

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
 UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 DISTRICT COUNCIL OF NEW YORK CITY :
 AND VICINITY OF THE UNITED :
 BROTHERHOOD OF CARPENTERS AND :
 JOINERS OF AMERICA, et al., :
 Defendants. :
 ----- X

90 Civ. 5722 (CSH)

**MEMORANDUM OF LAW IN SUPPORT OF THE GOVERNMENT’S MOTION TO
EXTEND THE TERM OF INDEPENDENT INVESTIGATOR WALTER MACK**

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

EDWARD SCARVALONE
LISA R. ZORNBERG
BENJAMIN H. TORRANCE
Assistant United States Attorneys
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2734
Fax: (212) 637-2686

– Of Counsel –

Table of Contents

PRELIMINARY STATEMENT	1
BACKGROUND	5
A. The Consent Decree and Its Adoption of the Job Referral Rules	5
B. Centralization of the Job Referral System in 1998 Under the Supervision of the UBC and the IRO	8
C. The 2002 Clarke Motion, Leading the Government to Seek Modifications of the Consent Decree	9
D. The Court’s Entry of the December 2002 Stipulation and Order Appointing Walter Mack as Independent Investigator	11
E. The Substantial Evidence of Consent Decree Violations and Corruption Uncovered by the Independent Investigator	13
1. Evidence of Substantial Violations of the Job Referral Rules by District Council Business Agents, Shop Stewards, and Carpenters	13
2. Evidence of the District Council’s Failure to Investigate Job Referral Violations	17
3. Mack’s Revelation of Long-Standing “Cash Jobs,” Indicating that District Council Business Agents Have Been Negligent in Failing to Uncover Corruption	19
4. Evidence of Continuing Racketeering Acts and Associations with Organized Crime by District Council Members	22
a. Forde and Devereaux convicted in April 2004	22
b. The Government’s racketeering indictment in April 2004 ..	23
c. Shop Steward Delroy Haughton charged in October 2004 ..	23
5. Evidence that Abuse of the “Special Request” System Has Undermined the Job Referral System	24
6. Evidence of Carpenters’ Continuing Fear of Retaliation by the District Council	27

F. Evidence of Walter Mack’s Effectiveness as Independent Investigator 28

G. The District Council’s Notice of Walter Mack’s Termination 30

**ARGUMENT—THE COURT SHOULD EXTEND WALTER MACK’S TERM AS
INDEPENDENT INVESTIGATOR 32**

**A. This Court Has Inherent Authority to Enter Orders That Will Ensure
Compliance with the Consent Decree 32**

**B. Compelling Evidence That the Consent Decree’s Terms and Objectives Have
Not Been Met Amply Justifies the Extension of Walter Mack’s Term as
Independent Investigator 36**

CONCLUSION 42

Table of Authorities

<u>Cases:</u>	Page
<u>Ass'n Against Discrimination in Employment v. City of Bridgeport</u> , 710 F.2d 69 (2d Cir. 1983)	35
<u>Berger v. Heckler</u> , 771 F.2d 1556 (2d Cir. 1985)	32, 33, 39
<u>EEOC v. Local 580, International Ass'n of Ironworkers</u> , 925 F.2d 588 (2d Cir. 1991)	<i>passim</i>
<u>Ferrell v. HUD</u> , 186 F.3d 805 (7th Cir. 1999)	33
<u>Local Union 20 v. United Brotherhood of Carpenters</u> , 1997 WL 630179 (S.D.N.Y. Oct. 9, 1997)	9
<u>Jenkins ex rel. Jenkins v. Missouri</u> , 103 F.3d 731 (8th Cir. 1997)	33
<u>Juan F. v. Weicker</u> , 37 F.3d 874 (2d Cir. 1994)	33, 34, 40
<u>New York State Ass'n for Retarded Children v. Carey</u> , 706 F.2d 956 (2d Cir. 1983)	34, 35, 40
<u>Patterson v. Newspaper & Mail Deliverers' Union</u> , 13 F.3d 33 (2d Cir. 1994)	35
<u>Picon v. Morris</u> , 933 F.2d 660 (8th Cir. 1991)	32
<u>Rufo v. Inmates of Suffolk County Jail</u> , 502 U.S. 367 (1992)	<i>passim</i>
<u>United States v. Delroy Haughton</u> , 04 Mag. 1987 (S.D.N.Y.)	24
<u>United States v. District Council</u> , 1999 WL 386935 (S.D.N.Y. Jun. 11, 1999)	6
<u>United States v. District Council</u> , 2002 WL 31873460 (S.D.N.Y. Dec. 24, 2002)	6, 10, 18
<u>United States v. District Council of Carpenters</u> , 972 F. Supp. 756 (S.D.N.Y. 1997)	8, 33, 40
<u>United States v. Louis Moscatiello, Sr.</u> , 04 Cr. 343 (KMW)	23
<u>United States v. Local 359, United Seafood Workers</u> , 55 F.3d 64 (2d Cir. 1995)	32, 38

United States v. Secretary of Housing & Urban Development, 239 F.3d 211
 (2d Cir. 2001) 35, 36, 40

United States v. Swift & Co., 286 U.S. 106 (1932) 34, 38

United States v. United Shoe Machinery Corp., 391 U.S. 244 (1968) 34, 36, 38, 39

United States v. Western Elec. Co., 46 F.3d 1198 (D.C. Cir. 1995) 36

Statutes:

29 U.S.C. § 186 24

New York Penal Law § 180.25 22

Rules:

Fed. R. Civ. P. 60(b) 34

PRELIMINARY STATEMENT

Plaintiff United States of America, by its attorney, David N. Kelley, United States Attorney for the Southern District of New York, respectfully submits this memorandum of law in support of the Government's motion for an order extending the term of Independent Investigator Walter Mack ("Mack").

At its core, the Consent Decree entered by this Court in 1994, both then and today, seeks to rid the union of corruption—that is, corruption that allows contractors to run “cash jobs” that deprive carpenters of their benefits and fair pay; corruption that leads to politically favored carpenters getting better and more frequent job assignments at the expense non-favored carpenters; corruption that stifles the union's democratic processes. One of the Consent Decree's primary vehicles for preventing such corruption is the job referral system—a set of rules implemented by the Decree to ensure that journeymen carpenters and shop stewards are impartially assigned jobs from an out-of-work list (also referred to as the “OWL”) based on the length of time have been unemployed.

Eleven years after the Consent Decree's entry, however, the unfortunate reality is that the Consent Decree's objectives still have not been met and that its terms continue to be violated. Indeed, in the last two years, Independent Investigator Walter Mack has uncovered a substantial body of evidence raising serious doubts about the District Council's adherence to the Consent Decree's goals, objectives, and express provisions. With respect to the job referral rules, Mack's investigations have revealed widespread violations of the job referral system; that certain favored shop stewards, aided by business agents and contractors, have rigged job referrals by manipulating the job referral rules and listing bogus job skills in their skills profile; that carpenters commonly “ride” the out-of-work list when they are actually working; and that, prior

to Mack's appointment, the District Council's unsupervised efforts to detect and investigate job referral violations were so inadequate as to be "at the very least negligen[t]."

Moreover, in one of the Independent Investigator's most disturbing findings, Mack determined that the Decree's job referral rules have been "almost completely undermined" by the so-called "special request system." Under that system, the District Council allows contractors to hand-pick every carpenter at a job site (except for the steward), effectively nullifying the "50/50" rule that had required half of workers on a job site to be referred from the out-of-work list. The practical effect of the special request system, as Mack found and as the Government agrees, is that journeymen carpenters can no longer rely on the out-of-work list for work and are beholden to contractors for employment, thereby increasing the potential for job-site corruption.

The evidence gathered by the Independent Investigator goes well beyond job referral violations, however. Mack has also uncovered nests of job-site corruption, where shop stewards falsified reports and accepted bribes while carpenters and non-union labor illegally worked for cash, without union benefits and in violation of collective bargaining agreements. The evidence indicates that certain contractors have been able routinely to operate large "cash jobs" on major construction sites without detection or intervention by the District Council. In the case of Boom Construction, Mack's investigation into that company (which Mack has indicated will be the subject of an upcoming report) has led to the criminal indictment of one shop steward for bribery, and to a stream of carpenters recanting their prior false statements to admit that they had received "off the books" cash payments for their work on Boom sites. These revelations show not only that corruption continues to infiltrate the union, but also that District Council officers and representatives have done an inadequate job of weeding it out. Indeed, the evidence strongly

suggests that District Council business agents either have been complicit in corruption or, at a minimum, not doing their jobs. Mack has also determined that the District Council has no effective system for holding shop stewards accountable for job-site violations, and that rank-and-file carpenters continue to fear retaliation by the District Council if they expose corruption.

Punctuating these findings are recent criminal proceedings evidencing job-site corruption and violations of the Consent Decree's prohibitions against racketeering. The District Council's Executive Secretary-Treasurer ("EST") Michael Forde and District Council business agent Martin Devereaux, were found guilty, on April 27, 2004, of accepting bribes from a contractor. (Forde and Devereaux are still awaiting sentencing while post-conviction motions are heard in state court.) Moreover, the United States Attorney's Office recently charged a shop steward for extorting bribe payments at a Jacobi Hospital construction project, and obtained a guilty plea from a Genovese organized crime family member for conspiring to corrupt a Kings County Hospital project.

The District Council's response to this recent barrage of revelations, which go to the heart of the Consent Decree, is to attack the messenger. In a December 2004 letter, the District Council (which is still headed by Forde, as he awaits his criminal sentencing) informed Mack that it will not renew his term as Independent Investigator beyond the initial twenty-four months, and that Mack's role will cease effective April 30, 2005.

The Court should not allow this to happen. Given the compelling evidence that the Consent Decree's objectives have been frustrated and its terms violated, an extension of Mack's term is not only desirable, but necessary to effectuate the Consent Decree's purposes. Firing Mack now—even if he is replaced by a new investigator—will undermine the positive changes

that are finally starting to be made as a result of Mack's work. Indeed, beyond demonstrating himself to be an effective investigator, Mack has gained the trust and respect of carpenters. The District Council's toll-free "anti-corruption hotline" is flourishing under his stewardship, and Mack's strong presence is finally forcing the District Council's business agents to play a more active role in detecting and reporting corruption. Moreover, carpenters are starting to get the message that if they violate the job referral rules, accept cash on the job, or lie to Mack during the investigative process, they will likely be caught. In short, as Independent Investigator, Mack has been instrumental not only in identifying the problems that threaten the Consent Decree, but also in spearheading the fix. Effecting institutional change is hard, however, and Mack's work is far from done. As Mack himself recently advised the Court, he has at least ten pending investigations, all concerning matters critical to the Consent Decree that warrant reporting to the Court. However, Mack will be unable to complete many of those investigations, let alone the reports, if terminated in April.

Accordingly, the Government now seeks relief that is narrowly tailored to what the circumstances require: an extension of Mack's term for a reasonable period—eighteen months, with leave to renew if necessary—so that he can complete his pending investigations and solidify the reforms that have just begun to take hold with his influence. Such relief is well within this Court's authority to grant. Although the December 2002 Stipulation and Order appointing Mack gave the District Council the option of not renewing Mack's term after twenty-four months, that provision was entered prior to the recent revelations concerning the extent and breadth of Consent Decree noncompliance and corruption within the District Council. In light of these changed circumstances, enforcement of the Consent Decree cannot be held hostage to a

stipulated provision that, if given effect, would disserve the Decree's objectives. As the Second Circuit has repeatedly recognized, district courts have the inherent power in supervising and enforcing consent decrees to enter appropriate orders, and even to modify the decree's terms, when necessary to enforce the decree's objectives. That is particularly so where, as here, a consent decree involves issues of institutional reform. In the face of compelling evidence that, eleven years after the Consent Decree's entry, its objectives are being frustrated, this Court has considerable discretion to impose reasonable measures to enforce the Decree. Extending Mack's term as Independent Investigator is one such measure.

BACKGROUND

A. The Consent Decree and Its Adoption of the Job Referral Rules

In March 1994, after a break in the bench trial on the Government's civil RICO case, the parties signed and this Court entered the Consent Decree. (Declaration of Edward Scarvalone, Feb. 24, 2005 ("Scarvalone Decl."), Ex. 1).¹ The Consent Decree instituted a number of measures to weed out corruption in the union's operation. Thus, the Decree permanently enjoined any District Council officer, employee, or member from engaging in racketeering activity or knowingly associating with any organized crime member. (Consent Decree (Ex. 1) ¶¶ 2(a), 2(b)). The Decree also appointed Investigations and Review Officer ("IRO") Kenneth Conboy to investigate allegations of corruption, bring disciplinary charges,² and oversee the

¹ Unless otherwise indicated, references in this brief to "Ex." refer to exhibits to the Scarvalone Declaration.

² During his tenure, IRO Conboy charged numerous union officials with violating the permanent injunctive provisions of the Consent Decree. (See IRO Second Interim Report (Ex. 4) at 21-23 (Anthony Fiorino and Lenard Simon); IRO Fourth Interim Report (Ex. 5) at 33-35 (continued...))

union's elections. (Id. ¶¶ 3-4). IRO Conboy's term expired on June 6, 1999, following several extensions by this Court. See United States v. District Council, 1999 WL 386935, at *8 (S.D.N.Y. Jun. 11, 1999); (Scarvalone Decl. ¶ 2; Ex. 12).

The linchpin of the Consent Decree's structural reforms, however, is the job referral system that it put in place. The job referral rules, which are incorporated into the Consent Decree (see Consent Decree (Ex. 1) ¶ 5, Exhibit A), were implemented specifically to ensure that carpenters are assigned work in a fair and impartial matter and to protect against jobs being doled out as a means of solidifying political power or extracting private economic gain. See United States v. District Council, 2002 WL 31873460, at *1-3 (S.D.N.Y. Dec. 24, 2002). As IRO Conboy observed, "[t]he job referral rules were intended to eliminate the corruption, favoritism and cronyism that existed under the old system" (IRO First Interim Report (Ex. 3) at 9), and "to minimize the potential for abuse created by referrals made for reasons other than the amount of time an individual has been out of work" (IRO Decision No. 1 (Regarding job referral rules), § F at page 5). Thus, the Rules provide for a system whereby members register their names on an out-of-work list, from which members "shall be referred to jobs in the order in which they have registered their availability for referral, with the first registered member referred first, provided that the member has indicated that he or she has the qualifications requested by the employer." (Consent Decree (Ex. 1), Exhibit A at Rule 5(A); see also id., Exhibit A at 1 (stating in preamble that the Rules are promulgated "to maintain and administer a processing system for referral of

² (...continued)
(Enrico Ruotolo and Benedetto Schepis); IRO Fifth Interim Report (Ex. 6) at 35-36 (George Albert, Patrick Harvey, and Philip Fulgieri); IRO Tenth Interim Report (Ex. 11) at 18-23 (Dominick Lavacca and Martin Devereaux)).

members to employment in a fair and equitable manner . . . ”)).

Indeed, the Consent Decree recognizes only one narrow exception to the job referral rules’ first-in/first-out system: namely, an employer may request a specific carpenter off the out-of-work list, regardless of that carpenter’s priority ranking on the list, if the carpenter had been “employed by the employer within the previous six months.” (*Id.* Exhibit A, Job Referral Rule 5(B)). (This exception does not apply to shop steward referrals.) See also IRO Decision No. 1, § F, at page 5-6 (IRO Conboy recognizing a few other limited, permissible exceptions, such as referrals made out of order “in response to a lawful request for a minority or women employee,” but reaffirming “the Consent Decree’s strong preference for list priority”).

Moreover, the Consent Decree bars the District Council from amending the job referral rules without the Government’s prior notice and consent. (Consent Decree (Ex. 1) ¶ 12). If the Government opposes a proposed change as “inconsistent with the terms or objectives of the Decree,” the District Council cannot implement it unless, upon application to the Court, the District Council persuades the Court to permit the change over the Government’s objection. *Id.* This provision of the Decree, which places the burden squarely on the District Council to justify any proposed change to the job referral rules—whether major or minor—underscores the centrality of the job referral system, and the District Council’s compliance with that system, to the Decree’s purposes. See United States v. District Council, 2002 WL 31873460, at *4 (noting that United States Attorney’s Office “maintains a watching brief over the affairs of the District Council, its officers, and the constituent locals”).

Finally, with regard to shop stewards, referral in compliance with the rules is particularly important because, as IRO Conboy observed, “[t]he steward is the first line of defense in the

battle against the racketeers.” (IRO’s Special Interim Report (Ex. 8) at 28). “A corrupt steward, appointed out of order, can, among other schemes, be used by contractors to defraud the pension fund out of hundreds of thousands of dollars, depending on the size of the job.” (*Id.*).

B. Centralization of the Job Referral System in 1998 Under the Supervision of the UBC and the IRO

From June 1996 until January 2000, the United Brotherhood of Carpenters (“the UBC,” also sometimes referred to as “the International”) supervised the District Council under a trusteeship. (See IRO Fifth Interim Report (Ex. 6) at 2-5, 25-30; IRO Special Interim Report (Ex. 8) at 26-27; IRO Tenth Interim Report (Ex. 11) at 15). The trusteeship was imposed on June 25, 1996, because of gross mismanagement of District Council and Benefit Fund assets, and overwhelming evidence of corruption within the District Council and affiliation by District Council members with organized crime. (See IRO Fifth Interim Report (Ex. 6) at 2-30; see also United States v. District Council of Carpenters, 972 F. Supp. 756, 758 (S.D.N.Y. 1997)). Shortly thereafter, on October 24, 1996, the District Council’s then-President, Frederick Devine, was indicted on charges of grand larceny, for which he was later convicted. (See IRO Sixth Interim Report (Ex. 7) at 4-8; IRO Ninth Report (Ex. 10) at 20-21).

In September 1998, during the trusteeship, the UBC instituted a Restructuring Plan (with the consent of the Government and IRO) which, among other things, centralized the District Council’s administration of the job referral rules. (See IRO Special Interim Report (Ex. 8) at 26-27). Previously, the individual local unions constituting the District Council had maintained their own out-of-work lists. (See Consent Decree (Ex. 1) ¶ 5). However, beginning in 1998, the job referral function was performed out of one office, located in District Council headquarters

and facilitated by a centralized computer system for assigning jobs. (See IRO Special Interim Report (Ex. 8) at 26-27). This Court has recognized that, while the mechanics for administering the job referral rules changed under the Restructuring Plan, “the substantive job referral rules” remained the same, as “formulated under the Consent Decree and approved by the Court,” with carpenters “assigned to jobs from the top of the out-of-work list.” See Local Union 20 v. United Brotherhood of Carpenters, 1997 WL 630179, at *13 (S.D.N.Y. Oct. 9, 1997);

It was the hope of both the Government and the IRO that administration of job referrals through a central, computerized job dispatch system would, as the IRO put it, “end the abuse of the job referral system by those business agents [and managers] who have bypassed the out-of-work list in referring members to jobs, or who have ‘warehoused’ jobs for their cronies.” (IRO Ninth Interim Report (Ex. 10) at 2). Significantly, Michael Forde was one of the business agents whom IRO Conboy had charged with violating the job referral rules in this manner. (See *id.* at 30).³

C. The 2002 Clarke Motion, Leading the Government to Seek Modifications of the Consent Decree

The District Council’s centralized administration of the job referral system did not eliminate charges of corruption, however. In July 2001 (*i.e.*, approximately eighteen months after the UBC’s trusteeship ended), Local 608 member Eugene Clarke filed a complaint with the

³ Specifically, the IRO had charged that Forde, while business manager of Local 608 in 1997, had “referred members of Local 608 to work as shop stewards who were not eligible for such referrals, including by jumping certain favored members ahead of others on the out-of-work list.” (See IRO Eighth Interim Report (Ex. 9) at 21). Forde resolved the charge by signing a March 1998 settlement agreement in which he agreed not to violate the job referral rules for five years, and to pay a fine of \$5000 if he failed to comply. (See IRO Ninth Interim Report (Ex. 10) at 30). Yet Forde, as EST, is now the person ultimately responsible for ensuring the job referral rules’ application. (See District Council By-Laws (Ex. 40) § 12(A)).

District Council Executive Committee alleging that there continued to be persistent violations of the job referral system by Michael Forde, certain shop stewards, and others, whereby they rigged the system to favor those shop stewards who were political supporters of Forde. Specifically, Clarke contended that, through manipulation of the skills designations included in their profiles on the out-of-work list, favored shop stewards were able to jump ahead of others on the list to get preferred jobs—thereby evading the first-in/first-out job referral system mandated by the Consent Decree. See United States v. District Council, 2002 WL 31873460, at *3-4. In support of this complaint, Clarke pointed to District Council records showing that the stewards in question had changed their skills portfolio on the out-of-work list only hours before dispatch requests were submitted seeking stewards with precisely those newly added skills, with the result that the District Council’s computer matched that steward with the job.

The District Council, however, rejected Clarke’s complaint as unfounded, leading Clarke to file a motion before this Court in January 2002 (which is currently pending) to enforce the Consent Decree. See United States v. District Council, 2002 WL 31873460. In opposition to Clarke’s motion, the District Council filed a report defending the job referrals in question as technically correct under the District Council’s computerized referral system.⁴ (District Council’s Investigative Report (Ex. 13) at 20). In countering Clarke’s allegations of ongoing corruption, the District Council’s report also advised this Court that it had created an “anti-corruption committee” which meets regularly to address allegations of corruption, and that the Council operated a toll-free “anti-corruption hotline” (the “hotline”), which at the time was

⁴ The District Council’s investigation into Clarke’s allegation was conducted by Scott Danielson, who supervises the District Council’s OWL office, and Gary Rothman, a lawyer with O’Dwyer & Bernstien, LLP. (Scarvalone Decl. ¶ 5).

supervised by the Barry Security firm, for receiving tips from carpenters. (Decl. of Scott C. Danielson in Opp. to Clarke Mot., Jan. 28, 2002, ¶ 17).

In view of the serious allegations raised by Clarke's motion, the Government entered into discussions with the District Council early in 2002 to put in place a mechanism to address the issues raised by Clarke's motion. (Scarvalone Decl. ¶ 8). In the Government's view, there were two major areas of concern: first, the job referral rules required modification because, despite the passage of eight years since the Consent Decree's entry in 1994, shop stewards and other carpenters were still able to "rig the system" in violation of the Consent Decree. (*Id.* ¶ 10). Second, the District Council lacked any truly independent investigator responsible for looking into allegations of corruption. (*Id.* ¶¶ 5-7).⁵

D. The Court's Entry of the December 2002 Stipulation and Order Appointing Walter Mack as Independent Investigator

The Government's discussions with the District Council culminated in the modifications to the Consent Decree memorialized in the Stipulation and Order entered by the Court on December 18, 2002 (the "Stipulation and Order"). The Stipulation and Order modified the job referral rules to make it harder for shop stewards to manipulate their skills set to get referrals.

⁵ Barry Security was not, in the Government's view, an independent investigator. (Scarvalone Decl. ¶ 7). In the course of the Government's discussions with the District Council, Government counsel learned that Barry Security, in addition to operating the hotline, had a lucrative contract with the District Council to provide security guards at the District Council's headquarters. (*Id.*). Moreover, Barry's role in managing the hotline was ad hoc. Neither Barry nor the District Council could locate any retention agreement or any other document outlining Barry's investigatory responsibilities or any protocols for running the hotline or investigating or memorializing allegations of corruption. (*Id.*). The need for an independent investigator was also underscored by the District Council's response to Clarke's motion: Clarke's allegations were leveled directly at EST Michael Forde, yet, in the absence of any independent investigator, Clarke's allegations were investigated by a District Council officer employed at Forde's will, and an O'Dwyer & Bernstein lawyer retained by Forde. (*Id.* ¶ 6).

(Stipulation and Order (Ex. 14) ¶ 1). The Stipulation and Order also appointed Mack to a minimum two-year term as Independent Investigator. (Stipulation and Order (Ex. 14) ¶ 9).⁶

Significantly, it was the District Council that proposed Mack to the Government to serve in the role of Independent Investigator. Indeed, Mack was the first and only person proposed to the Government for the position. (Scarvalone Decl. ¶ 9).

By its terms, the Stipulation and Order broadly authorized Independent Investigator Mack to, among other things, “investigate allegations of wrongdoing concerning the operation of the job referral system and/or corruption or violations of federal, state, or local law” (Stipulation and Order (Ex. 14) ¶ 6(a)); review the District Council’s books and records (id. ¶ 6(c)); interview and depose carpenters (id. ¶ 6(b)); subpoena testimony and documents from third parties (id.); operate the anti-corruption hotline (id. ¶ 6(e)); assess the competency of the District Council’s anti-corruption program (id. ¶ 6(f)); refer charges to the District Council to initiate discipline of any member (id. ¶ 6(h)); and issue reports to the Court and parties (id. ¶ 6(i)). The Stipulation and Order provided that, after Mack completed his “initial” 24-month term, the District Council “may issue a sixty-day notice of termination, or may continue to retain the Independent Investigator’s services.” (Id. ¶ 9).⁷

⁶ The Stipulation and Order further provided that the Government agreed not to join in Eugene Clarke’s motion. (Stipulation and Order (Ex. 14) ¶ 13). The Stipulation also limited the Independent Investigator’s ability to investigate Clarke’s allegations, unless relevant to another pending investigation. (Id. ¶ 6(a)).

⁷ In the event of termination, the Stipulation and Order further provided that, “[i]f requested by the Independent Investigator, the District Council shall allow the Independent Investigator to continue working for an additional two (2) months, at the District Council’s expense, to allow the Independent Investigator to complete any investigations or disciplinary matters initiated before the notice of termination.” (Stipulation and Order (Ex. 14) ¶ 9).

E. The Substantial Evidence of Consent Decree Violations and Corruption Uncovered by the Independent Investigator

Mack's tenure as Independent Investigator to date has been marked by intensive information-gathering. Mack has interviewed scores of carpenters, conducted job site visits, taken video surveillance, and attended the District Council's weekly anti-corruption meetings. In the course of his investigations, Mack has also deposed dozens of individuals, including carpenters, shop stewards, business agents, and contractors. (Scarvalone Decl. ¶ 11). At those depositions, Mack has marked as exhibits hundreds of District Council records, including shop steward reports, job referral records, and Benefits Funds records. (Id.). Moreover, the Independent Investigator has published three reports containing multiple findings: a June 15, 2004 report on the functioning of the District Council's anti-corruption program ("Anti-Corruption Report"); a June 29, 2004 report concerning the manipulations of the job referral system by shop steward John Corrigan ("Corrigan Report"); and a November 5, 2004 report addressing the extent to which the "special request" system has undermined the job referral rules ("Special Request Report"). Accordingly, there is a considerable body of evidence now available regarding the practical operation of the job referral system, the state of District Council's anti-corruption efforts, and evidence of corruption.

1. Evidence of Substantial Violations of the Job Referral Rules by District Council Business Agents, Shop Stewards, and Carpenters

Mack's investigations have revealed that violations of the Consent Decree's job referral rules have been widespread, particularly in the years immediately preceding his appointment. As described below, the evidence show that shop stewards and carpenters—often acting in concert with business agents and contractors—have rigged job referrals in many ways, including by

manipulating their skills profiles on the out-of-work list, adding bogus skills to their profiles, “riding” the out-of-work list when they were not actually working, obtaining suspicious “immediate dispatches” to jobs, and arranging to be “specially requested” by contractors.⁸

One of the most flagrant examples of job referral violations uncovered by Mack involves shop steward John Corrigan, who was the subject of Mack’s Corrigan Report. As described in Mack’s evidentiary findings, John Corrigan routinely obtained lucrative, long-term steward assignments by adding a bogus “40-hour OSHA” skill to his skills portfolio, and by tailoring his profile to meet precisely the dispatch requests that contractors with whom he was colluding would then submit to the OWL office. (Corrigan Report (Ex. 16) at 5-19, 20-22). As recently as February 2003, Corrigan was dispatched by the OWL office to the Sorbara Construction job rebuilding 7 World Trade Center because of the 40-hour OSHA skill. (Id. at 7-10). Yet, as Mack discovered simply by making a few telephone calls, there is no such thing as a “40-hour OSHA” skill. (Id. at 3). Nevertheless, John Corrigan and one other steward, Joseph Connelly, were permitted over a period of years to list this bogus skill in the District Council’s job referral database, and use it to gain an “enormous advantage” over other shop stewards waiting on the out-of-work list. (Id. at 5).

As Mack found, the evidence further suggested that District Council business agents “were complicit in Corrigan’s and Connolly’s machinations.” (Id. at 20). Corrigan admitted that he was assigned to a Trump site for R&J Construction after “the powers that be” determined that he was “best suited” for the job. (Corrigan Dep. (Ex. 21) at 90-93; see Corrigan Report (Ex. 16)

⁸ Mack has also found that “there are substantial (both in number and significance) collective bargaining agreement violations on Carpenter job sites throughout the District Council’s jurisdiction.” (Anti-Corruption Report (Ex. 15) at 3).

at 15-17 (describing explanations given by business agent Joseph Firth and business manager John Greaney); id. Exhibit B (Memorandum of Greaney interview)). Similarly, shop steward Ron Rawald conceded at his deposition that he obtained desirable, long-lasting job assignments by adding and deleting skills at the advice of a Local 608 business agent who was helping Rawald get assigned to particular jobs. (Rawald Dep. (Ex. 29) at 54-57, 61-63, 68-71, 113). As Rawald explained, “I was given a heads-up” by the business agent as to what skills to add or delete (id. at 57); “Jerry was my business agent, and he’s the one that kept me working, and when he would advise me to do something, I would do it” (id. at 113).

Meanwhile, shop steward Michael Dolphin colluded with a company called Prince Carpentry to ensure that he would repeatedly be assigned as shop steward to Prince jobs. Dolphin admitted at his deposition that he had discussed with Prince what skills he should list on his skills portfolio in order to have his skills match those that Prince was requesting from the OWL office, and he even discussed with Prince how a dispatch request should be timed in order to result in Dolphin being assigned by the OWL computer system. (Dolphin Dep. (Ex. 23) at 40-41, 54). For example, Dolphin said that he once obtained a year-long job for Prince by adding a “refrigeration” skill to his portfolio, which then became one of the skills Prince requested in its steward request—notwithstanding that there was no need for any refrigeration work on that job. (Id. at 59-61, 65-67).

Mack’s depositions also revealed that stewards and carpenters have frequently put their names on the out-of-work list when they were, in fact, employed—otherwise known as “riding the list.” (Rawald Dep. (Ex. 29) at 60, 105-07, 112, 123-24; Anthony Arguelles Dep. (Ex. 18) at 83-86, 89-91, 312, 360; Michael Nee Dep. (Ex. 28) at 37-39, 93-94, 134-36; Patrick Lynch Dep.

(Ex. 27) at 44-46, 81-85, 105-08, 116-17, 126-28, 143-44, 222-24). Riding the list has been a common practice, according to shop steward Michael Nee. (Nee Dep. (Ex. 28) at 95 (“it was the thing to do”)). Ron Rawald, for example, “rode the list” from February 18, 2000, to May 2000, when he was employed by Component Contracting, and again from March 5, 2002, to April 8, 2002, when he was waiting for a dispatch to a desirable job for Donaldson Acoustics that eventually lasted nine months. (Rawald Dep. (Ex. 29) at 36-43, 51, 57-60, 105-07, 112, 122-24). By riding the list in this manner, Rawald was able, in his words, “to beat the system.” (*Id.* at 124). Similarly, shop steward Anthony Arguelles admitted to “riding the list” on several occasions 1998-2002, which practice enabled him to obtain referrals to desirable, long-lasting job assignments (Arguelles Dep. (Ex. 18) at 83-86, 89-90, 133-35, 155-57, 263-64, 312), including a two-year assignment for Prince Carpentry, which he labeled “a home run job” (*id.* at 360-62, 372).

Evidence gathered by Mack suggests that “immediate dispatch” requests are yet another tool for manipulating the job referral rules, resulting in stewards being able to engineer their assignment to desirable, long-lasting jobs. Michael Brennan, who has been referred consistently to the same contractor (OnPar) since October 2000, obtained what proved to be a three-year assignment at a major construction project (Times Square Tower) by means of a such an “immediate dispatch” request, which he himself termed “unusual.” (Brennan Dep. (Ex. 19) at 170-74; see also *id.* at 36). Likewise, Michael Nee obtained a desirable assignment to a major high-rise construction project by means of a “immediate dispatch” request that was telephoned in only minutes after Nee spoke with the contractor about his availability. (Nee Dep. (Ex. 28) at 151-60; see also Lynch Dep. (Ex. 27) at 178 (Lynch admittedly “knew that the dispatch was

coming”)). None of these stewards could explain why their jobs—both major projects for which the need for a steward would have been anticipated days (if not weeks) earlier—would have been telephoned in to the District Council as an immediate dispatch. (Brennan Dep. (Ex. 19) at 174 (“no idea”); Lynch Dep. (Ex. 27) at 171-72 (“a mystery”); Nee Dep. (Ex. 28) at 160 (“no idea”)).⁹

2. Evidence of the District Council’s Failure to Investigate Job Referral Violations

The evidence further indicates that, prior to Mack’s appointment in 2002, the District Council often did little to investigate or punish even flagrant violations of the job referral rules. Particularly telling is the District Council’s failure to catch the bogus 40-hour OSHA skill at any point prior to Mack’s 2003 investigation. As Mack reported to this Court, “[e]ven the most superficial inquiry—talking to an OSHA representative and to the Carpenter’s own Director of its training arm—would have disclosed that there is no 40-hour OSHA skill and, one would hope, triggered some investigative scrutiny.” (Corrigan Report (Ex. 16) at 6). Indeed, the District Council has no explanation for how its out-of-work office adopted “40-hour OSHA” as an approved skill without any investigation into the legitimacy of that skill. (*Id.* at 2, n.2). Moreover, business agents repeatedly called in dispatch requests listing the bogus 40-hour OSHA skill; they did this even though “no one whom [Mack later] deposed or questioned could tell [Mack] what a 40-hour OSHA certificate was or what it signified.” (*Id.* at 3).

That the District Council failed to make such inquiries is even more striking because the

⁹ Brennan repeatedly asserted his fifth amendment privilege against self-incrimination with regard to the accuracy of the shop steward reports he prepared during the course of that lengthy job assignment. (Brennan Dep. (Ex. 19) at 181-84). Brennan also asserted the fifth amendment with respect to his prior experiences working as a shop steward for OnPar. (Brennan Dep. (Ex. 19) at 110-11, 115-16 (18 Leonard Street job); *id.* at 136-38 (130 West 34th Street job)).

40-hour OSHA requirement was squarely placed at issue by Eugene Clarke's allegations, which called special attention to John Corrigan's referral history. See United States v. District Council, 2002 WL 31873460, at *4. As Mack has pointed out, in response to Eugene Clarke's allegations, the District Council blindly relied on the 40-hour OSHA certification to justify Corrigan's dispatches, without any further investigation—notwithstanding the unusual nature of that skill, and its role in determining Corrigan's repeated assignments to desirable jobs. (Corrigan Report (Ex. 16) at 17, 21 (quoting District Council's Investigative Report (Ex. 13) at 7 (“Corrigan's 40-hour OSHA certification alone can explain this dispatch as convincingly as any other reason.”))). Accordingly, Mack found the District Council guilty of “at the very least negligence” in permitting the bogus 40-hour OSHA schemes to occur, and he moreover questioned the District Council's “commitment to oversee the OWL with meticulous care, particularly since the issue had been brought to the District Council's attention.” (Id. at 21).

Moreover, given that many shop stewards were repeatedly assigned to jobs for the same contractor, it must have been obvious to business agents or other District Council representatives that this was no coincidence. If the job referral system worked in the neutral way intended, it is exceedingly improbable that any shop steward would be assigned to consecutive jobs for the same contractor. (Declaration of Michael Billelo, dated February 20, 2005 (“Billelo Decl.”) ¶ 9). Yet, prior to Mack's appointment, the District Council apparently did nothing to investigate this phenomenon.

Similarly, despite rampant and easily ascertainable evidence that carpenters were “riding the list,” those carpenters deposed by Mack on this subject testified that no one from the District Council had ever questioned them about, let alone disciplined them for, such conduct. (See, e.g.,

Rawald Dep. (Ex. 29) at 96; Arguelles Dep. (Ex. 18) at 39; Dolphin Dep. (Ex. 23) at 101-02).

Indeed, not only was Rawald not disciplined for his out-of-work list violations, he was promoted by Forde to the position of District Council organizer in May 2003. (Rawald Dep. (Ex. 29) at 25-28, 128-29; see also Dolphin Dep. (Ex. 23) at 51-52 (Dolphin testifying that he was willing to ride the list because he did not know anyone who had ever been caught by the District Council for doing so, and in any event the District Council's fine for such conduct was only \$100)).

Finally, additional findings by Mack have revealed that the District Council's anti-corruption efforts have had limited effectiveness. Thus, for example, Mack has found a real "need" for union leadership "to pay closer attention to the realities of the job site." (Anti-Corruption Report (Ex. 15) at 3). Mack has also reported his "fundamental criticism" of the District Council's anti-corruption program for being too "focused on computer systems and document retrieval without placing sufficient emphasis on whether those systems and documents accurately depict conditions at the job sites themselves." (Id. at 3). As set forth in Mack's reports, the District Council's investigative responses to complaints have been "slow" and, at times, "not effective in ascertaining the truth." (Id. at 7, 11 (noting "significant backlog" in anti-corruption committee's response to hotline calls referred from Mack's office for follow-up)). Moreover, Mack found that the District Council still needs "a system for holding shop stewards accountable"—a system "still only in its inception." (Id. at 4).

3. Mack's Revelation of Long-Standing "Cash Jobs," Indicating that District Council Business Agents Have Been Negligent in Failing to Uncover Corruption

Mack has also uncovered overwhelming evidence demonstrating the extent to which certain contractors (such as Boom Construction and Tri-Built Construction) have been able

routinely to operate large “cash” jobs on major construction sites—where carpenters are paid off the books, without union benefits, in violation of collective bargaining agreements—without detection by the District Council. This information is the subject of pending investigative reports (see Letter of Walter Mack to Hon. Charles S. Haight, Jr., Jan. 18, 2005 (Ex. 39), at 3), the substance of which has been reflected in depositions conducted by Mack. (See Scarvalone Decl. ¶¶ 12, 16). The depositions taken by Mack reveal that these contractors have been able to run these large cash jobs through the complicity of the particular shop steward assigned to the job. (Id. ¶ 16).

Shop stewards are not solely to blame, however. As Local 157 member Michael Billelo explains in his declaration, “[w]hile the shop steward is the union’s first line of defense against corruption on the job site, the business agent is supposed to be the second line of defense.”

[T]he fact that Mack is uncovering big cash jobs tells you that the District Council’s business agents have not been doing their jobs. No business agent is so incompetent that, if a major cash job is going on in his district, he can’t find it.

(Billelo Decl. ¶ 5). Billelo speaks to this subject from experience, as he himself worked as a business agent in 1998 and 1999. (Id.). As Billelo describes, during that time, “I uncovered and shut down a number of cash jobs—simply by doing my job and being vigilant. I walked the job site regularly; I personally checked the employees on the site against the shop steward report and against the amount of benefits being paid; and I removed the shop steward when I detected a problem. While I thought of this as just doing my job, in reality I was one of very few business agents—then or now—who took this anti-corruption role seriously.” (Id.).

Billelo’s comments about business agents are echoed by other carpenters’ testimony. (See, e.g., Chester Simon Dep. (Ex. 30) 121-22; Hank Simon Dep. (Ex. 31) 100-03; Eamon

Johnston Dep. (Ex. 26) at 86-92). According to Chester Simon, who admitted to working several “cash jobs” for Boom Construction, it should have been obvious to any business agent visiting the job site that there were far more carpenters working there than were listed on the shop steward report. (Chester Simon Dep. (Ex. 30) at 121 (stating that if business agents see “twenty, thirty guys” on the job, and then see a shop steward report listing fifteen carpenters, they “would have to know something is wrong”). Carpenter Hank Simon used the following analogy to make the same point:

A. Imagine we are building this table, right, all these six bottles are building the table. It takes thirty bottles to build that table, but there are only six. Say you’re the business agent, you come in, you see six bottles building the table, on the sheet [i.e., the shop steward report] or whatever; to build the table, you know yourself for the table to be finished in a week, it takes thirty bottles.¹⁰

Q. Why shouldn’t the business agent be alerted to that situation?

A. Right

(Hank Simon Dep. (Ex. 31) at 102).

In the case of the numerous cash jobs run by Tri-Built Construction, foreman Eamon Johnston testified that the business agent who visited Tri-Built’s job at Kings County Hospital failed to check workers’ union cards against the shop steward reports, to verify that all carpenters on the site were listed. (Johnston Dep. (Ex. 26) at 87-88). Had the agent done so, he would have discovered that some of the workers “carded” were actually being paid off the books. (Id. at 86-92). Likewise, due to a lack of diligence, the business agents from Local 608 who visited another

¹⁰ Mack provides the courtesy of Poland Spring water to witnesses and counsel at all depositions, which results in a conference table often littered with bottles by the end of the session. Simon was inspired to refer to “bottles” building a “table” as an analogy for carpenters on a job site.

TriBuilt job, at Fordham University, never raised any questions about the accuracy of the shop steward reports, even though roughly half of TriBuilt's carpenters were being paid off the books. (*Id.* at 78-80; *see also id.* 65-67; Hank Simon Dep. (Ex. 31) at 102-03 (Simon similarly testifying that business agents who visited Boom construction sites were not diligent in checking workers' union cards)).

4. Evidence of Continuing Racketeering Acts and Associations with Organized Crime by District Council Members

Despite the Consent Decree's permanent injunction barring District Council members from engaging in acts of racketeering, or knowingly associating with organized crime, those are also continuing problems, as reflected by criminal proceedings brought since Mack's December 2002 appointment.

a. Forde and Devereaux convicted in April 2004

On April 27, 2004, after a two-week trial, a Manhattan Supreme Court jury found Forde and Devereaux guilty of bribe receiving by a labor official in violation of New York Penal Law § 180.25. (Indictment (Ex. 32) at 59-60; Trial Transcript (Ex. 33) at 1329-30). The jury found that representatives of S&S Contractors had, in late April 1998, paid Forde (then president of Local 608) and Devereaux (a business agent for Local 608) a bribe of \$10,000, to enable S&S to use non-union labor at a Manhattan job site. (Trial Transcript (Ex. 33) at 121-24). Significantly, the shop steward who had been assigned to the job testified at trial that, when he realized there were non-union workers on the site, he telephoned Devereaux for guidance and was instructed "to hold onto the [shop steward reports] for the time being" because "[Devereaux] would look into it." (*Id.* at 361, 363). This instruction contradicted the requirement that a shop steward send

the reports to the district council at the end of each week. (*Id.* at 362, 390-91). The job was eventually raided and shut down by District Council investigators (acting under the supervision of a UBC official, James Slebiska) on June 19, 1998. (*Id.* at 372-73, 420-21).¹¹

b. The Government's racketeering indictment in April 2004

On April 14, 2004, the Government filed a racketeering indictment against several alleged members and associates of the Genovese organized crime family, including Paul Ghirarduzzi, a District Council shop steward from Local 926; Robert Alvarez, a former employee of the District Council's stamp department; and Carmine Sedita, a formal official of Local 20. (Indictment, United States v. Louis Moscatiello, Sr., 04 Cr. 343 (KMW) (Ex. 34), ¶¶ 21(e), 21(g), 21(h)). As to Ghirarduzzi, the Indictment alleges that, while serving as shop steward at a major construction project at Kings County Hospital between 1999 and 2001, Ghirarduzzi conspired with contractors to allow them to pay carpenters off the books, use non-union workers, and commit other violations of the collective bargaining agreement. (*Id.* ¶¶ 21(h), 144-61). The charges against Ghirarduzzi, Alvarez, and Sedita are still pending.¹²

c. Shop Steward Delroy Haughton charged in October 2004

On October 15, 2004, the Government filed criminal charges against District Council shop steward Delroy Haughton, arising out of the corruption of a major construction project at Jacobi Hospital in the Bronx. United States v. Haughton, 04 Mag. 1987 (S.D.N.Y.). Haughton,

¹¹ Post-conviction motions challenging the conviction are currently pending.

¹² One of the main defendants in that criminal case, Louis Moscatiello, pled guilty on October 13, 2004, to conspiring with Ghirarduzzi to violate the collective bargaining agreement at the Kings County Hospital project. (Plea Transcript, Oct. 13, 2004 (Ex. 36) at 5-6, 23; Information (Ex. 35) ¶¶ 6-10). Notably, Moscatiello had been previously convicted, in 1991, of bribing a District Council business agent. (Indictment (Ex. 34) ¶ 25).

who was the steward at the Jacobi Hospital job, is charged with extorting bribe payments of \$60,000 from the contractor in exchange for permitting the contractor to use non-union workers and agreeing not to report these workers on shop steward reports, in violation of 29 U.S.C. § 186(a)(2), (b)(1), and (d)(2). (Haughton Complaint (Ex. 37) ¶ 4(b)-(i)). The charges against Haughton arose directly from Mack's investigation into Boom Construction and referral of the matter to the United States Attorney's Office and are still pending. (Scarvalone Decl. ¶ 14).

5. Evidence that Abuse of the “Special Request” System Has Undermined the Job Referral System

On November 5, 2004, the Independent Investigator issued his Special Request Report, revealing that the “special request” system negotiated by the District Council into various collective bargaining agreements gives contractors the power to hand-pick virtually every carpenter at a job site (except for the steward). As Mack has reported, the implications of the special request system—both for the job referral rules and the Consent Decree as a whole—are startling. Specifically, the Report found as follows:

- **The special request system effectively renders the “50/50 rule” a nullity, and permits contractors to hand-pick virtually every carpenter who works on a job.** Notwithstanding that the union's collective bargaining agreements purport to effectuate a “50/50” rule, whereby the employer and union each pick fifty percent of the workers on a given job site, the special request system permits the employer to select not merely all of the “contractor's” fifty-percent share of the workforce, but also all of the union's fifty-percent share as well (with the exception of the shop steward). (Special Request Report (Ex. 17) at 3). Thus, “[i]n practice, these contractors routinely choose more than ninety per cent of the Carpenters employed at their sites,” and as a result, relatively few carpenters are being assigned from the out-of-work list. (Id. at 3).
- **Carpenters who rely on the out-of-work list for work languish while those who have connections with contractors go from job to job.** As the Report found, the carpenters chosen by contractors frequently never miss a day of work and, through the operation of the request system, jump over carpenters who often have been on the out-of-work list for months. (Id. at 3).

- **The special request system increases the potential for corruption.** The widespread use of the special request system is not only “unfair to all truly unemployed Carpenters who sit for months on the OWL without work,” but it also creates a potential for corruption on the job site. (Id. at 22). As Mack found:

Permitting contractors to hire only the people they know from the OWL rather than those who have been on the list the longest results in Carpenters who . . . have alienated a contractor (perhaps for insisting on adherence to CBA provisions), being unemployed for lengthy periods of time. I would add that it deprives the union of having at the job site Carpenters whose primary loyalty is to the union and its principles rather than to the contractor, whose principles and objectives may be quite different.

(Id. at 21-22; see also id. at 12).

- **The special request system increases the incidence of carpenters “riding the OWL.”** As the Report found, contractors routinely have carpenters who are working for them put their name on the out-of-work list as unemployed so that the contractor can “request” them and have them count as a “union” carpenter for purposes of the 50/50 rule. (Id. at 5-10). This practice—putting one’s name on the out-of-work list while working—is a violation of the job referral rules. (Id. at 9).
- **The creation of a meaningless “paperwork dance.”** The Report found that special request system reduces the job referral procedures “to a paperwork dance” (id. at 21), whereby employers switch carpenters from designated “company” workers to “union” workers simply by having the carpenter put his name on the out-of-work list and then “specially requesting” him from the list, so that the worker counts as a “union” worker for purposes of the 50/50 rule (id. at 4-5).
- **The abandonment of any enforcement of the 50/50 rule.** Because the special request system renders the 50/50 rule “meaningless,” business agents have no incentive to enforce that rule. (Id. at 10-12). Indeed, prior to the Independent Investigator’s taking depositions on the subject, there had been little or no effort by the District Council to enforce the 50/50 rule. (Id. at 14-18).

The threat of the “special request” system to the Consent Decree’s objectives is palpable.

Given the pressure to please contractors as the only realistic way of obtaining and keeping employment, numerous carpenters have testified that they agreed to work “off the books” for particular contractors out of fear that they would otherwise be laid off by the contractor, and then

languish on the out-of-work list for months. (See, e.g., Alex Frederick Dep. (Ex. 25) at 185 (“I was concerned about being out of work. . . . Not only losing my job there. Where’s the next job?”); Chester Simon Dep. (Ex. 30) at 40 (worked off the books out of concern that “[i]f I call up the District Council and put my name on the out-of-work list, you’re talking three to four months”); Jeremiah Casey Dep. (Ex. 20) at 200 (testifying that he agreed to work off the books for Boom construction because “[i]f you demanded to stay on the books, they would walk you in and give you a layoff check.”); *id.* at 203-06 (Casey testifying further that carpenters who did not agree to work off the books were in fact laid off and replaced with carpenters willing to work for cash); Glensworth Culzac Dep. (Ex. 22) at 228 (Culzac experienced a wait of “six to eight months” on the out-of-work list)).

Several carpenters have also admitted to initially lying to Mack about the cash jobs they had worked, simply to keep from being blackballed by the contractors—yet another indication of how the power accorded to contractors under the special request system leaves carpenters vulnerable to corruption. (See, e.g., Casey Dep. (Ex. 20) at 191, 200 (“[i]f it got out in this industry that you were the guy who gave up evidence, you would never again work in this town”; “everything gets around from one company to another company”)). Chester Simon testified that he was actually threatened by one contractor that if he disclosed the cash jobs being operated by the contractor, then that contractor and other contractors would not specially request him in the future:

And he also said to me . . . that, remember, as contractors, we talk to other contractors, so you’re—if you say you get cash, it’s going to make it harder for you to get a job if something happened.

(Chester Simon Dep. (Ex. 30) at 35-36; *id.* at 36 (“if you try to get a job with the next contractor,

they are going to know that you ratted out a different contractor”); see also Arguelles Dep. (Ex. 18) at 266-67 (“Good carpenters can’t get a job because they don’t have an in with a company or they stood up to a company on an issue Once you get that—you get burnt by a company because you stand up for your rights, they don’t want to know you no more. They really don’t want to know you.”)). In addition, carpenter Michael Billelo is aware of at least one District Council business agent who has told contractors which carpenters to specially request off the out-of-work list. (Billelo Decl. ¶ 10). This is another way business agents can collude with contractors to ensure that favored carpenters are given better and more frequent work. (Id.).

The special request system poses an enormous threat to the Consent Decree. What to do about it is an important question that the Government is evaluating. While the resolution to this problem is not the subject of this motion, what is clear is that had Mack not exposed this issue, neither the Government nor the Court would likely have become aware of it.

6. Evidence of Carpenters’ Continuing Fear of Retaliation by the District Council

Another troubling sign that the Consent Decree’s objectives are nowhere near achieved is the persistent fear among carpenters that reporting corruption to the District Council will result in retaliation against them. Mack has reported that some 30% of hotline callers are willing to be identified to the Independent Investigator’s staff but not to the District Council. (Anti-Corruption Report (Ex. 15) at 6). Another 30% of callers want total anonymity and “the reason most often given by callers who request anonymity is their expressed concern that their Carpenter careers would end . . . if they were to be identified.” (Id.).

Carpenters’ fear of retaliation may be well-founded. For instance, carpenter Gregory

Duhig testified that he once notified a District Council business agent about job-site corruption, whereupon he was promptly laid off by the contractor, and told that the contractor knew “that I was the one that called and got him into . . . trouble.” (Duhig Dep. (Ex. 24) at 206). Duhig resolved not to be a whistle-blower again:

Q. Did you complain either to [the business agent] or to anyone, that your layoff was inappropriate?

A. No, I didn’t.

Q. Why not?

A. Because I didn’t know who to believe or trust anymore. I mean, I called [the business agent] and then the next thing, they know what I did.

.....

Q. Did that form an impression upon you as to whether or not you would call and provide information in the future?

A. Yes.

Q. What was that?

A. Just mind my own business.

(Id. at 210).

F. Evidence of Walter Mack’s Effectiveness as Independent Investigator

There is both empirical and anecdotal evidence confirming that Mack has been extremely effective in his role as Independent Investigator and, as a result, is a deterrent to future violations.

Mack’s skill as an investigator is self-evident. Beyond that, however, Mack has gained the trust of the District Council membership. (See Billelo Decl. ¶ 2, 7; Clarke Decl. ¶ 7). Under his stewardship, the hotline has received over 2900 calls since January 28, 2003, compared to an

estimated forty-six logged telephone calls during the approximately two years when Barry Security operated the hotline. (Letter of Elizabeth Kuriyama, Feb. 17, 2005 (Ex. 41); see Decl. of Scott C. Danielson in Opp. to Clarke Mot., Jan. 28, 2002, ¶ 17)). Carpenters evidently trust Mack to protect their confidentiality and follow up on their complaints. (Billelo Decl. ¶ 7; Clarke Decl. ¶ 7).

There are signs, too, that Mack's aggressiveness in following up on allegations of job-site corruption is now forcing business agents to take their own anti-corruption role more seriously. A Local 157 business agent recently told Michael Billelo, "Walter has me out [checking job sites] on Saturdays and Sundays" and working harder than ever. (Billelo Decl. ¶ 6). Similarly, Eugene Clarke has been told by two Local 45 business agents that Mack is tough; that he makes the business agents work hard; and that he regularly meets with the agents. (Clarke Decl. ¶ 6). These are recent—and positive—developments. (Id.).

Another sign of Mack's effectiveness is that numerous carpenters, who had lied to Mack when first deposed, have accepted Mack's invitation to return to correct their testimony. (Scarvalone Decl. ¶ 12). That carpenters fear being caught by Mack is a crucial deterrent to future violations. (See Clarke Decl. ¶ 5-6 ("Walter Mack's presence is felt throughout the Union. For the first time I can remember, Carpenters are starting to fear that accepting cash on the job might be too dangerous because Walter Mack is watching."); Billelo Decl. ¶ 2 ("Mack has established credibility with the membership. Carpenters trust and respect him, and fear being caught by him.")).

The evidence further reflects that Mack has continually advised the District Council on how to rectify the problems he has found and strengthen the union's anti-corruption program.

(See Anti-Corruption Report (Ex. 15) at 5 (recommending adoption of formal, written risk assessment protocol); id. at 9 (developing systems to preserve information from hotline calls and previous investigations); id. at 10 (revising OWL computer system to track data helpful to investigative process, such as benefits, shut downs, investigative history, grievances, disciplinary history); id. at 15 (creating a tracking system to ensure follow-up on all open complaints)).

Accordingly, Mack not only uncovers the problems; he also considers ways to eradicate them going forward.

G. The District Council's Notice of Walter Mack's Termination

Approximately three weeks after Mack submitted his report on the special request system, the District Council gave notice of its intent to fire him, by letter dated December 2, 2004 (the "Termination Letter" (Ex. 38)). The Termination Letter cites no reason or cause for terminating the Independent Investigator's services. (Id.). In subsequent meetings between Government counsel and District Council representatives, the District Council asserted that because the Stipulation and Order gave the union the unfettered right to terminate Mack after twenty-four months, it needed no reason to terminate him. (Scarvalone Decl. ¶ 18). When pressed, the District Council voiced complaints concerning Mack's cost, his purported lack of support to the District Council Benefit Funds' efforts to collect delinquent benefit contributions from contractors, and other matters—none of which had been previously aired to the Government or the Court. (Id. ¶¶ 18-19).

Professing the desire to replace Mack with an "equally qualified" investigator, the District Council recently mailed out, to a limited list of recipients, a request for proposals ("RFP") for a replacement Independent Investigator. (Id. ¶ 20). The District Council has refused to identify

any of the recipients of the RFP. (Id.).

By letter to the Court dated January 18, 2005, Mack expressed his own concerns about the noticed termination, noting the “serious, still-unresolved issues that require follow-up” if the Consent Decree is to be adequately enforced:

If one principle emerges from my two years of service as Independent Investigator, it is that, at least for the near future, under no circumstances should the District Council be permitted to function with respect to corruption issues governed by the March 4, 1994 Consent Decree, without an informed overseer acting on behalf of and with reporting responsibilities to the Court. The still substantial volume of hotline complaints (which often serve as the springboard for my investigations) demonstrates the ongoing need for a hotline which can be operated by and followed up on by an agent of the Court.

(Mack Letter (Ex. 39) at 2).¹³

¹³ Given that the matters discussed in this brief directly concern Mack’s completed and pending investigations, his factual findings, and his evaluations of the District Council’s anti-corruption efforts, the Government believes it would be in the best interest of all concerned for the Court to solicit the Independent Investigator’s views on the matters raised in this brief. Mack also possesses information that is not available to the Government, such as information provided to him during untranscribed interviews, which may further inform his views.

ARGUMENT**THE COURT SHOULD EXTEND WALTER MACK'S
TERM AS INDEPENDENT INVESTIGATOR****A. This Court Has Inherent Authority to Enter Orders That Will Ensure Compliance with the Consent Decree**

The Court has two distinct powers applicable in this case: to issue orders necessary to enforce the terms of the Consent Decree, or to modify the Decree's terms in order to ensure that the Decree's objectives are met. Under either source of authority, the Court may extend Mack's term.

It is well settled that district courts enjoy inherent authority and considerable discretion to enter reasonable orders designed to ensure compliance with a consent decree. United States v. Local 359, United Seafood Workers, 55 F.3d 64, 69 (2d Cir. 1995); EEOC v. Local 580, International Ass'n of Ironworkers, 925 F.2d 588, 593 (2d Cir. 1991); Berger v. Heckler, 771 F.2d 1556, 1568-69 (2d Cir. 1985); Picon v. Morris, 933 F.2d 660, 662 (8th Cir. 1991). A consent decree "is an order of the court and thus, by its very nature, vests the court with equitable discretion to enforce the obligations imposed on the parties." Local 359, 55 F.3d at 69.

Accordingly,

[c]onsent decrees are subject to continuing supervision and enforcement by the court. A court has an affirmative duty to protect the integrity of its decree. This duty arises where the performance of one party threatens to frustrate the purpose of the decree.

Berger, 771 F.2d at 1568 (internal quotation marks and alterations omitted).¹⁴

¹⁴ Although the cases cited herein discuss only orders denominated as "consent decrees," the same logic, and the same power and duty of the Court to enforce the orders, applies to the Stipulation and Order in this action. See Ferrell v. HUD, 186 F.3d 805, 814 (7th Cir. 1999)

(continued...)

In exercising this power and duty to enforce a consent decree, the Court is not limited to the terms negotiated by the litigants. “Although a consent decree embodies the negotiated agreement of the parties, it is also an order of the Court. As such, a consent decree ‘contemplates judicial interests apart from those of the litigants.’” United States v. District Council of New York City and Vicinity of the United Bhd. of Carpenters, 972 F. Supp. 756, 762 (S.D.N.Y. 1997) (Haight, J.) (quoting Local 580, 925 F.2d at 593); accord Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 378 (1992) (“A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.”). For that reason, the Second Circuit has held that “in implementing the purposes of a decree, a court is not rigidly confined only to the terms contained within the four corners of the parties’ agreement.” Juan F. v. Weicker, 37 F.3d 874, 878 (2d Cir. 1994). Rather,

the court has inherent power to enforce consent judgments, beyond the remedial “contractual” terms agreed upon by the parties. Unlike a private agreement, a consent judgment contemplates judicial interests apart from those of the litigants. Until parties to such an instrument have fulfilled their express obligations, the court has continuing authority and discretion—pursuant to its independent, juridical interests—to ensure compliance.

Local 580, 925 F.2d at 593. Thus, “though a court cannot randomly expand or contract the terms

¹⁴ (...continued)

(court’s power to modify decree applied to stipulation); Jenkins ex rel. Jenkins v. Missouri, 103 F.3d 731, 741 (8th Cir. 1997) (same). That is particularly true in this case, because the effect of the 2002 Stipulation was to modify, and monitor the effectiveness, of the 1994 Consent Decree. (See Stipulation and Order (Ex. 14) ¶¶ 1-2 (modifying Consent Decree’s job referral rules), 5-6 (appointing Independent Investigator, inter alia, to investigate allegations of wrongdoing concerning the job referral rules)).

agreed upon in a consent decree, judicial discretion in flexing its supervisory and enforcement muscles is broad.” Id.

Alternatively, this Court has the authority to adapt or modify the consent decree when circumstances justify, pursuant to both Rule 60(b) of the Federal Rules of Civil Procedure and the Court’s inherent equitable power over its decree.¹⁵ The Supreme Court has long held that “[a] continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.” United States v. Swift & Co., 286 U.S. 106, 114 (1932); accord United States v. United Shoe Machinery Corp., 391 U.S. 244, 249 (1968). The Court may modify an injunctive decree “whether the decree has been entered after litigation or by consent.” United States v. Swift & Co., 286 U.S. at 114.

Moreover, where an injunctive decree is aimed at institutional reform, as in this case, the Supreme Court has recognized that an implementing court has a special need for flexibility in modifying the decree. Rufo, 502 U.S. at 380 (“The experience of the district and circuit courts in implementing and modifying such decrees has demonstrated that a flexible approach is often essential to achieving the goals of reform litigation.”). In reaching that conclusion, the Supreme Court in Rufo cited with approval the Second Circuit’s decision in New York State Ass’n for Retarded Children v. Carey, 706 F.2d 956 (2d Cir. 1983), in which the court “viewed with generosity” a request to modify a decree seeking to reform a state institution for the mentally

¹⁵ As detailed supra, actual modification of the consent decree is not necessary for the Court to enter an equitable order to enforce the decree. The Second Circuit has reasoned that an order “designed to ensure full compliance with the original decree” is not a “modification” of the original decree at all, and therefore the parties need not demonstrate “changed circumstances” to warrant entry of an order that is designed to implement the goals of the original decree. Juan F., 37 F.3d at 879.

retarded. 706 F.2d at 971. As the Second Circuit stated,

It is well recognized that in institutional reform litigation such as this judicially-imposed remedies must be open to adaptation when unforeseen obstacles present themselves, to improvement when a better understanding of the problem emerges, and to accommodation of a wider constellation of interests than is represented in the adversarial setting of the courtroom.

Carey, 706 F.2d at 969; see Patterson v. Newspaper & Mail Deliverers' Union, 13 F.3d 33 (2d Cir. 1994) (holding that flexible standard set forth in Rufo not limited to institutional reform litigation brought against a government entity, but includes action seeking to reform union's practices). As the Second Circuit has recognized, in recent years the Supreme Court has significantly increased the flexibility accorded to district courts to modify consent decrees, especially in institutional-reform cases, in light of the interest both non-parties and the public in general have in the achievement of reform. United States v. Secretary of Housing & Urban Development, 239 F.3d 211, 216-17 (2d Cir. 2001) (citing Rufo, 502 U.S. at 381).

Under this flexible approach, modification of a consent decree is appropriate where it is established that "a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." Rufo, 502 U.S. at 383. This includes situations where the goals of a decree cannot be achieved because of "unforeseen obstacles." Id. at 384 (citing Carey, 706 F.2d at 969); see Secretary of HUD, 239 F.3d at 217 (2d Cir. 2001) (where city of Yonkers continued its failure to achieve goals of prior consent order, modification of that order was well within district court's discretion); Ass'n Against Discrimination in Employment v. City of Bridgeport, 710 F.2d 69, 74 (2d Cir. 1983) (district court was well within its discretion to modify an injunctive decree to correct unforeseen impediment to achievement of decree's goals of alleviating effects of past discrimination).

The authority of the Court to modify an injunction or decree includes the power to impose more stringent requirements on the defendant—even over the defendant’s objection—when such requirements are necessary to achieve the goals of the injunction. See United Shoe, 391 U.S. at 252 (holding that a decree in an antitrust action that has not achieved its principal objectives after 10 years may be modified to impose more drastic measures against defendant); United States v. Western Elec. Co., 46 F.3d 1198, 1202 (D.C. Cir. 1995) (noting that “[a]t the request of the party who sought the equitable relief, a court may tighten the decree in order to accomplish its intended result.”); Secretary of HUD, 239 F.3d at 216 n.5 (same).

B. Compelling Evidence That the Consent Decree’s Terms and Objectives Have Not Been Met Amply Justifies the Extension of Walter Mack’s Term as Independent Investigator

As detailed above, Mack’s active and ongoing investigatory efforts have uncovered a substantial body of evidence showing that, more than eleven years after the Consent Decree was entered, the Decree’s objective of ridding the District Council of corruption remains elusive. Indeed, the violations exposed by Mack implicate non-compliance with the Consent Decree by District Council members of every rank—from the journeymen carpenters who “ride the list” and agree to be paid off the books; to the shop stewards who have rigged job referrals, accepted bribes, and associated with organized crime members; to the business agents and managers who have colluded in manipulating job referrals and been negligent in policing job sites for corruption; to the District Council’s EST, who was convicted last year of accepting a job-site bribe.

Nor can these problems be written off as isolated incidents. Rather, Mack’s investigations make clear that the District Council’s problems of ongoing corruption and job

referral violations are widespread and, moreover, that those problems stem largely from institutional causes. Thus, for instance, Mack has found that the District Council's anti-corruption efforts have been compromised by the Council's institutional failure to confirm whether information in its records conforms to the reality of what is happening on job sites. Likewise, Mack's finding that the "special request" system has largely undermined the job referral rules and increased the likelihood of job-site corruption highlights an institutional problem, one of enormous relevance to the Consent Decree. Further, the fact that rank-and-file carpenters continue to fear retaliation, both by contractors and the District Council, for reporting corruption, raises another institutional impediment to reaching the Consent Decree's objectives. And Mack's finding that the District Council lacks effective mechanisms for holding shop stewards and business agents accountable for job-site corruption identifies yet more areas in need of institutional reform.

Meanwhile, the evidence also demonstrates that extending Mack's term as Independent Investigator is a necessary means of ensuring the District Council's compliance with the Consent Decree. In the last two years, Mack has not only exposed the festering problems threatening the Consent Decree's objectives—to which the union had turned a blind eye—he has also taken steps toward remediating those problems. He is therefore uniquely well positioned oversee the union's efforts at reform.

In the face of such evidence, this Court has ample authority to extend Mack's term as Independent Investigator, and should do so. After eleven years, the union's continuing violations demonstrate beyond dispute that further enforcement by the Court is needed if the Consent Decree is to be given any real effect. See United Shoe, 391 U.S. at 252; accord Local 359, 55

F.3d at 69 (expressly upholding district court’s power to extend the term of a similar court-appointed officer overseeing the operations of a corrupt union “on the ground that such an extension was necessary to assist the court in ensuring compliance with the [Consent] Judgment”); Rufo, 502 U.S. at 380 (emphasizing need for “flexible approach” in supervising consent decrees aimed at institutional reform).

Moreover, while the Government does not consider the relief it seeks as requiring a modification of the Consent Decree, even were the Court to view it as such, the evidence uncovered by Mack within the last two years constitutes the kind of changed circumstances that warrant modification. In 2002, when union member Eugene Clarke moved this Court to enforce the Consent Decree, the Government did not know—and could not have known—of the union’s persistent noncompliance with its obligations under the Consent Decree. Prior to Mack’s appointment the Government had only limited access to information regarding the actual performance and implementation of job referral rules, and even less access to information about what was happening on District Council job sites. The Independent Investigator has now revealed to the Government—and the Court—the previously unknown and unknowable extent of the union’s failings. The District Council’s evasions thus constitute precisely the “unforeseen obstacles,” unknown to the Government prior to the entry of the Stipulation and Order but revealed by Mack’s investigation, that require modification of the Consent Decree to ensure that enforcement of the Decree and its goals is adapted to the facts as they now exist. Rufo, 502 U.S. at 383-84; Swift & Co., 286 U.S. at 114. That eleven years have now passed without achieving the Consent Decree’s goals makes such modification all the more appropriate. United Shoe, 391 U.S. at 252.

The remedy sought by the Government is also narrowly and “suitably tailored to the changed circumstance.” Rufo, 502 U.S. at 383. The Government seeks only the reasonable extension of Mack’s term as Independent Investigator—eighteen months with leave to renew if necessary—to permit him to build upon the positive changes he has started to bring about, and to complete his important tasks of oversight and investigation. That remedy is hardly a “random” expansion of the Consent Decree, see Local 580, 925 F.2d at 593, particularly given that Mack is already serving as Independent Investigator, was the District Council’s choice for that role, and has consistently demonstrated his effectiveness at uncovering corruption. Moreover, the District Council does not argue that the continued services of an Independent Investigator are not needed. Accordingly, the Government is not seeking to impose any oversight upon the District Council beyond what already exists; the Government merely seeks the continuation of the appointed officer to whom the District Council agreed two years ago. This remedy requires minimal judicial intervention and is manifestly a “reasonable action taken by the court to secure compliance with its orders.” Berger, 771 F.2d at 1568 (internal quotation marks omitted).¹⁶

Furthermore, the extension of Mack’s tenure is required and appropriate notwithstanding the omission of an express term permitting extension in the 2002 Stipulation and Order. As the cases of the Second Circuit and Supreme Court make clear, whether enforcing or modifying the Consent Decree, this Court is not confined to the rigid terms negotiated by the parties two years ago, when the Government had no knowledge of the extent of the union’s noncompliance with the Decree. In modifying a consent decree entered in institutional-reform litigation, a “flexible

¹⁶ While, at present, the Government seeks only this modest relief, at some future time the District Council’s failure to adequately implement the terms of the Consent Decree may warrant seeking additional remedial measures.

approach” is needed, Rufo, 502 U.S. at 380; and this Court’s inherent power to supervise and enforce the Consent Decree is not confined by the four corners of the Decree, Juan F., 37 F.3d at 878.

In light of the union’s violations, as detailed above, the Court’s interest in supervising and enforcing the Consent Decree is thus sufficient to overcome the parties’ omission of an extension clause in the Stipulation. In fact, even if there had been no stipulation—if the District Council had appointed Mack as an Independent Investigator in 2002 without the benefit of a court-ordered stipulation, and he had proceeded to discover the evidence of noncompliance that he has—the Government would still be entitled, under the Consent Decree itself, to seek the Court’s intervention to ensure that Mack was retained in his position to carry on the work that he has started. Thus, the absence of an extension provision in the Stipulation is of no moment to the relief available under Consent Decree, and does not limit this Court’s power to impose appropriate remedies to enforce the Decree.

Moreover, while there may be other people who might be suitable for the role of Independent Investigator, keeping Mack on at this time is especially critical. The evidence shows that, besides exposing serious corruption problems that persist within the District Council, Mack has also begun to lay the foundation for positive reform. Given Mack’s oversight, business agents are beginning to take their anti-corruption roles more seriously, and carpenters are more wary about violating the job referral rules. (Clarke Decl. ¶¶ 5-6; Billelo Decl. ¶¶ 2-6). Furthermore, one of the areas where Mack has faced the greatest obstacles, and yet has begun to make inroads, concerns the fear of retaliation felt by carpenters who tell the truth, and the resulting culture of lying prevalent among carpenters that Mack interviews and deposes. That

fear of retaliation is evidenced by the fact (as reported by Mack) that approximately 30% of callers to the anti-corruption hotline are willing to identify themselves to the Independent Investigator staff but not to the District Council; another 30% want total anonymity. Yet, it is an important indication of Mack's credibility with the rank-and-file membership that the volume of hotline calls quickly increased following Mack's appointment, and has remained at a high level throughout his tenure. (Letter of Elizabeth Kuriyama, Feb. 17, 2005 (Ex. 41)). Government counsel has also watched as numerous carpenters requested the opportunity to be re-deposed by the Independent Investigator for the purpose of recanting their prior false testimony. Word is starting to get out, it seems, that Independent Investigator Mack will find out the truth, and that Carpenters cannot lie to him without facing repercussions.

Changing the union's culture is a tremendous challenge, however, and the progress Mack is beginning to make is fragile. Accordingly, this is an exquisitely sensitive time in the union's history where what is most needed is for Mack to continue doing what he is doing—so that change can firmly take root. Moreover, Mack has many important investigations pending, on subjects that go to the heart of the Consent Decree, which he will be unable to complete if he is terminated in April 2005.

Removal of Mack at this time signals a return to the District Council's old ways. It tells the membership that effective anti-corruption efforts are not valued, and indeed will be cut off. It gives the District Council an opportunity to stop the momentum toward reform. As expressed by Michael Billelo, a carpenter who has spent nearly twenty years pursuing union reform, "Walter Mack is exactly what this union needs right now. Allowing the District Council to fire him will send the negative message that the District Council remains in control of who investigates it, and

that anyone who is too good or too independent will be fired.” (Id.; see also Clarke Dec. ¶ 3 (calling Mack “the Union’s best hope for reform and to weed out corruption”)).

Finally, extension of Mack’s term to ensure compliance with the Consent Decree serves the interests of the public and the union’s membership. Both the public and the rank-and-file carpenters have a strong interest in the reforms agreed to in the Consent Decree—the union members to ensure that the union in fact is fulfilling its obligation to advance the interests of the members rather than only a few insiders or outside influences; the public to ensure that a major institution, of great importance to the economy of New York City, is achieving the reform it needs.

CONCLUSION

For all the foregoing reasons, the Government respectfully requests that the Court extend Mack’s tenure as Independent Investigator for a period of eighteen months, with leave to renew that term if necessary, or as long as the Court deems necessary to permit him to accomplish the tasks he has been assigned.

Dated: New York, New York
February 24, 2005

Respectfully submitted,

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:



EDWARD SCARVALONE (ES-4880)
LISA R. ZORNBERG (LZ-1299)
BENJAMIN H. TORRANCE (BT-1118)
Assistant United States Attorneys
Telephone: 212.637.2734
Fax: 212.637.2686