

**CONFIDENTIAL**  
**Simultaneous Submission to Chambers**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

DISTRICT COUNCIL OF NEW YORK CITY AND  
VICINITY OF THE UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA, et al.,

90 Civ. 5722 (CSH)

Defendants.

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**TRANSITION REPORT TO INDEPENDENT INVESTIGATOR  
WILLIAM CALLAHAN REGARDING SHOP STEWARD ISSUES**

### Introduction

In accordance with Judge Haight's orders entered on April 27 and August 26, 2005 and our discussions during the period of transition, I submit the following as a summary of the findings and recommendations I have arrived at during my tenure, concerning issues surrounding District Council shop stewards. Based on our communications and your participation during the past several weeks, I think that the broad outlines of what I have to say are familiar to you. The purpose of this report is to provide you with an in-depth synthesis of the information obtained by the old Independent Investigator ("II") team. I hope that this information will be of value to your II team in completing work on this subject matter and in crafting recommendations you deem appropriate.<sup>1</sup>

I have enjoyed our brief time working together and wish you the very best in your position as the Court's Independent Investigator. I will, of course, remain available to you for whatever future consultations you may wish.

My findings cover a number of issues. One is the fairness, or lack thereof, with which favored shop stewards get assigned to jobs. Clearly, fairness in job assignments is one of the critical issues addressed in the 1994 consent decree and is the focus of the 2002 order appointing me Independent Investigator. Fairness is important not just because that is what a labor union should provide its members, but also because manipulation of the job assignment system has been demonstrated, as detailed below and in prior reports, to be used as a tool of corrupt contractors to undermine – and indeed eviscerate – the shop

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<sup>1</sup> As you know, I am providing a copy of this report to Judge Haight.

steward's role on the job site. As I have shown in prior reports, without an effective shop steward on a job site, the journeymen Carpenters lack the basic protections that the union is intended to provide. This report also discusses the patterns of abusive and corrupt activity engaged in by shop stewards (and others) on and pertaining to job sites. As I have said on numerous occasions, incorruptible shop stewards firmly supported by vigorous business agents would have prevented the repeated instances of corruption detailed here and in my other reports.

### **I. Riding the Out-of-Work List**

Putting one's name on the Out-of-Work List ("the OWL" or "the list") while one is working, or refraining from removing one's name from the OWL after obtaining a job, is perhaps the most common rules violation our investigation encountered. Riding the list enables a shop steward to have his number on the list advance toward the top at the same pace as the names of those shop stewards who are genuinely out of work.<sup>2</sup> There is evidence that the vast majority of shop stewards whom I questioned on this subject rode the list, some more frequently than others.

Some shop stewards admitted having ridden the list, often routinely. (Deposition of Anthony Arguelles, submitted herewith as Exhibit 1 ["A. Arguelles"], at 58, 84, 89,

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<sup>2</sup> This practice is not unique to shop stewards. Journeymen Carpenters also employ it but not with such frequency because, according to the current "request" system, contractors can request journeymen from the list without regard to their place on it. (My criticism of the current request system is the subject of my Report on the "50/50" Rule and "Request System" ["Request Report"] and also is discussed in other prior reports.)

94, 135, 263, 312, 359-60; Deposition of Stephen Arguelles, submitted herewith as Exhibit 2 ["S. Arguelles"], at 38; Deposition of Robert DeFeo, submitted herewith as Exhibit 3 ["DeFeo"], at 53, 75-76, 101-02, 106, 112-14; Deposition of Michael Dolphin, submitted herewith as Exhibit 4 ["Dolphin"], at 33-34, 49-50, 68-69, 72-73, 78-79<sup>3</sup>; Deposition of Michael Guerin, submitted herewith as Exhibit 5 ["Guerin"], at 53, 89; Deposition of Patrick Lynch, submitted herewith as Exhibit 6 ["Lynch"], at 45-46, 81-82, 84-85, 104-08, 116, 125-28, 142, 226-27; Deposition of Michael Mitchell, submitted herewith as Exhibit 7 ["Mitchell"], at 40-41; Deposition of Michael Nee, submitted herewith as Exhibit 8 ["Nee"], at 43-44, 91-94, 96, 102-03, 125, 136-39; Deposition of Ronald Rawald, submitted herewith as Exhibit 9 ["Rawald"], at 38, 43, 60, 65, 117, 123-24.)<sup>4</sup>

Others denied or equivocated about having ridden the list, arguing that the records of contributions to the benefit funds were an unreliable indicator of the time periods for which wages were paid, because the benefits contributions often were made late (Deposition of John Gaffney, submitted herewith as Exhibit 10 ["Gaffney"], at 34, 36, 89;

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<sup>3</sup> Mr. Dolphin was on the OWL on at least one occasion while he was serving a prison sentence, and therefore clearly unavailable to work. *Id.* at 78-79.

<sup>4</sup> Due to time constraints and the desire to avoid unnecessary duplication, I am not in this report identifying and making exhibits of the District Council paperwork (work referral histories, Benefit Funds records, manning requests and dispatches) upon which Don Sobocienski, Chief Investigator to the old II, and I relied in identifying instances of riding the list and of skills manipulation discussed in the next Section. But those documents are being forwarded to you in folders we kept for each Carpenter we examined.

Deposition of Richard Garces, submitted herewith as Exhibit 11 ["Garces"], at 92-93; Deposition of Peter Roche, submitted herewith as Exhibit 12 ["Roche"], at 116-17, 192-93, 236; Deposition of Paul Willoughby, submitted herewith as Exhibit 13 ["Willoughby"], at I 32-33, 95-96 and II<sup>5</sup> at 26-27.) I am aware that on rare occasions companies have made their benefit fund contributions late, and that such payments might be misleading as to the dates on which a shop steward actually worked. However, no shop steward responded to the invitation I typically gave them to produce pay records showing their dates of employment. I am skeptical of their claims but, if you have lingering questions on this subject, you can obtain whatever payroll records you need from the contractors involved.

There were other excuses given by shop stewards who denied or equivocated about having ridden the list on one or more occasions for which benefits records indicated that they were working. Some said that other Carpenters must have set them up by putting their names on the list without authorization (Roche at 80-81, 126-27, 130, 136; *see also*, Rawald at 125)<sup>6</sup>. Others said that the OWL staff did not follow instructions to remove

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<sup>5</sup> Mr. Willoughby's deposition was taken on two separate dates and the transcript for the second sessions starts with page 1. Therefore "I" indicates the first deposition session and "II" indicates the second.

<sup>6</sup> Mr. Roche argued that other shop stewards would have had access to his social security number (necessary information for putting one's name on the OWL) if he had been on their shop steward reports for previous jobs. (Roche at 80-82.) My confidence in OWL administrator Mr. Scott Danielson, who has advised us that OWL staff requires more information than a social security number in making additions or other adjustments to the OWL, causes me to be skeptical about such arguments.

their names from the list (Gaffney at 23-25; Garces at 83, 85). I note that some of the witnesses were facing District Council charges of riding the list at the time they testified and were therefore unlikely to make admissions on this subject. (*Eg.*, Roche at 136-42).

It appears to me that the District Council's failures to (a) monitor and (b) take meaningful disciplinary action with respect to this type of violation allowed the behavior to flourish. Each of the shop stewards I examined was the subject of Hot Line complaints; informants identified the same individuals as District Council or local union favorites. In almost every case, I was the first person to examine these individuals' union records to evaluate their use of the job referral list. Not only was this type of monitoring not done until we started to expose the Council's lack of vigor, but the disciplinary system had not been employed with respect to favored shop stewards.<sup>7</sup>

The sanctions of which we are aware were no more than a slap on the wrist, if that. Michael Guerin was given amnesty for his riding violations. (Guerin at 53.) Stephen Arguelles was called in by the District Council to discuss his riding violations but was not charged because it was the first time he had been discovered engaged in this activity. (S. Arguelles at 168, 174-75.) Michael Dolphin testified that he was not deterred from riding

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<sup>7</sup> In the context of assessing the anti-corruption program, we asked on numerous occasions for documentation of District Council disciplinary charges and actions taken against Carpenters. Apart from several cursory and facially incomplete and inadequate submissions, we were not given the requested information. Therefore we are unable to analyze the frequency with which charges of riding the list (or any other charges) have been brought, what process was given to Carpenters charged with rules violations, what determinations were reached, or the pattern of sanctions imposed. The disciplinary system would have been a focus of our continued service to the Court. We encourage you to take it on.

the list because he had heard that the punishment was only a fine of \$100 and even that was rarely imposed. (Dophin at 51-52.)

Ronald Rawald, now a District Council organizer, felt, while a shop steward, that he could risk frequently riding the list even while he was under consideration for the District Council position he now holds. (Rawald at 123.) I suppose that this was not irrational given the fact that riding the list does not appear to be a rules violation that the District Council views seriously.<sup>8</sup>

I submit that the District Council's lethargic practices toward maintaining the integrity of the OWL and its ineffectual discipline of those who violate the OWL rules, sends a signal to the membership that the Council's leadership disdains the workings of the OWL.<sup>9</sup> Given the combination of: lack of OWL monitoring, ineffective disciplinary system, and the request system, it is no wonder that the OWL is "gamed," especially by the favored few. Contractors can and do participate in the "gaming" and thereby select the shop stewards they want. It should come as no surprise that Carpenters generally lack respect for the OWL. And since the OWL is, or should be, the predicate for honest job

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<sup>8</sup> Even now, we are apprised that Maurice Leary, the District Council's Director of Operations, has determined that the District Council will undertake no investigation of any alleged list riding violations dating back more than one year.

<sup>9</sup> Indeed, the District Council has evidenced its disrespect for the job referral system by negotiating Collective Bargaining Agreements that allow contractors to, in effect, bypass the list by requesting specific Carpenters. The request system is vociferously condemned by every Carpenter I deposed on the basis that it renders the OWL a nullity. (*Eg.*, A. Arguelles at 264-68, S. Arguelles at 49-52, Guerin at 78-80, Mitchell at 128-29, Nee at 226 ; *see also*, my Request Report, submitted herewith as Exhibit 14, *passim*.)

site behavior, it should not be surprising that I have uncovered and reported so much wrongdoing during my tenure.

## **II. Skills Changes and other Manipulations of the OWL**

Several shop stewards admitted that they had colluded with a contractor's representative or a business agent to list skills that would be requested by the contractor for an upcoming job. As to those who denied all or some of what I saw to be manipulations of the OWL, I cannot accept as credible the repeated "coincidences" to which those witnesses testified. I reject their claims that repeated shop steward dispatches to the same contractor were coincidental. I submit that whenever a shop steward manning request contained a skill added to the Carpenter's listing just before the dispatch, the only real question is the identity of the contractor or union official who told the shop steward what skill(s) to add or delete.<sup>10</sup>

I also view with utmost skepticism some shop stewards' practice of "freezing" their names on the list (which they are entitled to do for 30 days to account for physical or other personal problems preventing them from working) and then unfreezing their names just, as it happens, when a manning request for a desirable job is about to be phoned in to the OWL staff. (One witness candidly testified that he used the "hold calls" directive only to time his availability for a desired job; he never used it for personal reasons. [Guerin at

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<sup>10</sup> My "Report Concerning Shop Steward Assignments Obtained by Local 608 Member John Corrigan" discusses examples of skills manipulation taken to its extreme. In the case of Mr. Corrigan (and, to a lesser extent, Joseph Connelly, another shop steward), the skill added did not exist. This, of course, drastically narrowed the pool of shop stewards who would list the skill.

113-14].) Similarly, I question assignments made after members changed their contact telephone numbers back and forth between home and cell phones. I believe that members engage in this conduct in order to avoid being reached until they are informed that an anticipated job is about to be phoned in to the OWL staff or to insure that the pre-arranged contact for a dispatch would reach the "lucky" shop steward. The freezing and unfreezing of names and the rapid changes in contact telephone numbers appears to have increased significantly after January of 2003, when, under pressure from the Government, the District Council changed its rules to require a 30-day waiting period before skills could be added or deleted from a Carpenter's listed skillset.

And because these manipulations were undertaken collusively with contractors and/or business agents, the manning request often called for an "immediate dispatch" in order to facilitate the pre-selected shop steward's ability to time his list manipulations and availability in order to "catch" the job in question.

The following examples represent just a portion of the many factual scenarios from which I infer that many shop stewards routinely engage in skills and related OWL manipulations, usually with the assistance of a contractor and/or business agent.

Anthony Arguelles admitted that shortly after completing a job for Prince Carpentry, he contacted the Prince foreman for whom he had just worked, told him what skills he had listed with the OWL office and asked him to include those skills in the company's manning request form. (A. Arguelles at 400-08.) Presumably to insure that

Mr. Arguelles' timing would be right, Prince requested an "immediate dispatch" on Friday morning. Nevertheless, when Mr. Arguelles was not available until Monday, the job was kept open for him until then, despite the purported need for immediacy on Friday morning. (*Id.* at 406-06, 409.)<sup>11</sup>

Richard Garces, though denying other apparent list manipulations (*see* below), admitted that he had added pre-agreed-upon skills to the OWL five hours prior to being assigned as a shop steward to Cross Interiors, which requested the newly-listed skills. Garces testified that he had accomplished this by coordinating with Cross Interiors' foreman, who has since died. (Garces at 53-55). Mr. Garces denied, however, that any manipulation took place when he froze his name from October 24 to October 31, 2002, deleted the hold calls directive on October 29 and was referred to a fairly lengthy job forty minutes later. (*Id.* at 128-29.) Mr. Garces also deleted a hold calls directive on July 8, 2002 and was sent to another shop steward job on an immediate dispatch basis. (*Id.* at 103-04, 107.)

Mr. Garces denied that it was his practice to freeze his name in order to insure his availability when a desirable job was in the offing. Rather, he testified, he typically froze his name when he was working on his house. (*Id.* at 97.) However, I do not accept as coincidences the two hold call scenarios described above. In fact, I would view with extreme skepticism any claim of coincidence that results in repeated good "fortune" for

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<sup>11</sup> Prince's willingness to wait a day for a shop steward when the manning request had been for an immediate dispatch should have raised questions at the District Council.

those who are the subjects of Hot Line complaints.

Like Anthony Arguelles, Michael Guerin was willing to implicate someone who is now dead when he admitted to changing his skills in order to obtain a desirable job at the suggestion of the late Local 608 business agent Jerry Philbin. Mr. Guerin testified that he was "good friends" and "drinking buddies" with Mr. Philbin and that when a good job was coming up, Mr. Philbin would notify Mr. Guerin and suggest changes to make to his skillset. (Guerin at 56-57, 63, 96.) For example, Mr. Philbin assisted Mr. Guerin in obtaining the shop steward assignment to a fairly lengthy job for Century Maxim by identifying for Mr. Guerin the skills that would be listed by Maurice McGrath, the business agent who had responsibility for contacting the OWL with the requirements for this job.<sup>12</sup> Mr. Guerin changed his skillset accordingly. (*Id.* at 58-63.) Mr. Guerin further testified that Mr. Philbin assured him that Mr. McGrath would wait to phone in the manning request until Mr. Guerin's number on the list was low enough to virtually insure that he would be dispatched for this position.<sup>13</sup> (*Id.* at 61.)

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<sup>12</sup> Manfred Dorschug, the Field Superintendent for Prince Carpentry, testified that business agent Joe Firth of Local 608 requested that manning requests go through Local 608 rather than be sent directly to the OWL. (Deposition of Manfred Dorschug, submitted herewith as Exhibit 15 ["Dorschug"], at 25-28).

<sup>13</sup> Mr. Guerin insisted that he had no interaction with Mr. McGrath regarding this job. Callers to the hotline identifying themselves as friends of the late Mr. Philbin have asserted that there is an agreement among members of Mr. Philbin's Local Union – 608 – to blame all business agent wrongdoing on him now that he is dead. (*See* Guerin at 62-63). Given the inferences to be drawn from business agent conduct of which I am aware (as demonstrated in this Section and in Section III, below), including that testified to by Mr. Arguelles regarding business agent Maurice McGrath, this scenario seems likely and, if proven, may in your discretion prompt you to assess whether there has been an obstruction of justice.

Mr. Guerin testified to a similar interaction with Mr. Philbin concerning a job for Sorbara Construction that lasted approximately ten months. (*Id.* at 64-65). At Mr. Philbin's suggestion, Mr. Guerin added certain skills on November 20, 2000 and was dispatched to the job (for which, again, business agent Maurice McGrath had responsibility at the time of the dispatch) two days later. (*Id.* at 68-70).

Mr. Guerin testified to obtaining a shop steward assignment to Northberry Construction by coordinating with the Northberry foreman, John Vecchione, whom he knew from a previous job. Mr. Guerin testified that notwithstanding the skills manipulation in which he and the foreman engaged, he missed the call from the OWL office. Learning this, he called Mr. Vecchione and told him to cancel the manning request due to bad weather and then to submit it again in a couple of days. (On another job, Mr. Vecchione took similar action in order to insure that he would get Peter Roche as shop steward. [Roche at 102-03, 109-10). Mr. Guerin testified to the obvious conclusion: that Mr. Vecchione was willing to do whatever it took to make sure that Mr. Guerin was assigned as the shop steward for the job in question. (*Id.* at 101-03, 109-10). The witness recalled that an unidentified business agent also had been involved in this plan. (*Id.* at 109-10).

Michael Dolphin conceded that he probably had an advance conversation with the foreman for a Prince Carpentry job back in 1999 to insure that Prince would request the skills he had listed. (Dolphin at 41-46, 54). He was somewhat equivocal about another

Prince job, but ultimately conceded that the company's request for refrigeration as a skill had not been necessary and that he had recently added refrigeration to his skillset. (*Id.* at 54-55, 57-59, 65-66). Indeed, he admitted that it was his practice to notify Prince Carpentry when his number was getting low enough to expect that he would get assigned to one of the next manning requests. (*Id.* at 54; *see also id.* at 84-85).

Michael Mitchell admitted that in order to obtain a shop steward assignment to A&M Wallboard in 2001, he did "investigate what skills the company may have been looking for . . . ." (Mitchell at 49). He was vague about how he did so; he testified that he might have discussed the skills with either a business agent, the owner, the foreman or the project manager of the job. (*Id.*) He also admitted that he must have spoken with a foreman or superintendent of a job with Eurotech in January of 2000 in order to have that company list hazardous materials, a skill in his OWL skillset, as a requirement in its manning request. (*Id.* at 59-62).

Mr. Mitchell served frequently as a shop steward for On Par Construction, a company which habitually paid Carpenters in cash, without benefits, cheating the District Council Benefit Funds of well over \$10 million that I have been able to identify. (I am, also submitting to you a separate transition memorandum on On Par). In fact, with minor exceptions, Mr. Mitchell worked as an On Par shop steward steadily from May of 2001 until at least August of 2004, when he testified. It is not possible to accept that these repeated and continuous shop steward assignments to one company could have been the

result of chance. Additional evidence confirms this.

Three hours prior to obtaining one assignment to On Par, Mr. Mitchell added and deleted skills and changed his telephone contact number. (*See, id.* at 81-82). And on the very day that job ended, he added the skill of protection and was dispatched three and a half hours later to another On Par job, for which protection had been listed on the manning request. (*Id.* at 84-85). Prior to obtaining yet another On Par assignment, Mr. Mitchell removed his name from the lists of two Local Unions, froze his name from April 1 to May 1, 2003, was unreachable on May 2, changed his contact telephone number on May 5 and was then dispatched on an immediate basis to a big On Par job on May 12. (*Id.* at 110-12, 118-23).<sup>14</sup>

I do not believe that Mr. Mitchell's collusion was only with On Par representatives. Although Mr. Mitchell denied having discussed an On Par job with Local 608 officials just prior to his assignment as an OnPar shop steward in June of 2002, he admitted that just prior to being dispatched to that job he had been in Washington for a union function, playing in the Local 608 band, that he "met every business agent in the City down there," and had been telling everyone that he was out of work and needed another job. (*Id.* at 101,103-04). Mr. Mitchell testified that he did not remember that he had removed himself from every list but Local 608's on June 26, was unable to be reached at one point

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<sup>14</sup> The District Council never questioned Mr. Mitchell about his nearly continuous three-year stint as an On Par shop steward on various projects. (*Id.* at 32.) To me, this fact alone is startling proof that the District Council's Anti-Corruption Program was weak and ineffective.

that day, but was dispatched to the OnPar job thirteen minutes later. (*Id.* at 105).

Many shop steward witnesses were even less candid. Robert DeFeo was assigned as shop steward four times to the same foreman for one contractor. (DeFeo at 102-03). Mr. DeFeo repeatedly maintained that his string of assignments to this company – Ess & Vee Acoustical, Inc. – was a "coincidence." (*Id.* at 103, 122-23, 181, 183). Leading up to one such "coincidence," Mr. DeFeo was unavailable via his contact telephone number two times on the morning of September 21, 2000. That afternoon he was reached and was referred to another Ess & Vee job. Mr. DeFeo froze his name from December 24 to January 10, 2003, deleted the hold calls instruction on January 9, and was dispatched to another Ess & Vee job within two hours. (*Id.* at 180).<sup>15</sup>

Paul Willoughby, who was demonstrated to have been at least somewhat involved in the corrupt activities of John Mingione (*see* Section V. B., below), was evasive when I asked him if he had had discussions with anyone before listing skills which led to certain of his shop steward assignments. When asked this question with respect to one job, he replied: "I don't remember, no" and repeated this self-contradictory answer when I probed

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<sup>15</sup> Mr. DeFeo and other shop stewards also used the technique of leaving a job shortly after being dispatched, if the job was short and if he was aware of a lengthy job in the offing. (DeFeo at 95-96, 125-27, 140; Willoughby at I 76-79, II 71; Second Interview of Joseph Firth, submitted herewith as Exhibit 16, ["Firth II"] at 169-70; A. Arguelles at 51). Although the District Council continues to permit this practice, I have routinely spoken out against it at Anti-Corruption Committee meetings. I believe that it is yet another means by which favored shop stewards "game" the OWL by timing their availability for desirable jobs. Also, by creating lack of continuity of Carpenter leadership, permitting a merry-go-round of shop stewards on a job undercuts the quality of the work performed and reflects poorly on Carpenters' professionalism. I have always regarded this practice as an invitation to revisit the efficacy of the 11-day rule.

about one skill in particular. (Willoughby at I 86). He was also evasive when I asked if Local 157 business agent Lawrence D'Errico had told him about another job. (*Id.* at II 38-39, 41).

As was true of other shop stewards who engaged in OWL manipulation, once skills could not be changed within a thirty-day period, Mr. Willoughby appears to have relied more on freezing and unfreezing his name on the OWL, so that he could be available when the call he expected arrived. He directed that calls be held on June 15, 2004 for a period of six days. However, he unfroze his name before the six days elapsed and was dispatched to a Century Maxim job lasting four months; he denied that he had any advance information about that job. (*Id.* at II. 72, 77, 81). Similarly, Mr. Willoughby froze his name on June 15, 2005 until June 20, was unreachable on June 21, and froze his name again June 22. He removed the hold calls directive on June 27, changed his contact telephone number and was immediately dispatched the following morning. (*Id.* at II 106-07).

John Gaffney, whose conduct on a Prince Carpentry job merits its own subsection (Section V.A., below), obtained this job after unfreezing his name five days after he entered a thirty-day hold calls directive. (Gaffney at 129-31). The assignment was pursuant to an immediate dispatch. (*Id.* at 132). Mr. Gaffney denied that the imminent Prince job, which he admitted knowing about, caused him to terminate his hold calls prematurely. His denial was self-contradictory and a *non sequitur* and therefore does not,

I believe, merit any credence: he said that he doubts that the Prince job was a factor in his premature unfreezing of his name because "[n]ot many carpenters want to work for Prince." But he then conceded that he had wanted to work for Prince. (*Id.* at 131). In reviewing the manning requests and dispatches for shop steward jobs Mr. Gaffney obtained, Chief II Investigator Don Sobocienski, found two instances of jobs to which Mr. Gaffney was sent on an immediate dispatch basis and that Mr. Gaffney had added skills included in the manning requests on the very days he was dispatched. (*See id.* at 68, 80). On one of these occasions Mr. Gaffney's good friend, business agent Joseph Firth, had called in the dispatch. (*Id.* at 111).

Peter Roche admitted that he had deliberately stopped answering his telephone for several days preceding his assignment to a desirable job he knew was going to be called in shortly. (Roche at 254-55). He also changed his contact telephone number to his home phone. (*Id.* at 253). (Presumably he had another means of communicating with the contractor or business agent who was going to phone the manning request to the OWL.) Mr. Roche told me, ". . . I played the same game as everyone else plays, on and off, on and off." "The system allows it." (*Id.* at 245). The collusion of contractors and/or business agents is also implicated in the fact the Mr. Roche was dispatched to jobs on an immediate basis for reasons he could not explain. (*Id.* at 184-85, 190, 210, 212, 228-30).

Michael Brennan] was unreachable on September 15 and 18, 2000 and then, on September 19 was referred to a shop steward position for On Par. On Par had requested

the skill of welding, a skill Brennan had in his OWL skillset, but which was never required on the job in question. (Deposition of Michael Edward Brennan, submitted herewith as Exhibit 17 ["Brennan"], at 123, 125, 127, 130-31).

Mr. Brennan also admitted that prior to getting assigned as shop steward to another On Par job in October of 2001, he changed his contact telephone number two days in a row (at least once on the advice of the late Jerry Philbin). Not only was the job to which he was dispatched an unexplained immediate dispatch (*id.* at 173-74), but despite the purported need for immediacy the manning request, dated October 18, was postponed. This evidently occurred because Mr. Brennan missed the call and another shop steward was dispatched. On route to the job, the other shop steward was contacted and told of the postponement. Four days later, on October 22, On Par submitted another manning request, again for an immediate dispatch, and this time Brennan received the call and obtained the job. (*Id.* at 159, 164-67; Interview of George Kadafer, submitted herewith as Exhibit 18; review of OWL records.) Mr. Brennan held that job for nearly three years. (*Id.* at 173). As noted above and as my On Par report will demonstrate, that company was rife with corruption. So it came as no surprise to me that Mr. Brennan asserted his Fifth Amendment rights when I asked him whether he kept accurate shop steward reports in this lengthy On Par job for which he apparently had been hand-selected. (*Id.* at 181-82).

#### **A. Shop Stewards' Sources of Information**

Many shop stewards conceded that they had added skills because they knew that an

upcoming job required those skills, but denied that they had obtained this information from a contractor or a business agent. Rather, they testified, they learned about the job and the required skills via scuttlebutt from other Carpenters at their Local Union halls or in bars. (*Eg.*, Gaffney at 50, 52). While it might seem that this could be true on some occasions, when one considers the specificity and timing of certain manning requests vis-a-vis the skills changes, I submit that one must reject the scuttlebutt argument.

Furthermore, while the shop stewards' recollections as to how they obtained information is often vague, they seem distinctly to recall that the information had not come from a business agent. I find such invariably precise recollections exonerating business agents to be of dubious candor when viewed in contrast to the usually vague testimonial recollections as to how information was obtained. (*Eg.*, Gaffney at 49, 50, 52, 55, 81, 112; Lynch at 111-13, 116, 121-23, 153).

Peter Lynch admitted that he froze his name on the OWL for a month in 2002 because he knew that another Century Maxim job was coming up. At first he testified that he could not identify who, from Century Maxim, had told him when the manning request for a shop steward was going to be phoned in; eventually, he said that the information had come from the foreman. (*Id.* at 167, 172, 173-74). Mr. Lynch could not explain why the manning request, which he had known was coming for a month prior to its issuance, required an immediate dispatch. (*Id.* at 167, 170). After a private consultation with his attorney, Mr. Lynch admitted that he was in a coffee shop near the

job site waiting for the manning request to be phoned in when the dispatch came through. (*Id.* at 177-78).

Michael Nee is another member who obtained several shop steward assignments to Century Maxim. Indeed there were two Hot Line complaints (*see Hot Line case files 4-3-1-759 and 5-9-1645*) from members upset that Mr. Nee's fortune in this respect was too good to be coincidental. Mr. Nee did not admit having obtained any advance information about the jobs he obtained. (Nee at 50, 51), except from what he learned from unidentified Carpenters who worked for Century Maxim. (*Id.* at 87, 89-90). This information enabled him, for example, to obtain an assignment to one Century Maxim job that required welding as a skill. He added that skill on March 30, 2000 and was referred to the job at 5 p.m. that day. (*Id.* at 48-49).

Mr. Nee maintained that he does not need to obtain information from business agents because he travels the City himself, looking for jobs that are about to start. (*Id.* at 109-11). He also testified that "I know John Greaney [the Local 608 business manager] for twenty years. He would probably tell me there are jobs starting, and I'll go out there and see what is going on myself." (*Id.*). When it was pointed out to him that shop steward jobs cannot be shaped, as he was suggesting, Mr. Nee claimed that he was not attempting to get a shop steward job because that is "like playing the lotto." (*Id.* at 10).

This latter comment does not ring true in Mr. Nee's case, given how many times he won "the lotto." Mr. Nee was dispatched to a Century Maxim shop steward job on

January 27, 2003, forty-five minutes after he placed his name on the OWL. The dispatch to this job was made by Mr. Nee's good friend, John Greaney. (*Id.* at 151). Mr. Nee could not explain why this job was called in as an immediate dispatch. (*Id.* at 160).

Mr. Greaney may or may not have played a role in this assignment for Mr. Nee. Mr. Nee testified that the foreman of the job had told him that the job in question was going to be called in that day. (*Id.* at 151-52, 157). Either way, Mr. Nee obtained an unfair advantage over other shop stewards on the list who lacked his connections.

Mr. Nee doubtless also relied on his contacts for information that led him to freeze his name on July 20, 2001 and then unfreeze it on August 14 because he was aware that both Century Maxim and Sorbara Construction had shop steward jobs coming up. (*Id.* at 107-08). He obtained the Century Maxim job that day. (*Id.* at 117).

And, as is demonstrated in Section V. D., below, Mr. Nee's willingness not to enforce union rules (he failed to enforce the "50/50" rule on at least one job site) might have been the reason that Century Maxim wanted him assigned as shop steward.

Ronald Rawald, now a District Council organizer, initially denied that anyone had advised him what skills to list in order to obtain a job in early March of 2000. (Rawald at 51). However, once confronted with evidence that he had deleted skills the day before he was dispatched to this job, he readily admitted that "obviously someone gave me the heads-up to take them off my work history." (*Id.* at 54). He then recalled that this heads-up had come from the late Jerry Philbin, who advised him what skills he should have

listed in order to obtain this particular job. (*Id.* at 57, 61, 63). In fact, Mr. Rawald testified that Mr. Philbin frequently would tell him what skills he should have for a particular job. (*Id.* at 69-70).

When asked about having: changed his contact telephone number on April 2, 2002, added a skill on the following day, been unavailable two days later and added two more skills that day, Mr. Rawald testified that he is sure that he had gotten information from either Mr. Philbin or Mr. Greaney. (*Id.* at 113-14). Then he testified that Mr. Philbin had told him that the shop steward at a job at 1745 Broadway was being removed and that he, Mr. Rawald, would become the replacement shop steward. (*Id.* at 114, 119). Mr. Rawald had that job for approximately ten months. (*Id.* at 122).

Interestingly, at some point Mr. Philbin determined that Mr. Rawald had obtained too many shop steward positions with the same contractor and advised Mr. Rawald to stop working for that company because his several-year history with it was beginning to look suspicious. (*Id.* at 107-08). Mr. Rawald heeded Mr. Philbin's advice because "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).

Jerry Philbin was also named by several other shop stewards as the business agent who had told them what skills they should list, and sometimes what times to be reachable by phone, in order to obtain particular jobs. (Roche at 62, 72, 107-08, 110, 159, 217-18; Brennan at 159; Guerin at 56-57, 68, *see also id.* at 73 [where I noted that Mr. Philbin had

called a job in with skills corresponding to Mr. Guerin's most recent skillset]). Mr. Roche's testimony established that Mr. Philbin had advised him to list skills that were not necessary for the job he was seeking. (Roche at 109, 110).<sup>16</sup>

### **III. Other Acts of Intervention by Business Agents in the Assignment of Shop Stewards**

As I think is demonstrated above, it is not possible to examine the subject of shop stewards' job assignments without looking at the conduct of business agents. I obtained valuable testimony on this subject from contractors' representatives Albert DeRoss, a foreman for Sorbara Construction, and Manfred Dorschug, the field superintendent for Prince Carpentry, concerning their interactions with business agents. Although I cannot assume that every contractor functions in the same manner as Sorbara and Prince, I believe that these witnesses' testimony is instructive.

Mr. DeRoss testified that two to three weeks in advance of the time a job will be requiring a shop steward, he calls a business agent in the appropriate Local Union to notify him. (DeRoss Deposition, submitted herewith as Exhibit 19 ["DeRoss"], at 41).<sup>17</sup>

Mr. DeRoss testified that he does not ask for any specific skill other than the fairly general skill of concrete. (*Id.* at 42). This is significant because it puts enormous power

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<sup>16</sup> I continue to harbor supreme skepticism that the now unavailable Mr. Philbin deserves all the blame for this wrongdoing. If you are interested in this subject, I am aware of some evidence that witnesses were encouraged to finger Mr. Philbin rather than the real culprit.

<sup>17</sup> Mr. DeRoss testified that the other Sorbara superintendents also called the local in which the job was located to request the assignment of a shop steward. (*Id.* at 61).

to into the hands of the business agents to request whatever skills particular friends of theirs may have.

Consistent with their ability to influence who is chosen for shop steward assignments, Mr. DeRoss testified that on more than one occasion prior to the start of a job, a business agent would bring a Carpenter to the job site and introduce him as the shop steward who would be assigned to the job once it started. (*Id.* at 62, 64, 66).

Clearly, if the rules were being followed, no business agent would be able to identify the assigned shop steward until the dispatch is made. Interestingly, Mr. DeRoss testified that these were the only times he ever met business agents. (*Id.* at 68). (This, of course, has serious implications for the extent and quality of supervision business agents engage in, discussed in more detail below, in Section IV).

Manfred Dorschug, Prince Carpentry's field superintendent, testified that Joe Firth, a Local 608 business agent, has asked that the Local, rather than the OWL, be contacted with requests for assignment of a shop steward. I cannot fathom any legitimate reason for Mr. Firth's request. It bolsters the other evidence that some business agents engage in OWL manipulation by steering desirable shop steward assignments to their friends.

Mr. Dorschug testified further that he does not recall ever requesting an immediate dispatch (*id.* at 39, 47); yet an immediate dispatch resulting in the appointment of John Gaffney as shop steward to a Prince Carpentry job was requested by business agent Joe Firth, presumably in order to manipulate the shop steward's selection (*see* Section V.A.,

below and Exhibit GAF - 3, last two pages [exhibits to the John Gaffney Deposition, submitted under separate cover].)

Mr. Dorschug testified to even more direct interference by business agents. He said that there were two jobs for which he obtained shop stewards directly through Local 157, probably through business agent Bill Hanley. (*Id.* at 30-32). And he testified that on two occasions another Local 157 business agent, George Dilacio, told him that a shop steward had already been selected for upcoming jobs. (*Id.* at 10-44).

#### **IV. Business Agents' Poor Performance**

As is demonstrated above, business agents, who should be paragons of loyalty to the entire membership rather than a select few, often behave in ways that directly undermine the values they are expected to uphold. Sections II and III above addresses business agents' collusion in OWL manipulations, thus violating the Consent Decree. This Section focuses on instances of other corrupt conduct and/or negligent supervision.

First, there is evidence that business agents do not pay routine visits to the job sites or they make only perfunctory visits to job sites, making no effort to check the accuracy of the shop steward reports they receive. (S. Arguelles at 139; A. Arguelles at 233, 347; Deposition of Peter O'Keefe, submitted herewith as Exhibit 20 ["O'Keefe"], at 171-72; Deposition of Declan Daly, submitted herewith as Exhibit 21 ["Daly"], at 53-54; Interview of Martin Devereaux, submitted herewith as Exhibit 22 ["Devereaux"], at 54-55, 67, 141; Third Interview of Joseph Firth, submitted herewith as Exhibit 23, ["Firth

III"]; at 72-73, 94; Interview of Bill Hanley, submitted herewith as Exhibit 24 ["Hanley"] at 46, 134-35<sup>18</sup>, 151; Revised Independent Investigator's Report on Unreported Cash Payments to Carpenters by Boom Construction Enterprises, Inc., submitted herewith as Exhibit 25 ["Boom Report"], at 29-30; Independent Investigator's Report on Unreported and Other "Cash" Payments to Carpenters by Tri-Built Construction, Inc., submitted herewith as Exhibit 26 ["Tri-Built Report"], at 20-23; my June 28, 2005 Memorandum to Judge Haight 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, submitted herewith as Exhibit 27 ["Silo Memorandum"], at 12).

There is also abundant evidence that some business agents do not review, at least not carefully, the shop steward reports they receive. Anthony Arguelles testified about shop steward positions held simultaneously by himself and his brother, Stephen Arguelles, that the brothers decided to switch so that each held the position assigned to his brother. (A. Arguelles at 297-303). And each brother signed his own name to his shop steward reports. (*Id.* at 305). Yet even though business agents were presumably reviewing the shop steward reports, the fact that the brothers had each taken jobs to which

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<sup>18</sup> Mr. Hanley admitted that even when shop steward Sal Tagliaferro took a two-week vacation from a job site, he not only failed to appoint a temporary shop steward (Mr. Hanley explained that shop stewards did not like to take short-term assignments because they would lose their place on the OWL if the job lasted for more than eleven days [Hanley at 127-31]), but when he visited the job site in Mr. Tagliaferro's absence, he merely looked into the shanty and asked how everything was going. (*Id.* at 134-35).

they were not assigned appears to have gone undetected. Similarly, no one asked Michael Dolphin about the fact that his own name was not listed on a shop steward report that he had signed. (Dolphin at 96-100, 102).

Anthony Arguelles testified to even more serious nonfeasance by business agent Bill Hanley. He told me Mr. Hanley was aware that there was no shop steward at a job for L & D Construction, which Mr. Arguelles had shaped, and took no action other than to ask Mr. Arguelles to keep an eye on the job, which had as many as eight to ten Carpenters. (A. Arguelles at 219, 221-23, 229, 30). Neither Mr. Hanley nor any other business agent visited this site. (*Id.* at 233).<sup>19</sup>

In a similar vein, I questioned shop steward Patrick Lynch about his failure, obvious from his shop steward reports for a Century Maxim job, to enforce the 50/50 rule. He testified that for some period of time business agent Maurice McGrath had gone over his reports with him and had made no comment about the 50/50 issue. (Lynch at 183-84, 188-89.)<sup>20</sup>

Business agent Bill Hanley told me that, although he knows that business agents are supposed to visit job sites, he decided not to if he believed the assigned shop steward

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<sup>19</sup> Mr. Hanley denied that he ever failed to assign a shop steward where required. (Hanley at 27-28, 30).

<sup>20</sup> At some point, Mr. McGrath did remove Mr. Lynch from this shop steward position, apparently because I had raised questions about Mr. Lynch's failure to enforce the 50/50 rule. (Lynch at 207-09.) However, it appears that 50/50 violations took place for some period of time before Mr. McGrath took any action. Additionally, there appears to have been no documentation created with respect to Mr. Lynch's removal. (*Id.* at 66).

to be reliable. (Hanley at 49-51.) Unfortunately, after meeting shop steward John Scivoli for the first time in the local union hall, Mr. Hanley determined that he was reliable and that it would therefore not be necessary for there to be any business agent job site visits to Mr. Scivoli's Randall's Island Tri-Built job site . (*Id.* at 53-54). As it turned out, Mr. Scivoli was a corrupt shop steward who kept Carpenters off the shop steward reports in exchange for time off with pay. (Tri-Built Report at 9-10). Even situations I view as "red flags" did not have this effect on Mr. Hanley. He did not raise an eyebrow when Mr. Scivoli was assigned to a Tri-Built job site shortly after having completed another shop steward assignment for Tri-Built. Mr. Hanley did not even take the trouble to look at the manning request for the Randall's Island shop steward. (*See* Hanley at 57). Had he done so, he would have noticed that the manning request included the skill "laboratory furniture," a skill required only for medical or school laboratories and therefore rarely requested.

Similarly, Mr. Hanley did not question Anthony Arugelless' assignment to a shop steward position with Prince Carpentry even though Mr. Arguelles had just completed a shop steward assignment for that company. (Hanley at 60). Mr. Hanley told me that he did not question Mr. Arguelles' second shop steward assignment because it had been made via the District Council (the OWL). (*Id.* at 61, 65). I find it hard to believe that Mr. Hanley was unaware of the ways in which the OWL was subject to manipulation. In any event, it is my view that all the business agents who were willing to tolerate repeated

shop steward assignments to the same company need rigorous instruction about the corruption-fighting components of their jobs.<sup>21</sup> Integrity is the most important attribute that a union leadership can provide his membership. The District Council's Anti-Corruption Program has not inculcated this in its business agents. I submit that, in assessing the Anti-Corruption Program, more attention should be given to the Organizational Sentencing Guidelines (*see* Federal Sentencing Guidelines Manual, § 8B2.1, a copy of which is submitted as Exhibit 28).

Although it does not involve business agent supervision of shop stewards, I note the disturbing example of either Mr. Hanley or George Dilacio, another Local 157 business agent, prevailing upon Manfred Dorschug, Prince Carpentry's field superintendent, to hire one Joseph Vecchiarello as a journeyman at a job on Chrystie Steet, in the Lower East Side. (Hanley at 99, 101, 102; Dorschug at 261, 268; Deposition of Prince shop foreman Jean-Philippe Cassagnau, submitted herewith as Exhibit 29 ["Cassagnau"], at 42, 45, 53; Deposition of shop steward Sal Tagliaferro, submitted herewith as Exhibit 30 ["Tagliaferro"], at 74-77, 79 ). Mr. Vecchiarello, who is alleged to have associations with organized crime figures, apparently lacked even fundamental carpentry skills and was terminated after a few days. (Cassagnau at 45; Dorschug at 266; Tagliaferro at 80-81). There was also evidence that one of these two business agents

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<sup>21</sup> Other examples of negligence or nonfeasance by business agents are discussed in the Boom Report (pages 27-32, 37-38) and the Tri-Built Report (pages 11-12 and n. 11, 19-20, 11, 22 at n.14, 23-26.)

complained to the Prince foreman about Mr. Vecchiarello's firing. (Dorschug at 270; Cassagnau at 42, 44-45, 53; Tagliaferro at 85). I encourage you to follow up on this incident.

## **V. Shop Steward Misfeasance**

### **A. John Gaffney**

There is a substantial amount of evidence that shop steward John Gaffney, a close personal friend of Local 608 business agent Joseph Firth (Gaffney at 151-52) improperly obtained and retained a Prince Carpentry shop steward assignment. Although his initial testimony was that he could not recall if he had discussed the job in advance with Mr. Firth (*id.* at 128), he finally conceded that "maybe" he and Firth did have a conversation about the job about a month before his dispatch (*id.* at 132.) As discussed above, in Section II, Mr. Gaffney was assigned to this job on an immediate dispatch basis, after he "unfroze" his name five days into a thirty-day hold calls directive.

Mr. Firth, too, denied having given Mr. Gaffney information or other help in obtaining the Prince job. (Firth III at 156). Mr. Firth denied discussing with Mr. Dorschug, Prince's field superintendent, what skills would be listed on the manning request. He testified that Dorschug left it to him to determine what skills should be requested. (*Id.* at 160, 175, 179). Mr. Dorschug, however, testified that Mr. Firth had asked him to issue the manning request and told him what specific skills to request. (Dorschug at 235-36). Mr. Dorschug testified further that when he requests skills, he asks

only for protection; he would never, of his own accord, have listed two of the skills (acoustical ceilings and foreman/layout) contained in this manning request. (*Id.* at 238-239).

The Hot Line received two calls concerning Mr. Gaffney's conduct as shop steward on this Prince site, at Central Park West and 106<sup>th</sup> Street. (*See* Gaffney at 138-39; *see* Hot Line case files 4-1-15-1330 and 4-1-13-1920, submitted under separate cover). Mr. Gaffney even admitted that he did not always stay on the site during working hours. Initially he testified that "I might have cut out early a few evenings" and "[t]here might have been an hour or two here or there." (*Id.* at 138-39). A little later he testified that he would leave at 1:00 if all of his work was done. (*Id.* at 143, 147). Mr. Gaffney also recorded himself as working every other Saturday, even though he had not worked those days. (*Id.* at 148).

When, following up on Hot Line complaints, I asked Mr. Gaffney whether he took time off to participate in real estate transactions, Mr. Gaffney responded that he might have taken "an hour or two" off for this purpose. Then he testified that "I might have told my foreman there's a closing at 4:00, I'm leaving at 12:00." He nevertheless felt entitled to list himself on his shop steward's report as being there for a full seven hours, and to get paid for that time, because "I completed my tasks for the day." (*Id.* at 144).

The obvious question provoked by this last statement is how a shop steward can have completed his tasks while journeymen were still working on the site. Even John

Greaney, Local 608's business manager and another friend of Mr. Gaffney's, testified that it is the shop steward's responsibility to make sure that everyone on the job is safe and that means that he must be on site at all times. (Interview with John Greaney, submitted herewith as Exhibit 31 ["Greaney"], at 149).

Manfred Dorschug, the Prince field superintendent, was leery of Mr. Gaffney because he had worked with him previously and had found him to be difficult. When Mr. Gaffney was assigned to the Central Park West site as shop steward, Mr. Dorschug told him that he expected him to work on this job. (Dorschug at 73, 75.)<sup>22</sup>

Mr. Gaffney's supervisors found his performance unacceptable but, for a variety of reasons, failed to take the appropriate steps to remove him from the job. Foreman Jean-Phillipe Cassagnau testified that Mr. Gaffney came to work every day for the first three or four months, after which he stopped coming to work regularly. (Cassagnau at 20). His hours, when he did come to the job site, were very limited. Typically he came to work at about 11:30, played poker until about 12:30, and left for the day at about 1:20. (*Id.* at 16).

Mr. Cassagnau testified that when he first encountered Mr. Gaffney on this Central Park West job and tried to give him work instructions, Mr. Gaffney told him to just stay out of his way. (*Id.* at 19). Mr. Gaffney intimidated Mr. Cassagnau by telling him that he

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<sup>22</sup> Although Mr. Gaffney initially denied having had this conversation with either Mr. Dorschug or foreman Jean-Phillipe Cassagnau, he ultimately admitted that Mr. Cassagnau had told him, when the job began, that he would have to be a working shop steward. (Gaffney at 143-44, 173-74). (It is a rather sad commentary on District Council culture that the concept of a non-working shop steward appears to be tolerated. [*See* Dorschug at 68-69].)

was associated with the Westies and had various connections that could enable him to stop material from being moved, thereby halting a construction job. (*Id.* at 16-17).

Despite Mr. Gaffney's disregard for his responsibilities on the job site, Mr. Cassagnau saw that Prince paid Mr. Gaffney as if he were working seven hours a day, every day, because he was afraid that Mr. Gaffney would use pretextual union reasons to interfere with the Carpenters' work. (*Id.* at 17, 21). Similarly, Prince field superintendent Manfred Dorschug allowed the situation to persist for some time because "I cannot afford to make enemies with the business agent over a little matter of a shop steward that doesn't want to work . . . If the shop steward is a friend of the business agent or somebody else, I don't want to step on the business agent's toes." (Dorschug at 55-56).

Nevertheless, Mr. Dorschug's ability to tolerate the situation began to erode and after an incident in which he found Mr. Gaffney playing cards on company time, he called Mr. Firth and asked him for help in getting Mr. Gaffney off the job. (*Id.* at 57-59).<sup>23</sup> Mr. Firth's response was to tell Mr. Dorschug to be patient and that Mr. Gaffney would soon be removed from the job. (*Id.* at 62). The removal did not materialize. Then there was an incident in which Mr. Gaffney is alleged to have deliberately broken a light bulb when asked by a foreman to perform some work, and then to have said that it was too dark for

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<sup>23</sup> Initially Mr. Gaffney testified that he only played cards at lunchtime. Then he conceded that he played cards "maybe ten minutes before, ten minutes after." (Gaffney at 153-54).

him to comply with the request.<sup>24</sup> (*Id.* at 60). Mr. Dorschug again asked Mr. Firth to help him get rid of Mr. Gaffney and Mr. Firth put him off as he had previously. (*Id.* at 62).<sup>25</sup> And again, nothing happened. So Mr. Dorschug fired Mr. Gaffney and the union filed a grievance because Dorschug had not followed the CBA's required procedural step of asking for a conference with the business agent and the shop steward before terminating the steward. (*Id.* at 69-70).<sup>26</sup>

Mr. Cassagnau testified that he, too, had attempted to get some assistance from Mr. Firth with respect to Mr. Gaffney's refusal to work. Mr. Firth, who Mr. Cassagnau saw at the job site approximately five times during eighteen months the job lasted (Cassagnau at 18, 36), brushed him off and walked away when Mr. Cassagnau said to

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<sup>24</sup> Mr. Gaffney maintains that he broke the light bulb accidentally. (Gaffney at 181-82). Yet two superintendents from Bovis Lend Lease, the general contractor, who witnessed this incident, wrote letters or memoranda complaining of Mr. Gaffney's conduct. One of these memoranda also noted that Mr. Gaffney routinely arrived at work late or left early. Additionally, the Bovis project manager wrote a letter saying that on several occasions he had witnessed Mr. Gaffney reading a book during working hours. (These three documents are submitted collectively as Exhibit 32).

<sup>25</sup> Mr. Firth essentially corroborated Mr. Dorschug's testimony. He said that Mr. Dorschug complained to him about Mr. Gaffney being frequently off site and said that something had to be done about this shop steward. But Mr. Firth appears to fault Mr. Dorschug for not being more specific in his complaints. (Firth III at 195.) It seems to me that Mr. Dorschug's complaints were enough to alert Mr. Firth that there were serious problems with Mr. Gaffney's performance and that they needed to be addressed. Apparently, however, this did not occur. Mr. Firth seems to have been satisfied with his perception that Mr. Gaffney stayed on the job site until at least 1:00 p.m. every day. (*Id.*).

<sup>26</sup> Mr. Dorschug testified that he believed that his two entreaties to Mr. Firth had satisfied the conference requirement. In any event, the grievance was settled and Mr. Gaffney was paid for six days post-termination. (*Id.* at 70-71).

him: "[t]here's no law that states a shop steward doesn't have to work." (*Id.* at 35).

Mr. Cassagnau testified that Mr. Gaffney relied on his, the foreman's, time records in order to fill out shop steward reports (*id.* at 20), and that because there often was no shop steward on the site, other contractors there worked without shop stewards and had Laborers doing Carpenters' work. (*Id.* at 22-23).<sup>27</sup> I think it is clear that John Gaffney's service as a shop steward was deplorable. At least on this Central Park West job for Prince, he did not fulfill his obligations to the journeymen working under him. And his conduct toward his employer reflects poorly on the District Council and feeds contractors' belief that they must assist in manipulations of the OWL in order to obtain a shop steward on whom they can rely. I encourage you to discover whether Mr. Gaffney has or will ever be disciplined for his conduct. You might investigate where and in what capacity he is currently working. I believe that it would also be worthwhile to learn what business agent(s) have facilitated his most recent assignments.

### **B. Paul Willoughby**

Paul Willoughby is another example of a shop steward whose persistent conduct disgraces union Carpenters and illustrates how weak the District Council's Anti-Corruption Program is. Mr. Willoughby was the subject of ten Hot Line complaints concerning his job site conduct (*see* case files 5-7-14-1258, 5-7-7-1516, 4-9-30-1317B, 4-

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<sup>27</sup> Mr. Cassagnau testified that there was one jurisdictional dispute that Mr. Gaffney involved himself with because it was early on in the job and he was still showing up on a daily basis. Nevertheless, it was Mr. Cassagnau who noticed the Carpenters' issue and brought it to Mr. Gaffney's attention. (*Id.* at 23).

8-20-1210C, 4-7-27-1640, 4-7-15-1640A, 4-6-28-1627B, 4-6-25-1545, 4-6-16-1605 and 4-6-9-1610, submitted under separate cover.) We were told that on a number of job sites he left early and omitted names from the shop steward reports. He was charged by the District Council with riding the list but he claims that the District Council took no action against him after he appeared before them.<sup>28</sup> (Willoughby at I 30-34).

Mr. Willoughby testified that his practice is to fill out shop steward reports only once a week. He does this so that he can use the foreman's payroll list as the basis for his shop steward reports. (*Id.* at I 56-57; 165-66). I suggest that this conduct alone subjects Mr. Willoughby's fitness to serve as a shop steward to serious question.<sup>29</sup> If the union's representative is relying on management's data to create shop steward reports, the purpose of which is to serve as a check on management's data, the shop steward reports are simply not reliable. It is the shop steward's job to be a bulwark against corruption. He cannot perform this role if he is not using first-hand observations to obtain the information required in the shop steward reports.

Mr. Willoughby justified failing to keep daily attendance records with the excuse

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<sup>28</sup> I have not been able to obtain any documentation regarding this proceeding. Mr. Willoughby asserts that the District Council believed his claims that he was not working when he was on the list. He gave the explanation that late benefits payments created the false impression that he was working at the times in question. On one occasion that he was on the OWL, he testified, he was working at the Javits Center and therefore permitted to remain on the list. (Willoughby at I 32-33).

<sup>29</sup> Shop Stewards Patrick Lynch, Anthony Arguelles and John Gaffney also relied on a foreman's time sheet in order to fill out their shop steward reports. (Lynch at 229; A. Arguelles at 397; Cassagnau at 20).

that stewards get only an hour a day to do paperwork. (*Id.* at I 57). This was an obvious untruth (the CBA provides that shop stewards be given adequate time to work on the shop steward reports and adequacy, of course, will depend upon the size of the job) and was in fact contradicted by Mr. Willoughby, himself, later in his testimony.

It turns out that Mr. Willoughby is implicated in the activities of one John Mingione, the former Benefit Funds employee who was allegedly paid by the owners of Tri-Built Construction, Inc. to remove shop steward reports from the District Council's offices (*See* Tri-Built Report at 13-15). Mr. Willoughby engaged in this activity on company time, saying that "I can come and go as I please. There is no one to check my time. The company doesn't check your time. Nobody is checking my time. . . . From my understanding, on big job sites, the shop steward had carte blanche." (Willoughby at I 123-24). Presumably carte blanche would have included adequate time to maintain shop steward reports on a daily basis.

Time limitations and the Benefit Funds' refusal to provide me with access to documents prevented me from fully investigating the John Mingione situation (see Tri-Built Report at 13-15), so I do not know how many other contractors retained Mingione's (and others') services. However, after much equivocation, Mr. Willoughby admitted to me that he accompanied Mr. Mingione on one occasion when a cash pick-up was made from an undercover officer with the New York State Organized Crime Task Force. In fact, it was Mr. Willoughby who picked up the cash. (Mr. Willoughby initially lied and

told me that he went into the building to pick up blueprints. (*Id.* at I 116-22, 131-33).

He also initially denied that he had known what was in the envelope. (*Id.* at I 139-40).

He had just decided to take a ride with his friend John Mingione during a work day despite his shop steward duties at another job site. (*Id.* at I 116-19, 119-25).

After prodding from me and conferencing with his attorney, Mr. Willoughby admitted that he had known, when he got into Mingione's waiting car, that there was cash in the envelope, since in the car, Mingione had an angry telephone conversation (with the undercover agent while under surveillance by other law enforcement officers), about the cash being short. (*See id.* at I 149-50).

Mr. Willoughby told the truth about his encounter with the undercover officer only after several lies and after I (and presumably his attorney) had made it clear to him that I was in possession of the facts. Therefore, while I have been denied the opportunity to investigate the Mingione issues, and can only speculate regarding the extent of Mr. Willoughby's involvement with Mingione, I cannot unquestioningly accept his testimony that the occasion of his encounter with the undercover agent was the only time he had accompanied Mingione on such an errand. (*See id.* at I 109-10). In fact, his further denials of such conduct were couched in such an equivocal manner that they appear to be dissembling. ("I don't know. I don't remember. No." [*Id.* at I 118; *see also id.* at I 126].)

Mr. Willoughby was arrested after his encounter with the undercover agent, but not indicted. It is still startling to me that although the District Council eventually

questioned an uncooperative John Mingione – well after his arrest – they never questioned Mr. Willoughby. (*Id.* at 114). The District Council never undertook any other investigative action with respect to Mr. Willoughby who continued, and may still continue, to serve as a Carpenter shop steward. This inattention by the District Council is discussed further in Section VI, below. As I have repeatedly said, it is my view that once the existence of any troubling conduct emerges, the District Council must immediately seize the initiative to discover the facts and promptly initiate meaningful union disciplinary action. I do not believe that corrupt conduct must rise to the level of prosecutorial interest for union disciplinary action to be appropriate.

### **C. Other Corrupt Shop Steward Conduct**

The conduct of shop steward Peter O'Keefe, who contrived, with Silo Construction Corporation ("Silo") to be assigned to a Silo site at 393 West 96<sup>th</sup> Street, and who, on this and previous Silo job sites accepted time off in exchange for leaving Carpenters' names off the shop steward reports, is detailed in the Silo Memorandum, at pages 2-11. I will not review it here. The corrupt conduct of shop steward John Scivoli, whom Tri-Built contrived to have assigned as a shop steward, is discussed in Section IV, above and in the Tri-Built Report at 9-10.

Given the magnitude of On Par Construction's cash payments, it is not surprising that at least two (and surely more) shop stewards who worked for On Par kept Carpenters off the shop steward reports. (*See* On Par Memorandum, *passim*). Michael Brennan and

Michael Mitchell, both of whom manipulated the OWL, with assistance, of necessity, to obtain On Par shop steward positions (*see* Section II above) both engaged in this conduct. On Par Carpenter Ronan Doherty testified that Messrs. Brennan and Mitchell both left his name off the shop steward reports. (Deposition of Ronan Doherty, submitted herewith as Exhibit 33 ["Doherty"], at 32, 35, 37-38, 52 [as to Brennan] and 91-93 [as to Mitchell]).<sup>30</sup> Declan Daly, another On Par Carpenter, testified that Mr. Mitchell kept him off the shop steward reports. (Daly at 41, 45-47). Mr. Daly testified that he was on Mr. Mitchell's shop steward report for one day only – on the day that business agents came to the job site and carded him. (*Id.* at 46). Although Mr. Mitchell testified that he had kept Carpenters off the shop steward's sheets only if they requested it, Mr. Daly contradicted this. (*Id.* at 47; Mitchell at 132-35). Other examples of On Par workers being kept off shop steward reports submitted by Messrs. Brennan and Mitchell are discussed in the On Par Report.

As noted in Section II above, Mr. Mitchell was an On Par shop steward fairly steadily for a period of more than three years. He denied that On Par management had ever asked him to violate his union obligations and he testified that he was unaware that On Par made any cash payments. (*Id.* at 137, 144). When asked similar questions, Mr. Brennan asserted his Fifth Amendment privilege against self-incrimination. (Brennan at 100, 137-38, 181-84).

Anthony Arguelles admitted that he had kept the foreman of a Ronsco job at Mt.

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<sup>30</sup> Mr. Doherty testified that Michael Brennan allowed him to work on an On Par job site before he had his union card. (*Id.* at 27).

Sinai Hospital off the shop steward reports for a couple of days each week, at the foreman's request; the foreman wanted to secrete some of his income because he owed money to his estranged wife. (A. Arguelles at 339). Mr. Arguelles also left his brother Stephen off the shop steward reports on this job so that his brother could remain on the OWL and avoid charges of riding the list. The foreman, of course, who signed Mr. Arguelles' shop steward reports as the company's representative, had no reason to question the omission of Stephen Arguelles. (*Id.* at 340-41, 346).

The Hot Line received two complaints about one of Mr. Arguelles' shop steward positions with Prince. (There were three complaints about Mr. Arguelles' assignment to another Prince job. [*See* Hot Line case files 12-4-1155 and 4-2-25-1605 for the Bloomberg job and Hot Line case files 4-8-27-909, 4-8-27-1253, and 4-10-29-1050 for the Avalon Chrystie job, submitted under separate cover].) We were told that he was not always on the job site and that he permitted Prince to violate the CBA. Mr. Arguelles admitted that there was an illness in his family at the time he held this job and that, for at least a month, he often left early. He testified that Prince management was aware of his family problems and paid him for the time he took off. (*Id.* at 375, 378, 383-84). Additionally, he sometimes left early when he was working overtime, and would rely on the foreman's time records for filling in his shop steward reports. (*Id.* at 396-97). He admitted that on those occasions that he learned of a site visit by District Council and/or II investigators while he himself was off-site, he would change the shop steward report to

accurately reflect his hours on the job. (*Id.* at 376).<sup>31</sup>

Mr. Arguelles also admitted that he left a few Carpenters, who worked at the job site for two or three weeks, off his shop steward report. (*Id.* at 384). And he did not enforce the 50/50 rule on this job because "I didn't want to fight. I wanted a lot of peace." (*Id.* at 385-87).

Mr. Arguelles was not the only shop steward who did not enforce the 50/50 rule.<sup>32</sup> Robert DeFeo, Michael Nee and Patrick Lynch all did the same. (DeFeo at 156-60, 163, 168-70; Nee at 172-73, 177-78, 196; Lynch at 183-86, 188-89). I believe that all of these shop stewards were inclined to let their employers violate the CBA because they had a relationship with the companies that allowed them to manipulate the OWL and obtain repeat shop steward assignments to those contractors.

The shop stewards mentioned in this report have "gamed" the out-of-work list rules, thereby obtaining jobs unfairly at the expense of their "brothers and sisters" who wait on the OWL to be assigned. Many have turned their backs on the journeymen whose rights to safety, union wages and benefits depend on a shop steward's protection. They

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<sup>31</sup> I continue to urge that shop stewards who are paid for hours not worked are being paid for "no show" jobs. The practice represents a large corruption risk. Although there may be occasions when a contractor could, under extenuating and limited circumstances, make a pay accommodation, the shop steward reports should reflect actual hours worked, with a notation that the contractor has agreed to pay the steward for specific hours he needed to be away from the job.

<sup>32</sup> While I view the 50/50 rule in its present form (*i.e.*, allowing for a contractor to request all the journeyman he wishes from the OWL) to lack real meaning (*see* Request Report, *passim*), I nevertheless view a shop steward's failure to undertake even this meager oversight measure as significant because it shows a willingness to accommodate contractors in violating the CBA.

have done so in order to ingratiate themselves with contractors and, in some cases, to get paid for work not performed. As shop steward Paul Willoughby put it, shop stewards on big jobs have "carte blanche." (Willoughby at 124).

Business agents and other union officials need to be held to high ethical standards and to supervise shop stewards meaningfully. Business agents need to make sure that shop stewards are serving the membership rather than taking advantage of a culture of "gaming," incompetence and wrongdoing.<sup>33</sup>

## **VI. Failures of the District Council**

The District Council is responsible and accountable for its Anti-Corruption Program. I believe that the job site and other corruption exposed in this and my other reports, and the all-too-frequent lack of follow-up in situations that cried out for attention, evidence lack of commitment to fighting corruption at the top of the union leadership. You, as the new II, will formulate your own view of the District Council's commitment to anti-corruption and will, I hope, be more successful than I have been in providing the District Council with guidance and motivation in this area.<sup>34</sup> Perhaps the work that I have

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<sup>33</sup> The conduct of other corrupt shop stewards is discussed in the Boom Report (at 14-15, 22, 24, 26) and the Tri-Built Report (at 10, 13.)

<sup>34</sup> More than a year ago, I provided the District Council with an outline for what I view as the requirements of an effective anti-corruption program. (*See* Report to the District Council of Carpenters Concerning the Operation and Effectiveness of its Anti-Corruption Program, submitted herewith as Exhibit 34 ["Anti-Corruption Report"], at 11-16). While I do not claim to have a monopoly on anti-corruption techniques, it appears to me that the District Council has not even explored or thought about most of my suggestions. I believe that the Council leadership determined some time ago that it was not receptive to my ideas about aggressive anti-corruption

done during my term as II will serve as a springboard for the cultural changes that need to occur under your stewardship.

Based on all the depositions and interviews I have conducted over the past two-and-a-half years, the weekly Anti-Corruption Committee meetings I attended, and the Hot Line calls we have received, I believe that the District Council has not made the fundamental shift it needs to make in order to become an effective anti-corruption force: to change the organizational culture to one that insists on integrity and diligently pursues wrongdoers. This is an issue of leadership, plain and simple.

One example of weak commitment to anti-corruption is the absence of training for business agents.<sup>35</sup> Certainly business agent William Hanley acknowledges this lapse. (Hanley at 23-24). And business agent Martin Devereaux, for example, exhibited ignorance of the importance of checking union cards and comparing them to shop steward reports when he told me that he does not typically do this because, "[f]or me to go and check the cards on a regular basis, the carpenters on the job would look at me and say: What is wrong with Martin; is he fucked up? He just checked my card two weeks ago." (Devereaux at 67).

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practices. I am pleased the Court's order appointing you will prevent the District Council from terminating you as it did me.

<sup>35</sup> Although I conducted several training sessions for business agents, and made a habit of being available by telephone and otherwise to advise or discuss issues with union officials, the District Council leadership determined to withhold enthusiastic support for my views. In any event, in order to effect an organization's culture, training sessions need to take place on a regular basis.

In a similar vein, Mr. Devereaux told me that during a visit to a Tri-Built site, he did not view the fact that he found Carpenters not listed on the shop steward report to serve as "red flag" for possible corruption on the site. Nor was a red flag presented by the fact that the number of names on the shop steward reports went up substantially when a new shop steward was appointed to the site. (Devereaux at 59-67). Comments like these illustrate either troubling ignorance or they mask corruption. Either case represents a significant failure of leadership by the District Council.

Lack of commitment to anti-corruption efforts was also demonstrated by the fact that Ronald Rawald was elevated to the position of a District Council organizer despite that fact that he had repeatedly ridden the OWL while a shop steward. He testified that he was never questioned on this subject. (Rawald at 95-96). From this I infer either that the District Council knew about his conduct and did not care or they never took the simple step of comparing Mr. Rawald's benefit funds records to his OWL records before appointing him to the important position he now holds.

Similarly, Anthony Arguelles, who was questioned about working the shop steward job to which his brother was assigned, was never questioned about riding the list despite his practice of doing so. (A. Arguelles at 39).

Perhaps the most striking investigative omission that I reviewed<sup>36</sup> is the District Council's failure to even question Paul Willoughby, the shop steward who left his post to

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<sup>36</sup> I could come up with many other examples. See my previous reports and the transition Telephone Hot Line Memorandum.

accompany John Mingione on an "errand" and ended up picking up a cash payoff from an undercover agent. I submit that even though it was only Mingione, and not Willoughby, who was indicted in this corrupt venture, there certainly was abundant evidence warranting a union investigation of Mr. Willoughby. In my view, the District Council should have questioned Messrs. Mingione and Willoughby immediately after their arrest and if they had refused to answer questions, they should have been expelled from the union. This is the type of action that is expected in today's corporate and law enforcement worlds.

I submit that it is only fear of reprisals that prevented more witnesses from saying to me what shop steward Stephen Arguelles told me. Mr. Arguelles testified that in recent years his feelings of commitment to the union have diminished because he believes that the District Council protects only the company men and that any union member who "goes out on a limb" runs the risk of being "blackballed." He said that "[y]ou don't want to be the opposition." (S. Arguelles at 125-28). Mr. Arguelles testified further that the District Council also tolerates companies not reporting their jobs so that they can avoid the assignment of a shop steward. He said, "[c]ompanies get away with murder. I mean, it is unbelievable what they get away with, where they don't get disciplined." (*Id.* at 133). He also testified that the identity of big companies that pay cash is well known to the District Council, which nevertheless takes no action. (*Id.* at 142-43). While Mr. Arguelles may in part have been attempting to rationalize his own violation of union

rules, I believe that he accurately depicts a District Council engaged in, at least, willful ignorance of the corrupt conduct by companies like Tri-Built and On Par, which were notorious among Carpenters as "cash" companies, yet were permitted to work corruptly for years.

I also believe that the situations described throughout this report as well as in the Boom and Tri-Built Reports and the Silo Memorandum support my conclusion that enforcing CBA rules, union rules, and the job referral provisions of the 1994 Consent Decree (¶ 5 and Exhibit A thereto) has simply not been a priority for the District Council. In truth and in fact, it should have been their first priority.

## **VII. Recommendations**

The above discussion, together with my other reports, point out several ways in which the District Council can better supervise the work of shop stewards. For example, I believe that business agents should make regular job site visits, during which they should "card" the Carpenters they find (after a thorough examination of the site), make a list of the Carpenters' names and compare that list to the shop steward reports. They should also make and retain in writing the specific details of their job site visits.

Business agents also need to be better schooled in the importance of conducting themselves ethically and in compliance with union rules. I do not for a minute believe that Jerry Philbin – who can no longer speak for himself – is the only business agent who contrived with shop stewards and contractors for particular shop stewards to be

dispatched to particular jobs.<sup>37</sup> I believe that many business agents do not respect the work referral rules and, at a minimum, tolerate the evident "gaming" that occurs. For instance when I interviewed Local 608 business agent Joseph Firth, he said that he does not view listing a skill and then asking the contractor to request that skill as OWL manipulation. His rationale was that, as long as the skill is appropriate for the job, the coordination between the contractor and the shop steward would not be manipulation because there would be no assurance that the steward would get the job. (Interview of Joseph Firth, first session, October 29, 2003, submitted herewith as Exhibit 35 ["Firth I"], at 172, 173). I view this as another example of muddled logic meant to excuse business agent nonfeasance and malfeasance. It should be an embarrassment to the District Council that it takes an outsider such as myself to point out basic realities of how the OWL functions.

Based on testimony and on information funneled to me informally, I believe that business agents also require education about the importance of supporting shop stewards who report contractor abuse. I believe that many shop stewards currently believe that it is fruitless to attempt to stand up to an abusive contractor because they will not have business agent support. Shop stewards must know that they do not stand alone. And they should not be able to give lack of support as justification for failure to report wrongdoing on a job site. There should be zero tolerance for such failures and serious

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<sup>37</sup> Business agent Maurice McGrath and other, unnamed, business agents are also, to some extent, implicated in the testimony discussed in Section II, above.

sanctions should be imposed in situations where a shop steward does not report wrongdoing to his Local Union and/or the District Council. But business agent support and protection is a predicate for holding shop stewards to this standard.

On the subject of sanctions, I also have observed a lack of due process in the District Council's disciplinary procedures. I strongly believe that there should be a protocol for how charges are brought, heard and adjudicated. I think that absence of Due Process fosters lack of respect for the rules. And there should be some predictability as to the sanctions imposed for each type of offense. (*See* my Anti-Corruption Report at 16.) A disciplinary system in which a sanction might not be imposed for years because it has yet to be resolved at a General Convention makes a mockery of the Anti-Corruption Program.

I believe that serious sanctions should be imposed for riding the list and for lying to the District Council's investigators. Historically, that certainly has not been the case. I have suggested a three-year statute of limitations on this and other corrupt conduct, rather than the one-year limit that the District Council has implemented. And, of course, the predicate for an effective disciplinary system is a thorough, reliable and credible investigatory process by which the facts are truly sought. There is a great deal of work that needs to be done.

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In conclusion, I wish you every success in the challenging endeavor of monitoring

the District Council's compliance with the out-of-work rules. It has been my pleasure to serve the Court and the District Council. I remain available to assist the Court and its Independent Investigator at any time.

Dated: New York, New York  
October 26, 2005

Walter Mack  
Former Independent Investigator

Amy Rothstein  
Of Counsel