious practice, it still provides a weak basis for removing him from a federal judgeship. Impeachment applies to abuse of a federal office, not of other offices."

The second article also addresses the judge's conduct during his career as a state judge, when a bail bondsman "supposedly provided benefits [to him] in return for judicial favors." Here is the Senate's dilemma, according to Stewart: "If the Senate removes Porteous for actions pre-dating his federal appointment, it risks expanding [the definition of] high crimes and misdemeanors ... [but] if it does not remove him, Porteous will hold a job he never would have received had [he been truthful during his confirmation hearings]."

The third article relates to Porteous' filing bankruptcy under a false name. As Stewart points out, "These accusations raise the question of whether a personal misstep warrants removal from office." As he reminds his readers, "In 1999, the Senate did not remove President Clinton from office even though he gave false testimony under oath about Monica Lewinsky. Perjury about his intimate life was found not worthy of removal."

Article IV is a "catch-all" article in which the House combined several charges together into one. Stewart said that in "the 1989 case involving Judge Walter L. Nixon, Jr. of Mississippi ... we challenged a [similar] catch-all article [successfully]."

In sum, then, in a case that appears on the surface at least to be a "lay-down" to convict Judge Porteous and remove him from office, a closer look reveals a much closer call.





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