

Administrative Criminal Law & Procedure in the Teamsters Union: What Has Been Achieved After (Nearly) Twenty Years

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This Article is a comprehensive case study of the most important civil RICO labor racketeering case in American history, U.S. v. IBT. It provides the first empirical study of the effort by DOJ and the federal courts to purge organized crime from the IBT and to reform the union so that it will be resistant to future corruption and racketeering. Drawing on 18 years of litigation generated by the effort of court-supervised monitors to enforce the 1988 settlement, it utilizes a database of all disciplinary charges brought by and the sanctions imposed by the court-supervised monitors. This Article traces the remedial phase which has generated an immense amount of litigation right up to the present and focuses on the disciplinary (as opposed to the election) part of the remedial effort. The magnitude of this effort can hardly be exaggerated. The two remedial entities that the settlement established to enforce the consent order have expelled more than 500 officers and members from the IBT and placed some 40 IBT locals and joint councils under the international union's trusteeship. This work has been accomplished via the creation of a IBT-specific criminal justice system that has evolved into an elaborate system of procedural and substantive disciplinary law. U.S. v.

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IBT is an experiment in institution building. It may allow us to determine, or at least to knowledgeably assess, the potential and limits of civil RICO as a methodology for attacking deeply entrenched systemic criminality in powerful formal organizations.

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I.

INTRODUCTION

U.S. v. International Brotherhood of Teamsters must surely count as one of the most ambitious lawsuits in U.S. history.¹ Rudy Giuliani, then U.S. Attorney for the Southern District of New York, filed the civil Racketeer Influenced and Corrupt Organizations (RICO) suit in 1988, even after 246 members of Congress petitioned the U.S. Attorney General to stop the suit.² The complaint alleged a “devil’s pact” between organized crime and the International Brotherhood of Teamsters (IBT). It sought nothing less than fundamental reform of the world’s then-largest private sector union by purging the influence of organized crime and establishing democratic processes that would make the union resistant to future corruption and racketeering.³ The parties’ settlement, negotiated shortly thereafter,⁴ was embodied in a federal court consent order; the order’s enforcement continues to this day (fall 2007).⁵

At the time the civil RICO suit was filed, the union had a total membership of approximately 1.5 million, organized into 615 local unions,

1. JAMES B. JACOBS, CHRISTOPHER PANARELLA & JAY WORTHINGTON, *BUSTING THE MOB: UNITED STATES V. COSA NOSTRA* 167 (1994).

2. See KENNETH C. CROWE, *COLLISION: HOW THE RANK AND FILE TOOK BACK THE TEAMSTERS* 74 (1993).

3. Government’s Memorandum of Law in Support of its Motion for Preliminary Relief at 9, *United States v. Int’l Bhd. of Teamsters*, No. 88 Civ. 4486 (S.D.N.Y. June 28, 1988) [hereinafter *Government’s Memorandum*].

4. Order, *United States v. Int’l Bhd. of Teamsters*, No. 88 Civ. 4486 (S.D.N.Y.) (Mar. 14, 1989), available at <http://www.irbcases.org/pdfs/ConsentDecree.pdf> [hereinafter *Consent Order*].

5. For criticism of the IRB’s indefinite term, see Andrew B. Dean, Note, *An Offer the Teamsters Couldn’t Refuse: The 1989 Consent Decree Establishing Federal Oversight and Ending Mechanisms*, 100 COLUM. L. REV. 2157 (2000).

44 joint councils, and five area conferences.⁶ According to its constitution, the IBT international union is governed by a general president, a general secretary-treasurer, who serves as chief financial officer, and sixteen international vice presidents. These officials comprise the General Executive Board, which has governing and disciplinary authority over all Teamsters affiliates and members.⁷

Corruption in the Teamsters dates back to the beginning of the century. By the 1950s, the Italian-American Mafia's infiltration of the Teamsters was notorious. La Cosa Nostra (LCN) figures such as John "Johnny Dio" Dioguardi and Anthony "Tony Pro" Provenzano controlled powerful Teamsters locals and, at the same time, served as international union officers.⁸ Jimmy Hoffa's alliance with mobsters who supported his march to the general presidency has been well documented.⁹ In 1957, the AFL-CIO expelled the Teamsters for failing to deal with pervasive corruption illuminated in the nationally televised Senate McClellan Committee hearings.¹⁰ From Hoffa's ascension to the presidency in 1958 until the

6. See CROWE, *supra* note 2, at 267-68. Today, there are approximately 568 Teamsters locals. See Dean, *infra* note 8, at 2161 n.22.

7. Constitution of the Int'l Bhd. of Teamsters, arts. VI, VII, IX, available at <http://www.teamster.org/about/const/constitutiontoc.htm> [hereinafter IBT Constitution]. The current General Executive Board includes twenty-two international vice presidents and three international trustees who serve as watchdogs over the union's finances. The IBT started in 1903 by representing drivers of horse-drawn carriages. With the advent of the motorcar and truck, the Teamsters' core membership was freight truck drivers. By 1988, the Teamsters represented warehouse workers, trade show and film workers, carters, construction workers, brewers, airline pilots, secretaries, private security guards, police officers, and many other workers. For a comprehensive history of the early years of the Teamsters, see generally STIER, ANDERSON, & MALONE, LLC, TEAMSTERS: PERCEPTION AND REALITY (2002); DAVID WITWER, CORRUPTION AND REFORM IN THE TEAMSTERS UNION (2003).

8. See JAMES B. JACOBS, MOBSTERS, UNIONS AND FEDS: THE MAFIA AND THE AMERICAN LABOR MOVEMENT 32, 62-63 (2006). For a discussion of the civil RICO litigation against Tony Provenzano's local, IBT Local 560, see JACOBS, PANARELLA & WORTHINGTON, *supra* note 1, at 31-78. The Mafia is often and mistakenly referred to as "La Cosa Nostra." In fact, Joseph Valachi first revealed that members of Italian-American organized crime families referred to their organization as "Cosa Nostra," or "our thing." See JACOBS, MOBSTERS, UNIONS AND FEDS, *supra* at xi. Reporters, and perhaps the FBI, erroneously began calling it "La Cosa Nostra" or "The Our Thing." While this is not grammatically correct, Italian-American organized crime is so often referred to as "LCN" that we use these initials throughout this Article. Cf. Note, Andrew B. Dean, *An Offer the Teamsters Couldn't Refuse: The 1989 Consent Decree Establishing Federal Oversight and Ending Mechanisms*, 100 COLUM. L. REV. 2157, 2158 n.9 (2000).

9. See, e.g., WALTER SHERIDAN, THE FALL AND RISE OF JIMMY HOFFA (1978).

10. WITWER, *supra* note 7, at 225. The American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO) merged in 1955 to become the preeminent umbrella labor federation in the United States and Canada. The AFL-CIO imposed on its affiliated unions a no-raiding rule, meaning that once an AFL-CIO affiliated union won a representational election, no other AFL-CIO affiliated union could subsequently seek to represent those workers. JACOBS, *supra* note 8, at 82-83, 88-89. Presumably, this rule has been defended on the ground that it is wasteful for unions to spend resources fighting with one another about which union will represent a given group of workers. The Teamsters reaffiliated with the AFL-CIO in 1987, when the RICO complaint was rumored to be imminent. See CROWE, *supra* note 2, at 73-74. The Teamsters disaffiliated from the AFL-CIO in 2005, and joined the Change to Win coalition, whose member unions are free to compete with unions affiliated with AFL-

election of Ron Carey in 1991, LCN bosses played a significant role in selecting every IBT general president and most regional conference chairs.¹¹ The mob was also deeply entrenched in the IBT's Central States Pension and Welfare Fund, the largest such fund in the country.¹²

The organized crime bosses controlled Frank Fitzsimmons, Hoffa's successor, even more firmly than they had controlled Hoffa, explaining why the mob assassinated Hoffa in 1975 when he sought to regain the general presidency upon release from prison.¹³ The U.S. Department of Labor (DOL) sued Fitzsimmons for irregularities in the administration of the IBT Central States Pension and Welfare Plans in 1976, and eventually achieved a trusteeship over these funds. Fitzsimmons died in office in 1981.¹⁴ His successor, Roy Williams, became a cooperating government witness after being convicted of conspiring to bribe Senator Howard W. Cannon (D-Nevada) to vote against legislation deregulating interstate trucking. Williams provided the government with extraordinary information about the breadth and depth of LCN's influence in the Teamsters. According to Williams, organized crime had a presence in every large Teamsters local.¹⁵ Williams's successor was Jackie Presser, the son of notorious Cleveland organized crime figure and labor racketeer William "Big Bill" Presser, who exerted much influence in the IBT's Central States Pension and Welfare Funds. Jackie himself was simultaneously an organized crime ally and an FBI informant.¹⁶ After Presser died in 1988, William McCarthy, also with the support of organized crime, became general president. One month later, Giuliani filed the civil RICO suit.¹⁷

CIO. Thomas B. Edsall, *Two Top Unions Split from AFL-CIO; Others Are Expected to Follow Teamsters*, WASH. POST, July 25, 2005, at A01.

11. For a history of racketeering, corruption, and organized crime in the Teamsters, see DAN LA BOTZ, *RANK AND FILE REBELLION 114-40* (1990) and PRESIDENT'S COMM'N ON ORGANIZED CRIME, *THE EDGE: ORGANIZED CRIME, BUSINESS, AND LABOR UNIONS: REPORT TO THE PRESIDENT AND THE ATTORNEY GENERAL 88-138* (1986) [hereinafter PCOC].

12. PCOC, *supra* note 11, at 91-93, 95, 98-101 & n.10, 119-20. The Fund, which provides benefits to many Teamsters members including those employed by United Parcel Service (UPS), has its own history of corruption. See Mary Williams Walsh, *Teamsters Find Pensions at Risk*, N.Y. TIMES, Nov. 15, 2004, at A1.

13. LESTER VELIE, *DESPERATE BARGAIN: WHY JIMMY HOFFA HAD TO DIE* (1977); CHARLES BRANDT, "I HEARD YOU PAINT HOUSES": FRANK "THE IRISHMAN" SHEERAN & CLOSING THE CASE ON JIMMY HOFFA (2005).

14. CROWE, *supra* note 2, at 59, 275.

15. PCOC, *supra* note 11, at 89 (quoting Deposition of Roy L. Williams by the President's Commission on Organized Crime, Sept. 13, 1985).

16. For Presser's connections to organized crime and his status as an FBI informant, see JAMES NEFF, *MOBBED UP: JACKIE PRESSER'S HIGH-WIRE LIFE IN THE TEAMSTERS, THE MAFIA AND THE FBI* (1989).

17. For instance, McCarthy's running mate for general secretary-treasurer needed to obtain the support of several organized crime figures. See LA BOTZ, *supra* note 11, at 318-20.

The civil RICO suit named General President McCarthy and the General Executive Board and its members as defendants.¹⁸ It also named as defendants twenty-six LCN members and bosses, and the LCN "Commission," a ruling body comprised of the bosses of the most powerful LCN crime families. Essentially the complaint charged that the defendants had violated RICO by: (1) seizing an interest in, and (2) conducting the affairs of, an enterprise (the Teamsters) through a pattern of racketeering activity that included mail fraud, embezzlement, bribery and wire fraud. The suit asked federal district court Judge David Edelstein¹⁹ to appoint a trustee who, for a time, would exercise all the powers of general president and General Executive Board. However, the parties produced a settlement, embodied in a consent order, that provided for a court-appointed independent administrator and two other officers (an investigations officer and an elections officer) who would serve until the completion of the 1991 national election. At that point, the government and the Teamsters would jointly appoint a three-person Independent Review Board (IRB) to take over the investigative and disciplinary functions. The elections officer would supervise the 1991 and 1996 elections.

This Article focuses on the work of the independent administrator and the three-person IRB, the two successive entities responsible for implementing the disciplinary portions of the settlement. We devote most attention to the IRB, because its ongoing tenure has spanned fifteen years, whereas the independent administrator's tenure spanned just three years. However, both remedial entities are separate parts of a single and unparalleled government-initiated and court-supervised organizational reform effort.

Eighteen years ago, the consent order established a Teamsters-specific system of disciplinary justice: a system operating under the supervisory authority of the local federal district court (S.D.N.Y.). The independent administrator and then the IRB were to enforce the negotiated settlement by punishing Teamsters members who violated the IBT constitution and

18. Complaint at ¶¶ 4-52, *United States v. Int'l Bhd. of Teamsters*, 88 Civ. No. 4486 (S.D.N.Y. June 28, 1988) [hereinafter Complaint].

19. Judge Edelstein's assignment apparently was part of Rudy Giuliani's strategy. Before the Teamsters case was filed, the U.S. Attorney filed criminal and civil RICO actions against Local 804 Secretary-Treasurer John F. Long and Local 808 Secretary-Treasurer John S. Mahoney, Jr. See generally *United States v. Long*, 697 F. Supp. 651 (S.D.N.Y. 1988) (denying recusal and other motions). Giuliani's team designated the Teamsters case as related to *Long*, thereby ensuring that it would be assigned to Judge Edelstein. *United States v. Int'l Bhd. of Teamsters*, 697 F. Supp. 710, 711 (S.D.N.Y. 1988) [hereinafter *Due Process Counterclaim*]. Edelstein was experienced in protracted litigation, having been assigned the government's antitrust case against IBM in 1952. That case resulted in a consent order that remained on Judge Edelstein's calendar when he received the Teamsters case in 1988. *Obituary: David Edelstein: Judge Who Tackled the Teamsters*, *GUARDIAN* (LONDON), Aug. 30, 2000, at 18. The Second Circuit required Judge Edelstein to recuse himself from the IBM case in 1995. *In re IBM Corp.*, 45 F.3d 641 (2d Cir. 1995).

bylaws, federal labor law, and the consent order itself.²⁰ The independent administrator's and IRB's decisions, as affirmed and modified by federal district and circuit courts, generated complex, substantive and procedural criminal-law-like precedents. Their decisions have led to the expulsion of more than 500 union officers and members, and to the placement under international trusteeship of more than forty Teamsters locals. The independent administrator and IRB have issued hundreds of opinions, each of which has been reviewed and almost always affirmed by the district court; the Second Circuit Court of Appeals has rendered dozens of opinions, again almost always affirming the independent administrator, IRB, and district court.

The work of the independent administrator and IRB has been controversial. Following the 1989 settlement, General President McCarthy and other IBT officers had a change of heart, vigorously opposing important parts of the settlement and many of the independent administrator's decisions. Indeed, the whole remedial structure might have collapsed had it not been for Judge Edelstein's steadfast determination to enforce the spirit as well as the letter of the consent order. Both the IBT and the AFL-CIO have criticized the IRB for infringing the autonomy of the labor movement and for wasting union funds.²¹ The Teamsters' current general president, James P. Hoffa, Jr., made termination of the IRB a frequently reiterated goal.²²

The time is ripe to document and analyze the complex legal and criminological history of the most important civil RICO union lawsuit of all time, and one of the most important reform litigations in U.S. history. Future generations may want to consider whether this remedial initiative could serve as a basis for other types of organizational reform. Criminal justice personnel and political figures in other countries may want consider

20. Consent Order, *supra* note 4.

21. *Federal Government's Use of Trusteeships Under the RICO Statute: Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 101st Cong. 593 (1989) [hereinafter 1989 RICO Hearings] (statement of James Grady, IBT General Counsel); David Moberg, *Reforming the Teamsters*, THE NATION, Sept. 2, 2002, at 30.

22. *Evans, Novak, Hunt & Shields* (CNN television broadcast Aug. 11, 2001) (Interview with James Hoffa, Jr., IBT General President) ("We are working very hard to make sure that we make a case. We created . . . a standard of ethics in the union. We've cleaned up the union. This has been going on 12 years and cost our members over \$100 million. It's time for the government to move out. We've created programs where the union is clean, and it's time for us to get out from under government supervision. We're going to keep doing that. We're going to keep pressing that. And we're going to talk to everybody we can to make sure that happens.") James P. Hoffa is the son of James Riddle "Jimmy" Hoffa. He first sought the IBT general presidency in 1991, but the elections officer ruled that he was ineligible to run because he was not a Teamsters member. He later became eligible for the IBT 1996 international election. CROWE, *supra* note 2, at 168. Ron Carey defeated him, but the elections officer voided the election and the IRB subsequently expelled Carey from the union on account of campaign finance violations. In the 1998 rerun election, Hoffa was victorious. He was reelected in 2001 and again in 2006. JACOBS, *supra* note 8, at 210. For background on the 1991 election, see generally CROWE, *supra* note 2.

the advantages and disadvantages of this remedial strategy for reforming organizations corrupted by organized crime groups. This Article focuses on the independent administrator and IRB, whose work is the crux of the reform effort. Part II explains the civil RICO complaint, the consent order and the remedial litigation that confirmed and defined the independent administrator's authority. Part III describes the IRB's organization and procedures for investigating, bringing, and resolving disciplinary charges against Teamsters officers and members. Part IV analyzes the independent administrator's and IRB's substantive jurisprudence, or the "substantive law" at the heart of the disciplinary enforcement. Part V presents empirical data on the extent of the independent administrator's and IRB's enforcement efforts since 1989. Part VI offers conclusions about this unprecedented effort by the Department of Justice, the federal courts, and a slew of court-supervised officers, to fundamentally reform the Teamsters.

II.

EARLY HISTORY OF THE CASE

A. *The Complaint*

On June 28, 1988, Rudy Giuliani, then U.S. Attorney for the Southern District of New York, filed a complaint against the IBT, and its General Executive Board, including General President Jackie Presser, the LCN "Commission" and twenty-six alleged LCN members and associates.²³ Giuliani described the complaint as "a precise, carefully-drawn legal effort to end LCN's corruption of this union and to implement procedures that will allow the many honest members of the Teamsters to run their own affairs in a democratic manner . . ."²⁴

In constructing the civil RICO complaint, the DOJ and FBI drew on congressional hearings, criminal and civil litigation, media reports, books and articles, cooperating government witnesses, and electronically-intercepted conversations.²⁵ All fifty-eight FBI field divisions, as well as FBI headquarters staff, participated in the investigation. As one FBI official testified at a congressional hearing, "Literally millions of documents were collected, reviewed, organized and then reviewed again."²⁶

23. Complaint, *supra* note 18, at ¶¶ 4-52.

24. Press Release, United States Attorney's Office for the Southern District of New York, Outline of Civil Complaint 3 (June 28, 1988) [hereinafter Press Release] (on file with author).

25. 1989 RICO Hearings, *supra* note 21, at 593 (Statement of Floyd I. Clarke, Executive Assistant Director, Federal Bureau of Investigations).

26. *Id.* The U.S. Attorney drew upon the President's Commission on Organized Crime (PCOC). Its March 1986 report described the Teamsters as the most LCN controlled union. PCOC, *supra* note 11, at 89. The PCOC pointed to confirmed organized crime influence in thirty-eight of the Teamsters' largest locals and joint councils. *Id.* Former Teamsters General President Roy L. Williams, who after indictment was acting as a cooperating government witness, testified before the PCOC that "Every big

The civil RICO complaint alleged numerous racketeering acts, for example that organized crime figures, aided and abetted by the Teamsters General Executive Board, had extorted (in violation of the Hobbs Act), “the right of labor organization members to free speech and democratic participation in internal union affairs.”²⁷ According to the complaint, the defendants had, by the use of actual and threatened force backed by organized crime, induced a “climate of intimidation and fear.”²⁸ The enumerated violent acts included twenty murders, and a number of shootings, bombings, and beatings.²⁹ The complaint alleged that LCN selected and dominated the previous four IBT general presidents,³⁰ that LCN and the union attempted to bribe Senator Cannon,³¹ and that LCN and the union corrupted the Teamsters benefit funds.³² Moreover, the U.S. Attorney charged that the General Executive Board defendants repeatedly breached their fiduciary duty to the union’s membership by supporting the General Executive Board candidates with known criminal histories, and by failing to purge or even investigate allegations of union corruption.³³ The U.S. Attorney alleged:

In response to the rampant corruption within the IBT, the Teamsters’ General Executive Board have [sic] literally done nothing, despite their affirmative obligation under federal law and the IBT’s Constitution to rid the union of corruption.... The inescapable conclusion from this shocking course of conduct is that the entire IBT General Executive Board has permitted La Cosa Nostra to influence and corrupt the IBT.³⁴

As preliminary relief, the U.S. Attorney requested an injunction barring LCN members and associates from participating in Teamsters affairs, barring the members of the General Executive Board from engaging in racketeering acts, associating with LCN members or interfering with a court liaison officer who would review all appointments and expenditures and exercise the general president’s and the General Executive Board’s disciplinary powers.³⁵ The government sought a permanent injunction barring LCN members from participating in the union, barring Teamsters officers found to be RICO violators from union membership, and

[Teamsters] local union . . . had some connection with organized crime.” *Id.* (quoting Deposition of Roy L. Williams by the President’s Commission on Organized Crime, Sept. 13, 1985).

27. Press Release, *supra* note 24, at 7.

28. Complaint, *supra* note 18, at ¶ 72.

29. Press Release, *supra* note 24, at 2.

30. Complaint, *supra* note 18, at ¶¶ 56-71.

31. *Id.* at ¶ 95.

32. *Id.* at ¶¶ 73(k), 75.

33. *Id.* at ¶ 73.

34. See Government’s Memorandum, *supra* note 3.

35. Complaint, *supra* note 18, Demand for Relief § (a).

appointing a trustee to run new elections and discharge any General Executive Board duties the trustee “deem[ed] necessary.”³⁶

District Court Judge David Edelstein denied preliminary relief.³⁷ Describing the case as “unique; if not in substance, then in scope,” Judge Edelstein emphasized the need for an evidentiary hearing to resolve important factual and legal issues.³⁸ He ordered an expedited discovery schedule and a consolidated preliminary hearing and trial on the merits.³⁹ It would prove to be one of the few times Edelstein ruled against the government.⁴⁰

The IBT filed a motion to dismiss, claiming that (1) the complaint violated its members’ First Amendment right to free association; (2) federal labor law preempted the RICO statute; (3) the RICO complaint had failed to state a claim; (4) the district court lacked jurisdiction over the IBT; and (5) many defendants had a valid statute of limitations defense.⁴¹ Judge Edelstein found all these arguments meritless. “It is only *lawful* association that is protected [by the First Amendment to the U.S. Constitution], not association for a criminal or unlawful purpose.”⁴² Edelstein stated that the IBT’s preemption argument ignored RICO’s legislative history and purpose:⁴³ to stop organized crime infiltration of legitimate organizations, including labor unions. Furthermore, he found RICO’s statute of limitations inapplicable to the case.⁴⁴

The IBT sought to transfer venue from New York City to Washington, D.C., site of IBT headquarters and the residence of many government witnesses.⁴⁵ Judge Edelstein refused, pointing out that Washington’s proximity to New York would make little difference to the convenience of any party.⁴⁶ The IBT also moved to join as “indispensable parties,” every Teamsters local, joint council and area conference.⁴⁷ Judge Edelstein, likely concerned that the addition of more than 600 entities would delay the

36. *Id.* at §§ (b)-(j).

37. Order Denying Preliminary Relief, *United States v. Int’l Bhd. of Teamsters*, No. 88 Civ. 4486 (S.D.N.Y.) (July 7, 1988).

38. *Id.* at 4.

39. *Id.* at 5-6.

40. Judge Edelstein presided over the case until his death in 2000. See *GUARDIAN*, *supra* note 19.

41. *United States v. Int’l Bhd. of Teamsters*, 708 F. Supp. 1388, 1392 (S.D.N.Y. 1989) [hereinafter *Motion to Dismiss*]. At this point in the litigation, Benito Romano had replaced Giuliani as U.S. Attorney.

42. *Id.* at 1393.

43. *Id.* at 1396.

44. *Id.* at 1402 (“This statute of limitations, however, is limited to civil enforcement actions seeking treble damages, brought by private plaintiffs.”).

45. Judge Edelstein doubted the sincerity of the IBT’s concern for the convenience of the government agents. “In so far as these witnesses are employees of the plaintiff, this point merits no discussion.” *Id.* at 1404.

46. *Id.*

47. *Id.* at 1403.

trial for many months, and probably for years, dismissed this motion out of hand:

The IBT vigorously claims it is a separate and independent entity with little or no control over the [s]ubordinate Teamster [e]ntities. Nevertheless, it is revealing that the Union has taken on the cause of these entities when, if the Union's argument is correct, these very entities could have attempted to intervene in this case to protect that interest.⁴⁸

Judge Edelstein also denied the defendants' request for a jury trial on the ground that the government was seeking only equitable relief.⁴⁹

With their preliminary legal objections rejected, the defendants faced the prospect of huge legal expenses in a cause likely to fail. Thus, despite a General Executive Board resolution forbidding individual settlements,⁵⁰ it took only one week for the parties to reach a negotiated settlement formalized in a signed consent order. Shortly after signing the consent order, IBT General President McCarthy told a congressional committee, "I am in no ivory tower, that is for sure. I am in hell."⁵¹

B. The Consent Order

The purpose of the consent order is set out in its preamble: "WHEREAS, the union defendants agree that it is imperative that the Teamsters, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence."⁵² Judge Edelstein later used this general statement of purpose to guide interpretation of the order's provisions.⁵³

The consent order required several permanent changes to the Teamsters constitution. First, it lengthened the statute of limitations for disciplinary actions from one year to five years,⁵⁴ measuring the time from

48. *Id.*

49. Judge Edelstein ruled that any disgorgement of funds would be "incidental" to equitable relief. *Id.* at 1407-08.

50. The resolution never had any effect (individuals members had settled despite the resolution), and Judge Edelstein quickly required it rescinded before the settlement with the General Executive Board was finalized.

51. 1989 RICO Hearings, *supra* note 21, at 41 (statement of William McCarthy, IBT General President). The statement was made in response to an accusation by Senator Roth that McCarthy was waiting in his "ivory tower" for trouble to bubble up rather than actively rooting out corruption. *Id.* (statement of Senator Roth).

52. Consent Order, *supra* note 4, at 2.

53. See, e.g., *United States v. Int'l Bhd. of Teamsters*, 742 F. Supp. 94, 102 (S.D.N.Y. 1990) [hereinafter 1991 Election Rules], *aff'd in relevant part*, 931 F.2d 177 (2d Cir. 1991).

54. The Consent Order reads as follows: "The portion of Section 6(a) of Article XIX of the Teamsters constitution that provides, 'Any charge based upon alleged conduct which occurred more than one (1) year prior to the filing of such charge is barred and shall be rejected by the Secretary-Treasurer, except charges based upon the non-payment of dues, assessment and other financial

the point at which misconduct is discovered.⁵⁵ Second, it permitted, but did not require, the IBT general president and the General Executive Board to suspend Teamsters members who face criminal or civil charges.⁵⁶ Previously, the constitution had prohibited disciplinary action against a Teamster pending criminal or civil action. Hence, members under indictment could not be suspended (while, perversely, unindicted members could be suspended).⁵⁷ Third, it required a special election to fill a vacancy in the office of general president.⁵⁸ Previously, the General Executive Board appointed a replacement if the general presidency became vacant between the union's quinquennial conventions. The previous four general presidents, and nearly all of the international vice presidents in office during the past twenty years first attained their positions by appointment. Once in office, they faced no opposition at the conventions.⁵⁹

The consent order enjoined all IBT members, officers and employees from (1) committing racketeering acts; (2) knowingly associating with any member or associate of LCN, any other criminal group, or any person enjoined from participating in the Teamsters' affairs;⁶⁰ and (3) interfering with the IRB or other court-appointed officers.⁶¹ The consent order provided for a two-phase enforcement mechanism. In the first phase, Judge Edelstein would appoint an independent administrator, an investigations officer, and an elections officer.⁶² The IBT agreed to pay their salaries and operating expenses.⁶³ In addition to wielding the same disciplinary authority as the general president and General Executive Board,⁶⁴ the independent administrator would have the power to veto any appointment or expenditure that he reasonably believed to constitute or further an act of

obligations,' shall be and hereby is amended to provide for a five (5) year period, running from the discovery of the conduct giving rise to the charge." Consent Order, *supra* note 4, at 4.

55. *Id.*

56. *Id.* at 5.

57. See 1989 RICO Hearings, *supra* note 21, at 165 (statement of Benito Romano, United States Attorney, Southern District of New York) (stating that there were disciplinary procedures, but that these procedures could not be used against members under indictment), implicitly suggesting such procedures could be used against unindicted members.

58. Consent Order, *supra* note 4, at 5.

59. 1989 RICO Hearings, *supra* note 21, at 25 (statement of Benito Romano, United States Attorney, Southern District of New York). A third amendment to the IBT Constitution prohibited employers from making campaign contributions and gifts to IBT candidates. Consent Order, *supra* note 4, at 5.

60. The text reads "union affairs" but it refers to the Teamsters specifically. This would include anyone barred by independent administrator or IRB action or recommendation for violation of the Labor-Management Reporting and Disclosure Act (LMRDA).

61. Consent Order, *supra* note 4, at 6.

62. *Id.* at 7.

63. *Id.* at 16-18.

64. *Id.* at 7, 19-22.

racketeering activity.⁶⁵ The investigations officer would investigate Teamsters members and entities, and initiate and “prosecute” charges where appropriate.⁶⁶ The order set detailed disciplinary procedures for notification, prosecution, adjudication, and punishment.⁶⁷ The independent administrator was authorized to disseminate information to the membership, and to petition the district court whenever the independent administrator “deem[ed it] warranted.”⁶⁸ The consent order required the independent administrator to report quarterly to the court on the activities of the court-appointed officers.⁶⁹

In the second phase, the consent order stated that a three-member Independent Review Board (IRB) would replace the independent administrator following the elections officer’s certification of the 1991 election as “honest, fair, and free[, and] . . . completely secure from harassment, intimidation, coercion, hooliganism, threats, or any variant of these no matter under what guise.”⁷⁰ The IRB would exercise investigative and enforcement functions.⁷¹ The U.S. Attorney General and the IBT would each appoint one IRB member; the third would be appointed by agreement of the first two. All three would serve five-year terms.⁷² The IRB was authorized to hire investigators, attorneys, and other staff.⁷³

65. The consent order states: “From the date of the Administrator’s appointment until the certification of the IBT elections to be conducted in 1991, the Administrator shall have the authority to veto whenever the Administrator reasonably believes that any of the actions or proposed actions listed below constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. § 1961, or furthers or contributes to the association directly, or indirectly, of the IBT or any of its members with the LCN or elements thereof: (i) any expenditures or proposed expenditures of International Union funds or transfer of International Union property approved by any officers, agents, representatives or employees of the IBT, (ii) any contract or proposed contract on behalf of the International Union, other than collective bargaining agreements, and (iii) any appointment or proposed appointments to International Union office of any officer, agent, representative or employee of the IBT.” *Id.* at 10-11.

66. *Id.* at 7-8.

67. *Id.* at 8.

68. *Id.* at 16, 18.

69. *Id.* at 16-17.

70. 1991 Election Rules, *supra* note 51, at 97; Consent Order, *supra* note 4, at 19. Under the consent order, the positions of independent administrator and investigations officer would terminate after certification. The elections officer could continue through the 1996 election cycle, depending on the government to fund the election. *Id.* at 15-16. However, the independent administrator and investigations officer retained authority to complete and decide all charges within nine months following certification. The consent order anticipated some overlap between the two remedial phases. *Id.* at 3.

71. Consent Order, *supra* note 4, at 19.

72. *Id.*

73. *Id.* U.S. Attorney Benito Romano did not see much difference between the two enforcement phases: “The Independent Review Board has very similar powers to the Administrator and Investigations Officer in terms of investigating and disciplining corruption within the Teamsters.” 1989 RICO Hearings, *supra* note 21, at 166 (statement of Benito Romano, United States Attorney, Southern District of New York). However, as noted in the text, there are some significant differences, particularly the IRB’s reliance, at least initially, on the Teamsters to initiate disciplinary action.

The IRB has indefinite tenure. The only sentence in the order relevant to the IRB's termination stated, "Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment dismissing this action with prejudice and without costs to either party."⁷⁴ Judge Edelstein characterized the IRB as "a permanent institution vested with power to investigate and eradicate corruption,"⁷⁵ recognizing that "eradicating corruption does not occur over night [sic]," and that "there is no timetable for the completion of the IRB's task."⁷⁶

C. *The Independent Administrator Phase*

Judge Edelstein appointed as independent administrator Frederick B. Lacey, a former New Jersey U.S. Attorney and former federal district court judge. Lacey had veto power over all IBT appointments, contracts, and expenditures. He also served as judge on disciplinary charges filed by the investigations officer.⁷⁷

Lacey encountered significant IBT opposition. In answer to a congressional committee's query about the IBT's compliance with the consent order, Lacey responded, "That is a question I could spend the rest of the week on. They fought me at every turn."⁷⁸ For example, the consent order required that the General Executive Board provide the independent

74. Consent Order, *supra* note 4, at 2. It is not clear if the requirement of a "joint motion" means that the IRB cannot be dissolved without the U.S. Attorney's agreement. It is also not clear what standard the district court judge should use to determine "satisfactory completion and implementation." For a discussion of the problems of determining when the remedial effort should end, see Dean, *supra* note 5.

75. *United States v. Int'l Bhd. of Teamsters*, 803 F. Supp. 761, 780 (S.D.N.Y. 1992) [hereinafter *Promulgation of Rules*], *aff'd*, 998 F.2d 1101 (2d Cir. 1993) [hereinafter *Affirmed Promulgation of Rules*].

76. *Id.* at 781.

77. *The Internal [sic] Review Board: Hearing Before the Subcomm. On Oversight and Investigations of the House Comm. on Education and the Workforce*, 105th Cong. 13 (1998) [hereinafter *IRB Hearings*] (Statement of Judge Frederick B. Lacey, Member, Independent Review Board). Lacey lacked the resources or staff to oversee the IBT's day-to-day operations. He reviewed only the largest expenditures and contracts. He had to let most appointments go forward subject to the possibility of subsequent removal. *Id.* at 14. Importantly, Lacey's veto power depended upon a reasonable belief that a contemplated act amounted to racketeering activity; he had no authority to veto "imprudent acts." *Id.* at 16 (Statement of Charles M. Carberry, Investigations Officer, Independent Review Board). Chief Investigator Charles Carberry has distinguished the consent order from a trusteeship that gives the trustee full governing authority. When asked whether the IRB, or previously, the independent administrator, could step in should the Teamsters purchase a Lear jet, Carberry responded, "Under the consent decree now, imprudent acts would not fall within anybody's oversight. One of the differences that I saw between the Teamsters' consent decree and some of the other Civil RICO consent decrees involving other unions around the country is that even the initial court officers had certain limits on both their responsibilities and their powers." *Id.*

78. *IRB Hearings*, *supra* note 77 at 12 (Statement of Frederick B. Lacey, Member, Independent Review Board).

administrator notice and an agenda prior to every board meeting.⁷⁹ By chance, Lacey heard from a journalist that an upcoming General Executive Board meeting was scheduled to interpret the term “beyond reproach” in the Teamsters constitution.⁸⁰ Lacey noted wryly, “And by coincidence, by their interpretation[,] the charge we had pending against an international vice president for association with organized crime would not be prosecutable.”⁸¹ The IBT went to court to challenge Lacey’s authority to interpret the Teamsters constitution. Judge Edelstein held that the consent order had the legal status of Teamsters constitutional law and that the independent administrator’s disciplinary authority necessarily included the authority to interpret the constitution’s disciplinary provisions.⁸²

In late 1991, the Teamsters rank and file elected as international general president an anti-establishment reformer, Ronald C. Carey, president of Teamsters Local 804 in New York City. In January 1992, Elections Officer Michael H. Holland certified the 1991 election results.⁸³ Perhaps surprisingly, Carey opposed the continued need for the IRB, despite the fact that the consent order was responsible for the fair election that resulted in his victory.

D. *The Independent Review Board Phase*

1. *Battling Over the IRB’s Rules*

On March 8, 1992, U.S. Attorney General William Barr selected Independent Administrator Lacey for the IRB. A month later, General President Carey appointed his campaign manager, Harold “Eddie” Burke to the IRB.⁸⁴ The two members could not agree on a third IRB member.⁸⁵ The consent order was silent about what to do in case of an impasse. Ultimately, Lacey proposed, and Judge Edelstein selected, former FBI Director and former CIA Director William Webster as the IRB’s third member.⁸⁶

In July 1992, the DOJ submitted to Judge Edelstein proposed rules governing investigations, adjudications, enforcement, decision review, and

79. Consent Order, *supra* note 4, at 10.

80. *IRB Hearings*, *supra* note 77, at 12 (Statement of Frederick B. Lacey, Member, Independent Review Board).

81. *Id.* at 12.

82. *United States v. Int’l Bhd. of Teamsters*, 743 F. Supp. 155, 162 (S.D.N.Y. 1990), *aff’g* *Investigations Officer v. Friedman & Hughes*, Decision of the Independent Administrator (Jan. 22, 1990), *aff’d*, 905 F.2d 610, 618-19 (2d Cir. 1990) [hereinafter *Friedman & Hughes*].

83. *Promulgation of Rules*, *supra* note 75, at 767-68.

84. *United States v. Int’l Bhd. of Teamsters*, 803 F. Supp. 806, 809-10 (S.D.N.Y. 1992) [hereinafter *IRB Appointee*], *aff’d*, 12 F.3d 360 (2d Cir. 1993).

85. Consent Order, *supra* note 4, at 19.

86. *IRB Appointee*, *supra* note 84, at 809-10.

reporting.⁸⁷ According to Edelstein, the IBT challenged the rules with a “farrago” of arguments, including alleging the rules were inconsistent with, and impermissibly altered, the consent order. The IBT further argued that federal labor law preempted the rules, that Carey’s election obviated the need for the IRB itself, and that the maintenance of the IRB would impose excessive costs upon the IBT.⁸⁸ At the same time, the IBT argued, disingenuously, that the IRB should make its own rules without court supervision.⁸⁹

Judge Edelstein, seemingly irritated, took the opportunity to review the IBT’s obstructionist litigation strategy, listing thirty-five different applications to his court.⁹⁰ Indeed, this opinion was Edelstein’s fifty-fifth since the parties signed the consent order three and a half years earlier. “From the day the parties entered the Consent Decree, March 14, 1989, until today, the IBT has waged a zealous legal attack on the reforms contained in that agreement. After agreeing it was ‘imperative’ to eradicate corruption from the IBT and restore democratic practices to the Union, the prior IBT administration spent \$10.5 million on a campaign to eviscerate the mechanisms contained in the Consent Decree to achieve these goals.”⁹¹

Judge Edelstein found the IRB rules necessary for the enforcement of the consent order, especially in light of the IBT’s obstructionist conduct. Leaving the IRB to resolve each of the issues addressed by the rules on an ad hoc basis would invite a “massive number of separate [IRB] litigations.”⁹² Despite that green light, the IRB could not promulgate its own rules because of the deadlock caused by lack of a third member until Webster’s appointment to the IRB resolved the impasse.⁹³

87. Promulgation of Rules, *supra* note 75, at 800-06. Indeed, the elections officer has always written the election rules. However, the DOJ wrote the IRB Rules & Procedures. It is not clear *why* that happened. One explanation is that when the IRB lacked a third member, Burke and Lacey could not collaborate on writing the rules. The IBT sued, claiming that only the IRB could write the IRB rules. Because rules governing the operation of the IRB were not mentioned in the consent order, Edelstein ruled that the government had as much right to propose rules as any other party.

88. Promulgation of Rules, *supra* note 75, at 777.

89. *Id.* This argument appears disingenuous because every previous and subsequent IBT motion had sought to limit the IRB’s power. As Judge Edelstein noted, “[I]n this argument [the IBT] is content to endow the IRB with an exclusive grant of rule-making authority that is far in excess of that contained in either the Consent Decree or the IBT Constitution.” *Id.* at 780. The consent order did not include or contemplate rules and procedures. A strict reading of the order does not provide the IRB or any entity rulemaking authority, contrary to the IBT’s principle argument. Section G of the consent order mentions rules only once, stating that hearings would be conducted under the “rules and procedures generally applicable to labor arbitration hearings.” Consent Order, *supra* note 4, at 21-22.

90. Promulgation of Rules, *supra* note 75, at 769-76 & n.2.

91. *Id.* at 777.

92. *Id.* at 782.

93. IRB Appointee, *supra* note 84, at 815. At the hearing where he appointed Webster to the IRB, Judge Edelstein had a testy interaction with IBT appointee Burke, who had referred to the third IRB member as the “neutral party.” Edelstein said:

My expectation, and it is resolute, and believe me, gentlemen, I will stand for no nonsense whatsoever, I will use the full force of my judicial power and position if I find there is any,

2. *The Composition of the IRB*

The IRB has three members, each serving a five-year term. Judge Edelman himself appointed the independent administrator, investigations officer and elections officer. By contrast, the district court has no role in selecting the IRB's members, unless there is a deadlock. The U.S. attorney general's choice for the IRB's first two terms, Frederick B. Lacey, had served as independent administrator.⁹⁴ The attorney general's third term appointee was former Attorney General Benjamin Civiletti. With the exception of Ron Carey's selection of Eddie Burke, which was criticized on grounds of inexperience, the IBT appointments to the IRB have not been controversial. Grant Crandall, who replaced Burke, was a former Rhodes Scholar and the United Mine Workers' general counsel.⁹⁵ In 2001, at the beginning of the IRB's third five-year term, the IBT appointed Joseph DiGenova, a former U.S. attorney for the District of Columbia. DiGenova previously had served as special counsel for the House of Representatives committee which, from 1997 to 1998, had investigated the Teamsters 1996 election.⁹⁶

All told, of the six members of the IRB, three have been former U.S. attorneys, two have been federal judges, and one was a former U.S. attorney general. Except for Burke, all have been lawyers who continued in private practice while serving on the IRB.

3. *Paying for the IRB*

The consent order requires that the Teamsters pay all IRB expenses.⁹⁷ IRB rules specify that the IBT bear the cost of IRB communications with

any, any bias or favoritism by any member of this board. I expect each member to discharge his duties responsibly, fairly, independently, courageously and without favor or bias.

The independent review board is meant to have three, three neutral members—not two partisans and one neutral member.

Id.

94. Lacey proved an able multitasker. In 1992 alone, he served simultaneously as independent administrator, IRB member, Independent Counsel investigating U.S. funding of Iraq's military build-up, and Special Master investigating New York State's redistricting program. *IRB Hearings, supra* note 77, at 126-29 (Resumé of Frederick Lacey).

95. *IRB Hearings, supra* note 77, at 125 (Biographical Information: Grant Crandall).

96. DiGenova & Toensing, LLP, Joseph E. diGenova, <http://www.digenovatoensing.com/attorneybiosjd.htm> (last visited Sept. 10, 2006).

97. Consent Order, *supra* note 4, at 23. Expenses for the IRB are paid for out of a \$100,000 fund created by the government and subsequently reimbursed by the IBT. *United States v. Int'l Bhd. of Teamsters*, 829 F. Supp. 602, 604 (S.D.N.Y. 1993) [hereinafter IRB Rules] ("With the consent of the Government, the IRB may draw upon the \$100,000 fund previously created for the Investigations Officer."). The IBT strenuously opposed the creation of a \$100,000 general operating fund for the independent administrator and the investigations officer in September 1989. *United States v. Int'l Bhd. of Teamsters*, 723 F. Supp. 203, 209 (S.D.N.Y. 1989) [hereinafter Elections Officer Order]. The IRB uses the fund for travel and office expenses. It is replenished each quarter after an IBT audit. The fund enables the independent administrator and investigations officer to spend without IBT approval.

the Teamsters rank and file and the cost of a toll-free corruption hotline.⁹⁸ The IRB has annual operating expenses of approximately \$2,800,000 to \$3,000,000, most of which is spent on salaries for the staff of investigators and attorneys.⁹⁹

The compensation of the IRB members and the chief investigator generated conflict.¹⁰⁰ The Justice Department proposed that the three IRB members and the chief investigator be compensated according to their hourly rates as lawyers, with a maximum annual remuneration of \$100,000, adjusted for inflation.¹⁰¹ Emphasizing the importance of attracting qualified persons to fill the four positions, Judge Edelstein modified the proposal and set a \$100,000 *minimum* annual payment for the IRB members and the chief investigator, while allowing for billable hours in excess of that floor.¹⁰² He warned that their remuneration could exceed \$100,000 in a matter of months if the IBT continued to pursue “needless litigation.”¹⁰³

The IBT appealed Judge Edelstein’s salary decision. While the Court of Appeals agreed with Judge Edelstein on the \$100,000 guaranteed minimum annual salary, it did not agree on compensating at full hourly rates because IRB members should not charge to the Teamsters a law firm’s overhead expenses in their hourly fees. Therefore their hourly rate could be discounted.¹⁰⁴ Notably, the IRB members have voluntarily declined to bill more than the \$100,000 salary, and they have declined cost-of-living adjustments. Chief Investigator Carberry, because of the substantial time required to investigate the union, has billed in excess of the \$100,000 salary base.¹⁰⁵

98. IRB Rules, *supra* note 97, at 604.

99. Telephone Interview with John J. Cronin, Jr., Administrator, IRB (May 30, 2006). The IRB rules require that the IRB operate from offices “as close as practicable” to IBT headquarters in Washington, D.C. IRB Rules, *supra* note 97, at 603. Indeed, the IRB offices on N. Capitol Street are just around the corner from the IBT headquarters, popularly known as the “Marble Palace.” The IRB, however, may hold hearings at such locations as members deem appropriate. *Id.* Judge Edelstein determined that the nearby office space comported with the language and purpose of the Order and the intent of the parties. Promulgation of Rules, *supra* note 75, at 769-70. However, even after approving the funding, the IBT continued to block efforts to lease New York office space. *Id.* at 770. At a second hearing on the matter, Judge Edelstein personally approved the lease. *Id.*

100. Carberry wanted his staff’s salaries to be in line with IBT salaries. Interview with Charles M. Carberry, Chief Investigator, IRB (Fall 2003).

101. Promulgation of Rules, *supra* note 75, at 799.

102. *Id.* at 799, 801.

103. Judge Edelstein also pointed to the salaries of the IBT’s own lawyers in support of his conclusion that the IBT needed to pay market rates to attract quality individuals by noting the names and hourly rates of the IBT’s lawyers. *Id.* at 799.

104. Affirmed Promulgation of Rules, *supra* note 75, at 1109.

105. Letter from John J. Cronin, Jr., Administrator, IRB, to Dimitri D. Portnoi (May 23, 2007) (on file with author).

4. *The Duties of the IRB*

Drawing on the consent order's "Whereas" clauses, Judge Edelstein gradually defined the IRB's role. "[R]egardless of a particular administration's stance toward reform, the IRB will serve as a perpetual agent of those reforms—independent of the parties, vigilant in the fight against corruption, and stalwart in the promotion of union democracy."¹⁰⁶ One can read the consent order as envisioning the IRB's duties as more limited than the independent administrator's; Judge Edelstein probably expected a great deal of reform to have been achieved after three years of independent administrator efforts and the 1991 election. The IRB did not envision a limited role. In its first five-year report, the IRB explained that its role was to "induce or, if necessary, force" the IBT and Teamsters locals "to police themselves under the monitoring and active investigative efforts of the IRB."¹⁰⁷ This statement reflected the hope that the IRB would find a cooperative partner in a democratically-elected IBT administration.¹⁰⁸

The role of the IRB was gradually defined. Previously, the investigations officer and independent administrator acted as prosecutor and judge. Presently, the chief investigator and his staff investigate Teamsters members and entities. If warranted, the IRB makes disciplinary recommendations to the IBT's General Executive Board or to the appropriate Teamsters joint council or local.¹⁰⁹ If the IRB determines that the Teamsters entity's response is inadequate, it may hold its own hearing and render a binding judgment.¹¹⁰ The IRB has authority to affirm, modify or reverse General Executive Board individual disciplinary and trusteeship decisions.¹¹¹

The IRB has a duty to keep the Teamsters membership appraised of its activities. At the conclusion of each investigation, the IRB must make its recommendation publicly available (unless no charges were recommended), thereby contributing to the creation of an informed electorate.¹¹² The IRB must follow up on its recommendations, ensure that the union entities meet deadlines, and report all IBT disciplinary decisions to the membership in

106. Promulgation of Rules, *supra* note 75, at 781.

107. Independent Review Board's Five-Year Report (1992-1997) To Honorable David N. Edelstein, United States District Judge, *United States v. Int'l Bhd. of Teamsters*, No. 88 Civ. 4486 at 1 (S.D.N.Y.) (Nov. 6, 1997) [hereinafter First Five-Year Report].

108. See Promulgation of Rules, *supra* note 75, at 781.

109. Consent Order, *supra* note 4, at 19-22.

110. *Id.*

111. *Id.* For nine of ten charged Teamsters members, final judgments came from a Teamsters entity, not from the IRB. In theory, the IRB may supervise the reform process that occurs absent IRB recommendations. However, it is not clear that the IRB has ever reviewed a Teamsters disciplinary action that it did not initiate.

112. *Id.*; see also IRB Rules, *supra* note 97, at 606. The IRB also has the authority to publish information in Teamsters newsletters, or use any other means to distribute materials. *Id.* at 608. The IRB, with IBT assistance, posts all disciplinary decisions online at www.irbcases.org.

Teamsters, an IBT newsletter. The IRB employs a full-time administrator and support staff in Washington, D.C. The administrator is responsible for communications between the IRB and the IBT, tracking union actions, maintaining the IRB's hotline, scheduling IRB hearings and meetings, and generating a flow of information through *Teamsters*.¹¹³

III.

THE IRB AS A DISCIPLINARY MACHINE

The consent order broadly outlined the IRB's structure. Rules and procedures, proposed by the government and modified by Judge Edelstein and the Second Circuit, specify how a case should proceed from investigation to charge to resolution to sanction.¹¹⁴ This Part explains those rules as well as the IRB's implementation efforts.

A. *The Investigation: The Chief Investigator's Office*

Instead of the prosecutor-judge model that defined the independent administrator phase, the consent order provided that the IRB would, when appropriate, recommend that the union take disciplinary action against individuals and union entities.¹¹⁵

The rules require the IRB to employ a chief investigator, as well as attorneys, investigators, auditors, accountants and other personnel.¹¹⁶ The chief investigator exercises the same authority with respect to investigations¹¹⁷ as the investigations officer exercised under the independent administrator.¹¹⁸ Indeed, the IRB immediately hired Investigations Officer Charles M. Carberry as chief investigator. He has been in charge of investigating *Teamsters* disciplinary violations since 1989,¹¹⁹ providing important institutional continuity to the entire remedial effort.

113. *IRB Hearings*, *supra* note 77, at 133 (John J. Cronin, Jr. Curriculum Vitae). John J. Cronin, Jr., has held the position of administrator since the creation of the IRB in 1992. He has substantial experience in auditing and accounting investigations, and worked for the independent administrator from 1989-91 as an auditor and investigator.

114. IRB Rules, *supra* note 97, at 602.

115. Letter from Charles M. Carberry, Chief Investigator, Independent Review Board, to James B. Jacobs, Professor of Law, New York University School of Law (July 7, 2006) (on file with author) (noting that the organization of the IRB is somewhat analogous to the organization of the Securities and Exchange Commission).

116. IRB Rules, *supra* note 97, at 604.

117. *Id.* at 606.

118. The separation of the IRB and chief investigator was geographical as well as symbolic; the chief investigator is located in lower Manhattan in the office previously occupied by the investigations officer, while the IRB is located near IBT headquarters in Washington, D.C.

119. The investigations officer, like Independent Administrator Lacey and Elections Officer Holland, was a court-appointed officer. The investigations officer had the authority to bring charges before the independent administrator, who acted as judge. While the consent order gave the independent

The chief investigator maintains a staff of eight to nine investigators and three attorneys¹²⁰ to investigate allegations of Teamsters members' corruption, membership in or association with LCN, and failure to cooperate with the IRB.¹²¹ The investigators are mostly drawn from the ranks of retired FBI, Internal Revenue Service (IRS) and New York City Police Department (NYPD) investigators.¹²²

The chief investigator's office obtains leads from a number of sources. First, the Teamsters members themselves provide information. Pursuant to IRB rules and procedures, the IRB set up a toll-free hotline that allows members to provide tips anonymously.¹²³ As of Fall 2007, the hotline had received almost 45,000 calls.¹²⁴ Tips from political rivals prove especially fruitful.¹²⁵

Second, law enforcement agencies, including the FBI, the Department of Labor's Office of Labor Racketeering, and state and local police departments, send corruption allegations to the chief investigator's office.¹²⁶ Third, the IRB and the chief investigator generate their own cases. An IRB member may refer a matter to the chief investigator, or the chief investigator may act independently.¹²⁷ The chief investigator investigates locals that have a history of corruption and racketeering,¹²⁸ and also

administrator power to investigate, Lacey determined that he could not "investigate allegations of corruption, and sit as the hearing officer" on charges he himself had investigated. Summary Report of the Independent Administrator, *United States v. Int'l Bhd. of Teamsters*, No. 88 Civ. 4486 at 166 (S.D.N.Y. Feb. 29, 1992) [hereinafter Report of the Independent Administrator] (citing Consent Order, *supra* note 4, at 13). Thus, Lacey established a wall between the independent administrator's office and the investigations officer's. *Id.*

120. Telephone interview with Charles M. Carberry, *supra* note 100; *IRB Hearings*, *supra* note 77, at 26 (Statement of Charles M. Carberry, Chief Investigator, IRB).

121. Consent Order, *supra* note 4, at 19 ("The Independent Review Board shall be authorized to hire a sufficient staff of investigators and attorneys to investigate adequately (1) any allegations of corruption, including bribery, embezzlement, extortion, loan sharking, violation of 29 U.S.C. §530 of the Landrum Griffin Act, Taft-Hartley Criminal violations of Hobbs Act violations, or (2) any allegations of domination or control or influence of any Teamsters affiliate, member or representative by La Cosa Nostra or any other organized crime entity or group, or (3) any failure to cooperate fully with the Independent Review Board in any investigation of the foregoing.").

122. Interview with John J. Cronin, Jr., *supra* note 99.

123. IRB Rules, *supra* note 97, at 606; *see also IRB Hearings*, *supra* note 77, at 26 (Statement of Charles Carberry, Chief Investigator, Independent Review Board) ("We have allegations that come in from members or from other people sometimes anonymously, sometimes with information that we follow up on.").

124. Interview with John J. Cronin, Jr., *supra* note 99.

125. Interview with Charles M. Carberry, *supra* note 100.

126. *IRB Hearings*, *supra* note 77 at 26 (Statement of Charles Carberry, Chief Investigator, Independent Review Board). In Chief Investigator Carberry's words, "We're, obviously, very, very dependent upon the FBI to a large extent in organized crime investigations." *Id.*

127. IRB Rules, *supra* note 97, at 606.

128. *IRB Hearings*, *supra* note 77 at 26 (Statement of Charles Carberry) ("In addition, consulting with the Board, we've undertaken various projects to gather information where we have seen patterns in the past which might suggest that this is an area that we should probe into more deeply.").

monitors the news media, criminal prosecutions, and other sources for investigative leads.¹²⁹

The IRB's rules and procedures put several investigative tools at the chief investigator's disposal. The chief investigator may require sworn statements or in-person examinations of any officer, member, employee, representative, or agent of the Teamsters.¹³⁰ A Teamster who refuses to cooperate in an IRB investigation is subject to disciplinary charges.¹³¹ The rules give the chief investigator authority to audit and examine at any time any Teamsters entity's books,¹³² and any reports to government agencies.¹³³ The chief investigator need not provide a statement of reasonable cause before taking any of these steps.¹³⁴

Chief Investigator Carberry's office attempts to investigate quickly, so as not to leave Teamsters officers under a cloud of suspicion for an extended period. It examines a local union's books and records in two days; it is usually able to take as many as seven depositions in one day.¹³⁵ Upon completion of an investigation, the chief investigator submits an investigator's report that, if necessary, proposes charges against individuals or recommends a trusteeship for a local or joint council.¹³⁶ The report

129. During the independent administrator phase, for instance, the investigations officer compared names of LCN figures compiled by the Senate Permanent Subcommittee on Investigations against the membership of the Teamsters. Interview with John J. Cronin, Jr., *supra* note 99.

130. *Id.*

131. Failure to cooperate fully with the IRB or the chief investigator is a substantive offense in itself, regardless of whether the individual whose cooperation is sought is an investigative target. IRB Rules, *supra* note 97, at 605 ("The IRB shall investigate any allegations of . . . any failure to cooperate fully with the IRB in any investigation of the foregoing.")

132. *Id.* The IBT challenged this authority during the independent administrator phase, but Judge Edelstein held that because the IBT general president and general secretary-treasurer had the investigatory authority to audit any books of any local at the time of the signing of the consent order, they had the authority to delegate that same authority to any entity, including the investigations officer and the IRB. *Joint Council 73 v. Carberry*, 741 F. Supp. 491, 493 (S.D.N.Y. 1990).

133. For instance, the Labor Organization Annual Reports (LM-2 forms) submitted to the U.S. Department of Labor Office of Labor Management Standards (OLMS) report each affiliate's assets, liabilities, receipts, disbursements, investments, loans and salaries. Interview with John J. Cronin, Jr., *supra* note 99; 29 C.F.R. § 403 (2006) ("Labor Organization Annual Financial Reports"). Filing an improper LM-2 form is a chargeable offense.

134. Procedurally, the only requirements are (1) the chief investigator must provide ten days advance written notice; and (2) the person to be examined has a right to be represented, either by legal counsel or by a Teamsters member of the examinee's choosing. *United States v. Int'l Bhd. of Teamsters*, 735 F. Supp. 519, 520 (S.D.N.Y. 1990) [hereinafter *Investigations Officer Notice Opinion*] ("Given this background of corruption and the explicit reason for the existence of the investigations officer, his notices of sworn statements must themselves be considered "reasonable cause" to take sworn statements or examinations for the purposes of para. F.12.(C)(c).")

135. Interview with Charles M. Carberry, *supra* note 100.

136. IRB Rules, *supra* note 97, at 606 ("Upon completion of an investigation, the IRB shall prepare, or shall direct the chief investigator to prepare, a written report (the "Investigative Report") detailing proposed findings, charges, and recommendations concerning the discipline of Teamsters officers, members, employees, agents and representatives, or concerning recommendations that any Teamsters-affiliated body be placed in trusteeship.")

explains the chief investigator's evidence and reasoning.¹³⁷ Charges are supported by exhibits, including sworn statements of Teamsters and law enforcement personnel, subpoenaed telephone records, Labor Organization Annual Reports ("LM-2 forms"),¹³⁸ articles from the news media, and internal Teamsters communications.¹³⁹ The report levels specific charges and cites independent administrator and IRB precedents, particularly those that have been affirmed by the district court and Second Circuit.¹⁴⁰ The chief investigator's practice is to not recommend a sanction.

The IRB may approve, modify or reject the chief investigator's report, or direct the chief investigator to investigate further.¹⁴¹ If the IRB approves the report, it becomes a "proposed charge," and is submitted to the Teamsters entity responsible for further action.¹⁴² Trusteeship recommendations are submitted to the general president.

B. *The Teamsters' Disciplinary Role*

The use of the Teamsters' disciplinary machinery as an arm of the consent order differentiates the IRB phase from the independent administrator phase. The IRB recommends charges to a Teamsters entity for adjudication. During the IRB's five-year term ending in July 2006, the IRB recommended charges against fifty-three union members. It conducted five disciplinary hearings itself; in the rest of the cases, it found the Teamsters' actions satisfactory.¹⁴³

1. *The Teamsters' Role in Adjudicating Individual Disciplinary Charges*

Under the independent administrator phase, the independent administrator acted as judge, trier of fact, and sentencer on disciplinary charges brought by the investigations officer. By contrast, the IRB investigates wrongdoing through the chief investigator's office and, if

137. For instance, if the charge is knowing association with a permanently barred member, the evidence must establish that the tainted individual is in fact permanently barred, that the charged member associated with the permanently barred member, and that the charged member knew the other member had been permanently barred. Memorandum from the Independent Review Board Members on Proposed Charge Against Local 783 Secretary-Treasurer Jerry Vincent to James P. Hoffa, IBT General President at 4-21 (Dec. 28, 2005) (on file with author) [hereinafter Proposed Charge Against Jerry Vincent].

138. *See supra* note 133.

139. *See, e.g., id.* at 29-32.

140. *See, e.g., id.* at 22-27.

141. IRB Rules, *supra* note 97, at 606.

142. *Id.* The IRB may designate the General Executive Board as the IBT entity responsible if the matter "concerns an offense committed against an officer of the International Union or the International Union."

143. INDEP. REVIEW BD., IRB REPORT FOR THE PERIOD 2001-2006 TO HONORABLE LORETTA A. PRESKA, UNITED STATES DISTRICT JUDGE 1 (2006).

satisfied that the chief investigator's charges have merit, refers "recommendations" to the relevant Teamsters entity.

The IRB typically sends disciplinary recommendations to a Teamsters local's executive board. However, if the charges implicate a majority of that executive board, the IRB directs its recommendation to the joint council or area conference.¹⁴⁴ The General Executive Board may exercise original jurisdiction over offenses committed against the international union or its officers.¹⁴⁵ The general president possesses emergency powers when a situation is "imminently dangerous" to the welfare of the international union or any subordinate body.¹⁴⁶ When the general president takes jurisdiction, he may appoint a hearing panel to make recommendations, but he retains the final decisionmaking authority.¹⁴⁷

Upon receiving an IRB recommendation for disciplinary action, the Teamsters local or other union entity designates an officer to act as prosecutor. Respondents are entitled to at least ten days notice before being summoned to a hearing.¹⁴⁸ Attorneys are not normally permitted at Teamsters hearings,¹⁴⁹ although a respondent may select a member in good standing from his local union to represent him; witnesses may be presented.¹⁵⁰

The respondent will be found not culpable unless a majority of the local's executive board or an IBT hearing panel finds him guilty by a preponderance of reliable evidence.¹⁵¹ The respondent and the Teamsters entity may settle the charges rather than formally adjudicate them. If so, the parties to the settlement will prepare an affidavit and agreement for the IRB to review in the same manner as it would review a final adjudication.¹⁵²

144. IBT Constitution, *supra* note 7, art. XIX, §§ 1(a), 4(a).

145. *Id.* art. XIX, § 5(a); IRB Rules, *supra* note 97, at 606.

146. IBT Constitution, *supra* note 7, art. XIX, § 11(a).

147. IBT Constitution, *supra* note 7, art. XIX, §§ 5, 11(b).

148. IBT Constitution, *supra* note 7, art. XIX, §§ 1(c), 2(b), 4(c). However, the general president may exercise his emergency power to impose a trusteeship prior to a hearing. *Id.* art. XIX, § 11.

149. *See, e.g.*, Johnnie Brown, Int'l Tr. Joint Council 16, Decision of the Int'l Tr. of Joint Council 16 on the Referral from the IRB of Charges Against Local 813 Officers Martin Adelstein, Alan Adelstein, James Murry and Michael Giammona 3 (Aug. 2, 1993), available at http://www.irbcases.org/pdfs/27,29_irb.pdf [hereinafter Decision of the Int'l Tr. of Joint Council] ("Although attorneys are not normally permitted at hearings held by Teamsters subordinate bodies, the Joint Council . . . had adopted a policy permitting all parties to be represented by counsel at hearings on IRB charges"); *but see* Decision of the General President Ronald Carey, In the Matter of Article XIX Charges against Local 813 Members, at 2 n.2 (May 10, 1996) ("Brother Mongelli showed up at the hearing, but left before it commenced having been advised that his attorney could not participate in the hearing.").

150. IBT Constitution, *supra* note 7, art. XIX, § 1(c).

151. *Id.* art. XIX, § 1(e).

152. *See, e.g.*, Letter from John Jackson, President, Local 676, to IRB (July 7, 1993), available at http://www.irbcases.org/pdfs/122_irb.pdf (Affidavit & Agreement attached).

The Teamsters entity must report its findings and sanctions to the IRB.¹⁵³ Sometimes these decisions resemble a federal district court opinion, exceeding fifty pages and citing independent administrator and IRB decisions as precedent.¹⁵⁴ In other instances, a local's executive board's report may comprise a few paragraphs, delineating the charges, verdict and penalty.¹⁵⁵ More specific explanation is usually included when a sanction less severe than permanent expulsion is imposed, or when the penalty recommended by the Teamsters entity is less severe than that traditionally imposed for the charged conduct.

The IRB must determine if the Teamsters entity's decision or settlement is "inadequate" or "not inadequate." A decision may be found inadequate because (1) the decision has not provided sufficient factual support for a finding of no culpability,¹⁵⁶ (2) the sanction does not reflect the gravity of the offense,¹⁵⁷ or (3) the agreement or the sanction is unenforceably unclear.¹⁵⁸ The IRB sends an inadequate decision back to the Teamsters for additional action, requesting reasoning and, if necessary, suggesting language to ensure the sanction's enforceability.¹⁵⁹ If the IRB is

153. IRB Rules, *supra* note 97, at 606.

154. See generally Decision of the Int'l Tr. of Joint Council, *supra* note 149.

155. See, e.g., Letter from Daniel Kane, Jr., Sec'y-Treasurer, Exec. Bd. Local 202, to IRB (Aug. 20, 1993), available at http://www.irbcases.org/pdfs/560_irb.pdf ("The Executive Board rules the following: 1. Mr. D'Amico will be immediately and permanently removed from office and permanently banned from being employed by Local 202 in any way; 2. that no further compensation or Health & Pension contributions shall be paid on his behalf by this Local or any I.B.T. entity; 3. Mr. D'Amico shall be permanently expelled from membership in Local 202. If you have any questions, do not hesitate to call.").

156. See, e.g., Opinion and Decision of the Independent Review Board *In re* Bruce W. Presley at 2-3 (July 8, 1998), *aff'd*, United States v. Int'l Bhd. of Teamsters, 1998 U.S. Dist. LEXIS 10914 (S.D.N.Y. July 21, 1998) [hereinafter *Presley*] (describing procedural history in a case where IRB took jurisdiction after the joint council failed to apply correct legal standard in finding no culpability).

157. See, e.g., Letter from John J. Cronin, Jr., Administrator, IRB, to Ron Carey, General President, IBT (June 22, 1995) (on file with author) (informing General President Carey that failure to impose a prohibition on payments during suspension period of Local 966 officer Vincent Sombrotto and others rendered decision inadequate); Letter from John J. Cronin, Jr., Administrator, IRB, to Charles Stansburge, III, President, Joint Council 62, IBT (Sept. 25, 1995) (on file with author) (finding sanction inadequate and recommending harsher penalty for three full-time officers of Local 355); Letter from John J. Cronin, Jr., Administrator, IRB, to Ron Carey, General President, IBT (July 10, 1996) (on file with author) (finding penalty as to Local 282 officer Ronald Forino inadequate as to penalty).

158. See, e.g., Supplemental Decision of the Executive Board of Joint Council 10 in the Matter of Daniel Zenga, Andy Bellemare and William Schomburg 1 (June 4, 1993) (on file with author) (describing IRB's finding that April 4, 1993 joint council decision was "inadequate" because penalties were not "sufficiently specific"); Response of Joint Council 16 to Independent Review Board Notice Asserting Deficiencies in Action of Joint Council 16 Involving Certain Officers of Local 854 1 (July 19, 1993) (describing June 11, 1993 IRB finding that affidavits signed by Local 854 officers Frank Marsigliano and Anthony Ignieri were inadequate because the representations were "not binding").

159. The IRB may point out inaccurate Teamsters legal findings. See, e.g., Letter from John J. Cronin, Jr., Administrator, IRB, to Ron Carey, General President, IBT (Oct. 27, 1997) (on file with author) ("The IRB does not, however, agree with the reasoning under which Trerotola was found not to have embezzled funds from Joint Council 16 and the Eastern Conference. That officers of those entities may have been aware of Trerotola's double dipping is not a defense to Trerotola's embezzlement."). In

dissatisfied with the Teamsters entity's revised report, the IRB will convene a hearing *de novo* and render its own decision and sanction.¹⁶⁰

In certain instances, the IRB rather than the Teamsters serves as the prosecutor and adjudicator. Organized crime cases are usually referred to the IRB because they require FBI agents' testimony. The FBI does not permit its agents or confidential witnesses to be cross-examined at a Teamsters disciplinary hearing.¹⁶¹ The IBT may also refer charges involving high-ranking international union officers to the IRB. For instance, the IRB first recommended that the General Executive Board charge former General President Ronald B. Carey with embezzlement and financial misconduct in connection with expropriating union funds to aid his re-election campaign.¹⁶² The General Executive Board filed charges against Carey but referred the case to the IRB for adjudication.¹⁶³

C. *The Independent Review Board's Procedures*

1. *IRB Hearings*

An IRB hearing is convened if: (1) the IRB finds the Teamsters' handling of a case "inadequate," or (2) the IBT refers the case to the IRB for adjudication. Before a hearing, the IRB provides notice to the respondent, including a copy of the investigative report with exhibits, and a copy of the IRB's Operating and Hearing Rules.¹⁶⁴ The IRB follows the same 10-day notice requirement and the same burden of proof (preponderance of reliable evidence) as the Teamsters, but recognizes a

the alternative, the IRB may suggest a harsher punishment. *See, e.g.*, Letter from John J. Cronin, Jr., Administrator, IRB, to Charles Stansburge, III, President, Joint Council 62, IBT (Nov. 25, 1995) (on file with author) ("Because the full-time officers, who are responsible for the day-to-day functioning of the Local failed to comply with specific financial control requirements that in essence are aimed at monitoring their actions, it appears that a one-month unpaid suspension would be a more appropriate sanction for the full-time officers").

160. IRB Rules, *supra* note 97, at 606. Additionally, the IRB may monitor the disposition of the referred matter itself or may direct the chief investigator to do so. If the IRB determines that the Teamsters entity is not pursuing the matter in a "lawful, responsible, and timely manner," the IRB may provide notice of such before the Teamsters entity has issued a decision. The Teamsters entity will have ten days to set forth what corrective actions it will take. If the IRB determines that the response is inadequate, it must take over the matter itself. *Id.*

161. Interview with John J. Cronin, Jr., *supra* note 99.

162. United States v. Int'l Bhd. of Teamsters, 22 F. Supp. 2d 135, 138 (S.D.N.Y. 1998) [hereinafter *Carey & Hamilton Discipline*], *aff'd*, 247 F.3d 370 (2d Cir. 2001) (quoting Decision of IRB *In re* Ronald Carey and William Hamilton, July 27, 1998, at 1).

163. *Id.*; *see also* United States v. Int'l Bhd. of Teamsters, 120 F.3d 341, 344 (2d Cir. 1997), *aff'g* 931 F. Supp. 1074 (S.D.N.Y. 1996) [hereinafter *Simpson II*] ("[T]he IBT referred the charges against Simpson to the IRB for adjudication, 'in accordance with past practice and in consideration of Mr. Simpson's position as International Trustee.'").

164. *See, e.g., id.* at 1095.

right to counsel.¹⁶⁵ Moreover, IRB hearings follow evidentiary and procedural rules generally applicable to labor arbitration hearings.¹⁶⁶

FBI agents and other DOJ personnel rarely testify and informants never appear at IRB hearings. Much evidence is introduced via hearsay, either by testifying agents or by affidavits. When these affidavits refer to FBI and Office of Labor Racketeering reports, those reports are admitted into the record, as are depositions and trial testimony of FBI informants and cooperating witnesses in other cases,¹⁶⁷ reports by state law enforcement agencies,¹⁶⁸ and congressional committees.¹⁶⁹ Surveillance tapes and electronic eavesdropping transcripts¹⁷⁰ often provide additional evidence.¹⁷¹ According to IRB decisions, hearsay is reliable when it is corroborated by other evidence, including other hearsay.¹⁷²

The Second Circuit upheld the IRB's use of hearsay evidence on two grounds.¹⁷³ First, because the independent administrator and the IRB are paid by the IBT, they are private actors not subject to constitutional due process constraints.¹⁷⁴ Second, because the disciplinary proceedings are administrative, procedural due process does not require adherence to the rules of evidence that govern criminal trials.¹⁷⁵

165. IRB Rules, *supra* note 97, at 607.

166. *Id.* A prior *nolo contendere* plea establishes just cause at a labor arbitration hearing to find that a respondent engaged in the conduct charged in the criminal case. See Decision of the Independent Administrator, Investigations Officer v. Senese, July 12, 1990, at 28 (citing Great Scot Food Stores, 73 Lab. Arb. (BNA) 147 (1979)); Great Atlantic and Pacific Tea Co., 45 Lab. Arb. (BNA) 495 (1965), *aff'd sub nom.* United States v. Int'l Bhd. of Teamsters, 745 F. Supp. 908 (S.D.N.Y. 1990) [hereinafter *Senese*], *aff'd*, 941 F.2d 1292 (2d Cir. 1991), *cert. denied*, 502 U.S. 1091 (1992)). Hearsay evidence is also admissible. *Senese*, 745 F. Supp. at 914.

167. Testimony from witnesses in the Federal Witness Security Program may be admitted by affidavit or transcript of past trial testimony. See, e.g., United States v. Int'l Bhd. of Teamsters, 98 F.2d 120, 122 (2d Cir. 1993) [hereinafter *Adelstein*] (crediting trial testimony of a former member of an organized crime family).

168. See, e.g., Decision of the Independent Administrator at 5, Investigations Officer v. Cozza (Jan. 4, 1991), *aff'd sub nom.* 764 F. Supp. 797 (S.D.N.Y. 1991), *aff'd*, 956 F.2d 1161 (2d Cir. 1992) ("The Pennsylvania Crime Commission issued regular reports in the years 1980, 1983 and 1985, listing LaRocca as a member of the Pittsburgh family of La Cosa Nostra.").

169. See, e.g., *Adelstein*, 98 F.2d at 123 (crediting reports by the Senate Select Committee on Improper Activities in the Labor or Management Field, chaired by Senator John L. McClellan, 1957-1959).

170. See, e.g., *id.*

171. For instance, in the case of Dominic Senese, it was entered into the record that Senese had been the victim of a "mob-style murder attempt, by means of a shotgun blast to the head, which he managed to survive." *Senese*, Decision of the Independent Administrator, at 20, *supra* note 166.

172. See *Adelstein*, 98 F.2d at 124-25.

173. *Senese*, 941 F.2d at 1292.

174. *Id.* at 1296-97.

175. *Id.* at 1298 (citing *Richardson v. Perales*, 402 U.S. 389, 402 (1971)).

The IRB does not have the authority to issue subpoenas on behalf of respondents.¹⁷⁶ While the Labor-Management Reporting Disclosure Act (LMRDA) requires unions to provide a “full and fair hearing,”¹⁷⁷ it does not require unions to subpoena witnesses for the respondent.¹⁷⁸ The respondent is entitled to cross-examine live witnesses.¹⁷⁹ All three IRB members need not be present at a hearing. Two of three members’ votes are sufficient to render a decision. One member may preside over a hearing and recommend a decision.¹⁸⁰

2. Appeals from IRB Decisions

The IRB submits its decision to the district court as an “application.” The respondent then may submit objections.¹⁸¹ The district court will affirm an IRB culpability determination unless it is “arbitrary or capricious,”¹⁸² and will affirm an IRB sanction unless it is “unwarranted in

176. *United States v. Int’l Bhd. of Teamsters (Simpson I)*, 870 F. Supp. 557, 561 (S.D.N.Y. 1994) [hereinafter *Simpson I*] (“Further, neither the Consent Decree nor the IBT Constitution grants Union members the right to subpoena witnesses.”).

177. 29 U.S.C. § 411(a)(5)(C) (2000). However, the LMRDA protects membership rights, not employment rights or union officers’ rights. The LMRDA’s “full and fair hearing” requirement does not prevent imposition of sanctions prohibiting a member from obtaining union employment, running for union office, or holding an officer position. *See United States v. Int’l Bhd. of Teamsters*, 315 F.3d 97, 99 (2d Cir. 2002) [hereinafter *Mireles & Roa*] (quoting *Finnegan v. Leu*, 456 U.S. 431 (1982)).

178. *Simpson I*, 870 F. Supp. at 561 (quoting *United States v. Int’l Bhd. of Teamsters*, 962 F.2d 4 (2d Cir. Mar. 27, 1992) (Table, No. 91-6300), *aff’g* 141 L.R.R.M. 2483 (S.D.N.Y. Nov. 8 1991) *aff’g sub nom.* Decision of the Independent Administrator, Investigations Officer v. Nunes (Sept. 6, 1991)) [hereinafter *Nunes*]. *See also United States v. Int’l Bhd. of Teamsters*, 247 F.3d 370, 385-86 (holding that the LMRDA does not grant a right to issue subpoenas, but that in some instances a full and fair hearing might require subpoena power).

179. FBI agents and OLR investigators usually present evidence via affidavit but on occasion they provide testimony via teleconference. The declaration stands for the direct testimony; the agents are subjected to cross-examination. *See, e.g.*, Decision of the Independent Review Board at 2, *In re Edward Garafola* (Jan. 3, 1995), *aff’d sub nom.* *United States v. Int’l Bhd. of Teamsters*, 878 F. Supp. 14 (S.D.N.Y. 1995).

180. IRB Rules, *supra* note 97, at 603-04; *see also United States v. Int’l Bhd. of Teamsters*, 998 F.2d 1101, 1107-08 (2d Cir. 1993) [hereinafter IRB Rules Appeal], *aff’g in part and rev’g in part*, Promulgation of Rules, *supra* note 75 (holding that a single IRB member may preside over hearings but not render a decision). At the conclusion of the hearing, the IRB issues a post-hearing schedule, setting a deadline for the chief investigator to submit a post-hearing memorandum setting out the chief investigator’s case. If the respondent submits a response, the chief investigator may submit a reply. *See, e.g.*, *United States v. Int’l Bhd. of Teamsters*, 910 F. Supp. 139, 141 (S.D.N.Y. 1996) [hereinafter *Lauro*]. Where the respondent does not appear, the hearing record is held open for ten days after the hearing transcript is sent to the respondent. *See, e.g.*, *Garafola*, Decision of the Independent Review Board, at 3.

181. *See, e.g.*, *Lauro*, 910 F. Supp. at 142 (“This Court received IRB Application XXVII consisting of the IRB’s Opinion and Decision concerning Lauro together with supporting exhibits on November 27, 1995. By letter dated that same day, Chambers informed Lauro that if he wished to object to the IRB’s findings and rulings, he could submit any objections to IRB Application XXVII to this Court no later than ten days from the date of the letter.”).

182. *Simpson II*, 931 F. Supp. at 1095 (citing *Friedman & Hughes*, 905 F.2d at 616; *United States v. Int’l Bhd. of Teamsters*, 981 F.2d 1362, 1368) [hereinafter *Sansone*]; *see also Simpson II*, 120 F.3d at 346 (“the Consent Decree contains ‘an extremely deferential standard of review’ of decisions of the IRB

law” or “without justification in fact.”¹⁸³ Judges Edelstein and Loretta Preska¹⁸⁴ have never overturned an IRB culpability finding.¹⁸⁵ Likewise, they have never rejected a sanction outright¹⁸⁶ and only rarely remanded a sanction for reconsideration.¹⁸⁷ The district court judges’ steadfast support for the court-appointed officers and the IRB has been crucial to the independent administrator’s and IRB’s success. The absence of such support would almost certainly have invited IBT recalcitrance and more legal challenges.

D. Cooperation Between the Teamsters and the IRB

The IRB phase requires the Teamsters’ participation in the RICO-driven reform effort. By sending recommendations to local union executive boards, joint councils and the General Executive Board, the IRB requires the Teamsters to prosecute, judge, and sanction members and officers.

by the district court”) (quoting *United States v. Int’l Bhd. of Teamsters*, 120 F.3d 340, 346 (2d Cir. 1994) [hereinafter *DiGirlando*]).

183. *United States v. Int’l Bhd. of Teamsters*, 978 F.2d 68, 73 (2d Cir. 1992) [hereinafter *Wilson, Weber and Dickens*] (overturning district court’s imposition of a lifetime ban).

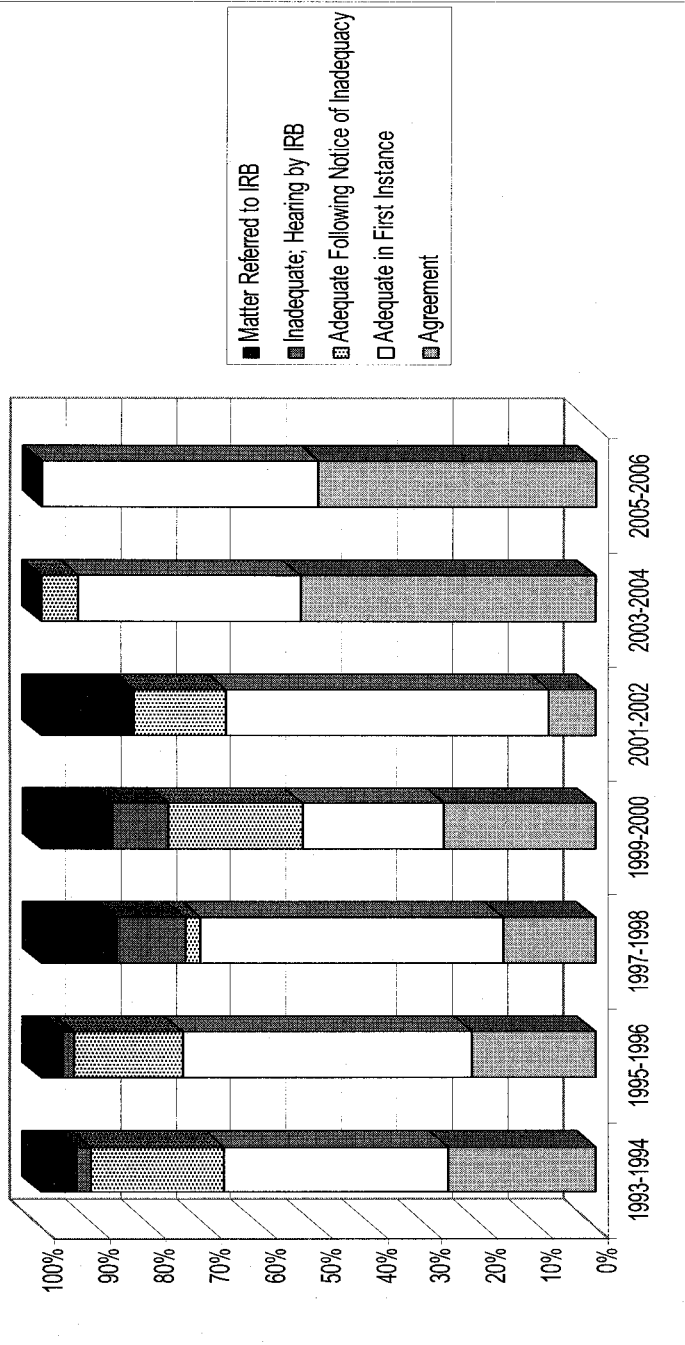
184. Judge Loretta Preska took over jurisdiction of the suit following Judge Edelstein’s death in 2000. *See Tusino v. Int’l Bhd. Of Teamsters*, Summary Order No. 01-7734 (2d. Cir 2002).

185. *But see Lauro*, 910 F. Supp. at 142-43 (affirming the charges despite errors that caused Judge Edelstein to comment, “My displeasure is beyond words.”).

186. The district court modified the elections officer’s decision on sanctions, finding that the ruling had inappropriately departed from the election rules without an appropriate basis. *United States v. Int’l Bhd. of Teamsters*, 9. F. Supp. 2d 354, 362 (S.D.N.Y. 1998), *aff’d*, 168 F.3d 645 (2d Cir. 1999) [hereinafter *Carey Slate Protest*].

187. On occasion, the court has done so when several co-respondents receive the same sentence in the same adjudication, despite differential culpability. *See, e.g., United States v. Int’l Bhd. of Teamsters*, 817 F. Supp. 337, 347-48 (S.D.N.Y. 1993) [hereinafter *Burke*] (“In light of the fact that Messrs. Abrego, Ottman, McKay, Cahill, Brechner, and Simmons appear to be less culpable than Mr. Burke and Mr. Wolchok, it is not clear why identical sanctions have been imposed on all Respondents.”). If the district court considers the sanction arbitrarily low, it may remand, but it may not suggest, even indirectly, an appropriate sanction. *United States v. Int’l Bhd. of Teamsters*, 170 F.3d 136, 145 (2d Cir. 1999) *vacating and remanding United States v. Int’l Bhd. of Teamsters*, No. 88 Civ. 4486 (S.D.N.Y. July 28, 1997) [hereinafter *Giacumbo III*] (“It seems evident that the district court was trying to accomplish indirectly what we previously found impermissible in *Wilson*, where the district court directly imposed a lifetime ban. The district court strongly suggested what it believed an appropriate sanction should be: ‘this Court questions Giacumbo’s fitness to ever again hold a position of trust, influence, or authority within the IBT, its Local Unions, or any other IBT-affiliated entity.’”).

Result of Recommendations by the Independent Review Board to the Teamsters Union, Percentage Breakdown (Fig. 1)



After the Teamsters make a determination about sanctions, the IRB may find: (1) the Teamsters' adjudication is adequate; (2) the adjudication is inadequate, but the Teamsters subsequently corrected it to the IRB's satisfaction; or (3) the Teamsters' final action is inadequate and an IRB hearing *de novo* is necessary.

To date, the IRB has found two-thirds of the Teamsters' adjudications to be adequate in the first instance and an additional quarter to be adequate after subsequent Teamsters corrective action. The IRB has rejected the Teamsters' final adjudication of nineteen charges against fifteen individuals; ultimately the IRB found six of those individuals to be not culpable. In more than a dozen years, the IRB has convened hearings against only 46 individuals. This contrasts starkly with the more than 100 hearings held by the independent administrator in just three years.

IV.

THE IRB'S DISCIPLINARY LAW OF THE TEAMSTERS

A. Introduction

The consent order gave the independent administrator and then the IRB the authority to investigate and resolve disciplinary violations of the Teamsters constitution, bylaws, federal criminal and labor law, and the consent order itself. The Teamsters, of course, already had a rudimentary history of "prosecuting" disciplinary violations, but its disciplinary decisions over the years were mostly unwritten and unknown to the union's rank and file. Certain clear violations of constitutional or bylaw language were obvious, but interpretations did not become precedents. The independent administrator initiated a more formal disciplinary process. He issued and publicized written decisions, sometimes clarifying ambiguous constitutional, bylaw, and consent order language. Over almost two decades of disciplinary proceedings, a common law of Teamsters discipline has been elaborated and given precedential effect.

1. Bringing Reproach Upon the Union

"Bringing reproach" upon the Teamsters is the most general and widely used disciplinary offense.¹⁸⁸ The Teamsters constitution provides that each member "pledges his honor . . . to conduct himself or herself in such a manner as not to bring reproach upon the union."¹⁸⁹ Article XIX, § 7(b)¹⁹⁰ of the Teamsters constitution provides a "*non-exhaustive list*"¹⁹¹ of

188. Report of the Independent Administrator, *supra* note 119, at 8 (quoting IBT Constitution, *supra* note 7, art. II, §2(a)).

189. IBT Constitution, *supra* note 7, art. II, §2(a).

190. Formerly, IBT Constitution, *supra* note 7, art. XIX, §6(b).

grounds constituting an offense; section 7(b)(2) provides that violation of the oath of office is itself such a ground.¹⁹²

Every investigations officer's charge or IRB charge begins by accusing the Teamsters member of "bringing reproach" upon the union, followed by a "to wit" clause detailing the allegedly reproachful conduct.¹⁹³ In November 1989, the General Executive Board attempted to rein in the scope of the bringing-reproach offense by means of a resolution limiting that charge to offenses explicitly named in the constitution.¹⁹⁴ Independent Administrator Lacey held that he was not bound by the General Executive Board's interpretation of the Teamsters constitution's disciplinary provisions, and that the consent order granted the independent administrator power to render his own constitutional interpretations.¹⁹⁵

Further, the consent order prohibited a union member from *future association* with members of any organized crime family.¹⁹⁶ The independent administrator took the position that the General Executive Board's interpretation notwithstanding,¹⁹⁷ association with any LCN member prior to the implementation of the consent order violated the constitution because it brought reproach upon the union.¹⁹⁸ Thus, the

191. Report of the Independent Administrator, *supra* note 119, at 9 (emphasis added).

192. IBT Constitution, *supra* note 7, art. XIX, §7(b)(2) ("Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.").

193. *See, e.g.*, Proposed Charge Against Jerry Vincent, *supra* note 137, at 27-28 ("Based on the foregoing, it is recommended that Jerry Vincent be charged as follows: While an IBT member and officer of Local 783 you brought reproach upon the IBT, violated your membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution and Paragraph E(10) of the March 14, 1989 Consent Order . . . , *to wit*: Subsequent to Michael C. Bane's permanent bar from the IBT on July 17, 2001 and William T. Hogan, Jr.'s permanent bar from the IBT on May 29, 2002, you had knowing and purposeful contact with both Bane and Hogan as detailed above."). Additionally, if the member is charged with violating another specific provision of Article XIX, § 7(b), that can also precede the "to wit" clause.

194. Report of the Independent Administrator, *supra* note 119, at 11. The General Executive Board concluded that the expression "bring reproach upon the Union" was "so vague and indefinite that it does not sufficiently inform trade union members and officers of the specific conduct which it covers" The resolution was passed at the request of IBT Vice President Theodore Cozza, who himself at the time was facing charges of "knowing association with members of LCN." Because no specific prohibition on association with LCN existed in the IBT Constitution, Cozza's charge would have been precluded under his proposed interpretation. *Id.* at 12 (quoting General Executive Board Resolution §1(a) (Nov. 1, 1989)). Cozza's contacts with organized crime dated back to the 1970s. Decision of the Independent Administrator at 5, *Investigations Officer v. Cozza* (Jan. 4, 1991), *aff'd*, 764 F. Supp. 797 (S.D.N.Y. 1991), *aff'd*, 956 F.2d 1161 (2d Cir. 1992).

195. Decision of the Independent Administrator, *Investigations Officer v. Friedman & Hughes*, *supra* note 82, at 19, 33-34 ("[T]he Resolution does violence to the plain language and intent of the IBT Constitution. . . . The constitutional language is unambiguous and specific.").

196. Consent Order, *supra* note 4, at 6.

197. *See* Report of the Independent Administrator, *supra* note 119, at 12 (discussing the November 1, 1989 resolution).

198. *See* Decision of the Independent Administrator, *Investigations Officer v. Friedman & Hughes*, *supra* note 82, at 23 (finding that past conduct "'brings reproach' . . . upon a Union that has recognized that 'there should be no criminal element of La Cosa Nostra corruption of any part of the IBT'" (quoting Consent Order, *supra* note 4, at 2)).

independent administrator and IRB could bring charges based on conduct that occurred years before the signing of the consent order.¹⁹⁹

2. *Legal Sources of Disciplinary Offenses*

The consent order provided for three important disciplinary offenses: (1) associating with LCN members or associates;²⁰⁰ (2) associating with members permanently or temporarily barred from Teamsters membership;²⁰¹ and (3) failing to cooperate with the investigations officer or IRB.²⁰²

The Teamsters constitution explicitly prohibits certain conduct including: (1) embezzlement or conversion of the union's funds or property;²⁰³ (2) assault or provoking assault of fellow members;²⁰⁴ and (3) extortion of a union member's rights.²⁰⁵ The consent order had enjoined the union's membership from knowingly associating with organized crime members and associates.²⁰⁶

Violations of federal labor or criminal law also bring reproach upon the union. The investigations officer and/or IRB have charged the following as disciplinary offenses: (1) receiving things of value from an employer;²⁰⁷ (2) providing union loans to a member;²⁰⁸ (3) offering, accepting, or soliciting a fee, kickback, commission, gift, loan, money or thing of value because of,

199. The independent administrator and investigations officer were not subject to a statute of limitations. Consent Order, *supra* note 4, at 4; *Friedman & Hughes*, 725 F. Supp. at 167. The IRB is subject to the amended five-year statute of limitations contained in Article XIX, § 7(a) of the IBT Constitution. See Consent Order, *supra* note 4, at 4.

200. Consent Order, *supra* note 4, at 6 (enjoining the Teamsters membership from associating with any member or associate of any organized crime family or any other criminal group).

201. *Id.* (enjoining the Teamsters membership from associating with any person enjoined from participating in union affairs).

202. *Id.* (enjoining the Teamsters membership from obstructing or otherwise interfering with the work of the Independent Review Board).

203. IBT Constitution, *supra* note 7, art. XIX, § 7(b)(3) ("Breaching a fiduciary obligation owed to any labor organization by any act of embezzlement or conversion of union's funds or property.").

204. *Id.*, art. XIX, § 7(b)(6) ("Disruption of union meetings, or assaulting or provoking assault on fellow members or officers, . . . or any similar conduct in, or about union premises or places used to conduct union business.").

205. *Id.*, art. XIX, § 7(b)(10) ("Retaliating or threatening to retaliate against any member for exercising rights under this Constitution or applicable law including the right to speak, vote, seek election to office, support the candidate of one's choice, or participate in the affairs of the Union.").

206. Consent Order, *supra* note 4, at 6-7. See also IBT Constitution, *supra* note 77, art. XIX, § 7(b)(9) (prohibiting "knowingly associating (as that term has been defined in prior decisions on disciplinary charges under this Article) with any member or associate of any organized crime family or any other criminal group.").

207. 29 U.S.C. § 186 (2000). Violations of this provision are listed in the Teamsters constitution. IBT Constitution, *supra* note 7, art. XIX, § 7(b)(13).

208. 29 U.S.C. § 503(a) (2000) ("No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.").

or with intent to influence the operations of, an employee benefit plan;²⁰⁹ and (4) filing false or misleading labor organization annual reports to the Department of Labor.²¹⁰ An embezzlement offense tracks provisions of federal criminal law.²¹¹

A number of other offenses cover conduct that violates either non-disciplinary provisions of the IBT constitution, such as membership requirements, or violates a local union's bylaws.²¹² Such offenses are not firmly grounded in statutory text, the consent order or union rules; rather, they are inferred from the constitutional bringing-reproach provision, and the common law developed by the independent administrator and IRB. These include: (1) failure to investigate;²¹³ and (2) any violation of a suspension; or (3) aiding and abetting either offense.²¹⁴

B. Individual Disciplinary Charges

This Part explains the elements of each disciplinary charge, and provides empirical data on the frequency of each charge from 1989 to 2005.

1. Membership in and Association with Cosa Nostra

The heart of the government's RICO complaint was the allegation of a "devil's pact"²¹⁵ between LCN and the Teamsters. The main purpose of the civil RICO suit was to purge LCN's influence from the union. Thus, it is not surprising that the consent order enjoins Teamsters members from knowingly associating with members or associates of any organized crime family.²¹⁶ Early on, Independent Administrator Lacey stated that "membership in and association with organized crime is repugnant to the ideal of a corruption-free union."²¹⁷ The independent administrator needed only a few early disciplinary cases to establish permanent expulsion from the Teamsters as the usual sanction for violating this prohibition.

209. 18 U.S.C. § 1954 (2000).

210. While violation of 29 U.S.C. § 431(b) (2000) is not a federal crime, the investigations officer charged such offenses. Report of the Independent Administrator, *supra* note 119, at 37.

211. 29 U.S.C. § 501(c) (2000) ("Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.").

212. *See infra* Part IV.B.8.

213. Motion to Dismiss, *supra* note 41, at 1388, 1401; *see also* United States v. Int'l Bhd. of Teamsters, 761 F. Supp. 315, 319 (S.D.N.Y. 1991) [hereinafter Yager Veto] ("As a result, when a union fiduciary . . . fails to act to remedy wrongdoing within the union, that constitutes aiding and abetting the extortion of Teamsters members' rights to democracy and free speech. . . . Further, aiding and abetting the extortion of members' rights to union democracy through failure to take action in the face of corruption is an act of racketeering").

214. *See infra* Part IV.B.10.

215. Government's Memorandum, *supra* note 3, at 9.

216. Consent Order, *supra* note 4, at 6.

217. *Senese*, *supra* note 166, at 141.

Membership in LCN is a single element offense; it is typically proven by an FBI agent's affidavit asserting that, in the agent's expert opinion, the respondent union member is an LCN member.²¹⁸ All but five of the twenty-three members charged with LCN membership held a union office, including five local presidents, three secretary-treasurers, and two vice presidents.

Knowing association with an organized crime member or associate has been a more frequently leveled charge. This offense requires proof of two elements: (1) that the individual with whom the respondent is alleged to have associated is an LCN member or associate;²¹⁹ and (2) that the association was "knowing."²²⁰ The association was "knowing" if the respondent knew or should have known of the person's LCN ties, and had purposeful—and not merely "incidental or fleeting"—contacts with the LCN member or associate.²²¹ It is irrelevant whether those contacts occurred in a business or social context.²²² The IRB focuses "on the nature and not the number of contacts."²²³ Indeed, a single meeting has been held sufficient.²²⁴ For example, Angelo Misuraca, former vice president of Local 398, was charged with participating in a single recorded conversation

218. See, e.g., Decision of the Independent Administrator at 9-10 (Aug. 20, 1990), *Investigations Officer v. Salerno* ("Thus, given DeVecchio's extensive background and experience, I accept him as an expert knowledgeable in investigation and structure of organized crime in New York."), *aff'd*, *United States v. Int'l Bhd. of Teamsters*, 745 F. Supp. 189 (S.D.N.Y. 1990) [hereinafter *Salerno*].

219. See, e.g., Decision of the Independent Administrator at 23-24, *Investigations Officer v. Salerno*, *supra* note 218, Decision of the Independent Administrator at 10-15, *Investigations Officer v. Cozza*, *supra* note 168.

220. Report of the Independent Administrator, *supra* note 119, at 20.

221. Decision of the Independent Administrator at 35, *Investigations Officer v. Senese*, *supra* note 166.

222. *Id.* Charges may be sustained even where the prohibited associate is a family member. See, e.g., Decision of the Independent Administrator, *Investigations Officer v. Kosey* at 10 (Apr. 22, 1992), *aff'd*, *United States v. Int'l Bhd. of Teamsters*, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. May 18, 1992) [hereinafter *Kosey*] ("Respondent would have us excuse his inaction because Glimco was his father-in-law and taking any step against him might have given rise to domestic problems. The implications of such a specious proposition are limitless. The mere placing of a family member on the Executive Board could then confer an immunity of sorts and excuse the violation of one's fiduciary responsibility."); Decision of the Independent Administrator at 11, *Investigations Officer v. Salerno*, *supra* note 218 (sustaining charges against Cirino "Charles" Salerno for associating with his brother, Anthony Salerno, the Genovese Family underboss). The Second Circuit has held that the law governing restrictions on parolees' activities is comparable. Such restrictions are violated by a "calculated choice to associate with persons having a criminal record." *DiGiramo*, 19 F.3d at 822 (quoting *United States v. Albanese*, 554 F.2d 543, 546-47 n.6 (2d Cir. 1977)). Familial connection may explain some contacts, but those that exceed those explained by familial obligations are violations. *Id.* (finding that familial connections justified DiGiramo's contacts with his in-laws when his wife was with him, but not when he visited his father-in-law unaccompanied by his wife).

223. Decision of the Independent Administrator at 36-37, *Investigations Officer v. Senese*, *supra* note 166.

224. Decision of the Independent Administrator at 18, *Investigations Officer v. Misuraca* (March 6, 1991), *aff'd*, *United States v. Int'l Bhd. of Teamsters*, 1991 U.S. Dist. LEXIS 9666 (S.D.N.Y. 1991) [hereinafter *Misuraca*].

with Angelo Amico, a high-ranking organized crime figure.²²⁵ That conversation and Misuraca's admission that he knew that newspaper articles alleged that Amico "ran the Rochester organized crime family,"²²⁶ were enough to sustain the knowing association charge.

In the absence of direct evidence,²²⁷ the IRB has held that respondent's knowledge of an individual's organized crime ties "may be inferred from the duration and quality of the association."²²⁸ It is not necessary to prove that respondent knew "details of [the LCN member's]... criminal activities or participated in any of those activities."²²⁹ Proof of the respondent's knowledge that the individual had organized crime ties is sufficient.

The investigations officer and IRB have charged sixty-nine respondents with association with organized crime members; these respondents include nine local presidents, eight secretary-treasurers, four vice presidents, and three recording secretaries, as well as two international vice presidents and an international representative. Twenty-seven rank-and-file members have been charged with associating with LCN members.

The independent administrator and IRB cannot be judged successful unless they substantially purge the Teamsters of LCN's influence. At the time of the civil RICO suit, many LCN labor racketeers with influence in the Teamsters had long histories of criminal activity; some were in prison or under indictment. Not surprisingly, most of these individuals were expelled from the Teamsters in the first few years of the independent administrator phase. However, once the known LCN figures were ousted from the Teamsters, it became harder to identify Teamsters members who continued to do organized crime's bidding. An individual with organized crime ties who had not been previously identified had every reason to cover his tracks. During the IRB's term ending in 2006, only seven Teamsters members faced charges for associating with LCN. Every finding of culpability or plea agreement resulted in a lifetime ban from Teamsters employment; in almost every case, the sanction also included a lifetime ban on Teamsters membership.

225. *Id.* at 9-10.

226. *Id.* at 15.

227. Direct evidence usually consists of the respondent's admission either that he knew that the individual in question was a member of LCN or that he was aware of such allegations. *See id.*

228. Decision of the Independent Administrator, at 37, Investigations Officer v. Senese, *supra* note 166; Report of the Independent Administrator, *supra* note 119, at 20; *see also* Decision of the Independent Administrator at 25, Investigations Officer v. O'Brien (May 15, 1991), *aff'd*, United States v. Int'l Bhd. of Teamsters, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. Sept. 11, 1991) [hereinafter *O'Brien*] ("It strains credulity that Mr. O'Brien could be friends with all the members in the highest ranking positions of the Detroit Organized Family of La Cosa Nostra and not be aware of their organized crime connections.").

229. Decision of the Independent Administrator at 25, Investigations Officer v. Cozza, *supra* note 168.

2. *Knowing Association with a Barred or Suspended Member*

The consent order also enjoins all Teamsters members from “knowingly associating with . . . any person otherwise enjoined from participating in union affairs.”²³⁰ Continued association would make it possible for expelled members to influence Teamsters affairs. Moreover, if barred individuals continued to associate with Teamsters members and officers, it would create the impression that eventually things would return to business as usual. The prohibition on contact with barred members applies to contact with individuals barred for any reason.²³¹ It also provides an honest Teamsters member with an excuse for avoiding and rejecting overtures from an individual who has been expelled from the union.

In prosecuting this offense, the IRB has rejected the defense that the respondent’s association with the barred member was unrelated to union business. For instance, in late 2005, the IRB recommended charges against Local 783 Secretary-Treasurer Jerry Vincent for prohibited contacts with two permanently barred Teamsters members.²³² Vincent had a series of phone conversations with barred members Michael Bane and William T. Hogan, Jr. The IRB determined that it was irrelevant that, as Vincent claimed, the calls were “just Mr. Bane whining about his fate.”²³³ However, the IRB recognized that a union officer’s job responsibilities may require prohibited contact with barred members if, for instance, the barred member is on an employer’s collective-bargaining team. Vincent argued that some of his calls were exempt from sanction for that reason, but the IRB held that the contact became prohibited as soon as it “went beyond that required for official union matters.”²³⁴

The IRB has charged twenty-five individuals with associating with a barred or suspended member. Of these respondents, six were shop stewards, three were local presidents, one was a recording secretary, and two were secretary-treasurers. Practically every charge resulted in a lifetime ban on both membership in, and employment by, the Teamsters, either by agreement or adjudication.

230. Consent Order, *supra* note 4, at 6; *see also Carey & Hamilton Discipline*, 22 F. Supp. 2d at 144-145.

231. *Carey & Hamilton Discipline*, 22 F. Supp. 2d at 144-45 (“Paragraph E(10) [of the Consent Order] provides no exceptions based on the stated reasons for the permanent bar.”).

232. Proposed Charge Against Jerry Vincent, *supra* note 137.

233. *Id.* at 24.

234. *Id.* at 25. However, the district court has recognized a limited exception when the personal contact is familial in nature. After former General President Ron Carey was permanently barred from office, he requested that the district court clarify that he could maintain contact with his son, also a Teamster. *Carey & Hamilton Discipline*, 22 F. Supp. 2d at 145 n.5 (quoting *DiGiramo*, 19 F.3d at 822) (internal quotations omitted). Judge Edelstein opined that the ban does not prohibit solely “familial or incidental” contacts. *Id.*

3. *Failure to Cooperate with the IRB & Failure to Appear Before the Investigations Officer*

Failure to cooperate with the IRB is a charge that significantly strengthens the IRB's investigatory powers. The IRB rules specify a number of actions that constitute failure to cooperate: failure to appear before a duly noticed in-person examination;²³⁵ failure to comply with the IRB's deadlines for responding to charges;²³⁶ failure to enforce an IRB decision;²³⁷ and failure to inform the IRB of trusteeship or disciplinary decisions made at the international level, regardless of whether the decisions were made pursuant to an IRB recommendation.²³⁸ Section L of the IRB rules, entitled "Cooperation," is a catch-all provision requiring that officers, members, employees, agents, and representatives must "cooperate fully" with the IRB in the course of any investigation or proceeding.²³⁹ This provision can be used to charge a Teamsters officer or member who refuses to answer questions,²⁴⁰ refuses to provide access to financial information, or provides false or misleading information.²⁴¹

The failure-to-cooperate charge has proven to be a powerful tool for encouraging cooperation with IRB investigations. The independent administrator and IRB have charged 146 members either with failure to appear before the investigations officer or failure to cooperate with the IRB.

During the independent administrator phase, only ten members were charged with failure to appear. However, the IRB has made much greater

235. IRB Rules, *supra* note 97, at 605 ("Failure to appear for a duly-noticed in-person examination shall be deemed a failure to cooperate fully with the IRB.").

236. *Id.* at 607 ("Failure to act in a lawful, responsible, and timely manner shall be deemed a failure to cooperate fully with the IRB.").

237. *Id.* ("Failure to immediately take all action necessary to implement the IRB's decision shall be deemed a failure to cooperate fully with the IRB.").

238. *Id.* at 608 ("Failure to inform the IRB of disciplinary or trusteeship decisions of the General President, the General Executive Board or the IBT Ethical Practices Committee, or to enforce any decision of the IRB affirming, modifying, or reversing any IBT disciplinary or trusteeship decision shall be deemed to be a failure to cooperate fully with the IRB.").

239. *Id.* at 607 ("Unreasonable failure to cooperate with the IRB shall be deemed conduct that brings reproach upon the Union, and which is thereby within the IRB's investigatory and decisional authority.").

240. *See, e.g.,* United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (DNE), 1994 U.S. Dist. LEXIS 13407 (S.D.N.Y. 1994) [hereinafter *Zancocchio*] (affirming that Teamsters officer fails to cooperate when he refuses to answer questions regarding association with organized crime).

241. *See, e.g.,* United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 486 (LAP), 2002 U.S. Dist. LEXIS 6751 at *3 (S.D.N.Y. Aug. 22, 2003) [hereinafter *Bane*]. This charge provides a particularly useful tool when the five-year statute of limitations has passed on a knowingly associating with LCN charge, but where the respondent's denial of the association occurs within the statute of limitations. *See id.* at *40-41 ("Bane argues that he is being punished for contacts with members or associates of organized crime that occurred outside the five-year statute of limitations in the IBT Constitution. This argument is without merit; Bane was not charged with contacts with members or associates of organized crime that occurred outside the statute of limitations but rather with failing to cooperate with the IRB in 2000.") (internal parentheses omitted).

use of this charge. Between 1995 and 1998, the IRB charged ninety members with failure to cooperate. Most of the individuals found culpable received a lifetime ban from Teamsters membership.

More than any other charge, failure to cooperate has been used against rank-and-file members. The independent administrator and IRB have charged ninety-six rank-and-file members with this violation, in addition to seven local presidents, ten secretary-treasurers, five vice presidents, and three recording secretaries.

4. *Failure to Investigate*

The independent administrator ruled that Teamsters officers have a fiduciary duty to investigate allegations or evidence of misconduct in the union; those who violate that duty are culpable of “bringing reproach” on the Teamsters.²⁴² This enabled the independent administrator and IRB to rid the union of Teamsters officials who were passively complicit with labor racketeers. The independent administrator noted, “It is imperative that not only are Union officers themselves free from the taint of corruption, but also that they do not close their eyes to the corruption around them.”²⁴³ In rejecting the Teamsters’ motion to dismiss the civil RICO suit, Judge Edelstein held that, “[e]ach defendant officer is a fiduciary with respect to the Union members. [Each has] a duty to disclose and remedy wrongdoing by the IBT.”²⁴⁴ Accordingly, “every IBT officer must, with unstinting effort and steely resolve, wage an active campaign to purge the Union of the hideous influence of organized crime.”²⁴⁵

The independent administrator and IRB used the failure-to-investigate offense to punish passive aiding and abetting. For decades, throughout the Teamsters, labor racketeers looted treasuries, intimidated rank-and-file members, solicited bribes for sweetheart contracts, and deprived union members of effective representation. Scores, probably hundreds, of otherwise non-criminal Teamsters officers stood by and did nothing. Indeed, they often personally benefited from the status quo. Drawing the line on responsibility implicated fundamental questions in transitional justice, as the independent administrator and IRB sought to deal with those who had collaborated with the old regime.

The IRB found failure to investigate to be a two-element offense. The first element requires proof that the respondent Teamsters officer should have a reason to investigate wrongdoing in the local union.²⁴⁶ This can be

242. Decision of the Independent Administrator at 1-3, *Investigations Officer v. Sansone*, *infra* note 245. See also *supra* Part IV.A.1.

243. Report of the Independent Administrator, *supra* note 119, at 25.

244. See *supra* note 213.

245. *Sansone*, 792 F. Supp. 1346, 1353 (S.D.N.Y.), *aff'g* Decision of the Independent Administrator, *Investigations Officer v. Sansone* (Mar. 30, 1992), *aff'd*, 981 F.2d 1362 (2d Cir. 1992).

246. See, e.g., *Sansone*, 981 F.2d at 1368-69.

proven by showing that media reports, criminal trials, or other information would have put a reasonable union official on notice of the possibility of corruption.²⁴⁷ The factfinder need not determine that a union officer actually was a member of organized crime or actually engaged in corrupt activity. It is sufficient that “responsible officers . . . should have been on notice of allegations concerning the activities [of other members] and [that] they should have investigated the truth of these matters.”²⁴⁸ For example, Robert Sansone, president of Local 682, failed to investigate media allegations that the vice president of his local was an LCN member.²⁴⁹ The independent administrator did not need proof that the local’s vice president was a member of organized crime, but merely that Sansone had reason to believe the vice president might have been.²⁵⁰ The independent administrator dismissed as insufficient Sansone’s claim that he confronted Local 682’s vice president and consulted an attorney.²⁵¹

The second element of a failure-to-investigate charge is satisfied by proof that the respondent failed to undertake a reasonable investigation.²⁵² This element is satisfied where an officer did little or nothing to investigate or take remedial action.²⁵³ Obviously, the element is also supported by evidence that the respondent actively sought to thwart a law enforcement investigation. For example, Local 295’s executive board had the local’s offices swept for electronic surveillance devices to thwart FBI surveillance.²⁵⁴ The independent administrator and IRB have not accepted as defenses that the respondent took token steps to investigate, such as merely “speaking with” the alleged offender, alerting the local’s executive

247. See, e.g., *id.*; Decision of the Independent Administrator at 5, *Investigations Officer v. Coli* (May 15, 1992), *aff’d*, *United States v. Int’l Bhd. of Teamsters*, 803 F. Supp. 748 (S.D.N.Y. 1992) [hereinafter *Coli*] (finding James Coli’s awareness that Joseph Talerico had been twice incarcerated and had invoked his Fifth Amendment privilege under government questioning constituted evidence that Coli should have been on notice that an investigation was necessary).

248. Decision of the Independent Administrator at 13, *Investigations Officer v. Sansone*, *supra* note 245. (March 30, 1992), *Sansone*, 792 F. Supp. 1346 (No. 88 Civ. 4486) (quoting Decision of the Independent Administrator at 24, *Investigations Officer v. Morris and McNeil* (May 22, 1991), *United States v. Int’l Bhd. of Teamsters*, 777 F. Supp. 1123 (S.D.N.Y. 1991)) [hereinafter *Morris & McNeil*].

249. *Sansone*, 981 F.2d at 1365-66.

250. Decision of the Independent Administrator at 12-13, *Investigations Officer v. Sansone*, *supra* note 245.

251. *Sansone*, 981 F.2d at 1366-67.

252. See, e.g., *Sansone*, 981 F.2d at 1368-69.

253. See, e.g., Decision of the Independent Administrator at 21-22, *Investigations Officer v. Calagna et al.* (June 14, 1991), *aff’d*, *United States v. Int’l Bhd. of Teamsters*, 138 F.R.D. 50 (S.D.N.Y. July 30, 1991) [hereinafter *Calagna*] (“Against this sordid background, there appears to be little, if anything, that any of the Respondents or other members of the [Local 295] Executive Board have ever done to cleanse the Local’s reputation.”).

254. See, e.g., *id.* at 17 (“Local 295 Executive Board asked . . . to have Local 295’s offices swept for electronic surveillance devices.”).

board to the allegations,²⁵⁵ or checking the books for financial discrepancies.²⁵⁶

Recognizing that union officers are not professional investigators, the IRB does not expect them personally to conduct a thorough investigation. They can satisfy their fiduciary duty by seeking assistance from an appropriate law enforcement agency or from the chief investigator's office.²⁵⁷ Alternatively, they can hire a private detective agency²⁵⁸ or a polygraph examiner.²⁵⁹ Where someone in the local has been prosecuted for corruption or racketeering, the local's executive board has a duty to look into the charges.²⁶⁰ The failure-to-investigate charge was utilized frequently during the independent administrator phase, but has all but disappeared during the IRB's tenure. The investigations officer brought forty-three charges of failure to investigate. The IRB recommended ten such charges in 1993, but since then, has only brought two charges.

5. *Embezzlement and Conversion*

The embezzlement offense tracks the LMRDA.²⁶¹ To sustain an embezzlement charge, the independent administrator or IRB must find fraudulent intent to convert union funds to personal use.²⁶² The IRB has rejected several respondents' arguments that a good faith belief that an

255. See *Sansone*, 981 F.2d at 1366-68.

256. See Decision of the Independent Administrator at 10-11, *Investigations Officer v. Crapanzano and Lanza* (March 30, 1992), *aff'd*, United States v. Int'l Bhd. of Teamsters, 803 F. Supp. 740 (S.D.N.Y. 1992) [hereinafter *Crapanzano & Lanza*].

257. Decision of the Independent Administrator at 17, *Investigations Officer v. Crapanzano & Lanza*, *supra* note 256.

258. Decision of the Independent Administrator at 25, *Investigations Officer v. Calagna*, *supra* note 253 ("While expensive it would have cost the Local far less than the \$150,000 in legal fees the Executive Board has agreed to pay Calagna's attorney, and the massive salary increase and 'severance' benefits the board voted to give Calagna.").

259. Decision of the Independent Administrator at 14, *Investigations Officer v. Sansone*, *supra* note 245.

260. See Decision of the Independent Administrator at 15, *Investigations Officer v. Coli*, *supra* note 247 ("At a minimum, Coli should have retrieved the Nevada court records.");

261. 29 U.S.C. § 501(c) (2000) ("Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$ 10,000 or imprisoned for not more than five years, or both.").

262. Decision of the Independent Administrator at 9-10, *Investigations Officer v. Vitale* (Dec. 18, 1990), *aff'd*, United States v. Int'l Bhd. of Teamsters, 775 F. Supp. 90 (S.D.N.Y. 1991), *aff'd in part, rev'd in part*, No-91-6154 (2d Cir. Oct. 31, 1991) [hereinafter *Vitale*] (quoting United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1989) in which Judge Friendly, writing for the majority, noted that a section 501(c) offense, like violations of numerous federal "larceny-type" statutes, occurs when someone "has taken another person's property or caused it to be taken, knowing that the other person would not have wanted that to be done." Stressing the requirement of fraudulent intent under section 501(c), the court observed in dictum that it was "doubtful whether a payment made with a bona fide belief that it was for a union's benefit and that it had been authorized or would be ratified can ever be swept under . . . section 501(c).").

expenditure provided a legitimate union benefit should be a defense.²⁶³ Using union money or property for a purpose that has no union benefit is evidence of fraudulent intent.²⁶⁴ Even if a local union authorized and ratified the expenditure, with full knowledge of all the facts, an officer is not necessarily absolved of wrongdoing.²⁶⁵ Fraudulent intent can be inferred from circumstantial evidence, including failure to alert other officers to the expenditure.²⁶⁶

The investigations officer brought embezzlement charges against George Vitale, an international vice president and the president of Local 283, for “double-dipping.” He received an unlawful tax benefit when both the international union and the local union paid his FICA taxes instead of withholding them from his salary.²⁶⁷ Vitale’s fraudulent intent was proved by: (1) his failure to notify other executive board members of the union’s double payment of the FICA tax; (2) his proven knowledge that “double dipping” was prohibited; and (3) the inferences that common sense would lead a union officer to know that receiving two FICA payments on the same wages was fraud on the union.²⁶⁸

Embezzlement can be proven by misuse of funds for the respondent’s own benefit or for someone else’s benefit. On occasion, the IRB has charged as embezzlement a pay raise, severance payment, or provision of an automobile to a Teamsters officer facing criminal charges.²⁶⁹ Before providing benefits to a member, executive board members have an affirmative duty to investigate pending criminal charges to determine if the proposed benefit is in the best interest of the local.²⁷⁰

The independent administrator and IRB have brought more embezzlement charges than any other charge. Together they have charged 162 individuals with 203 charges of embezzlement. This constitutes more

263. See, e.g., *Vitale*, supra note 262, at 10.

264. *Id.* at 10-11.

265. *Id.* at 15 (quoting *United States v. Vitale*, 489 F.2d 1367, 1369 (6th Cir. 1974)). However, the Second Circuit held that a charged member does not possess the requisite fraudulent intent if he has a “good faith belief both that the funds were expended for the union’s benefit and that the expenditures were authorized (or would be ratified) by the union.” *Wilson, Weber & Dickens*, 978 F.2d at 72 (emphasis added) (quoting *United States v. Butler*, 954 F.2d 114, 118 (2d Cir. 1992)).

266. *Vitale*, supra note 262, at 14-15.

267. *Id.* at 12-14.

268. *Id.* All were presented as proof of Vitale’s fraudulent intent by the investigations officer, though it is unclear whether each might have been sufficient on its own to prove fraudulent intent, or only all collectively. Nonetheless, all were quoted in the independent administrator’s opinion.

269. See, e.g., Decision of the Independent Administrator at 22 (Oct. 12, 1990), *Investigations Officer v. Salvatore*, aff’d, *United States v. Int’l Bhd. of Teamsters*, 754 F. Supp. 333 (S.D.N.Y. 1991) [hereinafter *Salvatore*].

270. *Id.* at 22; see also 29 U.S.C. § 501(a) (2000) (“The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members . . .”).

than a quarter of all offenses and all individuals charged from 1989 to 2006. During his three-year tenure, the investigations officer filed more than three-quarters of all embezzlement charges. The IRB has brought only five embezzlement charges since 2001. The decline in use of the embezzlement charge may reflect the impact of the IRB's post-1992 statute of limitations.²⁷¹ It may also reflect a preference for using the more easily proven financial misconduct charge. Alternatively, it may reflect a real decline in corruption within Teamsters.

Of the 162 individuals charged with embezzlement who were found culpable, eight were barred from Teamsters employment, and an additional sixteen were barred from Teamsters employment and expelled from Teamsters membership. Thirty-five others agreed to resign permanently. Through thirty-eight agreements and nine adjudications, embezzlement respondents were ordered to pay Teamsters entities more than \$650,000.

The embezzlement charge has been used disproportionately against Teamsters officers, although this may reflect the fact that officers are more likely to be in a position to steal union funds. The investigations officer and IRB have brought embezzlement charges against thirty-six local presidents, forty secretary-treasurers, seventeen vice presidents, and thirteen recording secretaries. In addition, the investigations officer and IRB have brought embezzlement charges against five international representatives,²⁷² four international vice presidents,²⁷³ and William Hamilton, the IBT's director of government affairs, who was implicated in the same campaign money laundering scheme as General President Carey.²⁷⁴ One embezzlement

271. The statute of limitations prior to the imposition of the consent order was one year. The consent order required that the investigations officer and independent administrator be subject to no statute of limitations. Consent Order, *supra* note 4, at 4. However, the IRB is subject to a new five-year statute of limitations. *Id.*

272. Anthony Hughes, international representative and recording secretary of Local 507; Leroy Nunes, international representative and secretary-treasurer of Local 291; Charles O'Brien; Earl Bush; and David Keaton. See Decision of the Independent Administrator Investigations Officer v. Friedman & Hughes, *supra* note 82; Decision of the Independent Administrator. Investigations Officer v. Nunes, *supra* note 178; Decision of the Independent Administrator, Investigations Officer v. O'Brien, *supra* note 228; Decision of the Independent Administrator, Investigations Officer v. Bush, Affidavit & Agreement (May 16, 1991); Letter from James P. Hoffa, General President, Int'l Bhd. of Teamsters, to Grant Crandall, William Webster & Frederick Lacey, Members, Indep. Review Bd. (on file with author) (Jan. 7, 2000).

273. Gene Giacumbo, former international vice president and president of Local 507; Harold Friedman, former president of Local 507; George Vitale, international vice president and president of Local 283; and Michael Riley, international vice president, president of Joint Council 42, and secretary-treasurer of Local 986. See *Giacumbo III*, 170 F.3d 136; Decision of the Independent Administrator, Investigations Officer v. Friedman & Hughes, *supra* note 82; Decision of the Independent Administrator, *Vitale*; Affidavit & Agreement (Sept. 5, 1991).

274. See also *Carey & Hamilton Discipline*, 22 F. Supp. 2d at 135.

respondent was Gerald Zero, whom Carey had appointed as international trustee over several different locals.²⁷⁵

6. *Assault*²⁷⁶

Article XIX of the Teamsters constitution specifically prohibits “[d]isruption of union meetings, or assaulting or provoking assault on fellow members or officers... or any similar conduct in, or about union premises or places used to conduct union business.”²⁷⁷ In one of his scores of opinions in *U.S. v. IBT*, Judge Edelstein noted, “This Court will not countenance politically motivated violence. Those who consider violence an acceptable form of political expression have no place in this Union.”²⁷⁸

It is not necessary to prove actual physical violence to sustain an assault charge.²⁷⁹ The mere threat of physical injury suffices.²⁸⁰ For instance, the investigations officer charged Carmen Parise, secretary-treasurer of Local 473 for assaulting and threatening to beat up his political opponent.²⁸¹ The independent administrator and IRB brought eight charges of assault, and sustained charges against one local president, one joint council president, and three local secretary-treasurers.

7. *Violations of Federal Labor Law*

The consent order specifically authorizes the IRB to investigate violations of the Landrum-Griffin Act’s prohibition on union officials’ extortion of union members.²⁸² The most common form of such extortion involves extracting money from members by threatening to blacklist

275. Letter from Tom Sever, Acting General President, IBT, to John M. Cronin, Jr., Administrator, IRB (Sept. 21, 1998) (reporting that charges against Gerald Zero had been sustained by the IBT hearing panel and the office of the general president).

276. There is a long history of Teamsters dissidents being beaten at union meetings and even at the quinquennial international conventions. See STIER, *supra* note 7, at 119-30, 217-19; LA BOTZ, *supra* note 11, at 13-14.

277. IBT Constitution, *supra* note 7, art. XIX, § 7(b)(6).

278. *United States v. Int’l Bhd. of Teamsters*, 782 F. Supp. 256, 261 (S.D.N.Y. 1992) [hereinafter *Cherilla*].

279. See Decision of the Independent Administrator at 3-5, *Investigations Officer v. Parise* (July, 29, 1991), *aff’d*, *United States v. Int’l Bhd. of Teamsters*, 777 F. Supp. 1133 (S.D.N.Y. 1991), *aff’d*, 970 F.2d 1132 (2d Cir. 1992) [hereinafter *Parise*].

280. In *Parise*, the investigations officer charged Carmine Parise for threatening physical and economic harm. An audio tape verified that Parise threatened a fellow member’s “physical being and economic welfare.” However, no case has been brought for assault in which a member’s economic welfare alone was threatened. *Parise*, *supra* note 279, at 3; see also 29 U.S.C. § 530 (2000) (“It shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this chapter.”).

281. *Parise*, *supra* note 279, at 1.

282. Consent Order, *supra* note 4, at 19; 29 U.S.C. § 530

them.²⁸³ For example, Local 11 President Robert Feeny used violence and threats of violence to extort money from catering truck operators in exchange for allowing them to operate certain routes.²⁸⁴

Although not grounded in the Landrum-Griffin law, extortion may also take the form of extracting payments from employers with labor problems. Such payoffs may be characterized as extortion, bribery, or both. For example, the IRB recommended that the Teamsters charge Glenn Boggia, a member of Local 282, with accepting a \$1,250 payoff to secure labor peace at a Queens, New York, construction project.²⁸⁵ The independent administrator and IRB brought and sustained nine charges of extortion, including charges against four local presidents, one secretary-treasurer and one recording secretary.

Landrum-Griffin also requires every union local to submit LM-2 forms.²⁸⁶ Soon after the settlement, the investigations officer filed charges against officers for failing to file accurately, or failing to file altogether.²⁸⁷ However, the Second Circuit held that proof of “fraudulent intent” was necessary to sustain this charge.²⁸⁸

The Taft-Hartley Act prohibits union officials from receiving money or anything of value from employers.²⁸⁹ To prove a violation of the statute, the government must show that the union official received and benefited from the employer’s transfer of a thing of value.²⁹⁰ The IRB has held that a Teamsters official receives a thing of value if he pays an employer “substantially less than market value” for a good or service.²⁹¹ The IRB brought such a charge against Mario Perrucci, international vice president and Local 177 secretary-treasurer, for purchasing a boat from a union employer for \$100; the boat was valued at approximately \$4,500.²⁹²

18 U.S.C. § 1954 prohibits a person in a position of authority in an employee benefit plan from “receiving or agreeing to receive or soliciting

283. See JACOBS, *supra* note 8, at 7 (describing control over job assignments as a factor in labor unions’ susceptibility to racketeering).

284. Decision of the Independent Administrator at 5-6, *Investigations Officer v. Feeny* (Dec. 18, 1990).

285. Application LVI of the Independent Review Board – In the Matter of Glenn Boggia and Local 282, *United States v. Int’l Bhd. of Teamsters*, No. 88 Civ. 4486 at 1 (S.D.N.Y. Mar. 9, 1998).

286. 29 U.S.C. § 431(b) (2000).

287. See, e.g., Decision of the Independent Administrator at 3, *Investigations Officer v. Vitale*, *supra* note 262.

288. Report of the Independent Administrator, *supra* note 119, at 37 (citing and quoting *Vitale*, No. 91-654, slip op. at 4).

289. 29 U.S.C. § 186 (2000); see also IBT Constitution, *supra* note 7, art. XIX, § 7(b)(13).

290. Decision of the Independent Administrator at 8, *Investigations Officer v. West* (Feb. 13, 1992) (citing *United States v. Pecora*, 484 F.2d 1289, 1294 (3d Cir. 1973)).

291. 29 U.S.C. § 186(c); *United States v. Int’l Bhd. of Teamsters*, 965 F. Supp. 493, 500 (S.D.N.Y. 1997) [hereinafter *Perrucci*].

292. Opinion and Decision of the Independent Review Board *In re Mario F. Perrucci, Jr.*, at 7-9 (Mar. 25, 1997), *aff’d*, *Perrucci*, 965 F. Supp. at 493.

any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced” by either an employer or a service provider.²⁹³ Unions are also prohibited from making loans to union members to prevent corruption and the plunder of union funds. 29 U.S.C. § 503(a) prohibits a labor organization from making loans to any officer or employee in excess of \$2,000.²⁹⁴ A salary advance is considered a loan.²⁹⁵

Since the settlement, the independent administrator and IRB have brought thirty-four charges of federal labor law violations against twenty-eight individuals. During the independent administrator phase, eight charges alleged the filing of false or misleading LM-2 forms. In 1991, the Second Circuit ruled that fraudulent intent was required to prove this charge; subsequently the independent administrator and IRB have not charged any individuals with filing false LM-2 forms.²⁹⁶ In addition, the independent administrator and IRB filed twelve charges against respondents for receiving illegal loans, and twelve charges for illegally receiving something of value from an employer or service provider. Of twenty-one individuals found culpable, nine were presidents of Teamsters locals, including three international vice presidents,²⁹⁷ and an international trustee; seven culpable respondents held positions as local secretary-treasurers, including an international vice president.

8. *Financial Misconduct Based Upon Violation of Local Union's Bylaws or International Rules and Regulations*

This class of offenses alleges improper benefit to a union officer on account of lack of financial controls or fraudulent membership schemes. Such offenses can be conceived of as fitting into three categories: (1) those charges that resemble embezzlement; (2) those charges that allege the

293. *Perrucci*, 965 F. Supp. at 500-01 (quoting 18 U.S.C. § 1954 (1994)).

294. 29 U.S.C. § 503(a) (2000) (“No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.”).

295. *Burke*, 817 F. Supp. at 344, *aff'g* Decision of the Independent Administrator, at 24-25 (Oct. 1, 1992); *Investigations Officer v. Burke*, *aff'd*, 14 F.3d 183 (2d Cir. 1994) (“It is clear that a salary advance constitutes a loan within the meaning of 29 U.S.C. § 503(a).”).

296. Report of the Independent Administrator, *supra* note 119, at 37 (quoting *Nunes*, 962 F.2d 4 (2d Cir. Mar. 27, 1992) (Table, No. 91-6300)), *aff'g* 141 L.R.R.M. 2483 (S.D.N.Y. Nov. 8 1991), *aff'g* Decision of the Independent Administrator, *Investigations Officer v. Nunes* (Sept. 6, 1991)).

297. Former International Vice President and Local 507 President Harold Friedman and International Vice President and Local 283 President George Vitale were each charged with filing false and misleading LM-2 forms. Decision of the Independent Administrator, *Investigations Officer v. Friedman & Hughes*, *supra* note 82; Vitale, Decision of the Independent Administrator, *Investigations Officer v. Vitale*, *supra* note 262. International Vice President and Local 177 Secretary-Treasurer Mario Perrucci was barred for life from union employment and for ten years from Teamsters membership for purchasing a boat from a union employer for less than fair market value. *Perrucci*, 965 F. Supp. at 495.

absence of required financial or other controls at the local union; and (3) those charges that allege a sham membership scheme.²⁹⁸

Financial misconduct charges, like embezzlement charges, have targeted local and international union officers. The independent administrator and IRB charged 149 individuals with 161 counts of these charges; those charged include twenty-two local presidents, twenty-two secretary-treasurers, nine vice presidents, ten recording secretaries, three international representatives,²⁹⁹ two international vice presidents,³⁰⁰ one international division director,³⁰¹ one assistant to General President Hoffa,³⁰² and General President Ron Carey himself.³⁰³ The number of charges in this category have remained relatively constant throughout the remedial effort, and have been the second most frequently used category of charges. As late as 2000, they represented more than half of the IRB's disciplinary charges. Since 2003, they comprise the majority of all charges.

a. *Embezzlement-Related Offenses*

Financial misconduct of this type requires proof of wrongful appropriation of union property. Unlike embezzlement, there is no need to prove the "fraudulent intent." For instance, former General President Ron Carey was found culpable for authorizing IBT contributions totaling \$735,000 to several non-profit organizations, which then made contributions to Carey's reelection campaign. The IRB ruled that he should have known that the IBT contributions would cause the recipient

298. *Id.* at 1121 ("Charge Two accuses Giacumbo, as Local 843's principal officer, of engaging in a pattern of ignoring the financial control requirements of the IBT Constitution, the Local Bylaws, and the IBT Secretary-Treasurer's Manual.").

299. These included international representative Dane Passo, and William T. Hogan, Jr., the Joint Council 25 president and Local 714 political and organizing director. Opinion and Decision of the Independent Review Board *In Re* Dane Passo and William T. Hogan, Jr. (May 29, 2002), *aff'd*, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Aug. 22, 2003), *aff'd*, 110 Fed. App'x 177 (2d Cir. Sept. 23, 2004) [hereinafter *Hogan & Passo*]. President of Local 337 and international representative Lawrence Brennan was found not culpable of misapplying monies for his election campaign before an IRB hearing. Opinion and Decision of the Independent Review Board *In Re* Lawrence B. Brennan, Colonel W. Myers, Robert F. Holmes, Frank Walker, Richard Gremaud and Charles Isom 29-30 (May 31, 2001), *aff'd*, United States v. Int'l Bhd. of Teamsters (*Brennan*), 2001 U.S. Dist. LEXIS 11322 (S.D.N.Y. Aug. 7, 2001).

300. This includes Edward Mireles, international vice president and secretary-treasurer of Local 952, who caused officers not to pay dues so they would not be eligible to run for office against him, *Mireles & Roa*, 315 F.3d at 98-99 (2d Cir. 2002); and international vice president, president of Joint Council 42 and secretary-treasurer of Local 986 Michael Riley, *Investigations Officer v. Riley, Affidavit & Agreement* (Sept. 5, 1991).

301. First Five-Year Report, *supra* note 107, at 13-14.

302. Application 113 of the Independent Review Board, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Jan. 11, 1951) [hereinafter *Scalf*].

303. *Carey & Hamilton Discipline*, 22 F. Supp. 2d at 135, 137-38.

organizations to make campaign contributions.³⁰⁴ A majority of the IRB did not find that Carey *knowingly* derived a benefit from the scheme, but the IRB sustained the charge because Carey should have known about the wrongful transactions and failed in his duty to inquire.³⁰⁵ The IRB also found William Hamilton, the union's director of government affairs, culpable of embezzlement in the same matter.³⁰⁶

Teamsters members have also been charged with aiding and abetting embezzlement of union funds,³⁰⁷ charging for expenses without proper approval,³⁰⁸ giving away union property in violation of the IBT constitution,³⁰⁹ and providing union benefits to organized crime members.³¹⁰ For example, Local 854 President Maureen Ruane continued to pay benefits to Frank Dapolito, even after the investigations officer had identified DaPolito as an organized crime member.³¹¹

As of Fall 2007, the forty-five charges in this category have resulted in nine lifetime bans, including Carey's. Almost \$90,000 in misappropriated union funds has been recovered.

304. Opinion and Decision of the Independent Review Board, *In re Ronald Carey and William Hamilton*, at 1 (July 27, 1998), *aff'd*, *Carey & Hamilton Discipline*, 22 F. Supp. 2d at 138, *aff'd*, 247 F.3d 370 (2d Cir. 2001).

305. Opinion and Decision of the Independent Review Board, *In re Ronald Carey and William Hamilton*, *supra* note 304, at 31-34. IRB member Lacey wrote a concurring opinion finding that Carey did know that the IBT contributions would result in contributions to his campaign. *See generally* Concurring Opinion, *In Re Ronald Carey and William Hamilton*. As a result of the improper donations, the 1996 election for international officers was rerun. Carey was disqualified from running due to his breach of fiduciary duty in failing to prevent the scheme. Carey was never charged with embezzlement, but the U.S. attorney did charge him with perjury before a grand jury and the IRB. He was acquitted of all counts in 2001. Steven Greenhouse, *Former Teamsters President Is Cleared of Lying Charges*, N.Y. TIMES, Oct. 13, 2001, at A8. Opinion and Decision of the Independent Review Board, *In re Ronald Carey and William Hamilton*, *supra* note 304, at 11.

306. Opinion and Decision of the Independent Review Board, *In re Ronald Carey and William Hamilton*, *supra* note 304, at 29-31.

307. *See, e.g.*, Letter from Ron Carey, General President, Int'l Bhd. of Teamsters, to Frank Pischera, former president, Teamsters Local 240 (notifying Pischera that charges against him of aiding embezzlement had been sustained for signing local union checks to cover Warren Selvaggi's use of the local's calling card after Selvaggi had been removed from the union pursuant to a court order).

308. *See, e.g.*, In the Matter of Article XIX Charges against Scott Dennison, Decision of General President (July 2, 1996) (sustaining charges against Local 186 secretary-treasurer Scott Dennison for the unauthorized expenditure of \$1,300 to attend a Teamsters for a Democratic Union (TDU) conference). TDU is the long-time dissident movement in the Teamsters. For a history of TDU, *see generally* LA BOTZ, *supra* note 11.

309. *See, e.g.*, Application XX of the Independent Review Board, *United States v. Int'l Bhd. of Teamsters (Raymond)*, No. 88 Civ. 4486 (S.D.N.Y. Jun. 29, 1995) (requesting approval of an agreement with the Local 677 executive board settling charges of transferring title to union-owned cars to a retiring officer).

310. *See, e.g.*, Application V of the Independent Review Board, *United States v. Int'l Bhd. of Teamsters (Ruane)*, No. 88 Civ. 4486 (S.D.N.Y. Feb. 3, 1994) (requesting approval of the IRB's finding of culpability against Local 854 President Maureen Ruane for paying the benefits of former officer Frank Dapolito, identified as an LCN member).

311. *Id.*

b. Inadequate Fiscal Controls at the Local Union

The IRB takes the position that lack of financial control creates fertile ground for corruption and organized crime infiltration.³¹² One-third of the IRB charges in this category alleged falsification of records,³¹³ while another third alleged submission of blank reports.³¹⁴ Other charges have alleged failure to keep minutes,³¹⁵ failure to approve local bylaws,³¹⁶ failure to comply with audits,³¹⁷ and the provision of false or misleading financial information to the IRB.³¹⁸ Frequently, these financial misconduct charges have been brought against several officers at the same local. For instance, the investigations officer charged all seven members of Local 831's executive board with failure to adopt bylaws,³¹⁹ and charged three Local 27 trustees with filing false financial statements.³²⁰

The investigations officer and IRB have brought forty-three lack-of-financial-controls charges. Twenty-one of these charges resulted in lifetime bans; most of the remainder resulted in suspensions or reprimands.

312. First Five-Year Report, *supra* note 107, at 5.

313. *See Scalf, supra* note 302, at 1-2.

314. *See, e.g.*, Letter from Charles H. Stansburge, President, Teamsters Joint Council 62 to Denis Taylor, President, Teamsters Local Union No. 355 (Nov. 15, 1995) (on file with author) (reporting that the joint council had decided that four full-time officers should be placed on suspension for four weeks for signing blank trustee reports).

315. *See, e.g.*, Decision of the Executive Board of Joint Council 10 in the Matter of Daniel Zenga, Andy Bellemare and William Schomburg 2 (April 5, 1993) (on file with author) (charging Recording Secretary William Schomburg with failure to keep minutes, and charging Secretary-Treasurer Daniel Zenga with allowing Schomburg to fail to keep minutes).

316. *See, e.g., id.* at 9 (charging Local 831 President Andrew Bellemare and Secretary-Treasurer Zenga for failing to submit appropriate bylaws for approval).

317. IBT Constitution, *supra* note 7, art. X, § 10(c) ("Any officer of a subordinate body refusing to turn over the books, bills, vouchers, or records to the delegated officer shall be subject to discipline under the provisions of Article XIX, and shall be liable to expulsion by the General Executive Board."); IBT Constitution, *supra* note 7, art. X, § 10(d) ("If the representative delegated to audit the books discovers any dishonesty or incompetency [sic] in the officers which warrants him to notify the General President and General Secretary-Treasurer, he shall do so and they shall take whatever action they deem advisable.").

318. *See, e.g.*, Decision of the Independent Administrator at 24-25, Investigations Officers v. Burke, *supra* note 187. ("Article X, Section 10 of the IBT Constitution authorizes the General Secretary-Treasurer to audit the books of Local Unions. The Article makes interference with the authority of the General Secretary-Treasurer a basis for discipline under Article XIX.").

319. Application XLVII by the Independent Administrator, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Aug. 5, 1991) [hereinafter *Alongi*].

320. *See, e.g.*, Charge, Investigations Officer v. John Congemi, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Feb. 28, 1992) [hereinafter *Congemi*].

c. *Sham Membership Schemes*

The IBT constitution sets out eligibility requirements for Teamsters membership.³²¹ Membership schemes that violate this provision bring reproach upon the union.³²² For example, corrupt local union officers created an “associate membership” program that extended Teamsters health insurance programs to non-union members in order to funnel monies into union officers’ salaries.³²³ Local 843 President and International Vice President Gene Giacumbo allowed individuals to join a Teamsters local without initiation fees and at discounted monthly dues which were, in any event, not regularly collected.³²⁴ Giacumbo used this scheme to buy votes prior to the 1996 election.³²⁵ In another example, all seven members of the executive boards of Locals 917 and Local 868 were charged with profiting personally from a sham membership scheme that provided health insurance to non-union workers.³²⁶

There have been seventy independent administrator and IRB charges alleging fraudulent membership schemes. More than half of these cases involve sham collective bargaining agreements that add ineligible individuals to the Teamsters membership rolls. Each sustained charge resulted in a lifetime ban for the ineligible member³²⁷ and membership suspensions for the officers who negotiated or administered the sham contracts.³²⁸ Seven charges, alleging nepotism or favoritism in hiring, resulted in suspensions of between six months and two years.³²⁹ The IRB recommended charges against eight officers and members of Local 807, alleging that contracts at the New York City Javits Convention Center

321. IBT Constitution, *supra* note 7, art. II, § 2(a) (“Any person shall be eligible to membership in this organization upon compliance with the requirements of this Constitution and the rulings of the General Executive Board.”).

322. *See, e.g.*, Decision of the Independent Administrator at 8-12, *Investigations Officers v. Burke*, *supra* note 187.

323. *Burke*, 817 F. Supp. at 342-43.

324. *United States v. Int’l Bhd. of Teamsters*, 951 F. Supp. 1113, 1119-21 (S.D.N.Y. 1997) [hereinafter *Giacumbo II*].

325. *Id.*

326. *Burke*, 817 F. Supp. at 342-33.

327. *See, e.g.*, Opinion and Decision of the Independent Review Board *In Re Larry Stein 5* (Oct. 8, 2000), *aff’d*, *United States v. Int’l Bhd. of Teamsters*, Memorandum & Order, No. 88 Civ. 4486 (S.D.N.Y. Dec. 7, 2000) [hereinafter *Stein*] (sustaining a charge against Local 810 member Larry Stein for maintaining a sham membership where he was the owner of Compuspace, as well as the only employee covered by the collective bargaining agreement).

328. *See, e.g.*, Letter from James P. Hoffa, General President, IBT, to James Bernardone, former trustee, Teamsters Local 531 (Apr. 6, 2000) (informing former local 531 trustee James Bernardone that he would be suspended for five years for entering into at least four sham collective bargaining agreements with employers or their spouses for the purpose of providing health insurance to the employer).

329. *See, e.g.*, First Five-Year Report, *supra* note 107, at 13-14 (describing nepotism charges against Rondal Owens).

enriched the negotiators and their family members.³³⁰ These charges resulted in two lifetime bans and six suspensions of three or five years.

9. *Violation of Suspension*³³¹

A person suspended from Teamsters membership must relinquish any Teamsters position for the term of the suspension. Suspension must be respected in substance as well as form.³³² A suspended member who continues to exercise de facto control or influence over a local union violates the suspension order.³³³ For instance, during his suspension for embezzlement, suspended Local 507 President Harold Friedman continued to exert control over the local³³⁴ by virtue of being president of a non-Teamsters union closely allied with Local 507 and by attending Local 507 meetings and social events.³³⁵ A Teamsters officer who fails to prevent suspended or barred individuals from violating their suspension or debarment³³⁶ also commits a disciplinary violation.³³⁷

10. *Prior Criminal Conviction*³³⁸

The prior criminal conviction charge was utilized frequently during the independent administrator phase, but has all but disappeared during the IRB's tenure. Of the twenty-two individuals charged with bringing reproach by virtue of a prior criminal conviction, eleven were settled by

330. For a history of corruption at the Javits Convention Center, see JAMES B. JACOBS, COLEEN FRIEL & ROBERT RADICK, *GOHAM UNBOUND: HOW NEW YORK CITY WAS LIBERATED FROM THE GRIP OF ORGANIZED CRIME*, ch. 12 (1999).

331. Violation of a suspension or the aiding and abetting thereof may also overlap with an LMRDA charge. See 29 U.S.C. § 504 (2000). The LMRDA prohibits persons with certain criminal convictions from serving as an officer or employee of any labor organization for a period of time that may be set by the sentencing judge, but no less than three years. 29 U.S.C. § 504(a)(5).

332. *United States v. Int'l Bhd. of Teamsters*, 838 F. Supp. 800, 809 (S.D.N.Y. 1993), *aff'd*, 33 F.3d 50 (2d Cir. 1994) [hereinafter *Friedman*] ("By contrast, the suspension that is enforced only in form undermines the Consent Decree and sends the message to the membership that dishonest Teamsters officials are immune from the law. Moreover, the spectacle of a suspension that has become a caricature of itself deflates the morale and dampens the zeal of those who attempt to live within the law and work within the rules.").

333. *Id.* at 811 ("As Machiavelli explained several centuries ago, power may be wielded in subtle, deceptive, and devious ways.").

334. See generally *Friedman*, 838 F. Supp. at 800.

335. *Id.*

336. *Friedman*, 838 F. Supp. at 807 (quoting Decision of the Independent Administrator at 23, *Investigations Officer v. Yontek* (June 21, 1993)) ("It is the duty of all IBT officials to take every reasonable step to prevent a suspended or barred individual from violating this standard. This duty is an affirmative one; acquiescence in the face of a violation of a suspension order or a statutory debarment is a violation of that duty.").

337. *Id.*

338. Federal labor law prohibits a convicted felon from holding office for thirteen years. The independent administrator and IRB held that a violation of this law constitutes "bringing reproach upon the union."

agreement; four respondents were found not culpable of bringing reproach. All seven individuals whom the independent administrator found culpable were also found culpable of another violation; the prior criminal conviction charge has never by itself resulted in a suspension or bar.

The investigations officer brought charges against Local 348 Secretary-Treasurer Daniel Darrow for having plead no contest to a second degree riot charge in connection with a gun battle.³³⁹ However, the independent administrator held that the conviction standing alone, without evidence that Darrow had carried a gun or engaged in violent activity, did not bring reproach upon the Teamsters.³⁴⁰ The independent administrator distinguished this case from a prior finding of culpability against Joseph Talerico, who had been convicted of criminal contempt for refusing to testify before a grand jury.³⁴¹ Unlike a second degree riot charge, refusal to testify before a grand jury in and of itself brings reproach upon the Teamsters.³⁴²

C. *Corruption Warranting Imposition of an International Trusteeship*

When the IRB is persuaded that an entire Teamsters local or joint council is so corrupt that it cannot be reformed by sanctioning a few officers, it may recommend that the international union take over the governance and administration of the union through imposition of a trusteeship. Based upon independent administrator and IRB recommendations, the IBT placed forty locals and joint councils into trusteeship between 1990 and 2003. Sixteen of those entities were subsequently merged with other locals or joint councils.

1. *Standard for Imposing a Trusteeship*

The independent administrator and IRB have been responsible for determining when Teamsters locals are so corrupt that an international union trusteeship is required. Strictly speaking, this is not a disciplinary offense, but in practice, it is a kind of organizational criminality.

The consent order did not define any new entity violations to be “punished” by international trusteeships. Rather, it provided the independent administrator and IRB with authority to impose a trusteeship,³⁴³ when necessary, to enforce the Teamsters constitution.

339. Decision of the Independent Administrator at 1-3, *Investigations Officer v. Darrow* (Oct. 2, 1991).

340. *Id.* at 8-9.

341. *Id.* at 7-8 (quoting Decision of the Independent Administrator at 29, *Investigations Officer v. Senese* (July 12, 1990)).

342. *Id.*

343. Consent Order, *supra* note 4, at 8.

Under the constitution, the international union may place an affiliated local or joint council under trusteeship for several reasons:

If the General President . . . believe[s] that any of the officers of a Local Union... are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union or its subordinate bodies, or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of, or interferes with the performance of obligations of other members or Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee³⁴⁴

The chief investigator's office investigates allegations that locals are not treating members fairly, have anti-democratic practices or lax financial controls.³⁴⁵ Prior to the transition to the IRB, the independent administrator recommended trusteeships for four locals.³⁴⁶ Since then, the IRB has recommended that thirty-six local unions and joint councils be placed under international union trusteeship.³⁴⁷

The most frequent reason for imposing a trusteeship is that the Teamsters entity is not being administered "for the sole benefit of its members,"³⁴⁸ but rather, for the benefit of a select few.³⁴⁹ Specific examples include sweetheart or sham arrangements with employers, nepotism or favoritism in hiring or referral practices, dual unionism (officers who are members of both Teamsters and non-Teamsters unions), and financial misconduct.³⁵⁰

A history of organized crime influence, as evidenced by criminal prosecutions and independent administrator or IRB disciplinary actions, is a good indicator that the corrupt union has not been run for the benefit of the

344. IBT Constitution, *supra* note 7, art. VI, § 5(a).

345. Letter from Charles M. Carberry, *supra* note 115.

346. Report of the Independent Administrator, *supra* note 119, at 152-60.

347. Independent Review Board's Five-Year Report (1997-2001), *United States v. Int'l Bhd. of Teamsters*, No. 88 Civ. 4486 at 41 (S.D.N.Y. Nov. 6, 1997) [hereinafter *Second Five-Year Report*]; Independent Review Board's Third Five-Year Report (2001-2006), *United State v. Int'l Bhd. of Teamsters*, No. 88 Civ. 4486 at 1 (S.D.N.Y. 2006).

348. Report of the Independent Administrator, *supra* note 119, at 164; *see also* Trusteeship Recommendation Concerning Local 714, Members of the Independent Review Board at 1 (Aug. 5, 1996) ("The Independent Review Board recommends to the IBT General President that Teamsters Local 714 located in Chicago, Illinois be placed in trusteeship because the Local is not being run for the benefit of its members.") [hereinafter *Trusteeship Recommendation Concerning Local 714*].

349. *Trusteeship Recommendation Concerning Local 714*, *supra* note 348 ("[T]he Local is being run for the benefit of its principal officer William Hogan, Jr., President James M. Hogan, Recording Secretary Robert Hogan and their family and friends.").

350. *Id.*

membership.³⁵¹ In the case of Local 531, a history of organized crime influence, including a sustained charge of organized crime association against the local's president, resulted in an investigation that disclosed sham collective bargaining agreements,³⁵² insufficient membership meetings, and inadequate financial controls.³⁵³ An investigation of Local 239 revealed a history of embezzlement from the union's benefit funds and failure to enforce collective bargaining agreements.³⁵⁴

Failure to hold membership meetings, lack of competitive elections, executive board members who were ineligible to hold office, and unapproved salary increases establish a prima facie case for a trusteeship.³⁵⁵ For instance, the chief investigator discovered Joint Council 69 was essentially a paper union that provided no services or benefits; all dues revenues went into the pockets of a few officers.³⁵⁶

The chief investigator's office now routinely monitors collective bargaining agreements covering units of fewer than ten members.³⁵⁷ As a result, the IRB has identified many sham or unenforced contracts and has recommended trusteeships.³⁵⁸

2. Procedure for Imposing a Trusteeship

The IRB uses the same procedure to bring charges against Teamsters entities as it does to bring individual disciplinary cases.³⁵⁹ The general president has never rejected a trusteeship recommendation or returned a recommendation to the IRB for adjudication. Therefore, the IRB has never conducted a trusteeship hearing.³⁶⁰ Before an international trusteeship can be imposed, the IBT constitution requires a hearing before a panel appointed by the general president,³⁶¹ unless the general president finds that an "emergency situation exists."³⁶² The IRB may demand action within two

351. Of the 17 entities placed in trusteeship in the IRB's second term, 1996-2001, ten had a history of organized crime influence. Second Five-Year Report, *supra* note 347, at 13.

352. Second Five-Year Report, *supra* note 347, at 13-14.

353. *Id.* at 13-14.

354. *Id.* at 14.

355. *Id.*

356. *Id.* at 15-16.

357. Interview with Charles M. Carberry, *supra* note 100.

358. During its first five-year term, the IRB recommended and the IBT placed six locals under trusteeship because their officers signed numerous contracts that did not benefit the union. First Five-Year Report, *supra* note 107, at 9.

359. See *supra* Part III.

360. In one instance, the IBT dissolved the entity, making a trusteeship unnecessary. While the IRB found the action inadequate and assumed jurisdiction, the matter was settled prior to a hearing. Second Five-Year Report, *supra* note 347, at 4.

361. IBT Constitution, *supra* note 7, art. VI, § 5(a).

362. *Id.* The Second Circuit has defined "emergency" for this purpose as "an unforeseen combination of circumstances or the resulting state that calls for immediate action." Int'l Bhd. of

weeks.³⁶³ The general president, not the IRB, selects the trustee,³⁶⁴ who must be a Teamster member in good standing.³⁶⁵

An IBT-imposed trustee has authority to “take full charge of the affairs of the Local,” remove any officer, appoint temporary officers, and take other necessary actions.³⁶⁶ The international trustee wields the power to remove a local union’s or joint council’s leadership, and take the reins of the organization and its finances. The exercise of the trusteeship power deprives the membership of its democratic representation in the local union until the trusteeship is lifted. However, a successful trusteeship may purge the union of corrupt elements and set the union on a democratic course.

V.

THE EMPIRICAL HISTORY OF THE REMEDIAL EFFORT

In this Part, we will use the empirical data about the charges brought through mid-2006 to provide a full picture of the remedial effort: the remarkable purging of organized crime and corrupt officers, and the substantial return of the union to its membership. The data compiled reflect a case-by-case review of each individual disciplinary charge, using the case documents the IRB has released on its website, the independent administrator’s report, the IRB’s three five-year reports, and interviews with the officers of the IRB and the chief investigator. It represents the first attempt to empirically evaluate this remarkable organizational reform effort.

Through the end of the IRB’s third term, the investigations officer and IRB have filed or recommended 783 charges against 611 Teamsters officers and members, belonging to more than 117 locals and joint councils. These charges have resulted in 355 lifetime bans and 169 suspensions of shorter duration.³⁶⁷ More than 25% of disciplinary charges (212) were filed during the last two years of the independent administrator phase. The IRB filed only twenty-four charges from 2001-2002, and nineteen charges from 2003-

Teamsters v. Local Union No. 810, 19 F.3d 790, 793 (2d Cir. 1994) (quoting WEBSTER’S COLLEGIATE DICTIONARY (9th ed. 1989)).

363. United States v. Int’l Bhd. of Teamsters [Local 714], 938 F. Supp. 1178, 1184 (2d Cir. 1994).

364. IBT Constitution, *supra* note 7, Art. VI, § 5(d).

365. See United States v. Local 295 of Int’l Bhd. of Teamsters, 784 F. Supp. 15, 17-18 (E.D.N.Y. 1992) (imposing a trustee in suit brought by the U.S. attorney for the Eastern District of New York after finding the trustee appointed by the general president pursuant to a decision of the independent administrator lacked the “skills and experience necessary to investigate and remove any possible corruption still plaguing the union”); Report of the Independent Administrator, *supra* note 119, at 155 n.50 (“On August 8, 1991, I wrote to Judge Nickerson stating my belief that an independent Trustee would be more effective in eliminating the influence of organized crime in Local 295 given the short tenure and limited investigative abilities and experience of any potential IBT appointed Temporary Trustee.”).

366. IBT Constitution, *supra* note 7, art. VI, § 5(b).

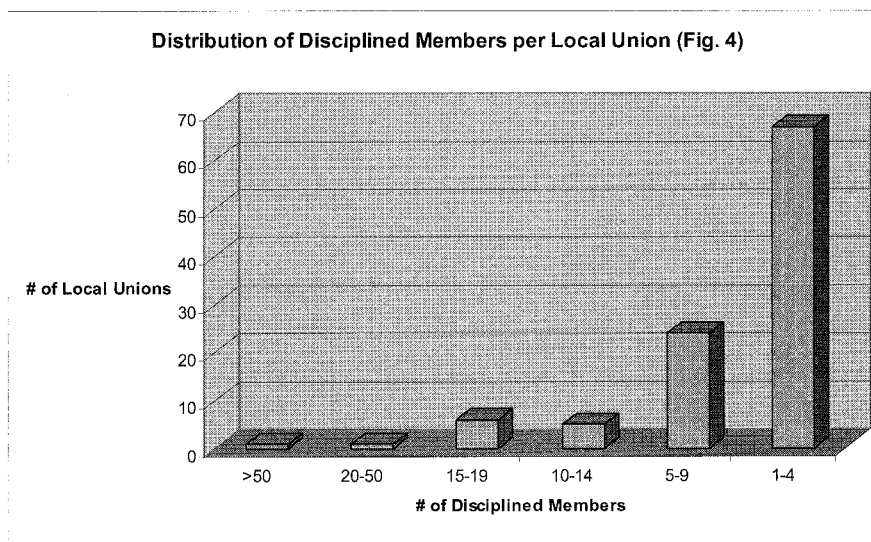
367. See *infra* Figures 2 – 3.

2005. This decline indicates the IRB's success in purging the union of corruption and racketeering over the course of 18 years.

The numbers reveal a gradual change in the approach of the court-supervised officers. From a focus on embezzlement and organized crime influence during the independent administrator phase, the IRB shifted to a focus on misconduct affecting the rights of the rank-and-file. The IRB also began recommending charges against members who refused to cooperate with its investigations.

A. Distribution of Charges Across IBT Local Unions

The IRB has leveled disciplinary charges against officers and/or members in 117 Teamsters locals. Over ninety local unions saw their president, vice president, or secretary-treasurer found culpable of a disciplinary violation. As Figure 4 shows, a small number of highly corrupt unions account for a large share of disciplinary charges. Teamsters Local 813, which represents drivers and other waste hauler workers in New York City, has accumulated the greatest number of charges.³⁶⁸ The independent administrator and IRB have sustained sixty-three charges against Local 813's members; nearly half of these charges have been for failure to cooperate, more than a quarter for financial misconduct, and eight for associating with LCN. The other most racketeer-ridden union is Local 282, which represents warehousemen, truck drivers, and construction workers in New York City and Long Island. The independent administrator and IRB sustained twenty-six charges against Local 282's members, including nine charges for associating with LCN and two charges for being an LCN member. Both locals (and three other Teamsters locals) have been subject to independent civil RICO suits that produced separate consent orders and trusteeships. These independent suits also resulted in many expulsions and resignations not included in this empirical study.³⁶⁹



368. Pursuant to a separate consent order, Local 813 has a separate investigations officer. That officer referred a number of cases to the independent administrator and the IRB. See STIER, *supra* note 7, at 392-400.

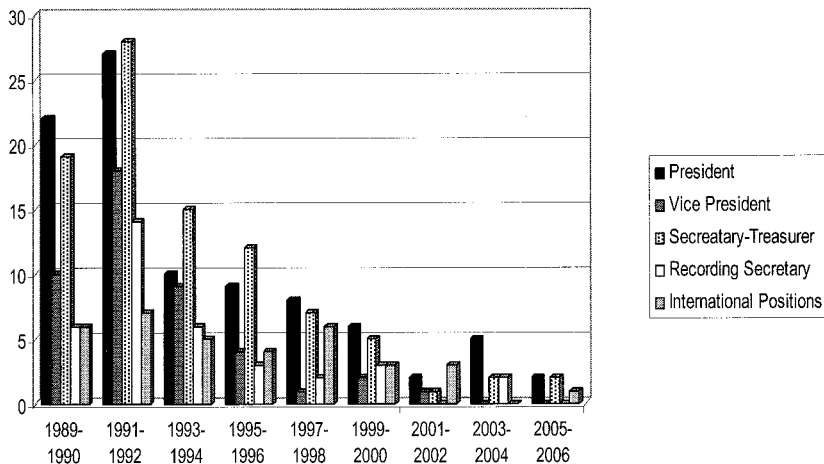
369. For a detailed review of these court-appointed monitors and trustees, see STIER, *supra* note 7, at 359-418. For an evaluation of the success of these efforts, see James B. Jacobs, Eileen M. Cunningham, and Kimberly Friday, *The RICO Trusteeships: A Progress Report*, 19 LABOR LAWYER 419, 419-80 (2004).

Figure 5. Separate Civil RICO Suits Against Teamsters Locals

Local	Location	Result	Source
560	Union City, NJ	Trusteeship Imposed, 1986-1999	STIER, <i>supra</i> note 7, at 363-83.
282	New York, NY	Consent Judgment: required IBT to appoint trustee subject to approval of the U.S. Attorney, 1995-2002	STIER, <i>supra</i> note 7, at 385-87.
813	New York, NY	Consent Judgment: court-appointed investigative officer imposed, 1994-2002	STIER, <i>supra</i> note 7, at 392.
813	New York, NY	Trusteeship Imposed, 1992-present	STIER, <i>supra</i> note 7, at 402-17.
295	New York, NY	Trusteeship Imposed, 1993-present	STIER, <i>supra</i> note 7, at 402-17.

The majority of Teamsters locals have had no officers or members charged throughout the remedial effort. Fifty-two locals have had two or fewer respondents disciplined, perhaps indicating individual rather than systemic corruption; about seventy locals have had fewer than five officers or members disciplined; twenty-nine locals have had five to nine disciplined members; and ten Teamsters locals have had ten to twenty disciplined members during the entire remedial effort.

Charges Brought by the IRB and Investigations Officer Against High-Ranking Local Union Officers and International Officers (Fig. 6)



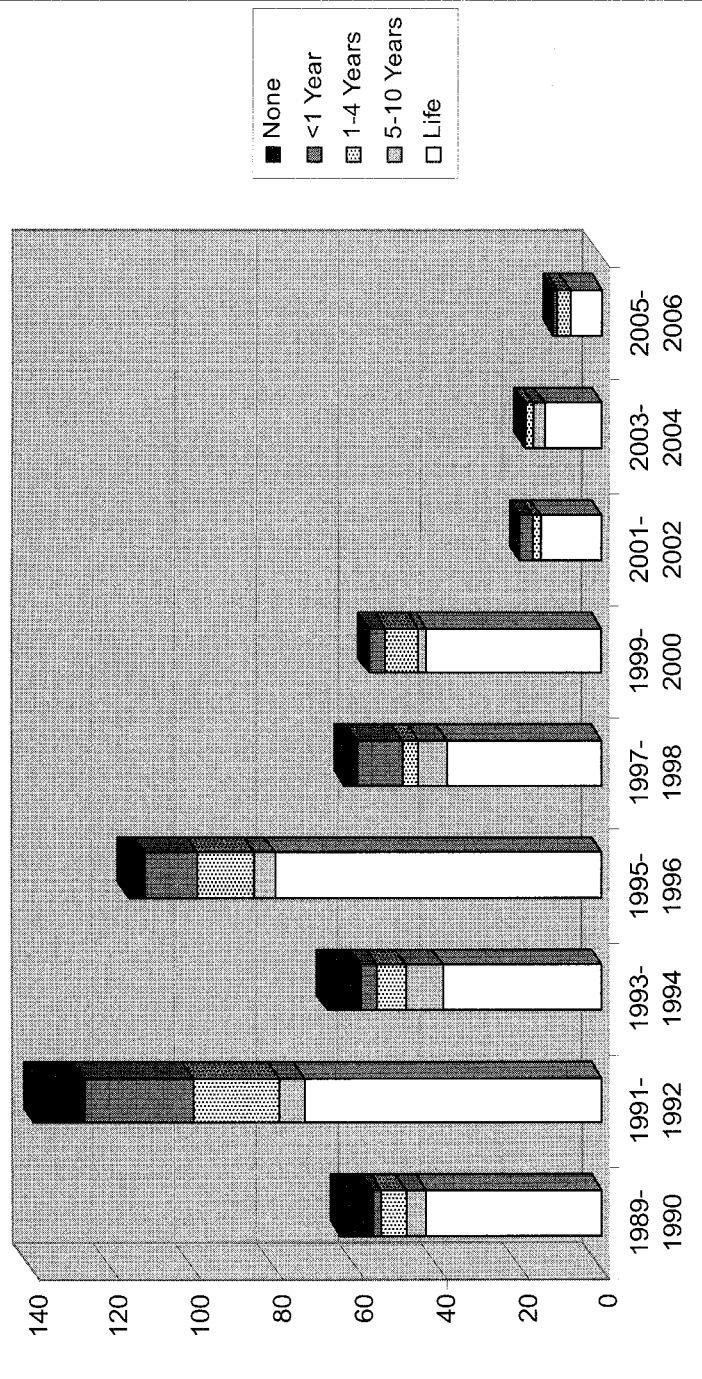
B. Sanctions

Almost 550 members have been disciplined by either the independent administrator, IRB, or Teamsters acting pursuant to IRB recommendations or pursuant to a negotiated settlement with the respondent. The most prevalent sanctions have been expulsions, suspensions, and fines.

A lifetime ban on employment with the Teamsters, not always accompanied by a lifetime ban on Teamsters membership, was the most serious sanction in two-thirds of all disciplinary cases. More than 100 individual members received suspensions of one year or more. Sixty-eight members received suspensions of less than one year. There were thirty-five reprimands or fines.³⁷⁰

370. A fine may be imposed as a stand-alone sanction or in combination with a suspension. The independent administrator, IRB, and Teamsters have imposed fines on sixty-eight members, totaling more than \$770,000.

**Length of Suspensions on Sustained Charges of the IO and IRB
(Fig. 7)**



VI. CONCLUSION

The Department of Justice's civil RICO suit against the International Brotherhood of Teamsters is arguably the most ambitious effort at government-initiated and court-supervised organizational reform in U.S. history. In 1988, the DOJ set out to purge the nation's most powerful crime syndicate from the nation's largest and most powerful private sector union, a union with more than 1.5 million members and 600 locals spread across the U.S. and Canada. The lawsuit quickly settled with an agreement embodied in a consent order issued by the federal district court in New York City. Judge David Edelstein, who signed the order, became strongly committed to its enforcement. The enforcement phase has taken eighteen years so far, with no end in sight. It has consumed tens of millions of dollars and countless hours of work by judges, court-appointed officers, lawyers, investigators, and union personnel.

It is important to document this massive anti-corruption and anti-racketeering effort, and to assess the potential benefits and limits of civil RICO settlements for remedying deeply entrenched organizational corruption. A full-scale study of the Teamsters case would require examination of the electoral and other constitutional changes embodied in the consent decree. That is beyond the scope of this Article. More time must elapse before we will be able to conclude with confidence that the DOJ and the courts have succeeded in purging organized crime from the Teamsters, and in reforming the union so that the membership can exercise the democratic rights promised by Landrum-Griffin and other federal labor laws. Nevertheless, after nearly two decades of remedial effort, it is possible to make some important observations.

This case study of the enforcement of the Teamsters consent order's disciplinary component shows that the remedial effort was able to overcome the Teamsters' initially intense resistance. The consent order's objectives could easily have been stymied had it not been for Judge Edelstein's determination. Again and again, he rendered decisions enforcing the spirit as well as the letter of the consent order. He steadfastly supported the independent administrator's disciplinary interpretations and decisions. Edelstein's decisions empowered the independent administrator and then the IRB. Gradually recognizing that the independent administrator and IRB decisions would be enforced, the Teamsters moved from resistance to grudging acceptance and finally to routine cooperation.

The remedial effort benefited from a number of good personnel appointments. The appointment of former federal judge Frederick Lacey to the independent administrator position signaled the importance of the position. Lacey handled the job with competence and determination. Likewise, the remedial effort benefited greatly from the appointment of

Charles Carberry, a tenacious investigator and prosecutor. His longevity on the case is one of the key reasons for the success of the disciplinary process.

The best measure of the success of the independent administrator and the IRB is the number of corrupt officials and members purged from the union. It bears emphasizing that 346 officers and members have been expelled or forced to resign, including twelve international union officers, forty-two local union presidents, thirty-eight local union secretary-treasurers, and hundreds of other officials. Charges have successfully been brought against officers or members from more than 100 Teamsters locals. Moreover, forty-four locals and joint councils have been placed under international union trusteeship. This constitutes a massive leadership change within the Teamsters, and opens up space for reformers at the local level to become involved in governance. It does not ensure a union free from corruption or a union committed to union democracy, but it does ensure the possibility of achieving those goals.

A second indicator of success is the decreasing number of disciplinary charges over time. Admittedly, it is possible that decreasing charges means that the easiest cases were dealt with in the early years while much hidden corruption remains. While that hypothesis cannot be absolutely rejected, we believe that the declining number of cases does indicate real progress because the investigative apparatus has remained relatively constant over time. The seriousness of the wrongdoing prosecuted has declined over time, suggesting real progress in ridding the union of serious corruption. Most importantly, there have been very few organized crime cases in recent years.

Reform imposed on an unwilling organization can only have limited success. Therefore, it is crucial that the Teamsters become committed to the goals of the consent order as interpreted by the district court and the Second Circuit Court of Appeals. This goal may not yet be 100% achieved, but the regular involvement of the IBT's General Executive Board, joint councils, and locals in the implementation of the IRB's recommendations is good evidence of the routinization of reform. The IRB has institutionalized an elaborate and formal disciplinary system with fair and effective investigative, prosecutorial, and adjudicatory procedures, and an elaborate and rational law of disciplinary offenses. When the IRB's work is eventually over, much of this legacy will likely be incorporated into the Teamsters administrative procedures.

As we approach two decades of government-initiated and court-supervised reform of the once organized-crime-ridden Teamsters we can say with confidence that there has been a great deal of progress. *Cosa Nostra's* influence is limited to just a few locals, if that.³⁷¹ Even in these

371. See James B. Jacobs and Ryan Alford, *The Teamsters Rocky Road to Recovery -- The Demise of Project RISE*, 9 TRENDS IN ORGANIZED CRIME 5, 10-13 (2005).

locals, Cosa Nostra and its proxies are under enormous pressure. There is no longer open and notorious labor racketeering. Even mundane corruption is likely to be identified and punished. The future can never be predicted with confidence, but at this point in time there is good reason to be optimistic.

