

## Creely's Grand Jury Testimony re: Cash Requests from Judge Porteous

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1 trial. You know, it was a jury trial. But, you  
2 know, yeah. I thought I was helping a friend out.  
3 All right. But from whatever -- from whatever the  
4 ethics, whatever it looks like, I did it. OK.

5 Q. Did you -- at the time did you consider  
6 whether that was something you would need to  
7 disclose to the other side or maybe ask the judge?

8 A. Without a date, whether it was something I  
9 decided I should do or not. I didn't do it. OK.

14 Q. Let me ask you something about the  
15 mechanics of this. When he came to you and hit you  
16 up, asked you for money, were you walking around  
17 with hundreds of dollars on you or did you have to  
18 take steps in order to get the cash?

20 you know. I probably, back 15 -- I made a fairly  
21 decent living over the years. Not recently. OK.  
22 My law partner, you know, getting cancer in 2000.  
23 And then from 2000 to this date have been some  
24 pretty sorry years. But back in those days I was  
25 making money. OK. And my law partner and I had a

## Creely's Grand Jury Testimony re: Cash Requests from Judge Porteous

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1 practice. And if you wanted to know something back  
2 in '85 or '90 I would have a record here to show  
3 you.

11 I don't remember  
12 the first time he asked me if I had money in my  
13 pocket and I handed it to him. Very well could  
14 have done that.

15 But the bottom line was, the first time he  
16 asked me for money I gave him money. And how the  
17 mechanics were about, that came about, in which I  
18 gave it to him, I gave it to him. I don't deny  
19 that.

21 continued and it continued. My question is, do you  
22 recall a pattern where you have to go to the bank  
23 if he came to you and asked for money or whether  
24 typically you just reach in your pocket and peel  
25 off some bills out of your pocket? I mean, you

## Creely's Grand Jury Testimony re: Cash Requests from Judge Porteous

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1 know, what were the patterns here?

2 A. At any time?

3 Q. Generally speaking?

14 I think sometimes I had to go cash a  
15 check, take a draw, yes. Yes, sir. I did not  
16 always have money to hand him. I would have to get  
17 -- I'd have to say, you know -- "You know, his  
18 tuition's due. He can't pay his tuition, Jake."  
19 And he'd say, "All right," you know. "How much  
20 money does he need?" And I would say five hundred  
21 or a thousand dollars, whatever. I'm just -- and I  
22 wanna try to be fair to him, OK, to whatever  
23 number. And then we'd go get a check cashed and  
24 give him the money.

Q. And then you'd be cashing. This was coming out

Judge Porteous's 5<sup>th</sup> Circuit Testimony re: Cash Received from Creely and Amato

1 Q. 19 Q. Judge Porteous, over the years, how much cash have you  
2 A.  
3 Q. 20 received from Jake Amato and Bob Creely or their law firm?  
4 you  
5 A. 21 A. I have no earthly idea.  
6 Q.

7 -- was false, correct? 7 Q. Those men or their -- and/or their firm, correct?

8 A. 9 Q. It could have been \$10,000 or more. Isn't that right?  
9  
10 whi 10 A. Again, you're asking me to speculate. I have no idea is  
11  
12 11 all I can tell you.

13 in 12 Q. When did you first start getting cash from Messrs. Amato,  
14  
15 13 Creely, or their law firm?

16  
17 Pag 14 A. Probably when I was on state bench.

18 BY  
19 Q. 15 Q. And that practice continued into 1994, when you became a  
20 rec  
21 A. 16 federal judge, did it not?

22  
23 17 A. I believe that's correct.

24 Amato, Robert Creely, C-R-E-E-L-Y, or their law firm.

25 loan.

25 BY MR. FINDER:

## Creely's 5<sup>th</sup> Circuit Testimony re: Objections to Judge Porteous's Continuing Requests for Cash

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1 but we just couldn't keep giving him money.

2 Q. Well, I understand; but I believe you remarked to us  
3 earlier that giving him money for car payments or house  
4 payments was one thing but you were concerned about whether or  
5 not it was gambling and drinking and that lifestyle. Is that  
6 an accurate statement --

7 A. Yes, sir. Yes, sir.

8 Q. -- of what you related to us?

12 I told him that I -- we could not  
13 continue giving him money, I couldn't continue giving him  
14 money.

15 Q. All right. And that's while he was still on the state  
16 bench. Is that correct?

17 A. Yes, sir.

18 Q. What happened as a result of that, between you and Judge  
19 Porteous, on the issue of giving money?

20 A. I don't think anything happened.

21 In our friendship?

22 Q. No. I'm speaking more of the curatorships.

23 A. Oh, if you're speaking about curatorships, the curators  
24 started coming to my office.

25 Q. Would you explain to the Committee what a curatorship is?

## Creely's Deposition re: Objections to Judge Porteous's Continuing Requests for Cash

7

1 of them or all of them were at private  
2 schools during that time period?

3 A. I don't recall if they were in  
4 private schools, but he had four kids and  
5 I've known him since 1972, in that range.

6 Q. And did the requests -- were they  
7 as much as \$500?

8 A. Yes.

12 A. I got tired of the requests for  
13 every request he made. I was tired of it.

13 every request he made. I was tired of it.

14 Q. But the fact is, because of your  
15 affection for him and your relationship with  
16 him, you would give him the money as he  
17 requested; is that right?

18 A. That's correct.

19 Q. Now, these were never loans, were  
20 they?

21 A. No, sir.

22 Q. And you never perceived these to  
23 be loans?

24 A. No, sir.

25 Q. If the amount was more than the

## Creely's Grand Jury Testimony re: Objections to Judge Porteous's Continuing Requests for Cash

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1 of the firm and Jake was sharing this burden?

2 A. That's correct way to put it, yes, sir.

3 Q. All right. Did this last through his

13 A. There came a time where, you know, this  
14 borrowing turned into this, as you said, burden,  
15 and that's a good word 'cause I, you know, can use  
16 many words for it. But he -- there was a time I  
17 said, you know, "I just can't keep doing this, man,  
18 I can't keep supporting your family."

16 many words for it. But he -- there was a time I  
17 said, you know, "I just can't keep doing this, man,  
18 I can't keep supporting your family." And knowing  
19 at the same time that I knew his lifestyle. He was  
20 my friend. OK. He's friend. I knew his life-  
21 style. I knew what his income was, because that's  
22 what they pay judges, like eighty something  
23 thousand dollars. I knew he had four kids. I knew  
24 they were all -- it's expensive to raise four kids  
25 at one time living in the same house. He couldn't

## Creely's Grand Jury Testimony re: Curatorships from Judge Porteous

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1 -- it would be hard for him if he had no vices, so

2 9

3 And so I told him I had to stop. I gotta  
4 stop doing this. All right.

6 -- his kids tuition or paying for his house note

7 14

8 But he  
9 started sending curatorships over to my office.

11 that -- which was extremely

12 17 All right. And he would send like two or three at  
13 a time.

14  
15  
16  
17 All right. And he would send like two or three at  
18 a time. Man, you know, where would he get these?  
19 And I began to try to think. That there's like a  
20 duty judge, all right, that's assigned, like a  
21 trial date. On Friday they rotate duty judges.  
22 And so everything that needs an order signed -- I'm  
23 sorry. I'm looking over here. I'm looking at the  
24 questions. I don't mean disrespect. The duty  
25 judge would sign the orders. All right. So the

53

1 executors, we call them, that's the way I call

6 My secretary did them, Dianne.

12 "Well, that's what we do?" He

17 afraid to run that piece of paper, OK, out of fear  
18 that it would get lost. But I have it in my  
19 computer. This is a document that goes back 12  
20 years ago. All right. And it has Bob's curators.  
21 Every curator that I've ever been given by not only  
22 him, but by the few other judges, you know, who  
23 sent me a curator. The other day somebody sent me  
24 a curator and I asked him to take it back and he  
25 wouldn't do it. I said, "I don't wanna do the

## Creely's Grand Jury Testimony re: Curatorships from Judge Porteous

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1 -- it would be hard for him if he had no vices, so  
2 to speak, to support his family. But he liked to

3  
4 7 And he then started calling and saying,  
5  
6 8 "Look. I've been sending you curators, you know.  
7  
8 9 Can you give me the money for the curators?" I  
9  
10 10 said, "Man." So I talked to my law partner. I  
11  
12 11 said, "Jake, you know, man, what do we do"? He  
13  
14 12 says, "Well, just go ahead and give it to him." We  
15  
16 13 decided to give him the money. We would deduct the  
17  
18 14 expenses. We would pay income taxes on it.  
19

20 duty judge, all right, that's assigned, like a  
21 trial date. On Friday they rotate duty judges.  
22 And so everything that needs an order signed -- I'm  
23 sorry. I'm looking over here. I'm looking at the  
24 questions. I don't mean disrespect. The duty  
25 judge would sign the orders. All right. So the

53

1 executors, we call them, that's the way I call  
2 them, didn't require a court appearance. Required

20 years ago. All right. And it has Bob's curators.  
21 Every curator that I've ever been given by not only  
22 him, but by the few other judges, you know, who  
23 sent me a curator. The other day somebody sent me  
24 a curator and I asked him to take it back and he  
25 wouldn't do it. I said, "I don't wanna do the

## Judge Porteous's 5<sup>th</sup> Circuit Testimony re: Curatorships

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1 A. I don't remember when I first started sending them.

2 Q. Do you recall calling Mr. Creely's secretary and saying,  
3 "How much have you received in curatorships" before asking for  
4 money?

5 A. I don't recall calling her. I'm not saying I've never

7 Q. Do you recall Mr. Creely refusing to pay you money before  
8 the curatorships started?

9 A. He may have said I needed to get my finances under control,  
10 yeah.

14 A. That's a speculation or opinion. I don't -- I don't know  
15 what you want to call it.

16 Q. What is your recollection in May or June of 1999 of going  
17 on a fishing trip with Mr. Amato? Do you recall going on a  
18 fishing trip?

19 A. I know I went with Jake on a trip with Mitch Mullin.

20 Q. Actually, you went on a lot of fishing trips with Amato and  
21 Creely, mainly Creely.

22 Have you heard of a place called Delacroix?

23 A. Oh, yeah, "Delacroix."

24 Q. "Delacroix." Excuse me for my mispronunciation.

25 That's property that he either owned or had a

## Judge Porteous's 5<sup>th</sup> Circuit Testimony re: Curatorships

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1 Q. Now, when you were a state judge, did you ever report any  
2 of these cash gifts on your Louisiana disclosure forms?

3 A. No. I don't think we actually received forms, but I don't  
4 remember that.

5 Q. Okay.

6 A. Whether you received a form like the federal government,  
7 where you have to fill it out, I don't believe they had  
8 reporting forms at the time. I know what the statute says, but  
9 I don't think it's like it is in federal court.

10 Q. Before you became a federal judge, you used -- as a state  
11 judge, you used to send something called "curatorships" over to  
12 the Creely-Amato firm, did you not?

13 A. And Gardner and all those, yeah.

21 Q. And after receiving curatorships, Mr. -- Messrs. Creely  
22 and/or Amato and/or their law firm would give you money,  
23 correct?

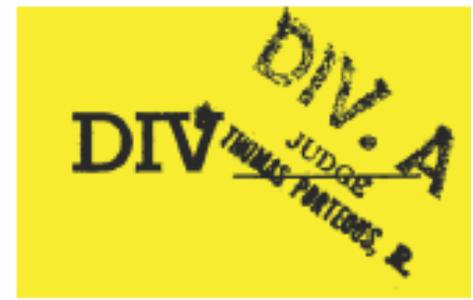
24 A. Occasionally.

22 and/or Amato and/or their law firm would give you money,  
23 correct?

24 A. Occasionally.

25 Q. You mentioned before that you read the grand jury

Nº 452464



24th JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON  
STATE OF LOUISIANA

\_\_\_\_\_  
\_\_\_\_\_

LEADER FEDERAL BANK FOR SAVINGS

vs.

*Plaintiff*

FRANCISCO J. SALMERON, SR. & SHERYL ANN BUSH, a/k/a

SHERYL ANN BUSH GERRICK

*Defendant*

\_\_\_\_\_  
\_\_\_\_\_

GEORGE B. DEAN, JR.

*Attorney for Plaintiff*

\_\_\_\_\_  
\_\_\_\_\_

*Attorney for Defendant*

Date of Filing           AUGUST 9, 1993 jff

3 1 0 1 5 0 7

STATE OF LOUISIANA \* PARISH OF JEFFERSON \* 24TH DISTRICT COURT  
LEADER FEDERAL BANK FOR SAVINGS

FILED: \_\_\_\_\_

VS. Suit #452-464-DIV A

FRANCISCO J. SALMERON, SR.

FILED FOR RECORD  
OCT 4 PM 12 30  
DEPUTY CLERK  
PARISH OF JEFFERSON, LA

**MOTION & ORDER TO APPOINT CURATOR**

On Motion of LEADER FEDERAL BANK FOR SAVINGS and on suggesting to the Court that defendants(s) is/are "absentee(s)" defined by Louisiana Code of Civil Procedure article 5251(1) because, without limitation, Plaintiff has been unable to perfect service upon defendants, Francisco J. Salmeron, Sr., despite the diligent efforts to plaintiff and the Sheriff of Jefferson Parish, Louisiana, as reflected by the Sheriff;s return on the service documents, and the whereabouts of said defendant (s) is/are unknown, and/or if dead their heirs are unknown, then therefore, an attorney at law should be appointed by this court to act as Curator ad Hoc upon whom services of legal process may be served during these procedures,

IT IS ORDERED that Robert D. Keely attorney at law, be appointed as Curator ad Hoc upon whom service of legal process may be obtained in the proceedings.

Gretna, Louisiana, this 8<sup>th</sup> day of October, 1993.

[Signature]  
JUDGE

CODED  
OCT 1  
ON MINUTE

# Curatorships Assigned to Creely by Judge Porteous

Year	Curatorships	Fee Amount	Total Dollar Amount
1988	14	\$150 or \$200	\$2,100 - \$2,800
1989	20	\$200	\$4,000
1990	34	\$200	\$6,800
1991	25	\$200	\$5,000
1992	40	\$200	\$8,000
1993	30	\$200	\$6,000
1994	28	\$200	\$5,000
No Year	2	\$200	\$400
<b>Total</b>	<b>191</b>		<b>\$37,500 - \$38,200</b>

SUPPLEMENT TO STANDARD FORM 86 (SF-86)

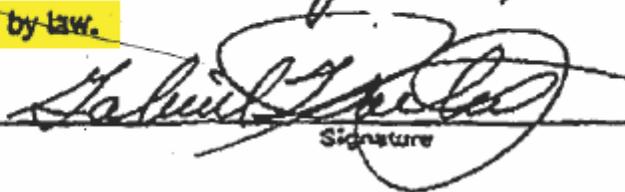
(Attach additional pages if necessary)

1S. Please list names of all corporations, firms, partnerships or other business enterprises, and all nonprofit organizations and other institutions with which you are now, or during the past five years have been, affiliated, as an officer, owner, director, trustee, partner, advisor, attorney or consultant. In addition, please provide the names of any other organizations with which you were affiliated prior to the past five years that might present a potential conflict or appearance of conflict of interest with your prospective appointment. (Please note that in

10S. 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.

NO

I understand that the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 dated April 27, 1994 and a false statement on this form is punishable by law.

  
Signature

SS. Have you ever been involved in civil or criminal litigation, or in administrative or legislative proceedings of any kind, either as a plaintiff, defendant, respondent, witness or party in interest? If so, please give full details identifying dates, issues litigated and the location where the civil action is recorded.

SEE ATTACHMENT #1

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

Office: 24th Judicial District Court  
Division "A"  
Gretna Courthouse Annex Bldg.  
2nd Floor, Room 200  
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946                      New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es)).

Carmella Ann Giardina Porteous  
Vascular Technician  
Vascular Laboratory, Inc.  
3939 Houma Blvd., Suite 20  
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Resolution: The matter was settled without any admission of liability or responsibility.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

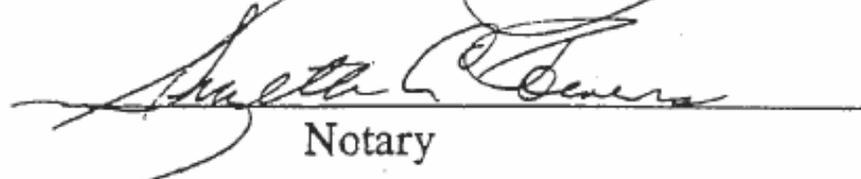
To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

**AFFIDAVIT**

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana this 6 day of September, 1994.

  
\_\_\_\_\_  
Gabriel Thomas Porteous, Jr.

  
\_\_\_\_\_  
Notary

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

SEP 19 2 49 PM '96  
CLERK

LIFEMARK HOSPITALS, INC. \*  
VERSUS \*  
LILJEBERG ENTERPRISES, INC. \*  
\* \* \* \* \*

CIVIL ACTION

NO. 93-1794 c/w  
94-3993  
94-4249  
94-2922

SECTION "T"

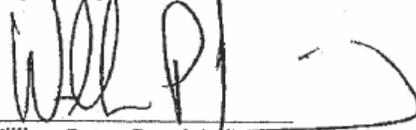
EX PARTE MOTION OF LILJEBERG ENTERPRISES, INC.  
TO SUBSTITUTE COUNSEL

NOW INTO COURT comes Liljeberg Enterprises, Inc., ("LEI") Jacob Amato, Leonard  
Levenson, William P. Connick and Stephen Wimberly, who moves this Honorable Court to allow

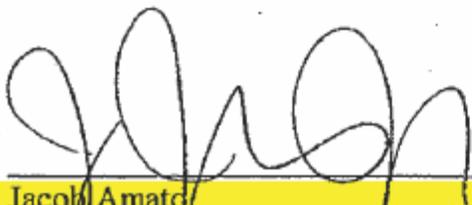
and to allow Jacob Amato and Leonard Levenson to be substituted as attorneys of record for LEI

LEI has consented to such substitution.

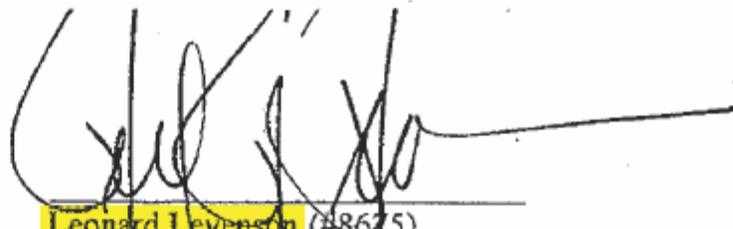
Respectfully submitted



William Peter Connick (#14158)  
Stephen Wimberly (#10985)  
CONNICK, LENTINI, WIMBERLY & deLAUP  
2551 Metairie Road  
Metairie, Louisiana 70001  
Telephone: (504) 838-8777



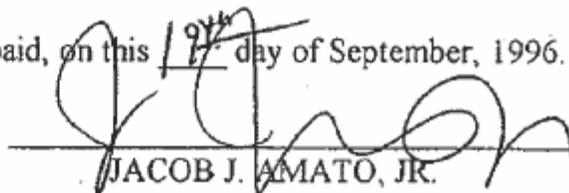
Jacob Amato  
AMATO & CREELY, P.C.  
901 Derbigny Street  
Gretna, Louisiana 70054-0441  
Telephone: (504) 367-8181



Leonard Levenson (#8675)  
Attorney at Law  
427 Graver Street  
New Orleans, Louisiana  
Telephone: (504) 586-0066

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing pleading upon Joseph N. Mole  
at 3600 Energy Center, 1100 Poydras Street, New Orleans, Louisiana, 70163, by <sup>hand</sup> placing the  
same in the United States Mail, postage prepaid, on this 17<sup>th</sup> day of September, 1996.



JACOB J. AMATO, JR.

1  
2  
3  
4  
5  
6  
7  
8

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS, LOUISIANA

LIFEMARK HOSPITALS, INC.                      Docket No. 93-179-4-"T"  
Plaintiff,  
v.    New Orleans, Louisiana  
LILJEBERG ENTERPRISES, INC.                      Defendant.

Wednesday, October 16, 1996

**PLAINTIFF'S MOTION TO RECUSE  
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.  
UNITED STATES DISTRICT JUDGE**

15  
16  
19  
20  
21  
22  
23  
24  
25

STEPHANIE MAI  
GARY RUFF, ESQ.  
1100 Poydras Street  
Suite 3600  
New Orleans, Louisiana 70163

**For the Defendant:**

Weigand, Levenson & Costa  
BY: LEONARD LEVENSON, ESQ.

**BY: LEONARD LEVENSON, ESQ.**

New Orleans, Louisiana 70130

**BY: JAKE AMATO, ESQ.**

901 Derbigny Street  
Gretna, Louisiana 70054

BY: HANS LILJEBERG, ESQ.  
1221 Elmwood Park Boulevard  
Suite 701  
Harahan, Louisiana 70123

## Hearing on the Motion to Recuse

3

1

P R O C E E D I N G S

2

MORNING SESSION

**THE COURT:**

(Wednesday, October 16, 1996)

4

THE COURT: Let's take up this next matter, which is

5

93-1794 and all consolidated cases also. This is the motion

6

filed with respect to all of the particular cases to recuse.

7

Let me dictate one thing into the record before everybody

17

A

18

lawyer who reasonably believes that the Judge before whom he

19

is appearing should not sit must raise the issue so that it

20

may be confronted and put to rest. Any other course would

21

risk undermining public confidence in our judicial system."

22

I cite that so that everyone understands that I recognize my

23

duty and obligations, and I am fully prepared to listen.

22 I cite that so that everyone understands that I recognize my

23 duty and obligations, and I am fully prepared to listen.

24 All right, go ahead.

25 MR. MOLE: I appreciate your remarks. It is not a very

# Hearing on the Motion to Recuse

4

1 easy thing to confront the federal judge with the suspicion  
2 that he probably doesn't want to hear. I am sure that in  
3 the course of trying -- I don't know you very well, Judge,  
4 and I have gotten to learn about you only through this  
5 case --

6 THE COURT: You told me the last time we graduated from  
7 Cor Jesu.

8 MR. MOLE: That's about all we have in common. What I  
9 learned about you from trying to investigate what I should  
10 do about what I have raised that you probably did read  
11 briefs and gave it some intelligent thought. So I don't  
12 want to go back through everything I have said.

13 What I would like to emphasize is mainly by what has  
14 been established in response to my motion to recuse. I have  
Levenson and Mr. Amato

**THE COURT:**

17 if anyone wants to decide whether I am a friend  
18 with Mr. Amato and Mr. Levenson, I will put that to rest for  
19 the answer is affirmative, yes. Mr. Amato and I practiced  
20 the law together probably 20-plus years ago.

24 issue at all, it is a non-issue.

25 MR. MOLE: What prompted us to file the motion is the

# Hearing on the Motion to Recuse

6  
1 it? Did he wait to see when you would hold on to the case  
2 rather than pass it on to Judge Lemon? Those are the sort  
3 of que 25

THE COURT:

4 happens forever if you be the Judge.

5 1 Amato and Mr. Levenson are friends of mine. Have I ever  
6 i  
7 c 2 been to either one of them's house? The answer is a  
8 l  
9 M 3 definitive no. Have I gone along to lunch with them? The  
10 c  
11 r 4 answer is a definitive answer yes. Have I been going to  
12 a  
13 t 5 lunch with all of the members of the bar? The answer is  
14 a  
15 a 6 yes.  
16 c

17 THE COURT: Well, the case you cite by the way involved  
18 the judge's wife. So I assume they were fairly close  
19 friends, too.

20 MR. MOLE: Probably. You don't have to stipulate.

21 THE COURT: Well, it could be a question sometimes.

22 MR. MOLE: I understand, Your Honor. I don't know what  
23 the Court wants to do with that issue, whether or not the  
24 Court wants to make a statement or accept the statement.

25 THE COURT: No, I have made the statement. Yes, Mr.

7  
1 Amato and Mr. Levenson are friends of mine. Have I ever  
2 been to either one of them's house? The answer is a  
3 definitive no. Have I gone along to lunch with them? The  
Yes, Mr.

5 lunch with all of the members of the bar? The answer is

18 THE COURT: And I also must say something for the  
19 record I think other than connecting the dots that the last  
20 status conference I had I virtually told everyone I was  
21 continuing this case. So this rush to trial that you  
22 suggest I am maintaining, I did all but connect the dots the  
23 last time.

24 MR. MOLE: Well, I understand.

25 THE COURT: The lawyers have come to this case like a

## Hearing on the Motion to Recuse

8

1 storm cloud through Louisiana. Look at the list. I ran a  
2 chaser sheet. Up until I think maybe Mr. Steeg and Mr.

15 **MR. MOLE:** The public

16 perception is that they do dine with you, travel with you,

17 that they have contributed to your campaigns.

18 **THE COURT:** Well, luckily I didn't have any campaigns.

19 So I'm interested to find out how you know that. I never

20 had any campaigns, counsel. I have never had an opponent.

16 perception is that they do dine with you, travel with you,

23 **THE COURT:** The first time I ran, 1984, I think is the

24 only time when they gave me money.

21 One time I had an opponent --

22 MR. MOLE: I had a campaign return from the --

23 THE COURT: The first time I ran, 1984, I think is the

24 only time when they gave me money.

25 MR. MOLE: 1990 is what I have.

# Hearing on the Motion to Recuse

10

1 know. Maybe it is pertinent. Maybe microscopes and maybe  
2 that's why we shouldn't have it. But, yeah, okay, it's  
3 there.

7 **THE COURT:** You haven't offended me. But don't  
8 misstate, don't come up with a document that clearly shows  
9 well in excess of \$6700 with some innuendo that that means  
10 that they gave that money to me. If you would have checked  
11 your homework, you would have found that that was a Justice  
12 for all Program for all judges in Jefferson Parish. But go  
13 ahead. I don't dispute that I received funding from  
14 lawyers.

19 sincerer than any other member of the bar, then we would be  
20 happy to have them or you dispel that. I think you have  
21 been honest with us. There is not much more I can say.  
22 THE COURT: I understand. Let me tell you, no, it is a  
23 uncomfortable position you find yourself in, counselor. You  
24 know, I have been doing this for awhile. With all candor I  
25 must admit this is the first time a motion for my recusal

# Hearing on the Motion to Recuse

17

1 not to do that. That speaks more loudly than anything I  
2 could say.

3 **THE COURT:** 1, you know the issue becomes one of, I  
4 guess the confidence of the parties, not the attorneys.  
5 Because when it is all said and done you all have been but  
6 the spokesperson for the true people in interest and that's

18 I have always taken the position that if there was ever  
19 any question in my mind that this Court should recuse itself  
20 that I would notify counsel and give them the opportunity if  
21 they wanted to ask me to get off.

15 non-jury trial, we are the trier of fact. And there is a  
16 ton of case law that says that I should charge myself  
17 according to the same way I would charge a jury.

18 I have always taken the position that if there was ever  
19 any question in my mind that this Court should recuse itself  
20 that I would notify counsel and give them the opportunity if  
21 they wanted to ask me to get off. That includes a case  
22 wherein my cousin, Billy, Billy Porteous tries a case in  
23 front of me in Gretna, and the plaintiff's lawyer is  
24 absolutely delited. And I have got to go fully explain to  
25 the jury that I never practiced with him and that they are

# Hearing on the Motion to Recuse

20

1 taking up other issues today, and I had issued an order and  
2 I am hoping everyone got a copy of it. And if they didn't,  
3 I don't know what happened. But entry no. 278 says, "Having  
4 received the plaintiff's Motion to Recuse, the Court finds  
5 it is in the best interest of justice that all motions are  
6 deferred pending resolution of the motion to recuse.

7 ~~MR. MOLE:~~ I just that.

8 **THE COURT:**

9 I don't know what to tell you all other  
than I do not believe this is a case where 28 USC 455 is

10

I don't think a well-informed individual can

11

question my impartiality in this case.

12 one of you. That's always going to be a problem if you know  
14 somebody on one side. I'm human, but I assure you I have  
15 done this long enough that it won't bother me at all.  
16 Saying no is the easiest thing. Saying zero is just a  
17 number. Whether it is worth \$140 million as you suggest, I  
18 don't know. I don't know enough about this case. I don't  
19 even know if you all know enough about this case given the  
20 rash of pleadings that go back and forth. I'm not even sure  
21 it is that complex, but it is sure being made fairly  
22 complex.

23 Now, having said all of the above, I tell you now that  
24 there is no way on this earth that I can get through any of  
25 the motions pending and have a trial date by November 4th.

## Judge Porteous's Financial Condition While Liljeberg Case is Under Advisement

<b>Year</b>	<b>Credit Card Debt</b>	<b>IRA Balance</b>
Year-End 1996	(\$44,000)	\$59,000
June 1997	(\$69,000)	\$20,000
June 1999	(\$103,000)	\$9,500
April 2000	(\$153,000)	\$12,000

## Federal Grand Jury Testimony of Judge Bodenheimer

9

10

1 bc 24 Judge Porteous was there. And he walked over and

2 ar  
3 sc 25 he said, "Congratulations kid, you know. Now, let

4 them to be honest with you. And this guy was  
5 al 1 me tell you, let me give you some pointers about

6 ch  
7 re 2 being a judge. Number one, you'll never be known

8 yo  
9 so 3 as Ronnie again. You'll be judge for the rest of,

10 re  
11 4 your life. Number two, you'll never have to buy

12  
13 to 5 lunch again OK. There will always be somebody to

14  
15 yo 6 take you to lunch. And number three, always wash

16 el  
17 7 your rear end so the attorneys have a clean place

18 Po  
19 fu 8 to kiss."

20 I really wasn't sitting very long, there was a  
21 social function. I really don't recall which one  
22 it was because we used to go to social functions  
23 three -- two, three, maybe four times a week. And  
24 Judge Porteous was there. And he walked over and  
25 he said, "Congratulations kid, you know. Now, let

20 Let me just tell you something." He says, "I know  
21 you really don't like Louis Marcotte," because  
22 Louis Marcotte -- and I hate to sound prejudice,  
23 but he had the ponytail in the back and he just  
24 looked like a Miami Vice dope dealer. And there  
25 was always rumors about him fooling around with

**Amato's Deposition re: Cash Request from Judge Porteous While  
Liljeberg Case Pending**

12

13

15           Q.     Okay.  And you previously  
16 testified that he asked you for money on  
17 that fishing trip; is that correct?

18           A.     He told me that the wedding, his  
19 son's wedding, ran over budget and that he  
20 couldn't afford it, and could I lend him,  
21 give him, somehow get him some money to help  
22 out.

23           Q.     Okay.  You don't remember the  
24 exact word he used --

25           A.     No.

24 exact word he used --

25           A.     No.

24 night, got to the dock.  I went home and

25 laid down for a couple hours, took a bath

## Amato's Deposition re: Cash Request from Judge Porteous While Liljeberg Case Pending

12

13

1 Q. -- but clearly he wanted you to  
2 provide him money, correct?

3 A. To help him, yeah.

4 Q. And the amounts of money -- now,  
5 as a result of that request, did you in fact  
6 provide him money?

7 A. Yeah.

8 Q. And the amount of money that he  
9 asked for, do you have a recollection in  
10 your own mind the approximate amount it was?

11 A. About \$2,500.

25

A. No.

25

laid down for a couple hours, took a bath

## Judge Porteous's 5<sup>th</sup> Circuit Testimony re: Cash Request to Amato While Liljeberg Case Pending

121

136

1 11 Q. Do you recall in 1999, in the summer, May, June, receiving  
2 12 \$2,000 for them?

3  
4 13 A. I've read Mr. Amato's grand jury testimony. It says we  
5  
6 14 were fishing and I made some representation that I was having  
7  
8 15 difficulties and that they loaned me some money or gave me some  
9  
10 16 money.

11  
12 \$2,000 for them?

12 with \$2,000 shortly thereafter?

13 10 Q. Well, whether or not you recall asking Mr. Amato for money  
14  
15 11 during this fishing trip, do you recall getting an envelope  
16  
17 12 with \$2,000 shortly thereafter?

18  
19 13 A. Yeah. Something seems to suggest that there may have been  
20  
21 14 an envelope. I don't remember the size of an envelope, how I  
22  
23 15 got the envelope, or anything about it.

24  
25 A. No.

25 envelope, a bank envelope, or what.

## Judge Porteous's 5<sup>th</sup> Circuit Testimony re: Cash Request to Amato While Liljeberg Case Pending

2 JUDGE LAKE: Wait a second. Is it the nature of the  
3 envelope you're disputing?

4 THE WITNESS: No. Money was received in envelope.

5 JUDGE LAKE: And had cash in it?

6 THE WITNESS: Yes, sir.

7 JUDGE LAKE: And it was from Creely and/or --

8 THE WITNESS: Amato.

9 JUDGE LAKE: -- Amato?

10 THE WITNESS: Yes.

11 JUDGE LAKE: And it was used to pay for your son's  
12 wedding?

13 THE WITNESS: To help defray the cost, yeah.

14 JUDGE LAKE: And was used --

15 THE WITNESS: They loaned -- my impression was it was  
16 a loan.

17 JUDGE LAKE: And would you dispute that the amount was  
18 \$2,000?

19 THE WITNESS: I don't have any basis to dispute it.

## Judge Porteous's 5th Circuit Testimony re: Cash Request to Amato While Liljeberg Case Pending

137

138

1 Q. Okay. Let me --

2 JUDGE LAKE: Wait a second. Is it the nature of the  
3 envelope you're disputing?

4 THE WITNESS: No. Money was received in envelope.

5 JUDGE LAKE: And had cash in it?

25 Q. Did you ever pay back the loan?

8 THE WITNESS: Amato.

1 A. No, I didn't. I declared bankruptcy in 2001; and, of  
1 course, I didn't list it.  
2

14 JUDGE LAKE: And was used --

15 THE WITNESS: They loaned -- my impression was it was  
16 a loan.

17 JUDGE LAKE: And would you dispute that the amount was  
18 \$2,000?

19 THE WITNESS: I don't have any basis to dispute it.

20 JUDGE LAKE: All right. Thank you.

21 BY MR. FINDER:

22 Q. Your impression was that it was a loan was what you just  
23 said, correct?

24 A. Yes.

25 Q. Did you ever pay back the loan?

1 A. No, I didn't. I declared bankruptcy in 2001; and, of  
2 course, I didn't list it.

3 Q. But it wasn't listed as paid --

4 A. No, it wasn't listed.

5 Q. So, did you ever pay back the loan --

8 A. No.

9 Q. Then, it was income. Is that right?

14 federal judge, you know some law --

15 A. It's income.

16 Q. -- it's income, right?

17 A. All right.

18 Q. But it was never reported on your tax returns, was it?

19 A. No, it was not.

20 Q. It was never reported on the judicial disclosure form under  
21 "Other Income," was it?

22 A. No.

23 Q. Let's talk about the bachelor party.

24 A. All right.

25 Q. In approximately May of 1999, your son Timmy was going to



<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s) G. T. Ortous C. A. Ortous	FORM BI, Page 2
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)		

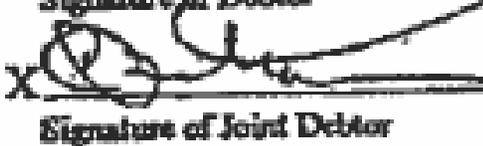
### Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7, I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

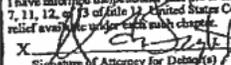
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X   
Signature of Debtor

X   
Signature of Joint Debtor

Telephone Number (If not represented by attorney):

3-24-01

Date <b>Exhibit A</b> (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.	If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. <input checked="" type="checkbox"/> Not Applicable Signature of Bankruptcy Petition Preparer Date
<b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that (he or she) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. <input checked="" type="checkbox"/>  Signature of Attorney for Debtor(s)	Date A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156. 3-28-01 Date

ing of a statutory term unless Congress explicitly rejects that meaning. See *Taylor v. United States*, 495 U.S. 575, 592, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990).

Second, the plain language of the phrase “crimes against the person” connotes conduct that is *intentionally* directed against another person—which would exclude reckless conduct with the likely effect of harming others. Here again, the definition of “crime of violence” in § 16(b), as construed in *Chapa-Garza*, provides a more suitable reference point than the Guidelines definition because § 16(b) includes only those offenses that are likely to involve the intentional use of force.

In sum, we conclude that the term “crimes against the person” should be construed in accordance with its accepted common law meaning to include only those offenses that, by their nature, are likely to involve the intentional use or threat of physical force against another person. Under this definition, Trejo’s misdemeanor convictions for driving under the influence are not “crimes against the person.” See *Chapa-Garza*, 243 F.3d at 927–28; cf. *Solem v. Helm*, 463 U.S. 277, 280, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) (noting that, for purposes of Eighth Amendment proportionality review, a “third-offense driving while intoxicated” is not “a crime against a person”). Consequently, Trejo is not eligible for an enhanced sentence of supervised release under § 1326(b)(1).

### III

Because Trejo’s three misdemeanor convictions for driving under the influence were not “crimes against the person” under § 1326(b)(1), the district court erred in sentencing Trejo to a term of supervised release in excess of the maximum term authorized for a conviction under § 1326(a). Accordingly, we VACATE Trejo’s three-year term of supervised release

and remand the case to the district court for resentencing in a manner not inconsistent with this opinion.

VACATED and REMANDED.



In the Matter of: LILJEBERG  
ENTERPRISES, INC.,  
Debtor.

Lifemark Hospitals, Inc., Appellant-  
Cross-Appellee,

v.

Liljeberg Enterprises, Inc., Appellee-  
Cross-Appellant,

Liljeberg Enterprises, Inc., Appellee-  
Cross-Appellant,

v.

Lifemark Hospitals, Inc., Appellant-  
Cross-Appellee,

Lifemark Hospitals, Inc., Appellant-  
Cross-Appellee,

v.

St. Jude Hospital of Kenner, Louisiana,  
L.L.C., Appellee-Cross-Appellant,

Liljeberg Enterprises, Inc., Appellee-  
Cross-Appellant,

v.

Lifemark Hospitals of Louisiana, Inc.;  
Lifemark Hospitals, Inc.; American  
Medical International; Tenent  
Healthcare Corporation, Appellants-  
Cross-Appellees.

No. 00-30645.

United States Court of Appeals,  
Fifth Circuit.

Aug. 28, 2002.

In consolidated proceedings involving  
Chapter 11 debtor-company which had ex-

Lifemark Hospitals, Inc. loaned money to St. Jude to build a hospital, a loan evidenced by a loan agreement and a promissory note, or hand note, in turn collateralized by the pledge of a collateral mortgage note, itself secured by a collateral mortgage on the hospital site.<sup>FN32</sup> The extraordinary

**The extraordinary duty the district court imposed upon Lifemark, who loaned the money to build the hospital and held the mortgage on it to secure its payment, is inexplicable.**

record its lien. We reject the assertion <sup>\*429</sup> that Lifemark as the mortgagee here owed a duty to its mortgagor to reinscribe the mortgage, as illustrated in part, indeed, by the very difficulty of describing exactly how not protecting a mortgage's first position, in and of itself, could possibly harm the mortgagor.

FN32. Under a later settlement in 1991, St. Jude executed a renewal note, renewing and extending the original note, and, like the original note, the renewal note was secured by the original collateral mortgage, collateral mortgage note, and pledge of the collateral mortgage note. Along with the execution of the renewal note, St. Jude provided Lifemark Hospitals, Inc. with additional security in the form of a collateral assignment of rents, which assignment was recorded.

Nor can this theory explain how it can lie beside the undisputed right of Lifemark Hospitals, Inc. to, "at any time, without notice to anyone, release any part of the Property from the effect of the Mortgage." This right of release is explicitly recited in the collateral mortgage itself. In addition, the renewal note provides that St. Jude "agree[s] to any ... release of any [of the security herefor]." The right of Lifemark to unilaterally release any part of the property from the mortgage is wholly at odds with the district court's discovery of a "duty" to reinscribe the collateral mortgage. It was Lifemark's contracted-for right to retain the collateral mortgage's priority against other creditors, under both the renewal note and the collateral mortgage itself. <sup>FN33</sup> The grant of a security interest to secure St. Jude's debt was to protect the lender, Lifemark Hospitals, Inc., not the borrower.

FN33. Cf. *Commercial Nat'l Bank in Shreveport v. Audubon Meadow P'ship*, 566 So.2d 1136, 1140-41 (La.App. 2 Cir.1990) (holding that, in light of the guaranty agreement's permitting the lending bank to surrender any securities without notice or consent from

**Nor did Lifemark as mortgagee have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did.**

Nor did Lifemark as mortgagee have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did. It is self-evident that there is a vast difference between a statutory duty to prevent loss or decay of a third party's note evidencing a debt owed to the collateral mortgagee/pledger in order to preserve against other third

**This is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth.**

out of whole cloth.

In sum, Lifemark had no duty to timely reinscribe the collateral mortgage, and the district court erred as a matter of law in concluding that Lifemark had a consequential duty to "mitigate" any harm allegedly caused by Lifemark's failure to reinscribe by buying out the Travelers lien and adding the Travelers debt to the debt owed by St. Jude to Lifemark.

[7]  As for any duties arising out of Lifemark's holding the right to basic rent under the collateral

having Lifemark Hospitals of Louisiana, Inc. purchase the hospital at the foreclosure sale. In sum, Lifemark did not owe the duties to St. Jude upon which the district court premised its order reversing the judicial sale of the hospital. The district court erred in upsetting the confirmed judicial sale on these grounds.

B.

[8]  The district court pointed to its findings of Lifemark's bad faith, collusion, and self-dealing in forcing the judicial sale of the hospital, chilling the bidding at the sale, and purchasing the hospital as an alternative ground for its upset of the judicial sale. The district court relied upon **\*431** two unpublished district court decisions setting aside a judicial sale. Both were in admiralty and prior to

**That slender reed aside, the district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from St. Jude and Liljeberg Enterprises border on the absurd. We are left with the definite and firm conviction that a mistake has been committed, that the findings are not supported by the evidence and are clearly erroneous.**

The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or St. Jude's losses were caused by Lifemark. Specifically, not reinscribing the collateral mortgage and not buying out the Travelers lien and adding the Travelers debt to the debt owed by St. Jude to Lifemark. These findings turn on the remarkable but largely implicit conclusion, asserted directly by the Liljebergs' counsel at oral argument, that, under Louisiana law, a second mortgagee, which Travelers would have been had the collateral mortgage been timely reinscribed, cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.<sup>FN38</sup>

<sup>FN38.</sup> See, e.g., *First Nat'l Bank of Gonzales v. Morton*, 544 So.2d 5 (La.App. 1 Cir.) (involving a prior successful foreclosure suit brought by a second mortgagee), writ denied, 550 So.2d 654 (La.1989); *Keys v. Box*, 476 So.2d 1141 (La.App. 3 Cir.1985) (involving a foreclosure suit brought by a bank to protect its interest as a second mortgagee); *Guinn v. Houston Fire & Cas. Ins. Co.*, 32 So.2d 613 (La.App. 1 Cir.1947) (involving a foreclosure suit instituted by a second mortgagee).

The theory that Lifemark proximately caused any loss to Liljeberg Enterprises or St. Jude from the

**These findings turn on the remarkable but largely implicit conclusion, asserted directly by the Liljebergs' counsel at oral argument, that, under Louisiana law, a second mortgagee, which Travelers would have been had the collateral mortgage been timely reinscribed, cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.<sup>FN38</sup>**

<sup>FN39.</sup> See LA. CIV.CODE art. 3333 ("A person may reinscribe a recorded document creating a mortgage or evidencing a privilege by filing with a recorder a signed, written notice of reinscription."); accord *id.* art. 3369(E) ("The effect of the registry ceases in all cases, even against the contracting parties, unless the inscriptions have been renewed within the periods of time above provided in the manner in which they were first made, or by filing a notice of reinscription of mortgage or a written request for reinscription by the mortgagee or any interested person, together with a copy of the original act of mortgage." (emphasis added)) (repealed by 1992 La. Acts 1132).

Even if we were to somehow "explain" all of this by the theory that this foreclosure was part of Lifemark's plan from the beginning, the theory cannot be squared with one large undisputed fact: Liljeberg Enterprises and St. Jude faced the Travelers lien because of Liljeberg Enterprises's and St. Jude's own failed litigation against Travelers, arising out of an independent dispute with Travelers. Any suggestion that Lifemark somehow worked that result is defied by the record. Indeed, a panel of this court described the Liljebergs' conduct\*432 involved that litigation as "as egregious and unconscionable of bad faith contractual dealings as the members of this panel can recall having encountered." FN40 The cases before us only reinforce that panel's observation. The record is clear that any losses by St. Jude and Liljeberg Enterprises were proximately caused by the Liljebergs, who defaulted to Travelers and whose post-default conduct, in part, led to the Travelers judgment and its resulting judicial mortgage and lien on the hospital. The foreclosure of this lien led to the foreclosure of the hospital that the district court order would set aside.

FN40. *Travelers Ins. Co. v. St. Jude Hosp., No. 92-9579, 21 F.3d 1107, at 2 (5th Cir. Apr. 20, 1994)* (unpublished per curiam). The panel further noted that "[t]he Liljeberg conduct to which we refer is the antithesis of that mandated in *La. Civil Code Ann. art. 1983* ('Contracts must be performed in good faith.'). and has contributed to the legal effects described in *La. Civil Code Ann. art. 1997* ('An obligor in bad faith is liable for all damages, foreseeable or not, that are a direct consequence of his failure to perform.')." *Id.* at 2 n. 3.

Indeed, despite Liljeberg Enterprises's contention on appeal that Lifemark's efforts to "circumvent" the pharmacy agreement and refusal to renew the medical office building lease caused St. Jude and Liljeberg Enterprises to experience significant shortfalls which foreclosed any possibility of paying the note on the medical office building to Travelers, the district court made no findings of fact that Lifemark's conduct was the cause of the debt to Travelers or St. Jude's inability to pay that debt, which resulted in the judicial mortgage Travelers filed encumbering the hospital property. FN41

FN41. Nor, for that matter, did the district court make findings supporting two other premises of the Liljebergs' arguments on appeal: that Lifemark intentionally or deliberately failed to reinscribe the collateral mortgage or that Lifemark engaged in any fraud on the court or fraud with regard to the judicial sale.

the idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment, *to wit*, approximately \$7.8 million, to Travelers at any judicial sale, comes close to being nonsensical. It rests upon the assertion that Louisiana law somehow obligated Lifemark to lend the money to bail the Liljebergs out of their litigation fiasco with Travelers.

once building and the hospital to Lifemark Hospitals of Louisiana, they, who earlier Lifemark conspired to manipulate the judicial sale, colluded to minimize the price offered at the judicial sale, and schemed to terminate the lease and St. Jude's right to collect rents from Lifemark.

In answer to the palpable flaws in their theories, the Liljebergs would simply expand the conspiracy. They argue that this court should consider documents from Lifemark's legal malpractice suit against their former attorneys for their attorneys' failure to reinscribe the collateral mortgage and, more specifically, in a footnote in their original brief, the Liljebergs state for the first time that they "challenge the court's denial of their motion to supplement the record with documents from the trial between Lifemark and [its former attorneys]," which "documents clearly show that Defendants and their attorneys conspired to defraud St. Jude/Liljeberg Enterprises out the hospital, the lease, and \*433 the pharmacy." It tells that this argument was not raised or briefed as a separate issue until