

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

G. THOMAS PORTEOUS, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	
ALAN I. BARON, et. al.,)	
)	
Defendants.)	

**DECLARATION OF RICHARD W. WESTLING
IN SUPPORT OF JUDGE PORTEOUS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

I, **Richard W. Westling**, make the following declaration under penalty of perjury, and declare that:

1. I am currently serving as counsel for the Honorable G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana ("Judge Porteous") in connection with the impeachment inquiry being conducted by the Impeachment Task Force, Committee on the Judiciary, United States House of Representatives.

2. I am an attorney with the law firm Ober, Kaler, Grimes & Shriver, P.C. in Washington, D.C. and have been practicing in the area of federal criminal law for 21 years. I have previously served as a federal prosecutor for seven years, first as a Trial Attorney with the Criminal Section, Tax Division, U.S. Department of Justice and, later, as an Assistant United States Attorney for the Eastern District of Louisiana. I have been engaged primarily in the defense of federal civil and criminal federal enforcement matters since 1997.

3. I submit this declaration in support of Judge Porteous' motion for a temporary restraining order and preliminary injunctive relief.

4. In the course of my representation of Judge Porteous I have become personally familiar with the facts and circumstances of the impeachment inquiry and of Judge Porteous' testimony before the Special Investigatory Committee (the "Special Committee") of the United States Court of Appeals for the Fifth Circuit and the proceedings before the Special Committee, the Fifth Circuit Judicial Council and the Judicial Conference of the United States.

5. From approximately, 1999 through 2007, the United States Department of Justice (the "Department"), through the Public Integrity Section of the Criminal Division, conducted a

criminal investigation of Judge Porteous. The investigation concluded without the filing of criminal charges.

6. On May 18, 2007, the Department submitted a formal complaint of judicial misconduct to Edith H. Jones, Chief Judge of the United States Court of Appeals for the Fifth Circuit ("Chief Judge Jones"). The complaint letter stated that the Department had determined that it would not seek criminal charges against Judge Porteous, but that it was forwarding the evidence gathered during its investigation for possible disciplinary proceedings and, if warranted, certification for possible impeachment by Congress.

7. Based upon the complaint, Chief Judge Jones appointed the Special Committee to investigate the Department's allegations and, on October 29, 2007, a hearing was convened by the Special Committee to hear testimony and receive evidence in connection with the complaint against Judge Porteous. During that hearing, Judge Porteous was called as a witness by counsel to the Special Committee and Judge Porteous' testimony was compelled under a grant of statutory immunity pursuant to 18 U.S.C. §6002.

8. While testifying under the immunity order, Judge Porteous answered numerous questions relating to the allegations of judicial misconduct in the complaint resulting in a transcript of more than 125 pages.

9. Based upon the hearing, on November 20, 2007, the Special Committee issued a report to the Judicial Council of the Fifth Circuit concluding that Judge Porteous committed misconduct that might constitute one or more grounds for impeachment.

10. On December 20, 2007, a majority of the Judicial Council accepted and approved the Special Committee's Report and adopted its conclusion that Judge Porteous had engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution.

11. On June 17, 2008 the Judicial Conference of the United States transmitted a certificate to the Speaker of the House expressing the Conference's determination that consideration of impeachment of Judge Porteous might be warranted. On September 17, 2008, the House of Representatives of the 110th Congress passed House Resolution 1448 which provided that the Judiciary Committee shall inquire whether the House should impeach Judge Porteous.

12. On October 15, 2008 House Judiciary Chair John Conyers announced that Alan I. Baron had been hired as Special Counsel to lead an inquiry into Judge Porteous' impeachment. Representatives On January 13, 2009, the House of Representatives of the 111th Congress passed House Resolution 15 which continued the authority of House Resolution 1448 of the 110th Congress, in order to permit the work of the Impeachment Task Force to continue.

13. Since that time, defendants Alan I. Baron, Mark Dubester, and Harold Damelin have been reviewing the materials provided by the Fifth Circuit, including the Special

Committee Report, the hearing testimony, and other information. In their official capacity as counsel to the Impeachment Task Force, defendants have received the immunized testimony of Judge Porteous but have failed to implement measures designed to prevent the immunized testimony from being used against Judge Porteous, as is typical when a subsequent prosecution is brought against an individual who has provided testimony under a grant of immunity.

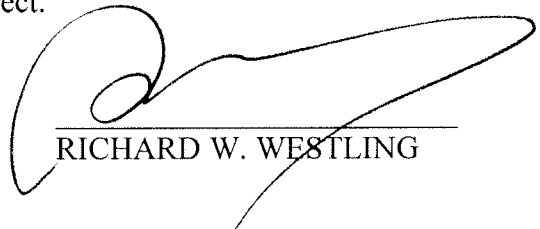
14. Defendants have reviewed the immunized testimony and made use of it in determining the course of the impeachment investigation, in interviewing witnesses, and in considering what additional evidence to seek or what investigative leads to pursue. See Letter from Irvin Nathan, General Counsel, U.S. House of Representatives, dated November 11, 2009, at page 2. (Attached).

15. Upon information and belief, defendants have published Judge Porteous' immunized testimony by exposing potential witnesses to the testimony or its contents, either through the questioning of these witnesses based upon Judge Porteous' testimony or by seeking the witnesses' reaction to his testimony.

16. This use of Judge Porteous' immunized testimony to pursue the quasi-criminal punishment of impeachment, conviction, and removal is a violation of his rights as guaranteed by the Fifth Amendment of the United States Constitution.

17. The use of this testimony has caused Judge Porteous harm and, unless Defendants' conduct is immediately enjoined, it will continue to cause Judge Porteous to suffer irreparable harm.

18. In accordance with Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct.



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November 11, 2009

Via Hand Delivery and Facsimile

Richard W. Westling, Esq.
Ober Kaler
1401 H Street, N.W., Suite 500
Washington, D.C. 20005

Re: *Impeachment Proceedings Against District Judge G. Thomas Porteous*

Dear Mr. Westling:

You have advised this office and counsel for the House Judiciary Committee that you intend to file a lawsuit later this week seeking to enjoin the use in the impeachment investigation that is under way in the House of the immunized testimony of your client, Judge G. Thomas Porteous, taken before the Special Committee for the Fifth Circuit Judicial Council in October, 2007.

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, we urge you not to file such an action, which in our view is completely without merit, is not supported by any non-frivolous argument and presumably will be filed solely to harass, cause unnecessary delay in the on-going impeachment investigation and/or needlessly increase the cost of that proceeding.

Any such suit would have to be dismissed because, under governing Supreme Court and D.C. Circuit precedents: (1) impeachment procedures are non-justiciable and do not present matters in which the courts may involve themselves; (2) the activities of the Committee staff, whom you propose to sue, are absolutely and fully protected and immunized from suit by the Speech or Debate Clause of the U.S. Constitution; and (3) impeachment proceedings are not criminal and the immunity order and the statute pursuant to which it was granted make it absolutely clear that the immunity order extends only to criminal proceedings and has no bearing on impeachment proceedings. *See Nixon v. U.S.*, 506 U.S. 224, 234 (1993); *Gravel v. U.S.*, 408 U.S. 606, 618 (1972); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975); and *Hastings v. U.S. Senate, Impeachment Trial Committee*, 716 F.Supp. 38, 41 (D.D.C.,1989).

As if these holdings were not enough, your client is barred by laches from seeking equitable relief at this time because you and your client have known since at least June,

Richard W. Westling, Esq.
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2008 that the immunized testimony was included within the materials supplied by the U.S. Judicial Conference to the House as part of its certification that an impeachment inquiry was warranted against your client. *See, e.g., Amidon v. Amidon*, 280 A.2d 82, 84 (D.C.1971). Thus, you and your client have known for more than a year that the Judiciary Committee and its staff were doing exactly what the U.S. Judicial Conference, headed by the Chief Justice of the United States intended, that is, used all of those materials, including the immunized testimony, to pursue leads, conduct examinations of witness and make requests for documents in furtherance of the investigation that the Judicial Conference suggested.

As a moment's reflection will reveal, no federal court can conclude that when the U.S. Judicial Conference sent the immunized testimony to the House to be used in the impeachment inquiry, the House or its staff were precluded in any way from using that testimony to pursue its Constitutional responsibility to consider whether impeachment was warranted. Presumably, you and the Judge understood that when you and he forbore from even suggesting that issue to the Committee or its staff for well over a year. It is apparently only now that the Committee has announced public hearings in its inquiry that you have decided to seek emergency relief to delay and disrupt those hearings. This is a part of the same pattern of attempted delay by your client that has attended the earlier judicial proceedings against him and his efforts to preclude the Committee from obtaining materials it has sought during the course of its investigation.

There is no reason that the Committee should be disrupted from its work by your proposed litigation, nor any reason that counsel for the Committee should be put to the burden and expense of litigation and the disruption of their scheduled activities. Accordingly, we urge you not to bring this action. If it is brought and dismissed, the Committee will seriously consider seeking Rule 11 sanctions against you, your law firm and your client.

Sincerely,



Iryin B. Nathan
General Counsel

cc: Hon. Adam Schiff
Hon. Bob Goodlatte
Alan Baron, Esq.
Mark Dubester, Esq.
Harry Damelin, Esq.