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INVESTIGATIONS OFFICER

Claimant,

v.

CIRINO "CHARLES" SALERNO, and  
WILLIAM CUTOLO

Respondents.

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OPINION OF THE INDEPENDENT  
ADMINISTRATOR

Charges having been filed by Charles M. Carberry, Investigations Officer, against Cirino "Charles" Salerno (sometimes hereinafter referred to as "Salerno") and William Cutolo ("Cutolo"), a hearing was held on May 14, 1990.<sup>1</sup> Salerno was represented by counsel and appeared at the hearing with his counsel. Cutolo, although represented by counsel, did not appear at the hearing. Neither did his attorney. Evidence was accepted against Cutolo nonetheless.<sup>2</sup> Pre and post-hearing memoranda were received on behalf of Salerno. Having reviewed the evidence

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<sup>1/</sup> Scheduled at that same hearing were similar charges pending against three other union officials, Warren Selvaggi, Joseph Pecora, Sr., and Vincent Gugliaro. Given that Mr. Selvaggi resigned from his position as president of Local 240 and consented to a permanent bar from the union, pursuant to an Order entered in an unrelated action in the United States District Court for the Southern District, the Investigations Officer withdrew the charge against Mr. Selvaggi. The Investigations Officer also withdrew the charge against Joseph Pecora, Sr., Secretary-Treasurer of Local 863 in Mountainside, New Jersey, based upon Mr. Pecora's having agreed to submit his permanent resignation as an officer of his Local. Mr. Gugliaro's hearing was adjourned without date due to his medical condition.

<sup>2/</sup> The Investigations Officer informed me that he received a phone call from a Ronald Russo on the eve of the hearing. Mr. Russo stated that he was an attorney representing Cutolo and further indicated that Cutolo had resigned his union positions, challenges the Investigations Officer's and Independent Administrator's jurisdiction over him, and "may or may not" show up at the hearing.

submitted against Salerno and Cutolo and the arguments of counsel for Salerno, I conclude that the Investigations Officer has satisfied his burden and, thus, find Salerno and Cutolo culpable as charged.

**I. BACKGROUND**

**A. The Charges**

Salerno is charged with "[v]iolating Article II, §2(a) of the International Brotherhood of Teamsters ["IBT"] Constitution by conducting [himself] in a manner to bring reproach upon the [IBT] . . . ." This charge is grounded on two allegations: (1) that Salerno "knowingly associated with members of organized crime, La Cosa Nostra, from, at least, December 1, 1983 to the present, to wit: Anthony Salerno, Vincent Cafaro, John Tronolone, Giuseppe Sabato, Louis Gatto and Sammy Santora"; and (2) that Salerno had "a specific prohibited financial interest and transaction in violation of New York Labor Law §725, to wit, receiving \$500.00 [on] September 15, 1978, and \$500.00 on December 14, 1978, from an employer whose employees Local 272, of which . . . Salerno was an officer, represented for purposes of collective bargaining. This conduct formed the basis of [Salerno's] conviction on Indictment 625/79 in Supreme Court, New York County." Salerno is the President of Local 272 in New York City.

Cutolo is charged with a violation of "Article II, §2(a) and Article XIX, §6(b) of the IBT Constitution by conducting [himself] in a manner to bring reproach upon the [IBT] and by violating [his] oath, to wit: while an officer of Local 861, being a member of La

Cosa Nostra and knowingly associating with members of La Cosa Nostra, including Gregory Scarpa, Sr. and Gregory Scarpa, Jr." Cutolo is the President and Business Agent of Local 861 in New York City.<sup>3</sup>

**B. The IBT Constitutional Provisions**

The charges at issue implicate the following provisions of the IBT Constitution:

1. Article II, Section 2 (a), which provides:

Any person shall be eligible to membership in this organization upon compliance with the requirements of this Constitution and the rulings of the General Executive Board. Each person upon becoming a member thereby pledges his honor: to faithfully observe the Constitution and laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Bylaws and laws of his Local Union; to comply with all rules and regulations for the government of the International Union and his Local Union; to faithfully perform all the duties assigned to him to the best of his ability and skill; to conduct himself or herself at all times in such a manner as not to bring reproach upon the Union . . . . [emphasis supplied]

2. Article XIX, Section 6 (b)<sup>4</sup>, which provides:

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<sup>3</sup>/ As noted in Footnote 2, Cutolo's attorney informed the Investigations Officer by phone that Cutolo had resigned his union positions.

<sup>4</sup>/ At a November 1, 1989, special meeting of the IBT's General Executive Board ("GEB") a resolution was adopted purporting to review and interpret certain provisions of the IBT Constitution, including Article XIX, Section 6 (b). In a decision dated January 11, 1990, in the matter of Investigations Officer v. Friedman and Hughes, I rejected the GEB's interpretation as unreasonable. United States District Judge David N. Edelstein endorsed and approved my ruling in his Opinion and Order dated March 13, 1990. In an Opinion dated June 1, 1990, the United States Court of Appeals for the Second Circuit affirmed Judge Edelstein's March 13, 1990 ruling. United States v. International Brotherhood of Teamsters, Docket Nos. 89-6248, etc., slip op. (2d Cir. June 1, 1990), at pp.16-25.

The basis for charges against members, officers, elected Business Agents, Local Unions, Joint Councils or other subordinate bodies for which he or it shall stand trial shall consist of, but not be limited to, the following:

- (1). Violation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder.
- (2). Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.
- (3). Embezzlement or conversion of union's funds or property.
- (4). Secession, or fostering the same.
- (5). Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any union's legal or contractual obligations. Causing or participating in an unauthorized strike or work stoppage.
- (6). Disruption of Union meetings, or assaulting or provoking assault on fellow members or officers, or failure to follow the rules of order or rulings of the presiding officer at meetings of the Local Union, or any similar conduct in, or about, union premises or places used to conduct union business.
- (7). Crossing an authorized primary picket line established by the member's Local Union or any other subordinate body affiliated with the International Union.

## II. The General Defenses of Salerno To The Knowing Association Charge

Salerno argues generally that his alleged associations did not bring reproach upon the IBT because the meetings in question took place in a "private club many years ago." Salerno Post-Hearing Memorandum at p.2. As argued by Salerno, "[a] private meeting known only to the persons involved and eavesdropping

government investigators could not possibly bring reproach upon anyone five years later." Id. at pp.2-3. In addition, Salerno argues that the injunctive provision of the March 14, 1989, Consent Order entered into between the IBT and the Government "permanently enjoins officers and members of the I.B.T. from future association with members of organized crime. . . . It cannot be claimed it could enjoin activities that occurred years ago. It is a direction as to proper conduct in the future."<sup>6</sup>

Id. at p.3.

Dealing first with Salerno's contention that his past associations cannot support the charge in question, this same argument, cloaked in a United States Constitution Fifth Amendment claim, was made by two charged respondents in a matter decided by me on July 12, 1990. There, Dominic Senese and Joseph Talerico

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<sup>6</sup>/ The specific injunctive provision in question is found at paragraph E.10 of the Consent Order and reads as follows:

Defendants William J. McCarthy, Weldon Mathis, Joseph Trerotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis, as well as any other or future IBT General Executive Board members, officers, representatives, members and employees of the IBT, are hereby permanently enjoined from committing any acts of racketeering activity, as defined in 18 U.S.C. §1961 et seq., and from knowingly associating with any member or associate of the Colombo Organized Crime Family of La Cosa Nostra, the Gambino Organized Crime Family of La Cosa Nostra, the Lucchese Organized Crime Family of La Cosa Nostra, the Bonnano Organized Crime Family of La Cosa Nostra, any other Organized Crime Families of La Cosa Nostra or any other criminal group, or any person otherwise enjoined from participating in union affairs, and from obstructing or otherwise interfering with the work of the court-appointed officers or the Independent Review Board described herein.

had argued that the Consent Order's injunction against "knowingly associating with any member or associate . . . of La Cosa Nostra," is prospective in nature and, therefore, that the charges at issue "involve[d] the fundamental right to notice that certain conduct is prohibited or will subject a person to sanctions."

In rejecting this argument, I stated:

To conclude otherwise would lead to the most disingenuous of contentions -- that until the entry of the explicit bar in the Consent Order against association with members of La Cosa Nostra, Senese and Talerico, both long-time IBT members and officers in Chicago<sup>o</sup>, did not know that associating with organized crime figures would taint their Union -- a Union which has "acknowledg[ed] that there have been allegations, sworn testimony and judicial findings of past problems with La Cosa Nostra corruption of various elements of the IBT." Consent Order, fourth Whereas clause at p.2. Most recently, Judge Edelstein has described the IBT as "a union which has been the historic marionette of organized crime." United States of America v. IBT, 88 Civ. 4486 (DNE) (S.D.N.Y. July 10, 1990). The Consent Order's injunction did not bring to bear anything new, but simply explicated what, according to the IBT's current leadership, are the goals of the IBT. See Consent Order fifth and sixth Whereas clauses at p.2 ("WHEREAS, the union defendants agree that there should be no criminal element or La Cosa Nostra corruption of any part of the IBT; and WHEREAS, the union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence . . . .")

IBT General President William J. McCarthy has himself stated that "the goals of a clean . . . union are consistent with the goals of our leadership." President's Message, The International Teamster, April 1989. IBT General Counsel Grady has also favorably quoted to the approximately 1,700,000 rank and file members of the IBT Judge Edelstein's statement made in open court on March 14, 1989:

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<sup>o</sup>/ This same analysis is applicable with full force in this matter, where Salerno is a long time IBT member and officer in New York City.

"Today, the leaders of the International Brotherhood of Teamsters have rededicated themselves to the principle and spirit that guide labor unions in this country. They affirm that their union should be free from the influence of organized crime."

[The International Teamster, April 1989, at p.6 (emphasis supplied)]

In a related context, and in answer to what is a basic unfairness argument, that is, that these Respondents are being punished for past activity, the United States Supreme Court has endorsed licensing provisions which take into consideration past acts of the applicant. As stated in De Veau v. Braisted, 363 U.S. 144 (1960):

"The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession."

[363 U.S. at 160 (emphasis supplied)]

In this case, the charges do not seek to punish Respondents for their past associations, but rather, the charges are part of the general scheme to rid the IBT of the influence of organized crime, and as such, past conduct of IBT members may be properly considered. [Investigations Officer v. Senese, et al., July 12, 1990, Opinion of the Independent Administrator at pp.8-12].

Salerno's contention that the "knowing association" charge should be barred because his meetings with alleged organized crime figures took place in a "private club," is also rejected. To accept Salerno's argument would be to condone meetings with elements of organized crime so long as those meetings take place behind closed doors. As noted, it has been recognized and acknowledged by both Judge Edelstein and the IBT leadership that organized crime's hideous influence has no place in a union

dedicated to cleansing itself of its corrupt influences. Whether that influence finds root in a public or private setting is of no relevance. As stated in my July 12, 1990, decision in the Senese et al. matter, at p.17:

In this matter, the compelling interest is clear -  
- to rid the IBT of the influence of organized crime. Such a goal can never be realized unless the IBT purges itself of those individuals within its ranks who knowingly associate with members of organized crime or who are actually members in such notorious organizations as La Cosa Nostra. Such associations are clearly inimical to the lofty goal at stake here, and must be compromised if the IBT is to be cleansed of its corrupt influences.

Finally, in response to Salerno's argument that the associations in question are somehow stale given that they are "many years old," it is clear that pursuant to the terms of the Consent Order the Investigations Officer and the Independent Administrator are bound by no statute of limitations. As was stated in my September 29, 1989, decision in the matter of Investigations Officer v. Friedman and Hughes, at p.8, ". . . if the authority granted the Investigations Officer and the Independent Administrator is to have any impact, they must be given the opportunity to probe into the history of the IBT and particular members and officers involved," aff'd, United States v. IBT, 725 F.Supp. 162, 166-67 (S.D.N.Y. 1989), aff'd, United States v. IBT, Docket Nos. 89-6248 etc., slip op. (2d Cir. June 1, 1990). Where

appropriate, however, I may consider the age of a transgression in mitigating a penalty.<sup>7</sup>

### III. The Investigations Officer's Evidence On Salerno's Knowing Association Charge

#### A. The DeVecchio Affidavit

The chief submission of the Investigations Officer in proving his "knowing association" charge against Salerno was the Affidavit of FBI Special Agent R. Lindley DeVecchio ("DeVecchio"). Investigations Officer's Exhibit 1 ("Ex. IO-1"). DeVecchio's Affidavit was supplemented by his testimony on cross-examination. No direct examination was taken.

A review of DeVecchio's Affidavit reveals that he has been a special agent with the FBI for over 24 years. Ex. IO-1 at ¶1. He is currently assigned as a supervisory special agent in the FBI's New York office. Ibid. Since 1983, he has supervised a squad of special agents who conduct organized crime investigations of La Cosa Nostra members and associates. Ex. IO-1 at ¶1.

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<sup>7</sup>/ In the Investigations Officer's Post-Hearing Memorandum, at p.8, he contends that Salerno has asserted two additional defenses: (1) that Salerno is not bound by the Consent Decree because he was not a signatory to it; and (2) that the November 1, 1989, resolution of the IBT General Executive Board "interpreting" the IBT Constitution bars the charges against him. In his Post-Hearing Memorandum, at pp.6-7, Salerno claims that the Investigations Officer "misrepresents Respondent's position with regard to the Consent Order and the General Executive Board's Resolution . . . Mr. Salerno has never claimed not to be bound by the Consent Order." Given Mr. Salerno's statement, I need not address these defenses beyond noting that the Second Circuit Court of Appeals has ruled that the disciplinary provisions of the Consent Order are binding on non-signatories, and that same court has upheld my rejection of the November 1, 1989, Resolution's interpretation of the IBT Constitution. United States v. IBT, Docket Nos. 86-6248 etc., slip op. (2d Cir. June 1, 1990).

For 23 years of his career, DeVecchio has been involved in organized crime investigations in the FBI's New York office concerning La Cosa Nostra. Ex. IO-1 at ¶2. He has been involved in the investigation of "hundreds of criminal activities involving La Cosa Nostra members and associates during [his] career." Ex. IO-1 at ¶2. These investigations centered upon the five La Cosa Nostra families located in New York City, and also concerned other La Cosa Nostra families nationwide. Ex. IO-1 at ¶2. DeVecchio is familiar with the FBI's investigative techniques regarding La Cosa Nostra. Ex. IO-1 at ¶2.

In the past, DeVecchio has testified in criminal prosecutions involving La Cosa Nostra members and associates on "numerous occasions." Ex. IO-1 at ¶3. He has also been "qualified as an expert witness regarding organized crime and methods of its investigation." Ex. IO-1 at ¶3. DeVecchio holds a masters degree in criminal justice. Ex. IO-1 at ¶4.

Although Salerno challenged the factual assertions made by DeVecchio in his Affidavit, no challenge was made to DeVecchio's credentials. Thus, given DeVecchio's extensive background and experience, I accept him as an expert knowledgeable in investigation and structure of organized crime in New York.

**1. Proof Of The Organized Crime Connections Of Salerno's Alleged Associates**

As noted at the outset, the Investigations Officer alleges that Salerno has associated with six members of "organized crime, La Cosa Nostra . . . to wit: Anthony Salerno, Vincent Cafaro, John Tronolone, Giuseppe Sabato, Louis Gatto and Sammy Santora."

Anthony Salerno is Respondent Cirino Salerno's brother. Ex. IO-1 at ¶38. "Anthony Salerno was previously the Boss of the Genovese [organized crime] Family." Ex. IO-1 at ¶35. He "controlled the activities of the Genovese Family and conducted organized crime activities from two locations which he frequented in New York City, the Palma Boy Social Club located at 416 East 115th Street, New York, New York, and the Social Club at 2244 First Avenue, New York, New York." Ibid. "[T]hese premises which were frequented by Anthony Salerno were the subject of intensive investigation by the [FBI] during the early 1980's, which culminated in the installation of court-authorized electronic surveillance devices which intercepted conversations on these premises from December 1983 through February 1985." Ex. IO-1 at ¶36.

DeVecchio reports that:

As a result of the information obtained from intercepted conversations at the above premises and subsequent investigative activities which resulted therefrom, it was established at one prosecution in the United States District Court in the Southern District of New York that Anthony Salerno controlled the criminal enterprise identified as the Genovese Family, and in another prosecution in the same judicial district that Anthony Salerno represented the Genovese Family interests on what has been previously identified as the Commission [of La Cosa Nostra]. [Ex. IO-1 at ¶37.]

In support of this statement, DeVecchio referenced five exhibits, Exhibits A-E, which formed part of his Affidavit. Exhibit A is the indictment in the matter of United States of America v. Anthony Salerno, et al., SSS 85 Cr. 139 (RO). Exhibit B is Anthony Salerno's "Judgment and Probation/Commitment Order"

in that case. Salerno was sentenced to 100 years imprisonment and assessed substantial fines. Exhibit C is the January 31, 1989, Order of the United States Court of Appeals for the Second Circuit affirming Anthony Salerno's conviction. Exhibit D is the indictment in United States of America v. Salerno, et. al., SSS 86 Cr. 245 (MJL). Lastly, Exhibit E is Anthony Salerno's "Judgment And Probation/Commitment Order" in that case. In this matter, Salerno was sentenced to over 40 years in prison and assessed substantial fines.

Four additional exhibits support the finding that Anthony Salerno was indeed a member of La Cosa Nostra. Exhibits I and J to the DeVecchio Affidavit are, respectively, the transcript of "the testimony of Angelo Lonardo, an admitted former Underboss of the Cleveland Family of La Cosa Nostra and currently a federally protected witness, before the Permanent Subcommittee on Investigations of the United States Senate on April 15, 1988, and the transcript of a civil deposition of Lonardo taken on September 14, 1988." Ex. IO-1 at ¶41. In both, Lonardo identified Anthony Salerno as the Boss of the Genovese Organized Crime Family. Ex. IO-1 at ¶41.

Exhibit K to the DeVecchio Affidavit is a "transcript of the civil deposition of Aladena Fratianno, who is also known as 'Jimmy' Fratianno, taken on January 6, 1989." Ex. IO-1 at ¶42. "Fratianno is an admitted former Underboss and sometimes Acting Boss of the Los Angeles Family of La Cosa Nostra." Ex. IO-1 at ¶42. In his

deposition, Fratianno identified Anthony Salerno and his role in La Cosa Nostra. Ex. IO-1 at ¶42.

Lastly, in ¶43 of his Affidavit, DeVecchio referenced a chart (Exhibit L to the Affidavit) which was published by the Permanent Subcommittee. The "chart depicts some of the members of the five La Cosa Nostra Families which are located in New York City." Ex. IO-1 at ¶43. Anthony Salerno is listed on the chart as a member of the Genovese Family.

As for Cafaro, DeVecchio referenced two exhibits to his Affidavit, Exhibits F and G. Exhibit F is an affidavit of Cafaro executed April 8, 1988. This affidavit was submitted to the Permanent Subcommittee on Investigations of the United States Senate on April 29, 1988. Ex. IO-1 at ¶39. Exhibit G is a transcript of Cafaro's testimony before the Subcommittee. Ibid. In both his Affidavit and in his testimony, Cafaro admitted to being a "made" member of the Genovese Family since 1974.

In his Affidavit, Cafaro stated:

I also got union money from "Speed" or Charlie Salerno, who was connected to Local 272 of the Garage and Parking Attendants Union. Every month, Speed would bring \$1,000 to \$2,000 by the [Palma Boy Social] club for me and Fat Tony -- we would split it. Speed told me that these were "shakedown" funds -- funds kicked back to him by the dentist who got the union dental plan business. [Ex. IO-1F at pp.17-18.]

At another point in his Affidavit, Cafaro stated that in October 1986 the underboss of the Genovese Family, Sammy Santora, decided that Cirino Salerno would be used as a go-between to funnel

payments from Nicky Auletta<sup>9</sup> to Anthony Salerno. Ex. IO-1F at p.30. When he testified before the Senate Committee, Cafaro reiterated the facts set forth in his Affidavit and fielded related questions from the panel.

DeVecchio also referenced a signed statement given by Cafaro to another FBI Special Agent on January 21, 1987. Ex. IO-1 at ¶40. This statement is made part of the DeVecchio Affidavit as Exhibit H. In that statement, Cafaro identified Cirino Salerno as Anthony Salerno's brother. Cafaro also stated that IBT Local 272 "is ours -- it belongs to our brugard,"<sup>9</sup> and that a share of money extorted from the parking lot employers of Local 272 members was paid by Cirino Salerno to Cafaro or Anthony Salerno on a regular basis. In addition, Cafaro stated that "[i]n order to run a garage or parking lot in New York City, you have to make a deal with 'Speed.' I know this because 'Speed' told me so. I was also told this by 'Speed's' brother, 'Fat Tony.'" Cafaro then detailed the extent of Cirino Salerno's control over the parking lot industry in New

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<sup>9</sup>/ Auletta, the owner of a concrete construction business, knew Anthony Salerno through his [Auletta's] father-in-law who in the past had been involved in an illegal enterprise with Anthony Salerno. Auletta and Anthony Salerno became partners in the concrete construction business, with Auletta providing the clients and Anthony Salerno financing the operation with organized crime money and exercising influence and control over the construction unions. Ex. IO-1F at 21. Auletta and Anthony Salerno were involved in another project in 1986. Auletta sold a building to a third-party and it was decided that Auletta would remit a portion of his profit from the sale to Anthony Salerno through his brother Cirino Salerno. The payment to Anthony Salerno was in consideration of his efforts in helping Auletta in the concrete construction business. Ex. IO-1F at 29.

<sup>9</sup>/ Devecchio explained that the term "brugard" is synonymous with the term "family." IO-1 at ¶40.

York and his use of organized crime to maintain that control. Cafaro also stated that "'Speed' now answers to 'Sammy' Santora as the Underboss of our 'brugard.'"

The evidence of the organized crime ties of Tronolone, Gatto, Sabato and Santora is supported by DeVecchio's statement that these four men are members of organized crime. Ex. IO-1 at ¶45. In addition, Gatto is listed on the Permanent Subcommittee chart as a member of organized crime. Ex. IO-1L. In his Affidavit submitted to the Permanent Subcommittee, Cafaro identified Santora as the "underboss of our brugard." Ex. IO-1F at p.10. Additionally, Lonardo, in his testimony before the Permanent Subcommittee, identified Tronolone as the individual he had called to set up a meeting in New York with Anthony Salerno to discuss who would succeed Jackie Presser as the president of the IBT. Ex. IO-1I at p.90.

## 2. The Surveillance Tapes

DeVecchio has also stated that he has:

Reviewed records of the Federal Bureau of Investigation and determined that Cirino Salerno was present in the Palma Boy Social Club or the Social Club located at 2244 First Avenue on several occasions between December 1983 and February 1985, when those premises were the subject of court-authorized electronic surveillance. During some conversations on surveillance, Cirino Salerno discussed union business and associated with members of organized crime, including Anthony Salerno, Cafaro, John Tronolone, Louis Gatto, Giuseppe Sabato, and Sammy Santora, among others. From review of records, I am aware that the Federal Bureau of Investigation considers Tronolone to be a member of the Cleveland Family of La Cosa Nostra, and Anthony Salerno, Cafaro, Gatto, Sabato, and Santora to be members of the Genovese Family of La Cosa Nostra. Cafaro has identified Santora as a stand-in and an Underboss for Anthony Salerno who received proceeds from illicit payments from employers through Cirino Salerno

after the incarceration of Anthony Salerno. [Ex. IO-1 at ¶45.]

DeVecchio also has stated that he has:

Listened to tape recordings of conversations in which Cirino Salerno was a participant which were intercepted via court-authorized electronic surveillance conducted at the two social clubs frequented by Anthony Salerno which are described above, and read transcripts of those conversations which have been introduced as evidence and exhibits in trials of Anthony Salerno and others. (Exhibits P, Q, R, and S [to the DeVecchio Affidavit]).<sup>10</sup> The voices on these tapes were identified by the prosecution during those trials of Anthony Salerno and others. (Exhibits T, U, V, and W [to the DeVecchio Affidavit]). [Ex. IO-1 at ¶46.]

The first transcript referred to by DeVecchio (Ex. IO-1P) reflects portions of a conversation at the Palma Boy Social Club, on November 27, 1984, commencing at approximately 11:37 A.M. The transcript reflects Respondent Cirino Salerno, Anthony Salerno, and John Tronolone exchanging greetings and pleasantries. Ex. IO-1P at pp.1-3. After an exchange of pleasantries, Cirino Salerno is not heard from again and the conversation is dominated by Tronolone and Anthony Salerno. There is no indication as to whether he remained during the conversation. Although the transcript is sprinkled with many enigmatic references, it is clear that at certain points Anthony Salerno and Tronolone are discussing the IBT, its General Executive Board members, and its interests in Las Vegas.

The next transcript, Ex. IO-1Q, sets forth a November 28, 1984, conversation which occurred at the Palma Boy Social Club,

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<sup>10/</sup> The Investigations Officer also submitted the actual cassette tape recordings into evidence.

commencing at approximately 1:17 P.M. This transcript reveals Cirino Salerno speaking briefly with Anthony Salerno on two occasions, once at the very beginning of the transcript and once at the end of the transcript. The subject of the brief conversation is not noteworthy. The bulk of the transcript is devoted to a conversation between Anthony Salerno, Louis Gatto and Giuseppe Sabato. Reading the transcript, it is evident that the three men are discussing IBT business. Again, Cirino Salerno is not heard from during the central portion of this conversation.

Ex. IO-1R is a transcript of a conversation captured at the Palma Boy Social Club on December 4, 1984, commencing at approximately 1:29 P.M. Among those present were Anthony Salerno, Vincent Cafaro and Respondent Cirino Salerno. In this conversation, Cirino Salerno is discussing union matters with his brother and Cafaro. At one point, "Local 252" is mentioned, although there is no indication if this is an IBT local. During the conversation, Cirino Salerno is heard saying: "The opposition guy won't let the guy in . . . there's a sit down . . . No, he's got some union guys over there. Tony, we're just mixing the cake . . . Bobby Sasso got shot . . . The deal I got with him." Of particular note is the following exchange:

ANTHONY SALERNO: Does he know anything about unions?

CHARLES SALERNO: What is there to know. Like (UI) .  
. . . (Laughs)

CAFARO: You got the book, the by-laws. It's  
written in there . . . the by-laws.

CHARLES SALERNO: . . . At least . . . you know the  
constitution over there that's all.

CAFARO: They give you a book. Right Speed?  
And you read the by-laws.

CHARLES SALERNO: Yeah, now I don't have to know  
nothing. All I do is look at the  
book. That's all. What do you want  
to know you can't help people . . .  
You work there five, ten years, you  
know more than anybody.

CAFARO: If you're pretty smart, two years you  
learn the whole thing, inside out.

CHARLES SALERNO: Right . . . In ten years, think of  
all you'd to [sic] remember, I don't  
know.

(Whispering)

CAFARO: Hey, I told Bobby I said, "Bring it  
down here. What's this I said, (UI).  
That's a small percentage."

C. SALERNO: (UI)

ANTHONY SALERNO: That . . . This fucking Arties. He's  
got some (UI) . . . when I think  
about it I (UI) I gotta get  
information. 'Cause he's such a  
tight cocksucker, you know, that he'd  
(UI) . . . (UI) . . . (Laughter)

CHARLES SALERNO: Push him again (UI) . . . (UI) . . .  
. Just tell him you want to go today.

CAFARO: Yeah, he's gonna take me after the  
holidays. I said, "Look, if you  
don't take me after the holidays I'll  
come down there myself. I talk to  
the trucking company." "Jesus, I'll  
take you, don't worry." "Ah, you've  
been telling me this for six months  
now. But I'll go down with ya."

ANTHONY SALERNO: (UI) . . . I'm just afraid to see  
what the real figure is.

CAFARO: Oh, he must be planning something  
like with these guys. Hey listen,  
I'm gonna take somebody down. When  
he comes, you don't do this and

you'll do that and you . . . Know what I'm saying, Speed?

ANTHONY SALERNO: Eh, when he gets . . . caught up I'm gonna say I hear his trouble.

CAFARO: You see, he's gonna get caught . . .

CHARLES SALERNO: Well that thing I caught him at the end of it . . . . . twenty-four hundred and they're giving us eight, eight hundred. Seven fifty the last one.

Ex. IO-1S is a transcript of a conversation that took place at the Palma Boy Social Club on May 22, 1984, commencing at approximately 11:25 A.M. Present were Respondent Cirino Salerno, Anthony Salerno, and an individual identified as Louis DiNapoli. The transcript begins with Cirino Salerno and Louis DiNapoli exchanging pleasantries. "Salerno", apparently Anthony Salerno, and DiNapoli then have a short cryptic conversation. There is no indication whether Cirino Salerno is present during the conversation. Although the Investigations Officer in his Post-Hearing Memorandum states that "[i]n the late morning of May 22, 1984, Respondent Salerno was a witness to a conversation between two organized crime members," there is nothing before me to identify DiNapoli as an organized crime member.

The Investigations Officer submitted a transcript, Ex. IO-2, and the actual cassette tape recording, of an additional conversation which took place on February 10, 1984, at a social club at 2244 First Avenue, New York. The voices on the tape were identified by a witness for the Investigations Officer as Charles

Salerno, Vincent Cafaro and a Louis Moscatiello. May 14, 1990, Transcript 24-13 to 15.

My own reading of this transcript results in a similar, but less colorful interpretation than the one advanced by the Investigations Officer in his Post-Hearing Memorandum. Moscatiello, an officer of Local 530 of the Operative Plasterers and Cement Masons International Association (May 14, 1990, Transcript 25-22 to 26-8), was asking Cirino Salerno for help in getting the Teamsters involved so that Moscatiello could avoid the restrictions of an injunction entered in the United States District Court in the Eastern District of New York against Local 530. The injunction restrained Local 530 from exercising jurisdiction over sites that belonged to another Local. Ex. IO-3. It was Moscatiello's hope that if Local 530's work could be done under the Teamster's banner, the injunction would have no force. Moscatiello apparently looked to the Teamsters because he wanted to stay "with our own." Although Cafaro's involvement in the conversation was limited, he was clearly present during the exchange and interposed his own thoughts at times.

### **3. Salerno's Objection To The DeVecchio Affidavit**

At the May 14, 1990, hearing, Salerno's attorneys objected to the introduction of the DeVecchio Affidavit. The following argument was advanced at the hearing by Salerno's attorney:

MR. VICTOR: We generally object to the introduction of the Affidavit of Mr. DeVecchio. Most of the affidavit, if not all -- not all of it -- is based not on his own knowledge, but on hearsay imposed upon hearsay. I don't know how many times the hearsay is imposed; it is based upon a review of other documents,

and the statements of other people who, in turn, have based their information on other hearsay information. I know hearsay is admissible at a Administrative Hearing, but this is the rankest form of hearsay . . . .

We have the same objection to many of the other Exhibits, which go so far afield as to be totally irrelevant to the charges herein. It's hard to determine how much hearsay is imposed upon the Exhibits and Documents.

[May 14, 1990, Transcript 8-15 to 9-12.]

\* \* \*

MR. VICTOR: The witness usurps the function of the Court. He states that he reviewed the documents, all the documents which your Honor has admitted into evidence, and arrives at conclusions from the documents; conclusions which I would assume are the function of the Hearing Officer here today, not the witness.

He has, according to the Affidavit, no personal or special information with regard to Mr. Charles Salerno, nor to any information which is set forth herein. It's all based on a review of other documents. It's bolstering at its worst. The essence of this would be to have another witness read this Affidavit, and come forward and submit another affidavit stating what is a review of other document. And he is trying to bolster Mr. Carberry's proof by the Affidavit.  
[Id. at 18-4 to 22.]

In further support of this argument, the following brief cross-examination of DeVecchio transpired:

Q Mr. DeVecchio, is any information imparted [i]n this affidavit based on your own personal investigation, as opposed to other documents? I am referring to Paragraphs 38 through 50 -- I am sorry -- 38 through 46, all of which relate to Cirino Salerno.

A I am not trying to confuse the issue, but through my own personal investigation, or through my own personal knowledge?

Q Investigation.

A Investigation, sir.

Q You mention, for example, that Mr. Cirino Salerno is the brother of Anthony Salerno. How do you know that?

A From working Organized Crime for 23 years, I have gleaned that information from the records. I have not investigated him, personally. From information from the Bureau, from talks with other agents.

Q You have concluded that he is the brother of Anthony Salerno?

A Yes, I have.

Q All of the other paragraphs stated, 39 through 46 are based on your review of documents?

A Yes.

Q Essentially documents here in evidence?

A That is correct.

MR. VICTOR: I have no further evidence.

JUDGE LACEY: You drew a distinction between personal investigation, and personal knowledge.

THE WITNESS: I wanted to make sure that I understood. I personally participated in the investigation involving this. I have knowledge of Mr. Salerno's relationship with some of the facts here as a result of many years of investigation of organized crime; but I have not personally engaged in an investigation involving Mr. Charles Salerno.

JUDGE LACEY: Anything further?

CROSS-EXAMINATION OF MR. DEVECCHIO BY MR. VICTOR (continued):

Q All your information is gleaned from other documents, and other hearsay statements?

A Yes.

[Id. at 20-6 to 22-2.]

In this proceeding, I may, and do, accept relevant hearsay according it appropriate weight under the circumstances. In light of all of the evidence before me, I accept the averments within his Affidavit as credible, except as hereinafter noted. See infra at p.34.

**B. The Merits Of The "Knowing Association" Charge Against Salerno**

Salerno does not deny that the evidence before me paints an accurate picture of events. For example, he has not disputed that he was at the Palma Boy Social Club during the government surveillances. Instead, he argues, through his attorney, that:

If there had been any wrongdoing on the part of Mr. Salerno in any of those recorded conversations, he would have been charged with criminal offenses. Those tapes show that he was there with his brother, and some of his brother's friends. It has absolutely nothing to do with these proceedings.

[May 14, 1990, Transcript 14-19 to 25.]

Similarly, Salerno does not challenge the Investigations Officer's assertion that Anthony Salerno, Vincent Cafaro, John Tronolone, Giuseppe Sabato, Louis Gatto and Sammy Santora are members of organized crime.

Regarding Anthony Salerno, the proof of his organized crime involvement is detailed. First, DeVecchio identifies Anthony Salerno as the previous "Boss of the Genovese Family." Given DeVecchio's expertise in the field of investigation and knowledge of the structure of organized crime in New York, I accept this conclusion as reliable. Moreover, DeVecchio's conclusion regarding Anthony Salerno was corroborated by many sources. See the racketeering indictments and convictions of Anthony Salerno (Ex.

Ex. IO-1A-E); the Lonardo transcripts in which he identifies Anthony Salerno as the Boss of the Genovese Family (Ex. IO-1I-J); and the Fratianno transcript in which he identifies Anthony Salerno and refers to his role in La Cosa Nostra (Ex. IO-1K).

The evidence of Cafaro's organized crime membership is equally compelling. First, we have the DeVecchio statement that Salerno "was previously the Boss of the Genovese Family." Ex. IO-1 at ¶35. In addition, Cafaro, a participant in the Government witness protection program, has on two separate occasions averred that he was a "made" member of the Genovese Family. See Ex. IO-1F and G. Given the circumstances under which they were made, I find the Cafaro statements reliable on their face and accept them.

The organized crime ties of Tronolone, Gatto, Santora and Sabato are proved by several sources. See DeVecchio's Affidavit (Ex. IO-1 at ¶45); the Permanent Subcommittee chart (Ex. IO-1L); the Cafaro Affidavit (Ex. IO-1F at p.10); and the Lonardo testimony before the Senate Permanent Subcommittee (Ex. IO-1I at p.90). Given DeVecchio's expertise, the corroborating proof where it existed, and the fact that Respondent Salerno offered no proof to contradict the conclusions regarding those so named, I accept the evidence of their underworld ties.

The remaining issue is whether the Investigations Officer has sustained his burden of proving that Respondent Salerno "knowingly associated" with these notorious figures (Anthony Salerno, Cafaro, Tronolone, Gatto, Santora and Sabato).

In my July 12, 1990, decision, at pp.35-36, in the matter of Investigations Officer v. Senese, et al., I held that:

[I]n order for the Investigations Officer to sustain his burden of proving a prohibited association with organized crime members, he must show that the contacts in question are purposeful and not incidental or fleeting. Such contacts may be shown in either a business or social context . . . . In determining whether the Investigations Officer has sustained his burden of proving a prohibited association, the focus will be placed on the nature and not the number of contacts in question. [Citing, inter alia, Birzon v. King, 469 F.2d 1241 (2d Cir. 1972) and Arciniega v. Freeman, 404 U.S. 4 (1971).]

In addition, I held that "[i]n the absence of direct evidence of knowledge of the organized crime ties of an associate, I conclude that such knowledge may be inferred from the duration and quality of the association." Id. at p.37.

The proof of Respondent Salerno's associations takes two forms: (1) the testimony of Cafaro before the Permanent Subcommittee and his statement provided to the FBI; and (2) the Government surveillance tapes. As already noted, Cafaro, in his own sworn statement to the Permanent Subcommittee, intimated that Cirino Salerno would make monthly deliveries to Cafaro and Anthony Salerno at the Palma Boy Social Club of "shakedown" funds from the Respondent Salerno's local union dental plan. Ex. IO-1F at pp.17-18. Also offered were allegations that Cirino Salerno delivered to Anthony Salerno or Cafaro monies that were skimmed from union "sweetheart contracts." Ex. IO-1I at p.1. Since his brother's arrest and conviction, Cirino Salerno now makes his deliveries to Santora. Id. at p.2. Given the nature of the Cafaro statements

and the circumstances surrounding them, I accept them into evidence.

Cirino Salerno's repeated deliveries to organized crime figures of monies skimmed from union funds constitute purposeful associations sufficient to sustain the Investigations Officer's charges. Additionally, the evidence before me demonstrates that Salerno's associations were "knowing." Anthony Salerno is, after all, Respondent Cirino Salerno's brother and Cafaro and Santora are close associates of Anthony Salerno, with whom Respondent Salerno had numerous contacts. Under all of the circumstances, it may reasonably be concluded that Cirino Salerno knew of the organized crime ties of his brother, Cafaro and Santora at the time he made these deliveries to them.

As to the familial relationship between Cirino Salerno and Anthony Salerno, it is recognized that "certain kinds of highly personal relationships [are afforded] a substantial measure of sanctuary from unjustified interference. . . ." Roberto v. United States Jaycees, 468 U.S. 609, 618 (1984).<sup>11</sup> In certain circumstances, a meeting between two brothers would not be subject to criticism. In this case, however, as I have noted, Cirino

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<sup>11</sup>/ Roberto v. United States Jaycees involved a challenge to a governmental intrusion into an individual's right to freely associate. Such a challenge raises United States Constitutional First (and Fourteenth Amendment) concerns which are, of course, predicated on "governmental" or "state" action. Given that neither Salerno nor the Investigations Officer have raised United States Constitutional concerns, I need not reach such issues here. It should be noted, however, that in Investigations Officer v. Senese, et al., I rejected Respondents' First Amendment argument as meritless, without reaching the question of whether there existed "governmental" or "state" action.

Salerno's associations with his brother were not solely familial; and the blood relationship between Cirino and Anthony Salerno does nothing to mitigate the evidence before me.

While the evidence of Respondent's conveying money to Anthony Salerno, Cafaro, and Santora, standing alone, would establish the Investigations Officer's charge, I also have before me proof of Respondent Salerno's presence in two social clubs frequented by organized crime figures. Jimmy Fratianno testified in United States v. Anthony Salerno that Cirino Salerno visited the Palma Boy Social Club "at least once a week." Ex. IO-1 T at p.3695. Testimony by an FBI agent during that same trial corroborated the fact that Cirino Salerno "was a frequent visitor to both" the Palma Boy Social Club and the social club located at 2244 First Avenue, New York, New York. IO-1 V at p.5432. In addition, we have numerous surveillance tapes of the social clubs which capture Cirino Salerno's presence. Given these proofs, I find that Respondent Salerno frequently visited these two premises.

Most telling among the surveillance tapes is that reflecting the surveillance of the social club located at 2244 First Avenue, on February 10, 1984. The transcript reveals Cirino Salerno and Cafaro meeting with an official of another union, Moscatiello, to discuss union business. See p.20, supra. This contact with Cafaro was most certainly "purposeful" and was neither incidental nor fleeting. Moreover, given the setting of the meeting, and Respondent's past contacts and associations with Cafaro, I find that the Respondent Salerno knew of Cafaro's organized crime ties

at the time of this meeting. At the May 14, 1990, hearing, Respondent's counsel argued that the conversation with Moscatiello simply addressed the issue of "whether or not [one union would] cover certain workers." Thus, it was contended, this was not "a commission of acts which would, in effect, come under the position of bringing reproach to the Teamsters." May 14, 1990, Transcript 27-22 to 29-5.

In making this argument, counsel loses sight of the charge against Salerno. It is his client's very association with Cafaro on February 10, 1984, that is being challenged. The nature of the conversation between Salerno, Cafaro, and Moscatiello is of relevance in that it supports a finding that the meeting was indeed purposeful.

Significant too is the result of the surveillance of the Palma Boy Social Club on December 4, 1984. Ex. IO-1R. The transcript of that surveillance reveals Cirino Salerno discussing union business with Anthony Salerno and Cafaro. Again, it is clear that this meeting was indeed purposeful and, for the reasons already expressed, I find that Cirino Salerno was aware of Cafaro's and Anthony Salerno's organized crime ties during this meeting.

The weight to be accorded the remaining surveillance tapes, Exs. IO-1P, Q, and S, is less compelling. Cirino Salerno is only heard speaking briefly of non-substantive matters; and there is no indication of whether he remained in the room while Anthony Salerno discussed business with Tronolone, Gatto and Sabato. I do note, however, that Salerno's very presence in the Palma Boy Social Club,

considering those known to frequent the club, further supports my finding of Salerno's deliberate associations with organized crime members.

In sum, I find that the Investigations Officer has carried his burden of proving that there is just cause to find that Cirino Salerno "knowingly associat[ed] with members of organized crime, La Cosa Nostra, to wit: Anthony Salerno, Vincent Cafaro . . . and Sammy Santora." The evidence of Salerno's association with Tronolone, Sabato, and Gatto (the three surveillance tapes, Exs. IO-1P, Q and S) is less compelling, and standing on its own, perhaps would not support the Investigations Officer's charge. On the other hand, it is certainly consistent with the determination that Cirino Salerno knowingly associated with members of organized crime.

### **III. The Charge Regarding Salerno's 1979 New York State Indictment**

The second charge against Cirino Salerno rests on an allegation that he brought reproach upon the IBT by virtue of his conviction involving a specific prohibited financial interest and transaction, in violation of New York Labor Law §725, for receiving \$500 on September 15, 1978, and \$500 on December 14, 1978, from an employer of IBT Local 272 members. Salerno was an officer in Local 272 during the times above mentioned. Judgment of conviction and a sentence of one year probation was entered in July 10, 1979. Ex. IO-1M and N. The Investigations Officer and Respondent Salerno stipulated that articles about Salerno's conviction appeared in newspapers in and around New York City. It was also stipulated

that, since his conviction, Salerno was reelected to his union office in 1981, 1984 and 1987.

These stipulations are relevant in that Salerno argues that this second charge is barred by Article XIX, Section 3(d) of the IBT Constitution. Section 3(d) reads in pertinent part:

Charges against elective officers of the International Union or any subordinate body shall be limited only to those activities or actions occurring during their current term of office, and only those activities and actions occurring prior to their current term which were not then known generally by the membership of the International Union or the subordinate body in the case of an officer of a subordinate body.

In his post-hearing submission, Salerno argues that his:

[c]onviction was generally known to the membership prior to his present term of office and he was reelected after these facts were known.

[Salerno Post-Hearing Memorandum at p.5.]

Salerno supports this conclusion by relying on: (1) the newspaper coverage of Salerno's conviction; and (2) the fact that Salerno was barred from holding union office for a period of two years as a result of his conviction (Ex. IO-1 at ¶44).

The Investigations Officer, while acknowledging the press coverage and Salerno's two-year bar from office, argues that "Respondent Salerno has failed to prove that his criminal conduct was generally known to the members of Local 272 at any election after his conviction." Investigations Officer Post-Hearing Memorandum at p.7.

In an earlier disciplinary proceeding, I determined that two respondents could not avail themselves of the Section 3(d) defense even though they were elected to office following criminal

convictions. In that case, I found that since those respondents were vigorously challenging their convictions at the appellate level and continuing to deny the criminal charges, their "activities and actions" could not have been generally known to the union membership that elected them. Investigations Officer v. Friedman, et al., September 29, 1989, Opinion of the Independent Administrator, aff'd, United States v. IBT, 725 F.Supp. 162, 165 (S.D.N.Y. 1989), aff'd, Docket Nos. 89-6248, etc., slip op. (2d Cir. June 1, 1990). Similarly, in this case, a review of Salerno's judgment of conviction, Ex. IO-N, reveals that Salerno's conviction came after a trial, thus it is assumed that Salerno contested the charges against him and asserted his innocence at trial. There is nothing before me, however, to suggest that Salerno ever changed his position, that is, that he readily admitted his guilt.

Moreover, in my January 11, 1990, Opinion, at p.39, in the matter of Investigations Officer v. Friedman, et al.,<sup>12</sup> I held that the burden of establishing the Section 3(d) defense is on the respondent. In other words, the Investigations Officer need not prove that the charged activities were not known generally to the union membership; the respondent must, if he wishes to use the Section 3(d) shield, prove that the charged activities were known generally. In a March 13, 1990, Opinion, at p.26, Judge Edelstein affirmed that conclusion, stating:

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<sup>12/</sup> My January 11, 1990, Opinion in the Friedman and Hughes matter contained my final ruling and findings following the conclusion of the hearing and post-hearing submissions. My earlier September 29, 1989, Opinion resolved certain pre-hearing objections raised by Friedman and Hughes.

The relevant interpretation of §3(d) means that [respondents] would have to prove that the membership of [the] Local . . . has conclusive knowledge that the defendants were actually guilty of the conduct when they were reelected.

On June 1, 1990, the Second Circuit Court of Appeals affirmed Judge Edelstein's March 16, 1990, ruling. United States v. IBT, Docket Nos. 89-6248 etc., slip op. (2d Cir. June 1, 1990).

Salerno failed to carry his Section 3(d) burden here. Not a single witness or document was produced to support Salerno's argument that the membership of his Local generally knew of the activities underlying his conviction when they reelected him to office. The simple fact that Salerno's conviction was reported in the press and that he was barred from office for two years does not satisfy the Section 3(d) burden. No proof was offered as to what, if anything, the membership of Salerno's Local was told regarding the activities underlying his conviction and subsequent absence from office. Indeed, there was not even any evidence introduced on the extent to which the membership which reelected him recalled or even read the newspaper accounts in question.

Thus, I find that the Investigations Officer has established just cause to find Salerno culpable as charged with respect to his 1979 criminal conviction.

#### IV. The Investigations Officer's Evidence Against Cutolo

As noted at the outset, Cutolo is charged with both "knowingly associating with members of La Cosa Nostra, including Gregory Scarpa, Sr. and Gregory Scarpa, Jr.," as well as "being a member of La Cosa Nostra." Given that I find sufficient proof of Cutolo's

membership in organized crime, but insufficient evidence of any actual association with the Scarpas or others, the Investigations Officer's proofs will be discussed first in the context of the association allegations and second in the context of the membership charge.

As with Salerno, the Investigations Officer's chief evidence against Cutolo was the DeVecchio Affidavit. We are told by DeVecchio that Cutolo, "who is also known as Billy Fingers, is known by [DeVecchio] to have been the President of IBT Local 861. . . . According to the Federal Bureau of Investigation, Cutolo is known to be an extremely influential 'made' member of the Colombo [organized crime] Family. Information available to [DeVecchio] indicates that Cutolo knowingly associated with other 'made' members of La Cosa Nostra." Ex. IO-1 at ¶58. DeVecchio also cites to a "chart" attached to his Affidavit as Exhibit BB entitled "Colombo Hierarchy 1987." This chart identifies Cutolo as a "Capo" in the Colombo Organized Crime Family. Lastly, DeVecchio references a "chart listing members of the Colombo Family dated April 8, 1988, which was prepared by the Permanent Subcommittee on Investigations of the United States Senate, and identified Cutolo as a member of the Colombo Family." Ex. IO-1L.

Ex. IO-1GG is a signed statement of Michael John Fronzese, given to the FBI on May 1, 1990. In that statement, Fronzese admitted to being a member of the Colombo Organized Crime Family since 1975. This is consistent with Fronzese's testimony given during a 1988 federal criminal trial, in which he describes himself

as a member of the Colombo Family. Ex. IO-1HH at p.7. In addition, Fronzese identified Cutolo and others, including Gregory Scarpa, Sr. and Gregory Scarpa, Jr., as members of the Colombo Family.

While DeVecchio states that "[i]nformation available to [him] indicates that Cutolo knowingly associated with other 'made' members of La Cosa Nostra," he does not disclose what information he relied upon in making this statement, nor does he indicate whether the information in question is of a type relied upon by the FBI. Thus, I assign no weight to DeVecchio's averment. Even the Fronzese statement, Ex. IO-1GG, that Cutolo and the Scarpas are all members of the Colombo Family, does not advance the Investigations Officer's proofs in this regard. Fronzese never stated that Cutolo associated with the Scarpas.

I also accord no weight to the chart entitled "Colombo Hierarchy 1987," Ex. IO-1BB, since I am given no information as to the genesis of that chart. I do, however, accord some weight to the chart prepared by the Permanent Subcommittee on Investigations, Ex. IO-1L, given the nature of that chart.

Turning to the evidence as to Cutolo's membership in La Cosa Nostra, DeVecchio's statement that "[a]ccording to the Federal Bureau of Investigation, Cutolo is known to be an extremely influential member of the Colombo Family," does, on the other hand, warrant credence. I have accepted DeVecchio as an expert knowledgeable in the investigation and structure of organized crime in New York. See p.11, supra. It follows then that DeVecchio's

statement concerning the FBI's classification of Cutolo as an organized crime member is inherently reliable. This is in contrast to Devecchio's statement regarding Cutolo's association with "other made members of La Cosa Nostra." The source of Devecchio's knowledge underlying that statement is not disclosed. In addition, unlike the statement regarding Cutolo's association, the statement of Cutolo's membership is corroborated by both the Senate Permanent Subcommittee's chart identifying Cutolo as a member of the Colombo Family, and Fronzese's statement that Cutolo is a member of that same family. As noted, neither Cutolo nor his attorney appeared at the hearing to challenge this finding.

Thus, I conclude that the Investigations Officer has carried the burden of establishing just cause to find that Cutolo was and is a member of organized crime. While a determination of membership in organized crime logically leads to the inference that Cutolo "knowingly associated with members of La Cosa Nostra," even absent proof of such association, I need not reach that issue, given my finding of Cutolo's organized crime affiliation.

#### V. Penalties

Cirino Salerno's association with members of organized crime and Cutolo's membership in La Cosa Nostra are gross anomalies in a union dedicated to ridding its ranks of corrupt influences. Thus, I find that the only just penalty for Salerno and Cutolo is permanent debarment from the IBT.

As for the penalty to be imposed for the charge arising out of Salerno's criminal conviction, I find that given the serious

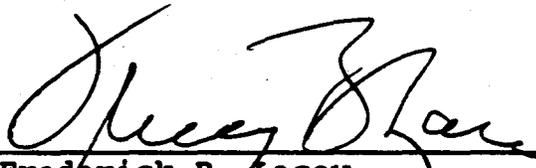
nature of that conviction, unlawful financial ties to an employer, permanent debarment from the IBT is also in order. Any mitigation of this penalty that may have been warranted, given the age of the conviction and the two-year bar from office already suffered, is lost when Salerno's conviction is judged against the backdrop of his underworld ties.

In accordance with the above determinations, Salerno and Cutolo are to permanently remove themselves from all of their IBT-affiliated union positions (including membership in their Local Unions and the International Brotherhood of Teamsters) and draw no money or compensation therefrom, or from any other IBT affiliated source.

While the present charges against Respondents Salerno and Cutolo warrant not only their removal from the IBT, but also termination of any and all benefits, it is clear that I lack the authority to terminate Respondents' pension payments. See, Guidry

v. Sheet Metal Workers, 107 L.Ed.2d 782, 110 S.Ct 680 (1990). The law is less clear as to the treatment to be accorded Salerno's and Cutolo's health and welfare benefits, I would also terminate these plans if I were not given pause by Paragraphs M.18 and O.20 of the March 14, 1989, Consent Order. If Judge Edelstein subsequently finds that these two provisions of the Consent Order do not prevent me from alienating Respondents' health and welfare plans, this opinion should be read to provide for the cessation of those benefits. This issue, among others, is currently before Judge Edelstein, by way of Application XII. That Application seeks review of my July 12, 1990, Opinion in Investigations Officer v. Senese, et al..

I will, however, stay the commencement of Salerno's and Cutolo's debarment until such time as Judge Edelstein has reviewed my findings and holdings, all of which I will immediately submit to him by way of Application XIII.

  
Frederick B. Lacey  
Independent Administrator

Dated: August 20, 1990