

**CONFIDENTIAL - NOT FOR PUBLIC FILING
PENDING COURT REVIEW**

MEMORANDUM

TO: Hon. Charles S. Haight, Jr.

FROM: Walter Mack, Independent Investigator

DATE: June 28, 2005

RE: Recommendation for Criminal Referral – Issues Relating to the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America and Silo Construction Corporation

Introduction

I respectfully submit this memorandum, copies of which are being sent to the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("the District Council") and to the Civil Division of the United States Attorney's Office, the parties to the litigation pursuant to which I was appointed as Independent Investigator ("II"), in order to summarize information that I believe merits scrutiny by a prosecutor's office. Because this II team is concluding our factual inquiry at an early investigative stage as a result of the delay in examining the subject matter and our imminent replacement, this memorandum consists primarily of information conveyed to us and questions that such information presents. Times and other details presented are often vague because witnesses' recollections are not precise and often contradict each other (and sometimes themselves), and although the District Council and Local unions

have produced documents in response to my requests, documents are missing and serious questions remain.

The material drawn on for this memorandum include: the deposition of Peter O'Keefe, a shop steward for Silo Construction Corporation ("Silo"); the recorded interview of District Council Local 608 President and business manager John Greaney; the recorded interview of Local 608 business agent Joseph Firth; the recorded interview of Local 608 business agent Martin Devereaux; the recorded interview of Local 608 business agent Vincent Taddeo; the recorded interview of shop steward Michael Guerin; the application of Richard Gotti for membership in District Council Local 926 and supporting letter from Michael Perrone, "Owner, Silo Construction;" the District Council's job referral history for Peter O'Keefe; shop steward reports; shop steward dispatches; New York City Buildings Department complaint records; and correspondence.

Peter O'Keefe, Silo Construction Corporation and Local 608

Peter O'Keefe ("O'Keefe") was dispatched from the Out-of-Work List ("the OWL") to his first Silo job on February 23, 2000. There is no indication that O'Keefe engaged in any manipulation of his skills set in order to obtain this dispatch; it appears to have been the result of chance – as the OWL is intended to operate. O'Keefe reports that he became friendly with the Silo foreman on that job and permitted Silo to conduct weekend carpentry work without accounting for it on the shop steward reports. (O'Keefe

Transcript [Exhibit 1] at 19, 20)

O'Keefe was dispatched to his second Silo job on December 1, 2000; the site was 112th Street and Frederick Douglas Blvd. (*Id.* at 25.) I have not obtained evidence that this second Silo assignment was the result of skills manipulation. On this job, too, O'Keefe permitted unreported Carpenter weekend work. (*Id.* at 40-42, 97). In exchange, O'Keefe was paid for the days on which such work took place even though he was not there. (*Id.* at 40, 99.) O'Keefe had recently been diagnosed with cancer and was receiving chemotherapy. Silo's foreman permitted him to come to work late or leave early without being docked pay. (*Id.* 99-101.)

O'Keefe's third dispatch to Silo, to a job at 393 West 96th Street, on December 13, 2001, was clearly the result of skills manipulation. O'Keefe testified that prior to his assignment he was contacted by the Silo "boss," Albert Brozek ("Brozek"),¹ who knew O'Keefe from the job on Frederick Douglass Blvd. and said that he would like O'Keefe to be assigned as the shop steward for this job. Brozek said that he thought the assignment could be arranged. When O'Keefe told Brozek that he needed to work in the meantime, Brozek sent O'Keefe to a couple of short term jobs to keep him available for when the West 96th Street job was ready to begin. (O'Keefe at 46-47, 101, 105, 106.) O'Keefe testified that in retrospect it seems to him that Brozek had wanted him as shop steward because he had cancer and had a history of allowing Silo to have unreported Carpenters

¹ O'Keefe reported that Brozek's father was reputed to be a "mafioso guy." (O'Keefe at 49.)

on the site in exchange for being allowed to take time off to address his health issues. (*Id.* at 70, 102.)

According to O'Keefe, Brozek had told him to contact Local 608 business manager John Greaney ("Greaney") about the possibility of getting the assignment. O'Keefe testified that Greaney told him what skills to add, writing down the skills he should list. O'Keefe added wood framing and protection to his skills set on December 10, 2001, three days before he was referred to the 96th Street site.² O'Keefe testified that Greaney also wrote down the name of the OWL staff member to telephone in order to confirm that the skills had been added. (*Id.* at 57, 59-61, 64-65, 106.)

Greaney denied telling O'Keefe what skills to add. Greaney said that he had not known O'Keefe prior to the time he came into the Local³ and that he was not familiar with Silo Construction at this time. Greaney said that O'Keefe did not mention a particular contractor, but simply told Greaney that he had cancer and asked for advice on how to get a job. Greaney said that as far as he could recall, he simply advised O'Keefe to make sure that he was on the OWL. Greaney said that he might also have, as he did for others seeking advice, written down the skills that are appropriate for a generic category of jobs. (Greaney Transcript [Exhibit 3] at 37-47.)

Once on the job, O'Keefe found safety issues and reported them, he testified, to

² Firth characterized the shop steward dispatch for this job as containing "unusual qualifications." (Firth Transcript [Exhibit 2] at 55-56.)

³ O'Keefe was a member of Local 157, not Local 608, John Greaney's Local.

OSHA, the New York City Buildings Department, and Local 608 business agent Joseph Firth ("Firth"). (O'Keefe at 28-30, 120-21;161.)⁴ The safety violations included: absence of safety cable; uncovered holes in the ground; and conditions leading to a roof collapse which caused the hospitalization of workers from another trade and led OSHA to shut the job down for a period. (O'Keefe at 116.) O'Keefe testified that he made several telephone calls to Firth, reporting safety violations and requesting that Firth visit the site. According to O'Keefe, Firth began to avoid him when he visited the Local to drop off his shop steward reports and on one occasion, told O'Keefe that he did not want to come to the site because he was afraid that he would be thrown off the building. (*Id.* at 120-21.)

Firth did not recall having received such reports from O'Keefe and he denied having refused requests to visit the site.⁵ (Firth at 77-79, 81.) According to Firth, O'Keefe, who visited the Local regularly to drop off his shop steward reports, was outgoing and pleasant and struck him as reliable. For this reason, Firth, who had not been a business agent for long, decided that it was not necessary to visit the site himself.⁶

⁴ Although we have not had an opportunity to obtain all relevant documents, we did obtain publicly available documentation pertaining to numerous complaints (copies of which are provided, collectively, as Exhibit 4) to the New York City Buildings Department.

⁵ This West 96th Street site appears to have been problematic even before Silo began its work there. Shop steward Michael Guerin testified that he was dispatched to the site early in February 2000 to work for Oilean, the company that was constructing the foundation, but that he left the job within a week because he felt that the safety issues on the job exposed him to injury. Mr. Guerin testified that he conveyed this information to Firth. (Guerin Transcript [Exhibit 5] at 92-93.)

⁶ It is noteworthy that when Firth took over responsibility for this site, Jerry Philbin, a more experienced business agent, warned him that Silo was a dishonest company and that he

(Firth at 72-73, 94.)

Firth also testified to having been threatened with physical harm when he visited this job site in 2001, prior to the time that Silo began its work there. He could not remember the precise nature of the threat but thought that it was something related to falling off the building. He believes that the person who threatened him was a superintendent or other representative of the general contractor, JBF Construction. (Firth at 46-54.)⁷ Firth reported the threat against him to Greaney. (Greaney at 49). Local 608 business agent Martin Devereaux also heard of this threat. (Devereaux Transcript [Exhibit 6] at 148-49.)

O'Keefe testified that about half-way into the job, Albert Brozek told him that Richard Gotti ("Gotti") was working in Silo's office and that O'Keefe should list his name on the shop steward reports. (O'Keefe at 123, 127.) Gotti is the brother of the late Mafia boss John Gotti and has a criminal record.⁸ Shortly after receiving Albert's instruction,

should watch them carefully. (Firth at 68-69.)

⁷ Firth described this man as in his early 50's, Italian, 5'8" or 5'9" and stocky. (Firth at 52.)

⁸ Richard Gotti, social security number 118-34-4854, of Howard Beach, New York, was accepted into Local Union 926 on April 24, 2002, based on a letter dated April 1, 2002, bearing the signature of "Michael Perrone, Owner, Silo Construction Corporation, 45-31 215th Street, Bayside, New York 11361, submitted together herewith as Exhibit 7. Neither the District Council nor Local 926 has produced documents that would disclose whether Gotti's application to Local 926 or his subsequent conduct was ever the subject of scrutiny or evaluation by the District Council. This subject, it would seem to me, should have at least raised the question of whether the District Council had some obligation under the Consent Decree to be sensitive to allegations relating to organized crime.

O'Keefe was introduced to Gotti by Roger, the Silo supervisor; Gotti requested a private conversation with O'Keefe. (*Id.* at 32-34.)⁹ O'Keefe knew very well who Gotti was. (*Id.* at 32.) Their conversation consisted of Gotti telling O'Keefe that if there were any further safety issues they would work themselves out and that O'Keefe should not report them to the union. Raising his voice and touching O'Keefe's chest with his finger, Gotti said that if O'Keefe did make further reports to the union, it would be he who would have the problem. (*Id.* at 34, 35, 37-38.) O'Keefe testified that he was intimidated by Gotti and did not sleep well for a few nights. (*Id.* at 35,37-38.) He also gave up on reporting problems to Firth or any other union official. (*Id.* at 154-55.)

Greaney told me that while Firth was out of town visiting his ailing mother, calls were received by Local 608 advising that there were non-union Carpenters working at Silo's 393 West 96th Street site. (Greaney at 55, 60.) Greaney went to the site with business agents Jerry Philbin (now deceased) and Maurice McGrath. (*Id.* at 59-60.)¹⁰ When they arrived at the site they saw workmen – about ten of them – fleeing the building (*id.* at 65); but a few non-union workers did not. A couple of those workers talked with the business agents and told them that they were employed by a company called Elite (presumably Elite Construction of New York, Inc. [*see* Exhibit 8]), which

⁹ During a different session of his testimony, O'Keefe said that it was Gotti who had given him his (Gotti's) social security number and instructed him (O'Keefe) to put his name on the shop steward reports. (O'Keefe at 35-36.)

¹⁰ No one has been able to place this incident in time and Greaney has been unable to find any memoranda or other documentation relating to this site visit. (Greaney at 62.)

they thought might be "the same company" as Silo because Silo and Elite shared a foreman (Peter Scalia). (*Id.* at 68-71.) One of these workers informed the Local 608 representatives that the shop steward, Peter O'Keefe, was never around. (*Id.* at 78-79.)

Greaney's recollection is that he and Jerry Philbin made another visit to the job site fairly soon after the first visit and spoke with the project's superintendent (a heavysset Italian man with dark hair), about Silo's use of non-union workers, and that the superintendent promised that he would try to address this. Greaney had the impression that the general contractor was in the process of terminating its contract with Silo. I have obtained a September 23, 2002 letter from the general contractor, JBF Construction, LLC, addressed to Elite Construction of New York, Inc., to the attention of Albert Brozek (the Silo "boss"), purporting to terminate the parties' subcontract agreement in light of Elite's non-compliance with contract terms. I submit a copy of that letter as Exhibit 9. This letter of course, lends substantial credence to the non-union workers' assertion that Silo and Elite were "the same company."

When Greaney subsequently visited the West 96th Street site, Silo was no longer present and Greaney spoke with workers from other trades. One of them insinuated that Silo was associated with organized crime. (Greaney at 81-82.) Greaney reported this comment to someone, whose identity he could not recall, at the District Council. (*Id.* at 85-86.) Both Greaney and Firth denied knowing that Richard Gotti was listed on O'Keefe's shop steward reports. (Firth at 121; Greaney at 80.) Copies of the shop

steward reports bearing Gotti's name are submitted as Exhibit 10. O'Keefe's testimony is that he put the first shop steward report bearing Gotti's name in front of Firth, pointing at the name and saying "we have a new carpenter." According to O'Keefe, Firth replied that everyone has the right to work. (O'Keefe at 172-74.)

Greaney did not recall that O'Keefe was terminated at this or any other visit he made to the Silo site. He said that he and Philbin asked O'Keefe for his shop steward reports and questioned why the non-union workers they encountered (the same ones they saw during the previous visit) were there. O'Keefe responded that those carpenters worked for Elite, not Silo. Greaney did not recall any further interaction with O'Keefe. Greaney recalled that charges against O'Keefe, the nature of which he did not know, were brought by union organizer Ramadan Ibric (known as "Rambo"). (Greaney at 108.)

Rambo asserted that O'Keefe had permitted non-union carpenters to work at the 96th Street site and had advised them to run if any union official arrived. (Transcript of May 1, 2003 Carpenters' Union Hearing [Exhibit 11], at 4.) O'Keefe denied the allegations (Greaney at 5.)¹¹ The transcript is notable for its brevity (eight pages including two cover pages and one page of introductions). There is no attempt by the union officials present to elicit any information, either from Rambo or O'Keefe, as to who

¹¹ There is some confusion as to which job site was the subject of Rambo's charges. Silo is not a non-union scaffold company, as Rambo described the employer in issue at the May 2, 2003 hearing. However, the Silo job at which O'Keefe was the shop steward was at 96th and West End Avenue, the location referred to by Rambo. And O'Keefe, in his statement at the May 2 hearing, referred to the contractor as JBF, Silo's general contractor. (Exhibit 11, at 4, 6.)

had corrupted O'Keefe. The employer/contractor is not even identified.

O'Keefe gave the following account of his removal as shop steward for Silo's West 96th Street job – presumably the scenario that led to the filing of charges by Rambo. He testified before me that the job had been shut down on several occasions due to safety-related problems and that on more than one occasion he was not notified that the job had been re-started. On one such occasion, Bill Berry, a Carpenter journeyman on the job, called him to tell him they were back at work. As O'Keefe was driving to the site from his home, he received another call from Berry telling him that Greaney was on the site and was angry. When O'Keefe got there, business agent Philbin told him that he was being replaced because he had allowed non-union carpenters on the job. O'Keefe tried, unsuccessfully, to explain that the job had been shut down and that he was unaware until he got the call from Bill Berry that it had re-started. (O'Keefe at 131-33;178-82.)¹²

The adjudication resulting from the disciplinary proceeding against him was that O'Keefe was to lose his shop steward certification for one year. However, the District Council failed to record this suspension in the appropriate manner and O'Keefe was dispatched at least once more as a shop steward. (*Id.* at 217, 220.) After one such job for Complete Construction Consortium ("Complete"), O'Keefe went to another Complete

¹² O'Keefe gathered signatures from workers from other trades saying that he had always been a vigorous advocate on behalf of the union. He testified that he gave his only copy of this statement to the District Council and that it was lost. (O'Keefe at 182, 185-88, 190-92, 199, 205) A second version of the statement was also lost at the District Council, O'Keefe testified. But this time he made a copy - although he did not bring it to his District Council disciplinary hearing (submitted herewith as Exhibit 12). (*Id.* at 208-09, 212.)

job site and told them, falsely, that he had been sent by the District Council as shop steward for that site. (*Id.* at 221-22). He was discovered on the site by a business agent who was aware of the suspension of his shop steward certification and disciplined once more. (*Id.* at 222, 225-26.)

Questions Raised

It was in the aftermath of this last incident of misconduct, when he was called to the District Council for an interview, that O'Keefe reported directly to the District Council that Richard Gotti had coerced him to put Gotti's name on the shop steward reports for the West 96th Street job. The II investigator who was present at that interview, in December of 2004, reported this information to me, along with O'Keefe's allegation that at the time he was putting Gotti's name on the shop steward reports he made a point of drawing this fact to the attention of the supervising business agent, Joseph Firth. It was then that I began this investigation by bringing O'Keefe to my office for several deposition sessions.

There are several questions that present themselves, based on the statements, testimony and documents we have been able to garner:

(1) Did anyone from the District Council (or a member Local) assist Peter O'Keefe in getting the shop steward assignment to Silo's West 96th Street job site? If so, why? Why would any of these companies connected to Silo be able to manipulate the job referral rules in such a way to secure the assignment of a weak and ineffectual shop steward to a job site?

(2) How did Richard Gotti secure his re-admission to District Council Local 926?

Was the District Council, or any representative, aware of Richard Gotti's presence on the shop steward reports? If not, why not, given the fact that his name was on several shop steward reports?

(3) Why were there so few business agent visits to Silo's West 96th Street site, despite repeated safety problems and despite the strong possibility of criminal activity associated with the job site, as evidenced by the threat made to Joe Firth by someone apparently associated with the general contractor? While I commend business manager John Greaney and his business agents for eventually raiding the job site, and I credit Greaney's testimony that he notified someone at the District Council of the job site's possible organized crime associations, I cannot find any reason to justify the absence of follow-up.

(4) Why, even after O'Keefe's corruption by Silo had been discovered, did the District Council conduct so superficial an investigation of events that surely went beyond O'Keefe's transgressions. It took an II investigator hearing of O'Keefe's statements, much later, for the questions presented in this memorandum to be raised.

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As noted above, we have not had the time to fully investigate the facts relating to Silo and the 393 West 96th Street job site. I believe that every document pertaining to any

grievance, claim, or complaint relating to this job site (including evidence of shut-downs) should be obtained and reviewed by a criminal investigator. Certainly, every extant union document related to this job site should be reviewed. I believe this scrutiny to be warranted by a combination of factors, including: the existence of significant safety issues on the site; the fact that business agent Joe Firth was threatened with bodily harm when he visited the job site; the District Council's lack of oversight of the Silo job; the fact that Richard Gotti, a convicted criminal and brother of former Mafia boss John Gotti, was associated in some manner with Silo, was permitted to become a union Carpenter, was falsely listed on some of the shop steward reports (likely as the result of coercion by Gotti and/or Brozek), and engaged in threatening conduct toward the shop steward. I also think that subpoenas should be issued to Silo Construction; Elite Construction of New York, which may be an alter ego for Silo; JBF Construction, the general contractor which retained Silo; and another company, Terra Firma, which appears to have been the construction manager for the 393 West 96th Street site.

I remain available to the Court and any prosecutorial entity to provide suggestions and any relevant information I have.

New York, New York
June 28, 2005

Respectfully submitted,

Walter Mack
Independent Investigator

Amy Rothstein
Of Counsel