INVESTIGATIONS OFFICER	:	
v.	:	OPINION OF THE
HAROLD FRIEDMAN	:	
		INDEPENDENT ADMINISTRATOR
INVESTIGATIONS OFFICER	:	
v.	:	
ANTHONY HUGHES	:	

This matter is before me to hear and adjudicate charges filed by Charles M. Carberry, Investigations Officer. Hearings were conducted, evidence received and arguments heard on December 13, 1989, and January 4, 1990. The following Opinion constitutes my Findings of Fact and Conclusions of Law.

I. BACKGROUND

A. The Charges Against Messrs. Friedman and Hughes:

On July 26, 1989, charges (hereinafter sometimes referred to as "Charge I") were brought against Messrs. Friedman and Hughes (hereinafter sometimes referred to as "Respondents") pursuant to the power vested in the Investigations Officer by the March 14, 1989, Consent Order, para. F.12.(A), which had resolved a lawsuit brought by the United States against the International Brotherhood

of Teamsters, etc. (hereinafter "IBT"), and its leadership, including General President William McCarthy and other members of the IBT General Executive Board (hereinafter sometimes "GEB").

Mr. Friedman was charged with:

1. Violating Article II, Section 2(a) of the International Brotherhood of Teamsters Constitution, by conducting yourself in a manner to bring reproach upon the International Brotherhood of Teamsters, to wit: by embezzling funds from Bakery, Confectionery and Tobacco Workers International Union, Local 19, in 1981. This conduct was the basis for your conviction for embezzling union funds in violation of 29 U.S.C. §439 in the United States District Court for the Northern District of Ohio, 86 Cr. 114.

2. Violating Article II, Section 2(a) of the International Brotherhood of Teamsters Constitution, by conducting yourself in a manner to bring reproach upon the International Brotherhood of Teamsters, to wit: by conspiring to and conducting the affairs of an enterprise through a pattern of racketeering from 1978 through 1981 in violation of 18 U.S.C. §§1962(c) and (d).[1] This conduct formed the basis for your conviction on Counts I and II of Indictment, 86 Cr. 114, in the United States District Court for the Northern District of Ohio.

3. Violating Article II, Section 2(a) of the International Brotherhood of Teamsters Constitution, by conducting yourself in a manner to bring reproach upon the International Brotherhood of Teamsters, to wit: by filing a false form LM-2 with the Department of Labor for the Bakery, Confectionery and Tobacco

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[1] To the extent Charge 2 against Mr. Friedman relates to the alleged conspiracy, 18 U.S.C. §1962(d), it has been withdrawn by the Investigations Officer. See December 21, 1989, letter from the Investigations Officer to the Independent Administrator.

Workers International Union, Local 19, in 1982. This criminal conduct formed the basis of your conviction on Count VI of Indictment, 86 Cr. 114, in the United States District Court for the Northern District of Ohio.

Mr. Hughes was also charged with:

1. Violating Article II, Section 2(a) of the International Brotherhood of Teamsters Constitution, by conducting yourself in a manner to bring reproach upon the International Brotherhood of Teamsters, to wit: by embezzling funds from Bakery, Confectionery and Tobacco Workers International Union, Local 19 in 1981. This conduct was the basis for your conviction for embezzling Union funds in violation of 29 U.S.C. §439 in the United States District Court for the Northern District of Ohio, 86 Cr. 114.

2. Violating Article II, Section 2(a) of the International Brotherhood of Teamsters Constitution by conducting yourself in a manner to bring reproach upon the International Brotherhood of Teamsters, to wit: by conspiring to and conducting the affairs of an enterprise through a pattern of racketeering from 1978 to 1981 in violation of 18 U.S.C. §§1962(c) and (d). This conduct formed the basis for your conviction on Counts I and II of Indictment 86 Cr. 114, in the United States District Court for the Northern District of Ohio.

On September 20, 1989, the Investigations Officer filed another charge (hereinafter "Charge II") against Mr. Friedman, alleging an additional violation of Article II, Section 2(a) of the IBT Constitution.[2] Charge II alleges that Mr. Friedman conducted himself in a manner to bring reproach upon the IBT:

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[2] A hearing date for Charge II has not yet been set.

> [B]y knowingly associating with associates of La Cosa Nostra, from, at least, January 1, 1979, to the present, to wit: Milton "Maishe" Rockman and Carmine D'Angelo.

B. Pre-Hearing Proceedings:

The hearing on the first set of charges against Messrs. Friedman and Hughes was postponed several times to accommodate counsel and to permit pre-hearing resolution of legal issues raised by the Respondents, including the power of the Independent Administrator to hold hearings. In this connection, I invited memoranda from not only the parties to the proceedings but the United States and the IBT as well. Only the IBT, acting through its General Counsel, Mr. James T. Grady, declined the invitation to do so, stating that my "invitation to submit a memorandum is ludicrous and does a serious disservice to Mr. Friedman." My inquiry to Mr. Grady as to why my invitation represented "a serious disservice to Mr. Friedman" went unanswered.

On September 29, 1989, I issued an Opinion, a copy of which is attached hereto as Appendix A, concluding that, despite the objections raised by Respondents, I was authorized and directed to conduct a hearing on the charges under and pursuant to the Consent Order. I further ruled that, since the predicate for the first charges against the Respondents arose out of their federal convictions, they would be collaterally estopped from contesting the substance of the charges against them at their hearings. I did rule, however, that, under the circumstances, the most severe

penalty that could be levied on the Respondents as a result of the first set of charges was "suspension".

My rulings then were placed before United States District Judge David N. Edelstein (hereinafter sometimes "the Court") by my Application for review, as permitted by the Consent Order, and by Respondents' motion for restraints under Fed.R.Civ.P. 65 to bar me from hearing the charges. Following argument of counsel, in a Memorandum and Order, dated November 2, 1989, the Court denied the Rule 65 motions and affirmed my jurisdiction to conduct the hearings on the charges against the Respondents. A copy of this Memorandum and Order is attached hereto as Appendix B. The Court also ruled that Respondents were collaterally estopped from contesting the merits of the charges against them. Respondents have appealed the Court's November 2, 1989, ruling to the Court of Appeals for the Second Circuit. Their applications to Judge Edelstein and to the Court of Appeals for a stay of the hearings before me were denied.

Notwithstanding Judge Edelstein's decision, and the refusal of both Judge Edelstein and the Court of Appeals to stay the hearings on the charges against the Respondents, on December 1, 1989, IBT Local 507, of which Mr. Friedman is President, his wife is Secretary-Treasurer, and Mr. Hughes is Recording Secretary,[3]

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[3] In addition to serving as President of Local 507, Mr. Friedman is a member of the Policy Committee of the Central Conference of Teamsters, President of the Ohio Conference, President of Joint Council 41 and Administrator and Trustee of Joint (continued...)

filed suit in the United States District Court for the Northern District of Ohio, sitting in Cleveland, against the Investigations Officer and me as Independent Administrator, challenging our jurisdiction to bring or hear charges against Respondents. The lawsuit did not mention that Judge Edelstein, who has continuing jurisdiction over issues arising under the Consent Order, had already decided I had jurisdiction, that Respondents had appealed that ruling, and that Judge Edelstein had refused to halt the hearings. At the time the suit was filed the Court of Appeals had yet to rule on Respondent's stay application.

On December 6, 1989, the United States secured from Judge Edelstein a temporary restraining order against Local 507, barring it from pursuing the Ohio action; and the Investigations Officer and I filed a motion to have that case transferred from the Northern District of Ohio to the United States District Court for the Southern District of New York.

Meantime, on December 4, 1989, Mr. Friedman had also filed a motion before United States District Judge White, the judge who presided over Mr. Friedman's criminal trial and conviction in

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[3](...continued)
Council 41 Severance Plan. Mr. Friedman was also an IBT Vice President and a member of the International General Executive Board until June 1989, when he resigned his position pending an appeal of his 1989, criminal conviction in Federal Court in Cleveland. Mr. Friedman, as a defendant, signed the March 14, 1989, Consent Order and agreed to be bound by its terms.

In addition to serving as Recording Secretary of Local 507, Mr. Hughes is presently a Trustee of Ohio D.R.I.V.E. and an employee of Joint Council 41.

Cleveland, Ohio, seeking to prevent me from conducting the instant hearings. On December 11, 1989, the United States obtained an order from Judge Edelstein barring Mr. Friedman from pursuing that motion and directing that it be withdrawn. Pursuant to that order, Mr. Friedman withdrew his motion on December 12, 1989.

The United States also requested Judge Edelstein to hold Mr. Friedman in contempt for his alleged participation in the action filed by Local 507, as President and otherwise, and for filing the motion before Judge White. Mr. Friedman's contempt hearing was held before Judge Edelstein on December 15 and 20, 1989. That hearing was adjourned to afford Mr. Friedman the opportunity to have Local 507 withdraw its suit. On December 22, 1989, that suit was withdrawn. Judge Edelstein has not yet issued a decision on the merits of the United States' contempt application.

C. Other Proceedings:

A critical element in these proceedings is a certain Resolution passed by a unanimous vote of the IBT General Executive Board on November 1, 1989. A copy of this Resolution is annexed hereto as Appendix C. If I give it the effect Respondents urge, it would result in a dismissal of Charge I. The Investigations Officer, however, would have me reject it as nothing more than an effort by the GEB "to protect its own cronies . . .." See November 14, 1989, letter of the Investigations Officer. The action thus taken by the GEB while these charges (as well as numerous others

to be later described) have been pending, and reliance by the Respondents upon this action, has the result of not merely injecting the GEB into these proceedings but necessarily calls up for consideration other Union activity related to the Consent Order. Accordingly, it is appropriate that such be described at this juncture, prior to considering the Resolution itself.

1. Lawsuits Against the Court-Appointed Officers:

a. The Lawsuit Against the Election Officer, Michael H. Holland:

Under the Consent Order, Mr. Michael H. Holland, as Election Officer, was given the authority and responsibility to establish a democratic election process for nomination and election of IBT officers. The IBT leadership rejected his proposed program. I made an Application under the Consent Order seeking approval of that program by Judge Edelstein. On October 18, 1989, Judge Edelstein endorsed in every respect Mr. Holland's program and his right and responsibility to coordinate, in accordance with the Consent Order, the first secret rank and file election of the IBT's General Executive Board in the history of the IBT.

The IBT, presumably at the direction of its General President and the GEB, however, appealed Judge Edelstein's ruling.[4] That

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[4] Pursuant to Article VI, Section 1(b) of the IBT Constitution, the IBT General President is charged with the responsibility of generally supervising the affairs of the International Union, subject at all times to review and approval of the General Executive Board. Presently there are seventeen members of the General Executive Board: William J. McCarthy, General President; Weldon L. Mathis, General (continued...)

appeal was dismissed by the Court of Appeals for the Second Circuit on December 12, 1989.

Meantime, one member of the IBT GEB continued his resistance to the Holland proposals. Thus, on November 17, 1989, a lawsuit was filed against the Election Officer, Mr. Holland, in the United States District Court for the Northern District of Illinois, sitting in Chicago. The plaintiffs in that suit are five IBT Locals and their presidents or secretary-treasurers, namely: Local 301, Robert Barnes, its President; Local 705, Daniel C. Ligurotis,

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[4](...continued)
Secretary-Treasurer; Joseph Trerotola, First Vice President; Joseph W. Morgan, Second Vice President; Edward Lawson, Third Vice President; Arnie Weinmeister, Fourth Vice President; Walter Shea, Fifth Vice President; Jack W. Cox, Sixth Vice President; Dan L. West, Seventh Vice President; Michael J. Riley, Eighth Vice President; T. R. Cozza, Ninth Vice President; Daniel C. Ligurotis, Tenth Vice President; Francis W. Hackett, Eleventh Vice President; R. V. Durham, Twelfth Vice President; Mitchell Ledet, Thirteenth Vice President; George J. Vitale, Fourteenth Vice President; and Gairald F. Kiser, Fifteenth Vice President.

Out of these seventeen present members of the General Executive Board, nine, who were members of the General Executive Board at the time the March 14, 1989, Consent Order was entered into, signed that Order: McCarthy, Trerotola, Morgan, Weinmeister, Shea, Cox, Riley, Cozza and Ligurotis. Vice President Lawson, Vice President Mathis (now General Secretary-Treasurer) and Vice President West entered into separate Consent Judgments with the United States on March 13, 1989. In these Consent Judgments, these individuals endorsed the objective of preventing La Cosa Nostra corruption of any elements of the IBT. In addition, these individuals endorsed the adoption and agreed to propose, vote for and support new provisions for the IBT Constitution requiring secret ballot elections of the IBT's General President, General Secretary-Treasurer, Vice Presidents and Trustees and the establishment of an independent officer or committee to initiate and resolve disciplinary and trusteeship proceedings within the IBT.

its Secretary-Treasurer, and Donald Heim, its President; Local 726, C. S. Spranzo, its Secretary-Treasurer; Local 734, Robert N. Meidel, its President; and Local 781, Joseph Bernstein, its President. As noted earlier, Mr. Ligurotis, one of the original plaintiffs, was and is an IBT Vice President and sits on the IBT General Executive Board, was a defendant in the lawsuit brought by the United States against the IBT leadership, and signed the Consent Order and agreed to be bound by its terms. Mr. Ligurotis, in an effort to escape a contempt of court order, subsequently removed himself as a named plaintiff in the Illinois lawsuit.

This lawsuit, apparently designed to preserve the former IBT election process, challenges the authority of the Election Officer to implement the election mechanism provided in the Consent Order, despite the fact that Judge Edelstein has clearly established that authority in his October 18, 1989, ruling.

The United States, presumably recognizing that this lawsuit in Illinois, participated in and perhaps even spearheaded by Mr. Ligurotis, could impede the efforts of the Court-appointed officers to fulfill their responsibilities under the Consent Order, almost immediately obtained from Judge Edelstein a restraining order against the plaintiffs in that suit to prevent them from pursuing it. In addition, the Election Officer has filed a motion to have that case transferred from the Northern District of Illinois to the United States District Court for the Southern District of New York. This motion awaits Court decision.

Additionally, on December 12, 1989, Judge Edelstein, on the Justice Department's application, held Mr. Ligurotis in contempt of court for his participation in the filing of the Illinois lawsuit, in view of his having signed the Consent Order as a defendant and having promised not to impede or obstruct achievement of the goals of the Consent Order. Judge Edelstein ordered Mr. Ligurotis to: (1) cause the withdrawal of that lawsuit by December 21, 1989, or pay fines beginning at $125 per day on December 22, 1989, doubling daily up to $512,000; and (2) use his personal funds to pay $44,901 in legal fees and court costs incurred by the Court-appointed officers and the United States in resisting the Illinois lawsuit. Mr. Ligurotis has appealed Judge Edelstein's ruling to the Second Circuit Court of Appeals which has stayed the Order's effect until the appeal is decided.

b. <u>The New Jersey Lawsuit Against the Investigations Officer</u>:

On December 8, 1989, yet another action was filed outside the Southern District of New York, this time against the Investigations Officer. IBT Joint Council 73 and IBT Local 641 brought this lawsuit in the United States District Court for the District of New Jersey, in Newark, challenging Mr. Carberry's authority to request and examine their books and records.

Judge Edelstein signed a temporary restraining order on December 15, 1989, barring the action in New Jersey from proceeding; and on December 20, 1989, United States District Judge

Harold A. Ackerman in New Jersey adjourned the matter in light of Judge Edelstein's restraining order.

2. The December 15, 1989, Restraining Order:

Apparently in response to the Union-generated litigation, the United States, to avoid the need for the Court-appointed officers to respond to lawsuits filed all over the country, sought and obtained from Judge Edelstein on December 15, 1989, a temporary restraining order preventing all IBT Locals, Joint Councils, Area Conferences, and other entities affiliated with the IBT, from filing or taking any legal action, that may impede the Court-appointed officers, in any Court other than the United States District Court for the Southern District of New York; and Judge Edelstein has invited all the entities affected by this restraining order to submit legal memoranda to him on the subject of his power to exercise exclusive jurisdiction over all matters affecting the Consent Order. The matter is thus sub judice on the Government's application for permanent restraints.

Following Judge Edelstein's Order of December 15, 1989, it now appears that on December 21, 1989, IBT General President McCarthy issued a Memorandum to "All IBT Affiliates." A copy of this Memorandum is annexed hereto as Appendix D. In it Mr. McCarthy states that the United States has filed an order to show cause and obtained a temporary restraining order against all IBT affiliates "enjoining the filing or taking of any legal action

which impedes the appointed Court officers."[5] Mr. McCarthy further states that:

> You are advised that this order was issued without prior notice of any kind to the IBT or its attorneys.
>
> The IBT fully recognizes that local unions, joint councils and area conferences were not parties to the New York litigation and did not enter into or sign the Consent Order of March 14, 1989.
>
> The IBT strongly urges each of its affiliates to respond to the Court's show cause order before 5 p.m. on December 26, 1989, in order to preserve and protect their rights as autonomous labor organizations.

After then listing ten legal points for the IBT affiliates' attorneys to consider in fighting the order to show cause, Mr. McCarthy concludes by stating that "I urge that you fight this unprecedented and ill-advised attempt of the government to deprive you and your members of your legal and constitutional rights."

D. IBT Activity Compelling Applications to the Court:

Various steps the Court-appointed officers have taken to fulfill their sworn responsibilities under the Consent Order have been resisted by the IBT. This has led to several Applications. These will not be described in detail here. They are on file with the Court and, by this reference, are incorporated herein as if set forth in full.

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[5] The Memorandum is inaccurate. The restraints do not bar suit in the United States District Court for the Southern District of New York.

E. General Counsel James T. Grady's Monthly Reports to General President William J. McCarthy:

In his monthly comments in the IBT International Teamster magazine, made in the form of an attorney's report to his superior, Mr. McCarthy, Mr. Grady has repeatedly vilified the Court-appointed officers. See, for example, Application VI. Thus, he suggests a "lust for power" on their part. International Teamster, October issue, p. 24. Not atypical is the following (International Teamster, October issue, p. 25):

> Mr. Lacey regrets the controversies that he and his Court Officers [sic] troika have caused by constantly seeking to expand their "powers" under the Consent Order, to the detriment of the rights of our members. History teaches us that Calvin Coolidge became President because in 1919 he broke the Boston police officers' strike by using the rifles and bayonets of the National Guard. Former President Reagan, in 1981, crushed the air traffic controllers' strike by having strikers arrested and imprisoned, which subsequently led to his re-election. Rudy Guiliano [sic] filed this Civil RICO case as an obvious attempt to gain publicity for himself in support of his present run for Mayor of the City of New York. We can only hope that the Court Officers have no such similar ambitions, because I am confident that under your leadership, Mr. President, they will fail if that is their true intention.

The irony here is that the Court-appointed officers took an oath before the Court to accomplish the aims of the Consent Order, that is, addressing the organized crime/corruption issue and establishing democratic election procedures. As the defendants, including General President McCarthy and members of the GEB, acknowledged in the Consent Order, "there had been allegations, sworn testimony and judicial findings of past problems with La Cosa Nostra corruption of various elements of the IBT," and declared

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." The signatories to the Consent Order also agreed to abandon the old election procedures.

I now turn to the November 1, 1989, Resolution of the IBT GEB.

II. The November 1, 1989, Resolution:

The Consent Order requires that the IBT give advance notice with an agenda to the Investigations Officer and me of any meetings of the GEB. It failed to give that notice in connection with a special meeting of the General Executive Board held in Washington, D.C., on November 1, 1989.[6]

Had I been advised by the IBT of the matter that was to be addressed at the November 1, 1989, meeting, I would have been remiss had I failed to attend. At the request of at least one member of the General Executive Board, IBT Vice President Cozza, that body, with Mr. Cozza abstaining, passed a Resolution which

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[6] I had filed Application V with the Court, seeking sanctions against the IBT for failing to give me such notice. At the hearing on this Application, I withdrew my request for sanctions based upon a representation by Mr. Grady that the IBT would in the future furnish me in advance with an agenda of all GEB meetings so that I could decide whether or not to attend. A mechanism was also established by which the Court will review claims of attorney-client privilege by the IBT in connection with GEB meetings. Presently before the Court is the claim of attorney-client privilege by the IBT in connection with its refusal to reveal what was said and done at the November 1, 1989, meeting.

purported to review and interpret certain provisions of the IBT Constitution.[7] These provisions are precisely those involved not only in Charge I against Messrs. Friedman and Hughes and Charge II against Mr. Friedman; they are also involved in charges filed against Mr. Cozza and others (See Appendix E attached hereto for a list of other individuals charged as of this date and their current Union positions.)

As I have stated, Mr. Cozza's counsel contends his client abstained from voting on the Resolution. While the IBT has refused to reveal who did vote on the Resolution, General Counsel Grady disclosed to the Court that the voting was unanimous in favor of the Resolution. In any event, the interpretation given to the provisions in question were such that counsel for Messrs. Friedman and Hughes - as well as others charged - now contend that the charges against them must be dismissed.

A. The General Executive Board's Interpretation of Article II, Section 2(a) and Article XIX, Sections 6(b) of the IBT Constitution:

Several IBT officers and members, including Mr. Cozza and Respondents here, are charged with conducting themselves so as "to bring reproach upon" the IBT by "knowingly associating with associates of La Cosa Nostra". See, e.g., Charge II against Mr. Friedman at p.3, supra; and see Charge against Mr. Cozza, as follows:

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[7] See the November 27, 1989, Memorandum of Law, at p. 2, submitted by Mr. Pass on behalf of Mr. Cozza.

You are charged with:

> Violating Article II, Section 2(a) of the International Brotherhood of Teamsters Constitution, by conducting yourself in a manner to bring reproach upon the International Brotherhood of Teamsters, to wit: by your knowingly associating from, at least, January 1, 1970 to the present with members of Organized Crime Families of La Cosa Nostra including John S. LaRocca, Gabriel 'Kelly' Mannarino, Michael Genovese, Joseph 'JoJo' Pecora, Antonio Ripepi and Joseph Sica.

These charges implicate the following provisions of the IBT Constitution:

Article II, Section 2(a) of the IBT Constitution 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 . . . <u>to conduct himself or herself at all times in such a manner as not to bring reproach upon the Union</u>. [emphasis supplied]

Article XIX, Section 6(b) of the IBT Constitution provides:

> (b). 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). <u>Violation of oath of office</u> or of the oath of loyalty to the Local Union and the International Union. [emphasis supplied]
>
> (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.

The November 1, 1989, Resolution interprets these provisions as follows:

> 1. a. The expression "to bring reproach upon the Union" is so vague and indefinite that it does not sufficiently inform trade union members and officers of the specific conduct which it covers in the context of trade union principles and practice. Since such term offers no guidance for disciplinary action in situations where there is a basis for more specific charges, we hold that the term must be construed within the context of the more specific provisions of Article XIX, Section 6(b), Subsections 3-7, and should be so limited in its application.

This interpretation effectively precludes any "bring[ing] reproach" charges based upon subdivisions (1) and (2) of Article XIX, Section 6(b), dealing with charges based upon violations of provisions of the "Constitution, Local Union Bylaws," etc., and "violation of oath of office or of the oath of loyalty to the Local Union and the International Union." As will be demonstrated hereafter, it is these violations of the Constitution and the "oath

of office" provisions that are at the core of the "bring[ing] reproach" charges here.

In so interpreting the IBT Constitution, and eliminating consideration of Section 6(a)(1) and (2) as bases for "bring[ing] reproach" charges, the Resolution does violence to the plain language and intent of the IBT Constitution. Acting in a manner "to bring reproach upon" the Union is, by virtue of Article II, Section 2(a), read with Article XIX, Section 6(b)(1) and (2), a violation which subjects one to disciplinary charges. Thus, the Resolution's interpretations are rejected as unreasonable. The constitutional language is unambiguous and specific.

It is most revealing that even Mr. Friedman himself acknowledges that he:

> [H]as not contested Charge I on <u>that</u> basis [i.e., as violating the specificity requirements of the law]. While denying his guilt therein, he recognizes that Charge I does refer back to his conviction in <u>United States v. Friedman</u>. [Friedman November 18, 1989, Memorandum at p. 4. (emphasis in original)].

Thus, even Mr. Friedman recognizes that the first set of charges filed against him and Mr. Hughes meet the specificity requirements of the law, including Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter "the LMRDA") as codified in 29 U.S.C. §405(a)(5). There is nothing vague about those charges. The allegation of bringing reproach upon the Union is followed by specific "to wit" clauses which relate back to Friedman's and Hughes' federal convictions.

It appears from the Resolution and the accompanying IBT memoranda that the General Executive Board was quite concerned with the substance of Charge II against Mr. Friedman and the charges against Vice President and General Executive Board member Cozza, and the others who have been or may be similarly charged, i.e., the alleged knowing association "with associates of La Cosa Nostra."[8].

The Resolution provides that the term "to bring reproach upon the Union":

> [D]oes not, cover associations between union members or officers with other persons inside or outside the trade union movement based upon the reputation or reputed activities of such other persons, absent any proof of participation or association with such persons in unlawful, or anti-union activities which would constitute violation of Article XIX, Section 6(b), Subsections 3-7.

Initially, it should be noted that this interpretation flies in the face of the injunctive provisions of the Consent Order itself. As provided at Paragraph E.10, p. 6 of the Consent Order:

> Defendants . . . 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 . . . knowingly associating with any member or associate of the Columbo Organized Crime Family of La Cosa Nostra, the Genovese 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

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[8] It is recognized that my decision only addresses Charge I, since it was only on that charge that evidence was taken; however, given the nature of the Resolution and that Charge II against Mr. Friedman and the charges against Mr. Cozza and others involve "knowingly associating" with organized crime, I will devote a portion of this opinion to that aspect of the Resolution. Thus my analysis of all of the Resolution can be presented to the Court for its review.

> Organized Crime Family of La Cosa Nostra or any other criminal group . . ..

It is patently unreasonable for the GEB to contend that associating with elements of La Cosa Nostra does not "bring reproach upon the Union" under the Constitution, in light of this clear injunctive provision in the Consent Order signed by so many of its present members, and where the Union in question has publicly recognized and acknowledged that "there should be no criminal element or La Cosa Nostra corruption of any part of the IBT." Consent Order, fifth "Whereas" clause.[9] 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, International Teamster, April 1989. 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, that the IBT leadership has "affirm[ed] that their union should be free from the influence of organized crime."

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[9] As to what the charge means, and its specificity, the defendants, like Mr. Cozza and Mr. Friedman, and the other members of the General Executive Board, including General President McCarthy, having agreed to the aforesaid provisions of para. E.10, are hardly in a position now to claim that this lacks specificity. Moreover, the "bring[ing] reproach" language of the Constitution was in effect long before the entry of the Consent Order. By the admissions about organized crime and its pervasiveness, and the declarations about the necessity of ridding the IBT of its influence to the extent it should be present, the signatories clearly acknowledged that their "knowing association" with such elements under all the circumstances would "bring reproach" upon the IBT.

An interview with IBT's General Counsel, International Teamster, April 1989, at p. 6.

The violation of the IBT Constitution highlighted in Charge II against Mr. Friedman is not a technical prohibition untied to factual allegations. The charge, which is followed by a specific "to wit" clause, meets the requirements of the LMRDA. See Gordon v. Winpisinger, 581 F.Supp. 234, 240 (E.D.N.Y. 1984)("The 'unbecoming a member' offense set out in [the Constitution] is obviously a 'catchall' charge for activities which are not expressly proscribed in the Constitution, but which may warrant the imposition of union discipline, nonetheless").[10] This conclusion is even more appropriate here in light of the provisions of the Consent Order.[11]

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[10] Mr. Friedman in his Memorandum argues that Gordon makes clear that it is "the Union's prerogative" whether it wishes to discipline members under a "catchall" provision. He contends that, "Here, the IBT has chosen not to." Friedman November 18, 1989, Memorandum at p. 9. What Friedman ignores is that the IBT, in fact, has included such a "catchall" provision in its Constitution, and the GEB cannot now ignore the plain language of its own Constitution.

[11] In the Memorandum accompanying the General Executive Board's interpretation of the "reproach" language of Article II, Section 2(a), reference is made to the unreported cases of "Cunningham v. English" and "Schaus v. Ramey and Zembower." In response to my invitation, counsel for Respondents forwarded materials relating to these two matters to me for my review. It should be noted that General Counsel Grady also forwarded me a packet with these same materials. In its Memorandum the General Executive Board states that "it is apparent from the Cunningham v. English litigation that the draftsmen of the 1981 Constitution were attempting to comply with the new requirements of Section 101(a)(5) of the LMRDA." Whether or not this is an accurate observation is of no
(continued...)

In his submissions to me, Mr. Hughes argued that since the November 1, 1989, Resolution limits the "reproach" charges to situations constituting violations of only Article XIX, Section 6(b)(3-7), i.e., conduct which directly affects the IBT, the charges against Mr. Hughes have no bases as those charges concern "only" an embezzlement from a non-IBT body, Local 19 of the Bakery, Confectionery and Tobacco Workers International Union (hereinafter "Local 19"). November 20, 1989, letter from Mr. Krislov to the Independent Administrator at pp. 5-6. As I have rejected the GEB's interpretation of the Constitution as unsound, Mr. Hughes' reliance upon that interpretation must also be rejected. I conclude that Mr. Hughes' conviction based upon his embezzlement of Local 19's funds "brings reproach" upon the IBT--a Union that has recognized that "there should be no criminal element of La Cosa Nostra corruption of any part of the IBT." Consent Order, fifth Whereas clause. Mr. Hughes' suggestion that an individual such as himself, an officer of an IBT Local, convicted in connection with a scheme to embezzle the funds of a labor union other than the IBT, cannot be said to have brought reproach upon the IBT, is unpersuasive. Mr. Hughes' contention is rendered all the more unacceptable by the

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[11](...continued)
relevance, as I have concluded that the charges in question do not violate Section 101(a)(5) of the LMRDA. As noted, even Mr. Friedman recognizes that Charge I does not violate this provision. The Schaus matter is cited by the General Executive Board in support of the provision that it "has emphasized that provisions of the Constitution must be interpreted in accordance with applicable law." My ruling herein is consistent with such concerns.

testimony of both Mr. Friedman and Mr. Hughes at the hearing regarding the long history of the interrelationship between IBT Local 507 and Local 19.[12]

B. The General Executive Board's Interpretation of Article XIX, Section 3(d) of the IBT Constitution:

Article XIX, Section 3(d) provides in 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.

When Respondents initially challenged my jurisdiction to conduct the disciplinary hearings, they argued that, since the charges are not based upon "activities and action" which occurred during their current term of office, the specific IBT

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[12] Mr. Hughes also contends that even if the Consent Order grants the Independent Administrator the right to suspend a member or officer pending a criminal appeal, that right is qualified by Article XIX, Section 1(e) of the IBT Constitution, which provides that the General President may, upon the filing of disciplinary charges, against an officer, "immediately suspend such officer from office . . . until a decision has been rendered in the case", "if the same are of such magnitude and seriousness as to jeopardize the interests of the Local Union or International Union . . .." A plain reading of this provision makes clear that it is directed to suspensions prior to the completion of a disciplinary hearing and the rendering of a decision. As no one has suggested that Respondents be suspended prior to completion of their hearings and the rendering of my decision, Section 1(e) has no application.

constitutional limitation period pertaining to elected officers prevents such charges from being heard, unless it can be said that the "pre-term" activities underlying the charges were not "known generally" to the membership. Mr. Hughes indicated that he was re-elected to his current term of office as Recording Secretary of Teamsters Local 507 in late 1987. Mr. Friedman indicated that he was re-elected President of Local 507 in 1987. Respondents argued that the Indictment upon which they were convicted, and which the charges here essentially track, was filed in 1986; thus the allegations underlying the charges were "known generally" to the membership after that time. In my September 29, 1989, Opinion I found this argument unpersuasive, finding that Section 3(d) does not address allegations "known generally." The significance of this distinction was succinctly explained by the United States in its September 8, 1989, Memorandum, at p. 4. "It is difficult to imagine how Friedman and Hughes can credibly argue that their racketeering activity was 'generally known' by the union membership when the pair continue to deny that they committed those crimes."

As stated by Judge Edelstein in his November 2, 1989, decision where he sustained my rejection of Respondents' arguments on this point:

> . . . Section 3(d) precludes bringing disciplinary actions for activity generally known, not allegations. To this day, Friedman and Hughes vehemently deny their guilt and maintain innocence despite their convictions. Such actions indicate that their actions could not have been "known generally" at the time of their convictions.

Notwithstanding my earlier opinion and the fact that the matter was sub judice before Judge Edelstein, the General Executive Board, without waiting for the Court's decision, which was filed on November 2, 1989, one day later, decided to interpret Article XIX, Section 3(d). Its interpretation once again favored the parties charged, Messrs. Friedman and Hughes, and other IBT officers and members who are or may be subjects of such charges by the Investigations Officer.

The Resolution, without referring to my Opinion of September 29, provides that this portion of Article XIX, Section 3(d):

> [W]as or is intended to protect an elected officer from being required to defend himself while in office as to chargeable activities which were known generally to the membership at the time they elected him to office, regardless of whether the involved officer admitted or denied participation in such chargeable activities. If such chargeable activities continue during the current term of office, the provisions of this Article are then applicable and charges may be filed based upon that conduct. If found guilty of such prior conduct in a duly constituted court of law, the remedy will be as ordered by the court. To interpret such language otherwise would make it possible to set aside the will of the membership which elected such officer when it was known generally by the membership of such allegations.

This is the same interpretation of Section 3(d) urged by Messrs. Friedman and Hughes in their jurisdictional challenge. It mistakes "allegations" for "activities and actions." It is rejected as unreasonable and without basis, for the same reasons

previously set forth in my September 29, 1989, Opinion and by Judge Edelstein in his November 2, 1989, Memorandum and Order.

Thus, the GEB's interpretation will be accorded no weight and the Court's November 2, 1989, ruling on the issue will stand.[13]

As already discussed, the activity underlying the first set of charges against the Respondents (Charge I) is that activity which formed the basis of Respondents' criminal convictions in January, 1989. As to Mr. Friedman, the Investigations Officer originally filed three charges against him relating to his criminal convictions. See p.2, supra. Charges 1 and 3, respectively, of Charge I relate to Mr. Friedman's criminal convictions for union embezzlement as charged in Count IV of his Indictment, and filing false statements with the Department of Labor as charged in Count VI of his Indictment. Charge 2 is related to Mr. Friedman's convictions for violating RICO as charged in Count I of the Indictment and conspiracy to violate

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[13] The memorandum accompanying the General Executive Board's interpretation of Article XIX, Section 3(d) references a 1979 decision on "charges filed against then General President Frank E. Fitzsimmons by William R. Berryhill and Peter Vitrano." At my request, counsel for Respondents have forwarded me a copy of that decision. General Counsel Grady has also sent me a copy. The Memorandum states that "[o]n pages 4 and 6 of that lengthy decision, the General Executive Board confirmed that the intent of the constitutional provision was to prevent an official from being subjected to charges based upon conduct which occurred and was known prior to the current term of office." This conclusion is consistent with my September 29, 1989, Opinion and the Court's November 2, 1989, ruling with the emphasis being on conduct which was known prior to an officer's current term, as opposed to "allegations" which are "known generally."

RICO as charged in Count I of the Indictment and conspiracy to violate RICO as charged in Count II.[14]

As with Mr. Friedman, Charge 1 against Mr. Hughes relates to Mr. Hughes' conviction for union embezzlement as charged in Count IV of his Indictment, and like Mr. Friedman, Charge 2 is related to convictions for violating RICO as charged in Count I of the Indictment and for conspiracy to violate RICO as charged in Count II of the Indictment.

The relevant portions of the Indictment provided as follows:

> From on or about a date prior to January 1, 1972, more precisely to the Grand Jury unknown, and continuing thereafter to a date subsequent to December 31, 1981, more precisely to the Grand Jury unknown, in the Northern District of Ohio, Eastern Division, and elsewhere, JACKIE PRESSER,[15] HAROLD FRIEDMAN, and ANTHONY HUGHES, the Defendants herein, and Allen Friedman, Jack Nardi, and George Argie, named but not charged herein, being employed by and associated with the enterprise described above, the activities of which affected interstate commerce, willfully and knowingly did conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as defined by Title 18, United States Code, Sections 1961(1)(c) and 1961(5), involving multiple acts of embezzlement, stealing, abstraction, and conversion to their own use, and the use of another, funds of Local 507 and

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[14] As noted at p. 2, n. 1, supra, to the extent Charge 2 is based on Mr. Friedman's RICO conspiracy conviction, the Investigations Office has withdrawn that charge.

[15] Mr. Presser, who was the IBT General President at the time of the Indictment, was a co-defendant with Mr. Friedman and Mr. Hughes. Mr. Presser died following the filing of the Indictment.

Local 19, as chargeable, in violation of Title 29, United States Code, Section 501(c).
[Count I, paragraph 3 of the Indictment]

* * *

From on or about a date prior to January 1, 1972, more precisely to the Grand Jury unknown, and continuing thereafter a date subsequent to December 31, 1981, more precisely to the Grand Jury unknown, in the Northern District of Ohio, Eastern Division, JACKIE PRESSER, HAROLD FRIEDMAN, and ANTHONY HUGHES, the Defendants herein, and Allen Friedman, Jack Nardi, and George Argie, named as co-conspirators but not charged herein, and other persons both known and unknown to the Grand Jury, willfully and knowingly did combine, conspire, confederate, and agree together and with other persons both known and unknown to the Grand Jury to commit an offense against the United States, that is, to violate Title 18, United States Code, Section 1962(c).
[Count II, paragraph 2 of the Indictment]

* * *

From on or about May 16, 1981 through on or about December 31, 1981, the exact dates being to the Grand Jury unknown, in the Northern District of Ohio, Eastern Division, the Defendant, HAROLD FRIEDMAN, while an officer and employee, that is President of the Bakery, Confectionery and Tobacco Workers International Union, AFL-CIO, Local 19, a labor organization engaged in an industry affecting commerce as defined by Sections 402(i) and (j) of Title 29, United States Code, and the Defendant ANTHONY HUGHES unlawfully and willfully did embezzle, steal, abstract, and convert to the use of HAROLD FRIEDMAN and the use of another, that is ANTHONY HUGHES, the sum of $17,000, more or less, of the moneys and funds of Local 19.

All in violation of Title 29, United States Code, Section 501(c), and Title 18, United States Code, Section 2.
[Count IV of the Indictment]

* * *

On or about April 3, 1982, in the Northern District of Ohio, Eastern Division, HAROLD FRIEDMAN, the Defendant herein, as President of Local 19, did make and cause to be made a false statement and representation of a material fact knowing it to be false in a Form LM-2, in that in the Form LM-2 for Local 19 for the year ending December 31, 1981, HAROLD FRIEDMAN falsely reported and caused to be reported that Defendant ANTHONY HUGHES had received "salary" of $26,000 as an "employee" and "business agent" of Local 19, at a time when HAROLD FRIEDMAN knew that ANTHONY HUGHES was not performing the services and duties of a "business agent" of Local 19 and, therefore, was not, as the Defendant HAROLD FRIEDMAN falsely reported, an "employee" and "business agent" who had received a "salary" of $26,000 from Local 19.

All in violation of Title 29, United States Code, Sections 439(b) and (d), and Title 18, United States Code, Section 2.
[Count VI of the Indictment]

The proffers made by Respondents at the hearings support the finding that while the allegations of criminal wrongdoing may have been "known generally", their criminal "activities and actions"[16] were not "known generally" at the time of their re-election to office. Mr. Friedman's first proffer of witness testimony, which was marked Ex. F-1,[17] consists of thirty-three separate testimonials going towards Mr. Friedman's general reputation of

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[16] The essence of the charges against both Respondents was that they placed "ghost employees" on the union payroll, or conspired to do so, and, in Hughes' case, drew compensation from the union that was inappropriate for the services performed.

[17] At the December 13, 1989, hearing Mr. Hughes' attorney indicated that he "would like to join in the proffer" of Mr. Friedman. See December 13, 1989, Transcript at p. 32 l.18-25

honesty and diligence in his work. In fact some of those testimonials expressly proclaim Mr. Friedman's innocence. For example, the proffer of a Robert Duvin provides as follows:

> Mr. Duvin is a principal in the law firm of Duvin, Cahn and Barnard. Mr. Duvin would testify that Mr. Friedman is over zealous in his support of his employees, and that he would never take anything of value from the Union nor would he ever allow anyone to be compensated for work which was not performed. Mr. Duvin indicated that Friedman worked harder and longer hours than any Union agent he has ever known. Mr. Duvin would testify that his observations of Mr. Friedman and Jackie Presser were that the two lived in separate worlds. He would further testify that Mr. Friedman had no control over Jackie Presser's people, that they each had two separate staffs and that Jackie Presser was clearly the boss.

Mr. Friedman also proffered a list of witnesses and the transcripts of their testimony at the criminal trial. According to Mr. Friedman's attorney, these witnesses would have been called to testify as to the lack of merit of the criminal charges. See Transcript of December 13, 1989, hearing at p.33, lines 2-8. See also Friedman proffer, Ex. F-2.

Mr. Friedman also proffered the testimony of shop stewards for IBT Local 507. See Ex. F-3. According to this proffer these individuals would have testified:

> That prior to the reelection of Mr. Friedman as president of Local 507 in December, 1987 and Mr. Hughes as Recording Secretary of Local 507 in December of 1987, it was generally known among the members of Local 507 that Mr. Friedman and Mr. Hughes had been indicted for actions and activities involving an alleged "ghost payroll scheme", involving Messrs. Argie and Hughes... Despite the common knowledge of the members of Local 507 about the indictments, and the actions and activities attributed to Mr. Friedman and Mr. Hughes in both the print and television media, and in the indictment as

> filed with the Court, Messrs. Friedman and Hughes were reelected to their positions with the Union. [emphasis supplied]

Once again this proffer only touches upon the fact that the allegations were "known generally." It does not support a finding that the actual criminal activities of Friedman and Hughes were "known generally."

Still further, at the December 13, 1989, hearing, Mr. Friedman's attorney referenced "the literally thousands of letters that were sent by the union members, which are court exhibits, in Judge White's court, which have been retained in Cleveland [that] go to a clear realization as to what the actions and activities were that were charged." Transcript of December 13, 1989, hearing at p.23, line 7 to p.24, line 4. Although I have not directed that those letters be physically delivered to me, they have been discussed and referenced in the record. Again, these letters go to the general knowledge of the charges against Messrs. Friedman and Hughes; they do not establish that the fact that Respondents broke the law was known generally prior to their reelection. In fact, it would be incredible to think that Friedman and Hughes would offer any statement to Judge White which would establish knowledge of their criminal wrongdoing, in light of their continued steadfast proclamation of innocence.

III. THE AUTHORITY OF THE INDEPENDENT ADMINISTRATOR TO INTERPRET THE IBT CONSTITUTION AND REVIEW THE RESOLUTION:

It has been argued by the Respondents that I am bound by the General Executive Board's interpretation of the IBT Constitution and that I lack the power as Independent Administrator to interpret the Constitution. I disagree with both contentions.

As I have indicated, I do not regard as binding upon me an interpretation of the IBT Constitution that is contrary to the plain language meaning, or the meaning readily inferred from its language in the light of all the circumstances. Beyond that, as Independent Administrator, I have been granted by the Consent Order the power to make my own interpretation of the Constitution.

The Consent Order specifically provides that, in relation to my disciplinary powers, I "shall have the same rights and powers as the IBT's General President and/or General Executive Board under the IBT's constitution . . .." Consent Order, para. F.12.(A), at p. 7. Article VI, Section 2(a) of the IBT Constitution provides:

> The General President shall have authority to interpret the Constitution . . . of the International Union . . ..

Article IX, Section 1 of the IBT constitution provides:

> The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union . . ..

Reading these two provisions in conjunction with the power vested in me by virtue of para. F.12.(A), it is clear that I have the "authority to interpret and apply the Constitution and laws of the

International Union . . ." in exercising my role in hearing charges brought by the Investigations Officer.

Moreover, the Consent Order grants me the right to "review" and to "affirm, modify or reverse" decisions of the GEB "on disciplinary charges." Consent Order, Para. F.12.(A) at p. 9. In this regard, any decision by me "shall be final and binding, subject to the Court's review as provided herein." Consent Order, Para. F.12.(A) at pp. 9-10. It is clear that the Resolution is a decision of the GEB "on disciplinary charges." The GEB itself acknowledges that the Resolution was adopted in response to "charges" which have "been filed by the Investigations Officer against certain members of the International Brotherhood of Teamsters." See Resolution, third "Whereas" clause. The GEB further states that it had been "requested to interpret" the IBT constitution "in connection with charges filed by the Investigations Officer."

An examination of these powers granted to me by the Consent Order leads to the conclusion that I have the right to interpret the IBT Constitution as related to disciplinary matters. As I perceive it, I also have the right to "modify or reverse" any decision of the GEB on "disciplinary charges," which right must include, if the goals sought to be achieved under the Consent Order are to be realized, the right to override constitutional interpretations of the GEB when those interpretations relate to

disciplinary charges. Of course, any such decision is subject to the review of the Court.

IV. THE MOTIVATION OF THE GENERAL EXECUTIVE BOARD IN ADOPTING THE RESOLUTION:

The Investigations Officer would have me consider the motives of the GEB in adopting the Resolution. Thus he contends that:

> The manner in which the resolution was passed by the board, and the IBT's defense of its actions at the November 13, 1989, hearing before Judge Edelstein, demonstrate beyond question that the board's sole purpose here was to protect its own cronies from the charges. [November 14, 1989, letter of the Investigations Officer at p. 3]

The Investigations Officer also points out that Mr. Grady revealed at the November 13, 1989, hearing before Judge Edelstein that the Resolution was passed by the General Executive Board because, "[t]hey had requests certainly from these people who are receiving these charges . . .." Transcript of November 13, 1989, hearing at p. 25, lines 16-17. The Investigations Officer then urges that, "it is plain that the . . . [GEB] intended to act, under the guise of interpreting the constitution, simply to further its litigation interests and undermine the Consent Order." November 21, 1989, letter of the Investigations Officer at p. 5 (hereinafter "November 21, 1989, letter").

In support of this conclusion, the Investigations Officer notes that, despite Mr. Grady's assertions at the November 13th hearing, the GEB had never had a previous occasion to interpret the "reproach" language before, and that despite a similar assertion

in the IBT's memorandum which accompanied the Resolution, it is undenied that in August 1988, the current General President, Mr. McCarthy, brought charges against the then Seventh International Vice President Maurice R. Schurr arising out of his felony convictions in 1984, for conspiracy and receiving illegal labor payments. November 21, 1989, letter at p. 5. In addition, according to the Investigations Officer, Mr. Schurr was separately charged with (1) "violation of Article II, Section 2(a), of the International Constitution, including but not limited to conducting yourself in such a manner as to bring reproach to the International Union"; and (2) "violation of your oath of loyalty to this Union." November 21, 1989, letter at pp. 5-6, quoting letter dated August 18, 1988, from IBT General President William J. McCarthy to Maurice R. Schurr. In his opening statement at Schurr's trial before the GEB, General President McCarthy said:

> Our Constitution provides, among other things, that a member and officer will faithfully perform all duties assigned to him and that he will conduct himself at all times in such a manner as not to bring reproach upon the Union. Brother Schurr's conviction demonstrates, beyond doubt, that he has failed to comply with our Constitution. [Opening statement submitted by General President McCarthy, October 17, 1988, attached to November 21, 1989, letter.]

As observed by the Investigations Officer:

> As McCarthy's statement demonstrates, the General Executive Board in 1988 [which consisted of virtually the same members who sit today and passed the resolution] had no apparent difficulty with the meaning of the term "reproach" when it preferred charges under Article II, Section 2(a), against Schurr.

> Certainly, there is nothing in the record of the Schurr proceeding to indicate that the board found the term too vague to be the basis of a disciplinary charge. That is because the interpretation must be made in light of the conduct charged. [November 21, 1989, letter of the Investigations Officer at p. 6]

It cannot be said that the Investigations Officer's suspicions concerning the motives of the GEB in adopting the Resolution are frivolous. The Investigations Officer announced at the hearing on January 4, 1990, that he intended to take depositions of the GEB members to inquire into the passage of the Resolution, if the Court rejects the IBT claim of privilege. These depositions, if taken, may enhance or may diminish his suspicions. However, given my disposition of the issues, based upon my reading of the Resolution, the IBT Constitution, and the Consent Order, I need not reach the question of the GEB's motivation. In my letter of January 2, 1990, I had advised counsel that I would receive testimony or an affidavit from General President McCarthy and "would welcome" testimony from Mr. McCarthy "and any other members of the General Executive Board in view of the arguments made by Mr. Carberry that go to the motives of those voting for the Resolution." While Respondents presented an affidavit from Mr. McCarthy at the hearing and asked that they be permitted to call the members of the GEB, having decided that I will not reach the issue of the GEB's motives in passage of the Resolution, I see no point in keeping the record open for testimony from the GEB members. Parenthetically, as I have earlier indicated, the GEB members in any event are presently

invoking the attorney-client privilege as to any communications at the meeting of November 1, 1989, at which the Resolution was passed.[18]

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[18] At the January 4, 1990, hearing Mr. Friedman submitted an affidavit of General President McCarthy, dated December 29, 1989, Ex. F-5, which briefly discussed the Schurr charges. In his affidavit, at para. 5, General President McCarthy stated that Schurr's conduct "constituted a breach of Schurr's oath of loyalty to the IBT, and certainly brought reproach on the IBT under Article II, Section 2(a) of the IBT Constitution." General President McCarthy also emphasizes that the Schurr charges were brought after Schurr's conviction "had been duly affirmed by the United States Court of Appeals for the Third Circuit." [emphasis in original]. If the McCarthy affidavit adds anything to the consideration of the issues before me, it simply affirms that the General President has had prior occasion to interpret and apply the "bring reproach" disciplinary prohibition of the IBT Constitution in much the same fashion as it is being applied in this case. That the Schurr charges were not brought until after the Court of Appeals affirmed Schurr's conviction is of no moment. At the time the Schurr charges were brought, Article XIX, Section 6(a) of the IBT Constitution was in full force and effect. That section provides that, "No member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial until his final court appeal has been concluded." Faced with such a provision, it would not have served any purpose to file charges against Schurr until the completion of his criminal appeal. The Consent Order at para. D.6., however, amends Section 6(a) by permitting the suspension of "a member or officer facing criminal or civil trial while the charges are pending." Thus, as I ruled in my September 29, 1989, opinion and as Judge Edelstein affirmed in his November 2, 1989, ruling, given this amendment, one may hold disciplinary hearings on charges involving the same set of facts as a criminal conviction presently on appeal. Certainly, there can be no power to impose a suspension other than after a respondent has been found guilty after a hearing on those charges. Absent this amendment, the GEB would have been unable to bring charges against Mr. Schurr until after he exhausted his appellate remedies.

V. MY DECISION ON THE CHARGES:

A. The Section 3(d) Defense:

Given my ruling of September 29, 1989, and that of Judge Edelstein on November 2, 1989, that the Respondents were, by virtue of their convictions, bound by the collateral estoppel doctrine, there was only one argument and one defense available to the Respondents at the hearing. This was that the criminal "activities and actions" charged in the Indictment, and of which they were found guilty, were "known generally" to the union membership before the Respondents were elected to their present posts. See IBT Constitution, Article XIX, Section 3(d).

The charge of the Investigations Officer did not allege that the charged activities were not known generally. If such were required, the ensuing exchange of correspondence and briefing effectively modified the charge to make clear the position of the Investigations Officer. The Respondents argue that the burden to prove the negative is upon the Investigations Officer. Again, if this were the case, and I find that under the peculiar circumstances of this proceeding it is not, that burden was met by evidence that throughout the trial - and even now, at the hearing - the Respondents deny that they unlawfully placed "ghost employees" on the Union payroll. Their pleas of not guilty were, it may be assumed, accepted by the membership that thereafter elected them.

As I have noted, counsel for Mr. Friedman stated that there were thousands of letters extolling Friedman, letters I assume went to United States District Judge White in connection with the sentencing. See p.p. 31-32, supra. Common sense tells us that these letters do not reflect that the writers knew of the criminal activity of Friedman and Hughes. How could they, prior to the trial, when the Respondents' position was that they were not guilty of the charges. As elsewhere indicated, I am accepting these letters, on counsel's representation, on the penalty issue. On the issue of Section 3(d), however, they have no meaning. As of this date I have received no evidence that goes to the issue raised by Section 3(d). However, if among the thousands of letters referred to, any meet the 3(d) requirement, I will accept them up to the close of the business day on January 19, 1990. This extension applies both to Mr. Friedman and Mr. Hughes. Meantime, this decision will be filed. If such evidence is forthcoming, I will reopen these proceedings. I caution counsel that I do not expect or wish to be inundated with additional testimonials which speak of Respondents' general reputation. If, however, letters exist which establish that individuals knew Respondents had actually broken the law, but yet still voted for them, such letters will be received and considered.

Mention must be made of a letter of January 4, 1990, from Mr. Friedman's counsel, which in pertinent part reads as follows:

> The record should also be clear that had you not initially ruled against Harold Friedman on

> the issue concerning Article XIX, §3(d) of the IBT Constitution he would have presented many witnesses relating to his reelection, and the fact that members of the Local Union knew of the activities alleged in the Indictment.

I do not understand counsel's position. Indeed, it borders on the frivolous. My ruling (and Opinion) of September 29, 1989, was made on the basis of the charge, and prior to the hearing. My Opinion of September 29, 1989, and Judge Edelstein's ruling of November 2, 1989, left the path clear for counsel to produce at the hearing any evidence pointing to what I held was required to meet Section 3(d)'s prescription as I interpreted it. I do not accept that counsel did not understand this. Moreover, when I inquired of him at the January 4, 1990, hearing whether the referenced letters included any whose authors said they knew that Mr. Friedman had committed the criminal activity charged, he said he did not know. I must reject the position that is now tendered in counsel's letter.

B. My Finding of Just Cause:

The Consent Order provides at para. F.12.(A) at p. 9 that I shall decide disciplinary cases using a "just cause" standard. As the Consent Order also provides that disciplinary hearings shall be conducted under the rules and procedures generally applicable to labor arbitration hearings, id., the burden of proof to

establish "just cause" at these hearings has been placed on the Investigations Officer.[19]

In light of the evidence, and arguments of counsel, I conclude that there is just cause for finding that the elements of Charge I against Messrs. Friedman and Hughes have been established, and I so find.

C. The Issue of the Alleged FBI Authorization:

At the December 13, 1989, hearing the Respondents once again argued the collateral estoppel issue. Mr. Friedman's counsel announced that he wished to call Mr. Hughes as a witness to show that the alleged "ghost employee" placement, which formed the basis of his convictions, was done at the direction of the FBI. He had

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[19] At the December 13, 1989, hearing proffers were first made by attorneys for Friedman and Hughes, after which time the Investigations Officer's evidence was received. See Investigations Officer's Exhibit 1 which includes as to Mr. Hughes, copies of the following: Charge I against Mr. Hughes (Exhibit A); Indictment in criminal case No. CR86-114 (Exhibit B); Judgment in criminal case No. CR86-114 as to Mr. Hughes (Exhibit C); Jury verdict sheet as to Mr. Hughes (Exhibit D); July Instruction of Judge White (Exhibit E); and Opening Statement of General President McCarthy in the matter of Trial of Maurice R. Schurr (Exhibit F). As to Mr. Friedman, the Investigations Officer's Exhibit 1 includes copies of Charge 1 against Mr. Friedman (Exhibit A); Indictment in criminal case No. CR86-114 (Exhibit B); Judgment in criminal case No. CR86-114 as to Mr. Friedman (Exhibit C); Jury verdict sheet as to Mr. Friedman (Exhibit D); Jury Instructions of Judge White (Exhibit E); and Opening Statement of General President McCarthy in the Matter of Trial of Maurice R. Schurr (Exhibit F). It should be noted that the Investigations Officer's evidence was forwarded to counsel prior to the commencement of the disciplinary hearings. The order of proof as taken at the hearings does not impact upon or lessen in any way the Investigations Officer's burden.

not, he said, had a full and fair opportunity to prove such "authorization" at the trial because Mr. Hughes had decided not to testify. Thus, he claimed, he should not be barred on collateral estoppel grounds from offering such evidence through Mr. Hughes in this proceeding.

I called for briefing on the matter and, after receipt of memoranda from counsel, wrote them on January 2, 1990, in pertinent part as follows:

> At the December 13 hearing, counsel for Messrs. Friedman and Hughes contended that they should be permitted to call Mr. Hughes as a witness to adduce testimony of FBI authorization of, or direction to, Mr. Hughes to commit the unlawful acts that formed the bases for the criminal convictions of both Messrs. Friedman and Hughes and which in turn formed the bases for the charges before me.
>
> This contention is simply a reiteration, although in more specific form, of the arguments previously asserted by counsel for Messrs. Friedman and Hughes, namely, that they be allowed to relitigate the issues that were resolved against them in their trial in the United States District Court for the Northern District of Ohio. Consequently, I adhere to my views as expressed in my Opinion of September 29, 1989, and hold that collateral estoppel applies. Thus the tendered testimony of Mr. Hughes (and any FBI agents) will not be received except to the extent that it is offered by Mr. Hughes "in mitigation" as suggested by counsel.

At the January 4, 1990, hearing before me, Mr. Hughes testified that, in his presence, Mr. Presser told Mr. Friedman to hire George Argie (allegedly one of the "ghost employees") because the government or the FBI wanted it done. Mr. Friedman was asked

about this conversation but could not with any certainty recall that it took place. I regret that I must reject this portion of Mr. Hughes' testimony as unworthy of belief, based upon my observation of his demeanor and the objective circumstances. Similarly, Mr. Friedman's testimony on the subject, to the extent it can be said he was asserting such a conversation took place, is also rejected for the same reasons.

Accordingly, at the January 4, 1990, hearing Respondents also offered three sworn statements from FBI agents Robert S. Friedrick, Patrick J. Foran and Martin P. McCann, Jr. See Exs. H-2, H-3 and H-4, respectively. Each statement is dated June 20, 1985, and was made to "Unit Chief Jim E. Moody and Supervisory Special Agent Edward J. Ball." The statements also indicate that present during the giving of the statements were "Paul E. Coffey, Deputy Chief, Organized Crime and Racketeering Section, Criminal Division, Department of Justice; Steven R. Olah, Attorney in Charge, Cleveland Strike Force; and Stephen H. Jigger, Strike Force Attorney, Cleveland Strike Force." It is not without significance that Messrs. Olah and Jigger signed the 1986 criminal indictment against Friedman and Hughes.

These statements purport to establish that Jackie Presser and Anthony Hughes were directed and authorized by the FBI to place certain "ghost employees" on the payroll of IBT Local 507 and Local 19. In addition, the statement of Mr. McCann says that McCann "indeed instructed Tony Hughes to frequent The Forge because it was

where the wise guys hung out and a good place to get information. I did not feel Hughes frequenting The Forge detracted from his ability to perform his union job as Hughes frequently spend [sic] evenings doing union work." The affidavits were presented to me as "mitigation" evidence and as an offer of proof going to liability. It must also be noted that both Mr. Friedman and Mr. Hughes testified at the hearing that evidence of the alleged authorization was not presented at their criminal trial.

Because I have found that Mr. Friedman did not establish at the hearing that he had any knowledge of the alleged FBI involvement with Messrs. Presser and Hughes, I find that these proffers in no way mitigate Mr. Friedman's culpability and, of course, were without relevance on the liability issue, given my collateral estoppel ruling. Mr. Friedman had the opportunity to offer at trial his own testimony regarding the conversation that he and Mr. Hughes testified to here regarding Mr. Presser's allegedly having told Mr. Friedman to hire George Argie. That he chose not to do so, because of the trial strategy considerations as outlined to me by his trial counsel, does not relieve him of the collateral estoppel bar. The stark fact is that Mr. Friedman never claimed at trial that he knew Messrs. Presser and Hughes were FBI informants, at least this is the impression cast by statements made to me by Mr. Friedman's counsel. He is left then merely with the claim that his trial was unfair because he was deprived of the testimony of Mr. Hughes. I find that, in light of all the

circumstances, the unavailability of Mr. Hughes as a witness at trial does not render the trial proceeding unfair. Cf. Wolfson v. Baker, 623 F.2d 1074, 1080-81 (5th Cir. 1980) (collateral estoppel of issues in civil case based on prior conviction upheld; claim of perjured testimony could be used to attack conviction collaterally and does not relieve party from being estopped in the second forum).

Additionally, since the Investigations Officer has dropped those portions of Charge I against Mr. Friedman which relate to his conviction for conspiracy, the argument of Friedman that he could not "conspire" with government agents is rendered moot.

As for Mr. Hughes, I accept these FBI statements on the issue of mitigation but give them little weight. Despite the fact that the statements of the FBI agents were made in the presence of the Justice Department, the Justice Department, armed with the knowledge of the alleged authorizations, elected to proceed with the indictments which resulted in the convictions of Messrs. Friedman and Hughes.

In addition, Mr. Hughes stated that he elected not to testify at trial because the FBI agents refused to testify and corroborate his story, invoking their Fifth Amendment rights against self-incrimination. Mr. Hughes failed to mention, however, that by Order dated October 19, 1988, a copy of which was submitted to the Independent Administrator by Mr. Friedman, Judge White, the judge presiding over the Cleveland criminal trial, ruled that the

statements of FBI Agents Foran and McCann would be admissible in the criminal proceedings as evidence pursuant to Rule 804(b)(5) of the Federal Rules of Evidence (declarants unavailable to testify at trial). Thus, Mr. Hughes' rationale for not introducing the authorization defense at trial is rejected. Accordingly, I adhere to my ruling as to the application of the collateral estoppel doctrine.

D. Additional Mitigation Evidence:

Respondents introduced evidence "in mitigation." See p.p. 30-32. As noted, I have accepted their representations, through counsel, that "thousands" of letters have been or were written in their support, in connection with their sentences on their criminal convictions underlying these proceedings, and otherwise, and that these letters express the reaction of the writers that the Respondents had served their Union's members well, were community assets, and were otherwise, in all respects, good citizens. My own judicial experience enables me to understand and accept these representations.

I also accept the testimony of the Respondents relating to their good standing in their unions and in their communities.

E. The Penalty to be Imposed:

I now turn to the matter of the penalty to be imposed. It is noted that Judge White sentenced the Respondents to probation for

four years, ordered that they forfeit their union positions and "credits" accrued through the relevant time period mentioned in the Indictment, and levied fines totaling $65,000; however, he stayed imposition of sentence pending Respondents' appeal and also stayed, pursuant to Fed.R.Crim.P. 38, §(f), "disability," pending their appeal.

It is further noted that I have considered is the extensive evidence tendered in mitigation of the crimes committed. I take particular notice of the testimony of Mr. Hughes that he was an informant for the FBI. I accept this, although I am skeptical of his stated reasons for becoming an informant, to clean out the "street people" from the Union.

While there is much to be said for the Respondents, it is nonetheless true that the crimes of which the Respondents were convicted are serious ones and a period of suspension is, I find, appropriate. Accordingly, I impose upon both Respondents a suspension for a period of one year. Thus, for a period of one year, they are to remove themselves from all of their IBT affiliated union positions and draw no money or compensation therefrom, or from any other IBT affiliated source.

However, I will stay the commencement of the period of suspension until such time as Judge Edelstein has reviewed my findings and holdings, including the penalty imposed, all of which I will immediately submit to him by Application VII. Said period

of suspension will not commence unless and until Judge Edelstein so determines, following his review of my ruling.[20]

Dated: January 11, 1990

FREDERICK B. LACEY
Independent Administrator

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[20] Counsel had requested an opportunity to make post-hearing submissions. While I appreciate their offer, I saw no need for such. The legal issues had been thoroughly briefed in connection with the pre-hearing rulings by Judge Edelstein and me, and as supplemented by counsel in their submissions after the December 13, 1989 hearing. The factual aspects were relatively uncomplicated and, with the Transcript of December 13 and my detailed notes of the January 4, 1990, hearing, I saw no point in subjecting counsel to the procedure of submitting proposed findings of fact and other devices of judicial administration.

E X H I B I T A

INVESTIGATIONS OFFICER,	:	
Claimant,	:	
v.	:	
HAROLD FRIEDMAN,	:	
Respondent.	:	O P I N I O N
INVESTIGATIONS OFFICER,	:	
Claimant,	:	
v.	:	
ANTHONY HUGHES,	:	
Respondent.	:	

Having reviewed the September 2, 1989, Memorandum of the Investigations Officer; the September 8, 1989, Memorandum of the United States; the August 14, 1989, September 11, 1989, and September 14, 1989, Memoranda of Mr. Cambria; and the August 17, 1989, September 11, 1989, and September 15, 1989, Memoranda of Mr. Krislov, I have concluded that I am authorized and directed to conduct a hearing on the above-captioned charges under and pursuant to Paragraph F.12.(A)(c) of the Consent Order.

A. BACKGROUND

On August 10, 1989, a Notice of Hearing was mailed to Messrs. Friedman and Hughes (sometimes collectively referred to as the "Respondents") setting a hearing date of September 13, 1989 on the charges brought the Investigations Officer.

Mr. Friedman was charged with violating Article II, Section 2(a) of the IBT constitution, by conducting himself in a manner to bring reproach upon the IBT, to wit:

> 1. By embezzling funds from Bakery, Confectionery and Tobacco Workers International Union, Local 19, in 1981. This conduct was the basis for Mr. Friedman's conviction for embezzling union funds in violation of 29 U.S.C.§ 439 in the United States District Court for the Northern District of Ohio, 86 Cr. 114;

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> 2. By conspiring to and conducting the affairs of an enterprise through a pattern of racketeering from 1978 through 1981 in violation of 18 U.S.C. §§1962(c) and (d). This conduct formed the basis for Mr. Friedman's conviction on Counts I and II of his Indictment; and
>
> 3. By filing a false form LM-2 with the Department of Labor for Local 19 in 1982. This conduct formed the basis of Mr. Friedman's conviction on Count VI of his Indictment.

Mr. Hughes was also charged with violating Article II, Section 2(a) of the IBT constitution, by conducting himself in a manner to bring reproach upon the IBT, to wit:

> 1. By embezzling funds from Local 19. This conduct was the basis of Mr. Hughes' convictions for embezzling union funds in violation of 29 U.S.C. §439, in the United States district court for the Northern District of Ohio, 86 Cr.114; and
>
> 2. By conspiring to and conducting the affairs of an enterprise through a pattern of racketeering from 1978 through 1981 in violation of 18 U.S.C.§§1962(c) and (d). This conduct formed the basis of Mr. Hughes' conviction on Counts I and II of his Indictment.

As Respondents raised various objections to the proposed hearing, the original hearing date was adjourned so as to afford the parties time to brief the issues raised by Respondents.

B. DISCUSSION

1. The "Stay Order" By Judge White

Respondents' counsel contend that all employment or other disabilities which emanate from the underlying convictions have been stayed by United States District Judge White pending their appeal from these convictions in the Northern District of Ohio. During the sentencing of Respondents, Judge White indicated that, acting under Fed.R.Crim.P. 38 Section (f), he would "stay disability." (Transcript of proceeding before Judge White on May 26, 1989, at page 3, line 21). Rule 38(f) provides:

> A civil or employment disability arising under a Federal Statute by reason of the

> defendant's conviction or sentence, may, if an appeal is taken, be stayed by the district court or by the court of appeals upon such terms as the court finds appropriate. The court may enter a restraining order or an injunction, or take any other action that may be reasonably necessary to protect the interest represented by the disability pending disposition of the appeal.[emphasis supplied]

However, the charges brought by the Investigations Officer will not result in or lead to a "disability arising under a Federal Statute." Any disability resulting from such charges will stem from the Consent Order itself, not from a "Federal Statute." Thus, Judge White's stay order is not applicable.

2. Article XIX, Section 3(d) of the IBT Constitution

Respondents argue that Article XIX, §3(d) (hereinafter "§3(d)"), of the IBT Constitution, bars the Independent Administrator from hearing the charges. Section 3 (d) provides:

> 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, 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. [emphasis supplied]

The Respondents argue that, since the charges here are not based upon "actions or activities" which occurred during their current term of office, the specific IBT Constitutional limitation period pertaining to elective officers prevents such charges from being heard, unless it can be said that the "pre-term" activities underlying the charges were not "generally known" to the membership.

According to Mr, Krislov, Mr. Hughes was re-elected to his current term of office as Recording Secretary of Teamsters Local Union No. 507 in late 1987. Mr. Cambria indicates that Mr. Friedman was re-elected President of Local 507 in 1987. Respondents argue that the Indictment upon which they were convicted, and which the charges here essentially track, was filed in 1986; thus the allegations underlying the charges were generally known to the membership since that time.

Not "charges," As

In this regard, the Investigations Officer is correct when he states that §3(d) does not address allegations "generally known," see, e.g., IBT Constitution, Article XIX, §6(a) (hereinafter §6(a)), but rather "activities and actions" that are "generally known." The distinction is significant. Section §6(a) provides for a one-year statute of limitations for "alleged misconduct" that could give rise to a charge. As argued by the Investigations Officer, Memorandum, p. 3, "[t]he selection of different language in §§3(d) and 6(a) for when charges are barred must be treated as a deliberate decision of the draftsmen."

Section 6(a) is a pure statute of limitations barring charges after a set period of time. Thus, it was meant to bar all charges arising out of "alleged misconduct", and the words selected serve that purpose. Section 3(d), on the other hand, seems to have been designed to avoid using the disciplinary process to upset election results. Thus, as the Investigations Officer properly argues, Memorandum, p. 3, if the IBT officer's "activities and actions" were "generally known prior to his election, it would be assumed it was the will of the electorate that no charges be filed."

The significance of this distinction is succinctly explained by the United States. "It is difficult to imagine how Friedman and Hughes can credibly argue that their racketeering activity was 'generally known' by the union membership when the pair continue to deny that they committed those crimes." Memorandum, p. 8.

As further explained by the Investigations Officer, Memorandum, p. 4:

> The "activities and actions" underlying the 1984 [sic] Friedman and Hughes indictment were never generally known to the membership. The Respondents vigorously contested the criminal charges, proclaiming their innocence both in and out of court. The members had a right to rely on the representations of their fiduciaries as to their underlying "activities and actions." Thus, the general knowledge of the Respondents' true "activities and actions" necessary to trigger Art. XIX, §3(d) did not exist.

Thus, the argument of the Respondents is unpersuasive. By their pleas and protestations of their innocence, they denied the allegations of the Indictment. Indeed, it may well be inferred that they would not have been

elected to office had the Union membership known of their "acticity and actions." Accordingly, I reject this part of their argument.[1]

3. The Limitation of IBT Constitution Article XIX, §6(a) Relating to Completion of Civil or Criminal Proceedings

Respondents next rely on that portion of §6(a) which provides as follows:

> No member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial until his final court appeal has been concluded. [emphasis supplied]

Respondents here argue that, although the filing of charges is permitted, proceeding with trial before appellate remedies are exhausted is not. They contend that the rationale of such a stay provision prevents trials and hearings from going forward, when their results may later be reversed on appeal.

Respondents ignore the Consent Order, which provides at para. D.6:

> Section 6(a) of Article XIX of the IBT Constitution shall be deemed and is hereby amended to include the following: "Nothing herein shall preclude the General President and/or General Executive Board from suspending a member or officer facing criminal or civil trial while the charges are pending."

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[1]The discussion of the parties relating to the effect of fraudulent concealment upon the tolling of a statute of limitations seems misplaced. Under the doctrine of fraudulent concealment, if a defendant conceals from the plaintiff the existence of a cause of action, the statute of limitations is tolled. Pinney Dock & Transport Co. v. Penn Central Corp., 838 F.2d 1445, 1478 (6th Cir.), cert. denied, 109 S.Ct. 196 (1988). In the instant matter, the issue is not whether the Respondents concealed their actions from the Investigations Officer. Rather, the focus is on what was "generally known" to the union membership. Keeping the focus on that issue, it is clear that respondents cannot in good faith argue that they are innocent of the wrongdoing with which they have been charged while also arguing that the general membership had knowledge of their wrongdoing.

Since the Independent Administrator has the same disciplinary powers as the IBT's General President and General Executive Board, (Consent Order Para. F.12.(A)), the Administrator has the right to suspend Respondents Friedman and Hughes at any stage while criminal charges are pending, and, as a step preliminary to such suspension, to hold disciplinary hearings.[2] Certainly there is no power to impose a suspension other than after a Respondent has been found guilty after a hearing on the charges. See IBT Constitution Article XIX §9(a), which provides that a suspension is a penalty which may be imposed on those "found guilty of charges."[3]

If §6(a) were to be interpreted as Respondents suggest, then the clear intent of the Consent Order to grant the Independent Administrator the power to discipline corrupt or dishonest members and officers would be severely curtailed. The term of the Independent Administrator is prescribed to expire in late 1991, at the latest, and frequently the time it takes for a case to work its way through the judicial system, including appeals, will often take more than two years. Thus, the Independent Administrator in many cases might well be precluded from disciplining any officer who is also involved in civil or criminal proceedings. Such a result is inconsistent with the spirit of the Consent Order. As provided in Para. B.3(2) of the Order:

> The Investigations Officer and the Administrator shall have the authority to resolve to completion and decide all charges filed by the Investigations officer on or before the date on which the authority granted to them...terminates[i.e., 9 months after certification of the 1991 election results]. (emphasis supplied).

Respondents' contention that, if the hearings are to go forward, the Independent Administrator would be limited to imposing suspensions as the only penalty is well taken in

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[2]As explained in the section which follows, Respondents' suggestion that the amendments to the Consent Order should only be applied prospectively flies in the face of both the plain language and intent of the Consent Order.

[3]To accept Respondents' arguments would be to confer upon the Independent Administrator the absolute power to suspend any member or officer facing criminal charges without the necessity of the filing of formal charges and the holding of a hearing. Certainly, the abrogation of such basic due process rights as "notice" and "an opportunity to be heard" is not contemplated in the Consent Order.

light of the amendment to §6(a), which empowers the General President and/or General Executive Board to "suspend" members and officers facing criminal trial while charges are pending. Since the Independent Administrator has the same authority as the General President, he too can only suspend those who are facing criminal proceedings.[4]

4. The One Year Statute of Limitations Found In I Constitution, Article XIX, §6(a)

Respondents also rely on that portion of §6(a) which reads:

> Any charge based upon alleged misconduct which occurred more than one (1) year prior to the filing of such charge is barred and shall be rejected by the Secretary-Treasurer, except charges based upon the non-payment of dues, assessment and other financial obligations

Since the charges against both Messrs. Friedman and Hughes are based upon events well over one year old, Respondents argue that §6(a) bars a hearing an these charges.

The Consent Order, at para. D.5., modifies §6(a) as follows:

> . . . Section 6(a) . . . shall be and hereby is amended to provide for a five (5) year period, running from the discovery of the conduct giving rise to the charge. This limitation period shall not apply to any actions taken by the Investigations Officer or the Administrator.

Respondents contend that since the amended five-year limitations period does not apply to either the Investigations Officer or the Administrator, the one-year limitations period set forth in §6(a) must govern their actions. Respondents' suggestion is inconsistent with the Consent Order. The plain reading of the Consent Order indicates that the Investigations

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[4]It must be remembered that this limitation is effective only when the Respondent is facing IBT charges based on the same allegations which serve as the basis of the criminal charges. See §6(a) ("No member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial . . ..") (emphasis supplied).

Officer and the Administrator should not be controlled by any limitations period. Reading the Consent Order as a whole, the Administrator is not given any less power under the Consent Order than the General President possesses. Moreover, 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. Respondents further argue that this amendment is only to be afforded prospective application. Once again, Respondents' position is contrary to the plain language and intent of the Consent Order in light of the elimination of any time bar for actions brought by the court appointed officers.

5. The Doctrine of Laches

Respondents further argue that the charges, which are based on activities which are several years old, are barred by the doctrine of laches. This contention is without merit. Even if the doctrine were applicable here, the charges here were brought within a reasonable time after Respondents' convictions. It cannot be said that there has been an inexcusable delay in filing the charges. See Gruca v. United States Steel Corp., 495 F.2d 1252, 1258 (3rd Cir. 1974). Thus, the doctrine of laches is inapplicable.

6. The Scope of the Hearings

Respondents argue that a hearing on the charges brought by Mr. Carberry would take "perhaps two months to try even outside the formal courtroom setting, and as long, if not longer to prepare." See Mr. Cambria's August 14, 1989, Memorandum, p.4. The Investigations Officer argues that Respondents are collaterally estopped from relitigating issues of fact decided adversely to them in the prior criminal proceeding and that the Independent Administrator is bound by those facts established by the guilty verdicts in the prior criminal proceedings. Thus, the sole issue for determination by the Independent Administrator would be whether those facts would warrant disciplinary action under the "just cause" standard.

It is well settled that before application of collateral estoppel can be deemed appropriate, a finding must be made that:

1. the party to be estopped must have been a party or in privity with a party to the prior action;

2. the issues to be estopped must be the same as the issues determined in the prior action;

3. the issues must have been actually litigated and necessary to the prior judgment; and

4. application of collateral estoppel will not be unfair because:

(a) the party to be estopped had little incentive to vigorously litigate the first action;

(b) the first judgment is inconsistent with other judgments on the issue to be estopped;

(c) the second action affords procedural opportunities unavailable in the first action (or, more generally speaking, that the party to be estopped had a full and fair opportunity to litigate its claims in the first action); or

(d) application of collateral estopped would not otherwise be unfair to the defendant.

Glictronix Corp. v. American Tel. & Tel. Co., 603 F.Supp. 552, 563-64 (D.N.J. 1984). See also Parklane Hosiery Co. v. Shore, 439 U.S. 322, 329-332, 99 S.Ct. 645, 58 L.Ed. 552 (1979). All the conditions necessary to the application of collateral estoppel are met in this case.

As for the first criterion, it is clear that Respondents were both parties in their own criminal actions.

Second, the issues to be estopped in the scheduled hearing are the same as the issues determined in the criminal proceedings. The Investigations Officer has charged Mr. Hughes with bringing reproach upon the Union by embezzling funds from Local 19 and by conspiring to and conducting the affairs of an enterprise through a pattern of racketeering. Mr. Hughes was found guilty of these charges in his criminal trial. The same is true as to Mr. Friedman.

Third, it cannot be disputed that the issues described herein were actually litigated and necessary to the criminal convictions of Respondents.

Fourth, the Respondents certainly had every incentive to litigate vigorously the criminal proceeding as they faced the prospect of jail terms and fines. Respondents do not contend otherwise. Moreover, there are no inconsistent judgments on the issues to be estopped. In addition, Respondents do not contend that they were denied any procedural protections in their federal criminal proceedings.

Lastly, Respondents argue that, in light of their pending appeals, the scheduled hearing should be stayed. In support of this contention Respondents cite two cases, Seltzer v. Ashcroft, 675 F.2d 184 (8th Cir. 1982); Bailey v. Ness, 733 F.2d 279 (3d Cir. 1984). Both of these cases involved situations wherein a convicted criminal defendant, pending appeal of his conviction, brought a civil action against his accusers. Certainly, in cases such as these, the merits of

plaintiffs' civil action are intimately tied to the success of the appeal.

In the instant matter, the outcome of Respondents' appeals will have little, if any, impact on the scheduled hearings. At the hearings the Independent Administrator will examine the record to determine whether "just cause" exists to discipline Respondents. Whether that same record would support a finding of a criminal conviction "beyond a reasonable doubt" is of no weight. Moreover, since the Independent Administrator will be limited to suspending Respondents, Respondents will not be unduly prejudiced.

7. The Intent of the Parties

In the papers submitted, some discussion is devoted to the issue of the intent of the parties in entering into the Consent Order. Respondents correctly cite to SEC v. Levine, No. 88-6244 (2d. Cir., August 2, 1989), in support of the proposition that "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it."[5]

While admittedly the individual expectations of the parties in entering into the Consent Order may have little impact on the implementation of the Order, the parties cannot ignore the spirit and intent of the Order itself. In this regard, I am reminded of Judge Edelstein's comments made during the August 8, 1989, hearing on the issue of the Investigations Officer's office space in New York.

As Judge Edelstein observed (Tr. p. 8):

> At the very start, I believe if my recollection serves me, and again subsequently I think I stated...that in viewing this decree and interpretations that would be required from time to time, it was the spirit and intent as well as the letter of the decree that this court would have to consider...

Accordingly, the spirit of the Consent Order must not be ignored when considering questions and issues arising thereunder.

The foregoing interpretation of the specific provisions of the Consent Order, while independently supported,

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[5]It is interesting that while Respondent Friedman, on the one hand, argues that the United States' "intent" in entering into the Consent Order is immaterial, he argues on the other hand that he

(Footnote continued to page 11

is consistent with the spirit of the Consent Order. A plain reading of the Consent Order as a whole reveals that its goal is to rid the union of all corrupt, dishonest and unlawful elements. Indeed, the IBT and the defendant officers, including Mr. Friedman, agreed that "there should be no criminal element or La Cosa Nostra corruption of any part of the IBT." Consent Order, 5th "Whereas" clause. Moreover, the Consent Order is designed to give the court-appointed officers great freedom in carrying out their duties.

To give the Consent Order the strained reading suggested by Respondents would be to frustrate the goals of that Order.

CONCLUSION

The contentions of the Respondents are rejected, and a hearing will be scheduled on the charges.

FREDERICK B. LACEY

Dated: September 29, 1989

(Footnote continued from page 10)
"bargained for and understood" the Consent Order to mean certain things and therefore he "is entitled to no less."

were taken account of by the International IBT in negotiating the Consent Decree. Contrast this situation to Wilks, where the later group collaterally attacking the Birmingham consent decree was completely absent from the original litigation and their interests unrepresented.

The second way this IBT case may be distinguished is that Wilks involved civil rights litigation, and the nature of the relief in the Birmingham consent decree--changes in the promotion structure of a public agency based on race which affected civil rights--is fundamentally different from the IBT situation. This Consent Decree entails appointing Court Officers to oversee the IBT electoral process leading up to (and including) the 1991 election, and to bring charges against IBT members guilty of racketeering acts. The ultimate aim of the Consent Decree is to guarantee free elections, and to rid the IBT of the hideous influence of organized crime. These goals seem squarely in the interest of the IBT rank and file as a whole.

Indeed, the Consent Decree appears to contravene the interests of only two classes of IBT members; the election oversight may imperil unfairly elected officers, and the prosecution scheme may ultimately suspend corrupt union members. Hughes, by virtue of his criminal conviction, falls in the latter category. To argue that it is unfair to bind Hughes--or any other IBT member falling in one of these two threatened classes--to the scheme created by the Consent Decree's changes to the IBT Constitution is simply ludicrous.

B. Irreparable Harm

Friedman and Hughes fail to demonstrate that they may suffer irreparable harm, and since they cannot meet the first prong of the Second Circuit's test, their motions for injunctions are denied. To be irreparably injured in this context, Friedman and Hughes must demonstrate that they stand to suffer a loss not compensable monetarily. Weinberger v. Romero Barcelo, 456 U.S. 305, 312-13, 102 S.Ct 1798, 72 L.Ed 91 (1981); Jackson Dairy Inc. V. H.P. Hood, supra, at 72. Further, loss of wages by an identifiable group of employees does not qualify as irreparable harm in the Second Circuit. Intern. Bro. of Teamsters v. Pan Am World Airways, 607 F.Supp 609, 614 (E.D.N.Y. 1985); Local 533 Transport Workers v. Eastern Air Lines 695 F.2d 668, 678 (2d Cir. 1981).

If the Administrator were to rule against Friedman and Hughes, they stand to lose their IBT wages, endure injuries to their reputation, and, they claim, suffer from facing an improper trial. This opinion has already ruled that the Independent Administrator has jurisdiction to hold the hearings. Since identifiable lost wages do not constitute irreparable harm in the Second Circuit, the only possible irreparable harm to Friedman and Hughes would be damage to their reputations as a result of removal from the IBT. Since Friedman and Hughes are both convicted felons, potential suspensions should cause little further damage to their reputations.

Even if possible lost wages and potential harm to reputation could constitute irreparable harm, the movants still have not yet suffered any actual irreparable harm. Friedman and Hughes are threatened with potential suspension from the IBT as a result of the Administrator's hearing. At this point, however, the Independent Administrator has not disciplined Friedman or Hughes. Further, even if the Independent Administrator should rule against them on all the charges, Friedman and Hughes still have recourse to appeal to this Court under ¶12(A) of the Consent Decree.

IBT members suspended under the Consent Decree's disciplinary apparatus may seek review by this Court under ¶12(A) of the Consent Decree. Because of this review procedure, no IBT member with a similar hearing pending faces irreparable harm. The Consent Decree plainly anticipated the very circumstances Friedman and Hughes now seek to escape, and the ¶12(A) review process is an adequate safeguard against error or unfairness. Given such procedural protections, a pending hearing before the Independent Administrator does not constitute irreparable harm to Friedman, Hughes, or any future IBT member similarly situated.

Accordingly, Friedman and Hughes' motions for preliminary injunctions are hereby denied, and the Independent Administrator may proceed with the hearings in question.

SO ORDERED.

DATED: November 2, 1989
New York, New York

U.S.D.J.

E X H I B I T C

GENERAL EXECUTIVE BOARD
RESOLUTION
November 1, 1989

WHEREAS the International Constitution was amended in 1981 to include in Article II, Section 2(a) the requirement that a member should "conduct himself or herself at all times in such a manner as not to bring reproach upon the Union", and

WHEREAS the General Executive Board has never specifically interpreted the meaning of the term "reproach", and

WHEREAS charges have now been filed by the Investigations Officer against certain members of the International Brotherhood of Teamsters alleging that they have violated their Oath of Obligation by acting in a manner "as to bring reproach upon the Union", and

WHEREAS the General Executive Board is desirous of exercising its constitutional authority as it has in the past (Terry L. Schaus v. James A. Ramey and James A. Zembower, Members of Local Union 512) to interpret language in the Constitution in a manner which will be in accordance with trade union principles and existing law, and

WHEREAS the General Executive Board has also been requested to interpret the provisions of Article XIX, Section 3(d) and Article XIX, Section 6 in connection with charges filed by the Investigations Officer, and

WHEREAS the General Executive Board has previously interpreted Article XIX, Section 3(d) as preventing the filing

of charges against an officer based upon events which were generally known prior to the current term of office (William R. Berryhill and Peter Vitrano v. Frank E. Fitzsimmons) and,

WHEREAS the General Executive Board has been fully informed and has given full consideration to the problems presented,

NOW THEREFORE, acting pursuant to the authority granted by Article IX, Section 1 of the IBT Constitution, the General Executive Board makes the following findings and interpretations:

1. a. The expression "to bring reproach upon the Union" is so vague and indefinite that it does not sufficiently inform trade union members and officers of the specific conduct which it covers in the context of trade union principles and practice. Since such term offers no guidance for disciplinary action in situations where there is a basis for more specific charges we hold that the term must be construed within the context of the more specific provisions of Article XIX, Section 6(b) Subsections 3 - 7, and should be so limited in its application.

b. The aforesaid term was never intended to, and does not, cover associations between union members or officers with other persons inside or outside the trade union movement based upon the reputation or reputed activities of such other persons, absent any proof of participation or association with such persons in unlawful, or anti-union activities which would

constitute violation of Article XIX, Section 6(b), Subsections 3 - 7.

2. The fourth sentence of Article XIX, Section 3(d) was and is intended to protect an elected officer from being required to defend himself while in office as to chargeable activities which were known generally to the membership at the time they elected him to office, regardless of whether the involved officer admitted or denied participation in such chargeable activities. If such chargeable activities continue during the current term of office, the provisions of this Article are then applicable and charges may be filed based upon that conduct. If found guilty of such prior conduct in a duly constituted court of law, the remedy will be as ordered by the court. To interpret such language otherwise would make it possible to set aside the will of the membership which elected such officer when it was known generally by the membership of such allegations.

3. The General Executive Board in making these findings and interpretations does not in any way condone or excuse any unlawful activities. Rather, we seek to ensure that the due process rights of all members as enumerated in the attached memoranda identified as "A" and "B", and preserved by the IBT Constitution, are protected.

E X H I B I T D

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

LEGAL DEPARTMENT (202) 624-6945

TO: The General Executive Board

RE: Interpretation of Article II, Section 2(a) - "Reproach"

In October, 1972, the General Executive Board approved a revision to the Ritual which included a new Obligation to be administered to new members at the time of their initiation. That Obligation included the pledge that the initiate would "conduct myself at all times in a manner as not to bring reproach upon my Union." The Obligation was originally submitted by Local 743. The new Obligation was included in the revised 1977 Model Bylaws and then incorporated in Article II, Section 2(a) of the 1981 Constitution. It presently appears in that section of the 1986 Constitution. There is nothing in any file which reflects the intent of the draftsmen as to the meaning of the term "reproach." Nor have there been any occasions for the General Executive Board to interpret the provision either in the abstract or in connection with internal charges.

The current language appears to be a modification of a pre-Landrum-Griffin provision of the International Constitution which provided a basis for internal union charges for engaging in "activities which tend to bring the Local Union or International Union into disrepute." (Art. XVIII, Sec. 6(10)

of 1957 Constitution) Identical language appeared in the 1947 Local 743 bylaws, the bylaws in effect at the time Local 743 suggested the Ritual be revised. The language was removed from the 1961 Constitution as part of the revision of that document which was undertaken under the Monitorship. Also removed in 1961 as part of the post-Landrum-Griffin revisions was the following:

> Revocation of Membership on Being Found Guilty of Crime
>
> Section 13. (a). When a member is convicted of the commission of a crime or serious wrongdoing, or pleads guilty to the commission of a crime or serious wrongdoing, against the Local Union or against the community, and which crime or act of serious wrongdoing tends to bring dishonor upon the Local Union or the International Union, it shall be the duty of the Local Union to proceed to revoke the membership of such member. Likewise, whenever a member of a Local Union has engaged in what is commonly termed racketeering, and he is found guilty thereof, thereby bringing dishonor upon the Local Union or upon the International Union, it shall be the duty of the Local Union to proceed in the manner provided in Article XVIII, Section 1, to revoke the membership of such member.

Although the 1961 Convention Proceedings indicate that these amendments were approved without discussion, it is apparent from the Cunningham v. English litigation that the draftsmen of the 1961 Constitution were attempting to comply with the new requirements of Section 101(a)(5) of the LMRDA. Undoubtedly the draftsmen were also aware that even prior to the LMRDA, vague constitutional provisions of union constitutions, including phrases such as "activities which bring

disrepute," had been struck down by state courts. See, Summers, "The Law of Union Discipline: What the Courts Do In Fact," 70 Yale L.J. 175, 192-93 (1960). And the new legislation specifically incorporated in Section 101(a)(5) the state court criteria for determining whether internal union discipline was appropriate, including the requirement that charges be specific. See, Cox, "Internal Affairs of Labor Unions Under the Labor Reform Act of 1959," 58 Mich. L.R. 819, 836 (1960). The 1961 Constitution was specifically approved by the Monitors and the United States District Court for the District of Columbia in order to ensure compliance with the LMRDA prior to its submission to the convention. Provisions of the old constitution deemed to be too vague to be enforceable under the new law were removed by the Monitors and Court.

Since the passage of the LMRDA, federal courts have invalidated union discipline based upon constitutional provisions which have been found to be too vague to satisfy the notice requirements of Section 101(a)(5). As Judge Lacey has noted, vague constitutional provisions chill legitimate activity by creating uncertainty and fear of illegal internal union discipline. Boswell v. Electrical Workers, Local 164, 93 LC ¶ 13372 (D.N.J. 1981)(defamation and causing dissatisfaction and dissension). Other courts have invalidated similar vague provisions. Murphy v. Operating Engineers, Local 18, 99 L.R.R.M. 2074, 2092 (N.D. Oh. 1978), aff'd, 774

F.2d 114 (6th Cir. 1985)(offense discreditable to the International Union); Mallick v. Electrical Wkrs, 644 F.2d 228, 233 (3d Cir. 1981)(same provisions as Boswell); Semancik v. United Mike Workers, 466 F.2d 144, 147 (3d Cir. 1972)(dishonest or questionable practices); Salzhandler v. Caputo, 316 F.2d 445, 446 (2d Cir. 1963)(conduct unbecoming a member; acts detrimental to the interests of the union; libeling, slandering a fellow member; acts inconsistent with the duties, obligations and fealty of a member).

Although most of these cases have involved speech activities, associational rights have also been protected against vague constitutional language. Thus, a vague anti-communist loyalty oath was struck down both because of its infringement on expression and its lack of connection to the union's legitimate interest in "weeding out Communists." Hurwitz v. Directors Guild of America, 364 F.2d 67, 76 (2d Cir.), cert. denied, 385 U.S. 971 (1966). The court noted that when political views of a member are at issue, the union must demonstrate that the beliefs "truly indicate dangers against which the union is justified in acting." Id.

In Turner v. Air Transport Lodge 1984, IAM, 590 F.2d 409, 412 (2d Cir. 1978), the court reaffirmed its view that affiliations with outside (non-union) political groups may not be the subject of discipline unless such association can be shown to have "caused ... harm to the union or interfered in

any way with its contractual obligations." Even where internal charges alleged association with "mobsters and gangsters ... [who] intended to take over the union ...", such charges have been set aside for failure to comply with Section 101(a)(5). Gleason v. Chain Service Restaurant, 300 F.Supp. 1241, 1246-47 (S.D.N.Y. 1969). In another context, it has been held that a restriction on association to "law-abiding persons" prohibits "only association with persons who are engaging in criminal activities at or around the time of the association." Any other restriction imputed to that phrase would be too vague. United States v. Bonanno, 452 F.Supp. 743, 756 n.18 (N.D. Cal. 1978), aff'd, 595 F.2d 1229 (9th Cir. 1979).

In view of these court decisions and, indeed, since the passage of the LMRDA itself, the General Executive Board has emphasized that provisions of the Constitution must be interpreted in accordance with applicable law. See, Terry L. Schaus v. James A. Ramey and James M. Zembower (1977). Zembower v. Teamsters, Local 512, 98 L.R.R.M. 2964, 2965 (M.D. Fla. 1978)(cited by Lacey, J., in Boswell).

Having now been presented with the necessity of defining the term "reproach" for the first time, the General Executive Board can interpret it in a manner which avoids the vagueness problems by limiting "reproach" to situations which constitute violations of the specific provisions of Article XIX, Section 6(b)(3 - 7). Such an interpretation will ensure

that the specific conduct subject to discipline will have been related to the union and will have occurred at a time proximate to the charges. Moreover, the term will be defined in conjunction with those offenses considered by the delegates to the Convention to be of sufficient importance to the Union to be enumerated in the Constitution. And, we would argue, the delegates are in the best position to determine the type of misconduct which is so injurious to the Union as to be specified in Article XIX and to determine that such misconduct would cause "reproach."

Any other definition might fail entirely on vagueness grounds, rendering the term "reproach" void and meaningless or subject to definition by a court. Courts have traditionally recognized that it is preferable for a union to define its own constitutions in a lawful and rational manner and have deferred to such interpretations. Vestal v. Hoffa, 451 F.2d 706, 709 (6th Cir. 1971), cert. denied, 406 U.S. 934 (1972); Stelling v. I.B.E.W., 587 F.2d 1379, 1388-89 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979); Drywall Tapers & Painters v. Operative Plasterers', 601 F.2d 675, 679 (2d Cir. 1979).

Thus, it is recommended that the General Executive Board issue an official interpretation of Article II, Section 2(a) consistent with the offenses specified in Article XIX, Section 6(b)(3 - 7).

James T. Grady
David Previant
Gary S. Witlen

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
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25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

LEGAL DEPARTMENT (202) 624-6945

TO: The General Executive Board

RE: Interpretation of Article XIX, Section 3(d)

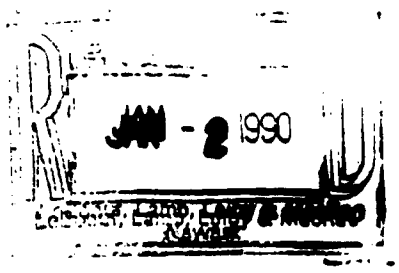
The General Executive Board has been requested to interpret the application of Article XIX, Section 3(d) with respect to charges which have been filed against an officer based upon activities which occurred prior to his current term of office, were generally known to the membership prior to that term of office, but which did not result in a criminal conviction until the current term of office. The General Executive Board has previously interpreted Article XIX, Section 3(d) in connection with charges filed against then General President Frank E. Fitzsimmons by William R. Berryhill and Peter Vitrano. On pages 4 and 6 of that lengthy decision, the General Executive Board confirmed that the intent of the constitutional provision was to prevent an official from being subjected to charges based upon conduct which occurred and was known prior to the current term of office.

Although the question of whether a denial by the charged officer of the merits of alleged impropriety had any impact on the preclusive effect of Article XIX, Section 3(d), it is recommended that the General Executive Board find that

it does not. The basis for the constitutional language is to prevent an officer from being subjected to discipline based upon activity of which the membership was aware at the last election. If the membership decided to elect or reelect said officer despite having general knowledge of the alleged improper activity, the will of the majority of those members should not be subverted by disciplinary proceedings based upon a subsequent conviction.

Thus, it is recommended that the General Executive Board reaffirm its prior interpretation as expressed in the Fitzsimmons charges.

James T. Grady
David Previant
Gary S. Witlen



TO: ALL IBT AFFILIATES

FROM: WILLIAM J. MCCARTHY, GENERAL PRESIDENT

DATE: DECEMBER 21, 1989

THE GOVERNMENT HAS FILED AN ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER AGAINST ALL IBT AFFILIATES ENJOINING THE FILING OR TAKING OF ANY LEGAL ACTION WHICH IMPEDES THE APPOINTED COURT OFFICERS.

YOU ARE ADVISED THAT THIS ORDER WAS ISSUED WITHOUT PRIOR NOTICE OF ANY KIND TO THE IBT OR ITS ATTORNEYS.

THE IBT FULLY REALIZES THAT LOCAL UNIONS, JOINT COUNCILS AND AREA CONFERENCES WERE NOT PARTIES TO THE NEW YORK LITIGATION AND DID NOT ENTER INTO OR SIGN THE CONSENT ORDER OF MARCH 14, 1989.

THE IBT STRONGLY URGES EACH OF ITS AFFILIATES TO RESPOND TO THE COURT'S SHOW CAUSE ORDER ON OR BEFORE 5:00 P.M. ON DECEMBER 26, 1989 IN ORDER TO PRESERVE AND PROTECT THEIR RIGHTS AS AUTONOMOUS LABOR ORGANIZATIONS.

THE IBT LEGAL DEPARTMENT SUGGESTS YOUR ATTORNEY CONSIDER THE FOLLOWING LEGAL POINTS:

1. A RESERVATION OF RIGHTS CONCERNING THE COURT'S JURISDICTION OVER YOUR AFFILIATE.

2. THE COURT'S EARLIER "PRECLUSIVE" RULING ENYING THE IMPLEADING OF LOCAL AFFILIATES FOUND AT 708 F. UPP. 1388, 1404 (SDNY) (1989).

3. A REQUEST FOR AN EVIDENTIARY HEARING.

4. COMPLIANCE WITH THE PROVISIONS OF RULE 65. F. .C.P.

5. THE INAPPLICABILITY OF THE ALL WRITS ACT, 28 .S.C. SECTION 1651.

6. VARIOUS CONSTITUTIONAL RIGHTS OF DUE PROCESS, QUAL PROTECTION, FREE SPEECH, AND CHOICE OF FORUM THAT ARE MPLICATED BY THE COURT'S TRO.

7. NOTE THE LANGUAGE OF LIMITATION IN PARAGRAPH 6(K) OF THE CONSENT ORDER.

8. NOTE THE RESERVATION OF RIGHTS IN PARAGRAPH .8(M) OF THE CONSENT ORDER.

9. NOTE THE LANGUAGE OF THE TRO AND COMPARE IT TO HE LAST SENTENCE OF PARAGRAPH 10(E) OF THE CONSENT ORDER

10. THE APPLICATION OF 29 U.S.C. 101 TO THE TRO ND THE COURT'S PROPOSED PRELIMINARY INJUNCTION.

AGAIN, I URGE THAT YOU FIGHT THIS UNPRECEDENTED ND ILL-ADVISED ATTEMPT OF THE GOVERNMENT TO DEPRIVE YOU AND OUR MEMBERS OF YOUR LEGAL AND CONSTITUTIONAL RIGHTS.

WILLIAM J. MCCARTHY
GENERAL PRESIDENT

E X H I B I T E

INDIVIDUAL IBT OFFICERS
AND THEIR AFFILIATIONS

Date Charged			Affiliations
9/12/89	Dominic Senese	-	President Local 703 Chicago, Ill.
9/12/89	Charles O'Brien	-	International Representative IBT Washington, D.C.
9/12/89	Edward Martinez	-	Recording Secretary, Local 808 Business Agent, Woodside, N.Y.
9/20/89	Cirino Salerno "Charles"	-	President, Local 272 New York, N.Y.
11/30/89	Joe (Sr.) Glimco	-	President, Local 777 Chicago, Ill.
11/30/89	Vincent Cozzo	-	Executive Coordinator Local 786 Chicago, Ill.
11/30/89	Joseph Talerico	-	Business Agent, Local 727 Chicago, Ill.
12/6/89	Warren Selvaggi	-	President, Local 240 Bronx, N.Y.
12/27/89	Edward Kantzler	-	Trade Division Director Central Conference of IBT
12/27/89	William Bernard	-	Recording Sec. Joint Counsel 43 Detriot, Mich. Member Board of Administration J.C. 43 Severance Pay Plan Trustee Labor Mich. Conference of Teamsters Welfare Fund

E X H I B I T B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -v- INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al., Defendants.	:	MEMORANDUM & ORDER 88 CIV. 4486 (DNE)

Appearances: OTTO G. OBERMAIER, United States Attorney for the Southern District of New York, Randy M. Mastro and Richard Marks, Assistant United States Attorneys, of counsel, for the United States,

HON. FREDERICK B. LACEY and Stuart Alderoty for the Independent Administrator,

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES, William M. Feigenbaum, Paul J. Cambria, Gerald Chapman, of counsel, for Harold Friedman,

LAW OFFICES OF MOSES KRISLOV CO., Moses Krislov, Esq. for Anthony Hughes.

EDELSTEIN, District Judge:

This opinion arises out of the implementation of the voluntary settlement effected March 14, 1989, ("the Consent Decree") in the suit instituted by the plaintiffs, United States of America ("the Government"), against the defendants, International Brotherhood of Teamsters ("the IBT"), and numerous named officers of that union. The Consent Decree called for the appointment of three Officials, the Independent Administrator, the Election Officer, and the

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Investigations Officer, ("the Court Officers"), who would oversee the IBT's 1991 election for International Officers and file charges against those IBT members accused of corruption.

This particular controversy involves Application III of the Independent Administrator, where he asked this Court to rule on specific objections to his jurisdiction raised by Harold Friedman and Anthony Hughes, the first two IBT members to be prosecuted by the Investigations Officer under the strictures of the Consent Decree. The Independent Administrator dismissed Friedman and Hughes' objections in an opinion dated September 29, 1989 (the "Administrator's Opinion").

Application III was originally considered at a hearing held October 13, 1989 (the "main hearing"). On October 12, 1989, Friedman and Hughes jointly and separately moved to this Court pursuant to Rule 65, seeking injunctive relief barring the Independent Administrator from hearing these charges. Their injunction asks this Court to enjoin the Independent Administrator from conducting the hearing, or in the alternative, order that they not be collaterally estopped from contesting the substance of their charges, which allege the same conduct that formed the basis for their criminal convictions in U.S. v. Friedman, 86 Cr. 114, in the Northern District of Ohio.

Since Application III involved issues which, if decided, would influence the merits of Friedman and Hughes' injunction, a further hearing was held on October 16, 1989 (the "injunction hearing"). On October 18, 1989, this Court issued an order interpreting the

portions of the Consent Decree contested at the main hearing (the "Interpretation Opinion"). This Court also issued an order asking the parties to the injunction hearing to submit further memoranda.

This opinion will decide Application III by the Independent Administrator, and all matters relating to the injunction motion by Friedman and Hughes. First, this opinion will consider the substance of Application III by the Independent Administrator, and then will rule on the injunctions. As an additional matter, while Friedman and Hughes submitted virtually identical motions, Hughes has argued that since he neither signed the Consent Decree nor was a party to the original suit, he should not be bound by the Consent Decree's changes to the IBT Constitution.

I. Application III

The Independent Administrator submitted Application III pursuant to ¶12(I) of the Consent Decree. Summarily, Application III arises from the challenges of Messrs. Friedman and Hughes to the authority of the Independent Administrator to hear charges against them brought by the Investigations Officer under Article XIX, § 3(d); Article XIX, § 6(a) of the IBT Constitution; and paragraph D.5 of the Consent Decree. The Independent Administrator dismissed their jurisdictional objections in the Administrator's Opinion. The Independent Administrator then filed Application III to have this Court establish his authority to hear charges against these two IBT members, the first members to be brought up on charges filed pursuant to the enforcement scheme set up by the

Consent Decree.

Friedman and Hughes claims may be summarized as threefold: First, that Article XIX, Section 3(d) of the IBT Constitution, ("§3(d)"), precludes bringing charges against elective officers for actions "prior to their current elective term which were not then known generally by the membership." Friedman and Hughes claim their racketeering actions were known generally as a result of their indictments. Second, they claim that under Article XIX, Section 6(a) of the IBT Constitution, ("§6(a)"), as modified by ¶D.6 of the Consent Decree, they cannot be disciplined while their criminal appeals pend before the Sixth Circuit. Third, they claim that under Article XIX, Section 6(a) of the IBT Constitution, as modified by ¶D.5 of the Consent Decree, the statute of limitations has run out for the Independent Administrator to hear these charges.

The Investigations Officer charges Mr. Friedman and Mr. Hughes with violating the IBT Constitution by embezzling from Union funds and committing racketeering violations in violation of 28 U.S.C. §§-1962(c) and 1962(d). The conduct occurred from 1978 through 1981. This conduct formed the basis for their convictions in U.S.v. Friedman, 86 Cr. 114 in the Northern District of Ohio.

A. Charges "Known Generally"

Friedman and Hughes contest the authority of the Independent Administrator to hear charges against them stemming from their criminal convictions, since §3(d) of the IBT Constitution bars

disciplining elective officers for activities occurring prior to their current term which "were not known generally" by the membership.[1] Friedman and Hughes argue that since their convictions were the result of highly publicized trials, the charges must have been "known generally" to the membership. Both Friedman and Hughes were re-elected to posts after the indictment upon which they were convicted was filed.[2]

The Investigations Officer claims that §3(d) refers to "activities and actions" generally known, not allegations. By this view, since Friedman and Hughes had only been indicted at the time of their re-elections, and since they denied the charges, their actual activities were not known generally to the membership. The Independent Administrator adopted the view of the Investigations Officer and dismissed Friedman and Hughes' contentions that, by virtue of the indictment and convictions against them, their actions were "known generally" to the IBT membership.

The Independent Administrator found that the racketeering

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[1]The pertinent text of §3(d) provides:

> 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, and only those activities and actions occurring prior to their current term which were not known generally by the membership of the International Union or the subordinate body in the case of an officer of a subordinate body. [Emphasis added.]

IBT Const., Art. XIX, §3(d) (as adopted by the 23rd International Convention, 1986).

[2]The Administrator's Opinion indicated that Friedman was re-elected as President of Teamster Local 507 in 1987. Hughes was re-elected to his current term as recording Secretary of Teamster Local 507 in Later 1987. Administrator's Opinion at 3.

activity of Friedman and Hughes could not have been "known generally" to the IBT membership. Further, the Independent Administrator reasoned that since Friedman and Hughes vigorously contested and continue to deny the criminal charges, then their actions could not have been generally known.[3]

I concur with the conclusion of the Independent Administrator in the Administrator's Opinion that charges against Friedman and Hughes are not barred by §3(d). In the Investigations Officer's view, which the Administrator's Opinion adopts, §3(d) precludes bringing disciplinary actions for activity generally known, not allegations. To this day Friedman and Hughes vehemently deny their guilt and maintain innocence despite their convictions. Such actions indicate that their actions could not have been "known generally" at the time of their convictions.

B. Stays of Proceedings

Friedman and Hughes claim that §6(a) prevents the Independent Administrator from pursuing charges against IBT members while they appeal their criminal convictions. §6(a) prevents IBT officers from facing IBT disciplinary charges on the same facts while their

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[3] See Administrator's Opinion at 3-5.

judicial trials or appeals pend.[4] Further, Friedman and Hughes argue that the intent of §6(a)--to prevent IBT members from unjust dismissals based on unsubstantiated civil or criminal allegations--should preclude these charges since they still deny their convictions and the Court stayed their sentences pending appeal.

The Independent Administrator found that the relevant portion of §6(a) was superceded by ¶D.6 of the Consent Decree, which specifically allows the IBT President or Board to suspend an officer while he awaits the final outcome of a trial.[5] The Independent Administrator went on to find that ¶F.12.A of the Consent Decree empowers the Independent Administrator with the same disciplinary power as the President or Executive Board.[6]

Friedman and Hughes' contention that §6(a) precludes the Independent Administrator from hearing charges against them while their appeals pend is without merit and must be dismissed. I find that §6(a) has been specifically superceded by ¶D.6 of the Consent Decree, despite Friedman and Hughes' illogical assertions to the

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[4] §6(a) provides in relevant part:
> No member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial until his final court appeal has been concluded.

IBT Constitution, Article XIX, Section 6(a) (As adopted by the 23rd Annual Convention, 1986).

[5] ¶D.6 of the Consent Decree amended §6(a) as follows:
> Nothing herein shall preclude the General President and/or General Executive Board from suspending a member or officer facing criminal or civil trial while the charges are pending.

Consent Decree at 5.

[6] See Administrator's Opinion at 5-8.

contrary. Both the specific language of ¶D.6, and the spirit and intent of the Consent Decree as described in the Interpretation Opinion support the position of the Administrator's Opinion.[7]

Further, I am unpersuaded by Friedman and Hughes' view of the intent of the amended §6(a). It is unreasonable to conclude that the spirit and intent of the Consent Decree--which specifically alters the IBT Constitution--should in any way preclude the Investigations Officer from pursuing charges against convicted felons. Throughout this matter, Friedman and Hughes seem to confuse being accused of criminal acts with being convicted of criminal conduct: Despite their protestations of innocence, both are convicted felons regardless of the fact they have pending appeals. That their sentences were stayed and that they continue to deny their culpability does not entitle them to the presumption of innocence they seek.

C. Statutes of Limitations

Friedman and Hughes argue that the ¶D.5 of the Consent Decree's modification of §6(a) time bars the Investigations Officer from filing these charges. Friedman and Hughes point out that the original §6(a) provided that all charges should be filed within one year of the alleged misconduct.[8] Further, ¶D.5 of the Consent

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[7]See conclusion, Interpretation Opinion.

[8]The pertinent portion of §6(a) provides:
Any charge based upon alleged misconduct which occurred more than one (1) year prior to the filing of such charge is barred and shall be rejected by the Secretary-Treasurer, except charges based upon the non-payment of

Decree--which modifies §6(a) to provide for a five year statute of limitations--exempted the Court Officers from this revised statute of limitation.[9] They extrapolate that the Court Officers must then be bound by the background original one year statute of limitations for their actions.

The Independent Administrator found that the Consent Decree itself, coupled with its intent and spirit, indicated that the Court Officers were to be bound by no statute of limitations. The Administrator's Opinion went on the find that the Consent Decree, taken as a whole, vests the Court Officers with "no less power" than the IBT General President.[10]

I find that the plain language of ¶D.5, taken together with the spirit and intent of the Consent Decree as a whole, support the Independent Administrator's conclusion that the Court Officers are bound by no statute of limitations. The Consent Decree intended for the Court Officers to have no less disciplinary power than the General President. To deduce a background one year statute of limitations would eviscerate the spirit and intent of that portion of the Consent Decree. I find that Friedman and Hughes' analysis

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dues, assessment and other financial obligations.

[9]the pertinent part of ¶D.5 provides:
...Section 6(a) of Article XIX ...shall be and is hereby amended to provide for a five (5) year period, running from the discovery of the conduct giving rise to the charge. This limitation period shall not apply to any actions taken by the Investigations Officer or the Administrator.

[10]See Administrator's Opinion, at 7-8.

of the applicable statute of limitations for the Court Officers is flawed and must be rejected.

D. Collateral Estoppel

The Independent Administrator determined that Friedman and Hughes should be collaterally estopped from contesting the substance of the charges against them at their hearings, since the charges are essentially the same as those previously decided in their criminal trials. Naturally, Friedman and Hughes argue that they should not be barred from re-litigating the charges against them. The Administrator's Opinion sets forth the standards for invoking "offensive" collateral estoppel, which prevents a losing party from re-litigating the same issues previously adversely decided in a separate action brought by a different plaintiff.

The Independent Administrator applied the well-settled standards for the use of offensive collateral estoppel set forth in Parklane Hosiery Co. v. Shore, 439 U.S. 322, 329-332, 99 S.Ct. 645, 58 L.Ed. 552 (1979). See also 1B Moore's Federal Practice ¶¶0.441[3]-[4].[11] The gist of Friedman and Hughes' argument is that

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[11]The Administrator's Opinion summarized the criteria for invoking collateral estoppel as follows:

1. the party to be estopped must have been a party or in privity with the party to the prior action;
2. the issues to be estopped must be the same as the issues determined in the prior action;
3. the issues must have been actually litigated and necessary to the prior judgement;
4. application of collateral estoppel will not be unfair because:
   (a) The party to be estopped had little incentive to vigorously litigate the first action;
   (b) the first judgement is inconsistent with other judgments on the issue to be estopped;

invoking collateral estoppel would contravene the fourth element of the test, that its employment be unfair to them. They ask this Court to exercise the broad discretion over collateral estoppel given trial courts by Parklane, and find that offensive collateral estoppel would be unfair in this instance.[12]

I find that the Independent Administrator has correctly applied the doctrine of collateral estoppel. The Administrator's Opinion convincingly applies the listed standards to Friedman and Hughes, and I endorse those findings.[13] Friedman and Hughes' further use of their familiar argument--that it would be unfair to bind them to factual determinations made at their criminal trial whose result they actively disputed and are still appealing--again is unfounded and without merit.

I endorse and affirm the findings and rulings of the Administrator's Opinion in full. Friedman and Hughes' objections to the Administrator's Opinion are hereby denied.

(c) the second action affords procedural opportunities unavailable in the first action (that the party had a full and fair opportunity to litigate the first action); or

(d) application of collateral estoppel would not otherwise be unfair to the defendant.

Administrator's opinion at 8-9.

[12]See Parklane, supra, at 331. The Supreme Court stated "that the preferable approach for dealing with these problems...[is] to grant trial courts broad discretion to determine when it should be applied." Id.

[13]See Administrator's Opinion at 8-9.

My rulings on the issues raised in Application III establish the jurisdiction of the Independent Administrator to hear charges against Friedman and Hughes. While the issues decided to this point establish the ability of the Independent Administrator to hold these hearings, Friedman and Hughes have also moved this Court and seek an injunction barring the hearings.

II. The Injunctions

Friedman and Hughes have moved this Court jointly and separately for an injunction to prevent the Independent Administrator from hearing the charges against them.

The standard for issuing a preliminary injunction in this circuit is a showing of (a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly towards the plaintiff requesting the preliminary injunctive relief. Kaplan v. Board of Education 759 F.2d 256, 259 (2d Cir. 1985); Jackson Dairy, Inc. v. H.P. Hood & Sons, 596 F.2d 70, 72 (2d Cir. 1979).

A. Separate Consideration of Hughes

While Friedman and Hughes move this Court for separate injunctions, each of their petitions incorporates the arguments of the other, and the merits of their motions should be considered together. Hughes--at both the main hearing and the injunction hearing, and in his further papers--argues that he, unlike

Friedman, is not bound by the changes in the IBT Constitution wrought as a result of the Consent Decree, since he was neither a signator of the Consent Decree nor a party to the original lawsuit. Hughes further claims that under Martin v. Wilks, __ U.S. __, 109 S.Ct 2180 (1989), non-parties to a consent decree cannot be bound to its effects.

Hughes' injunction motion should be considered on the same plane as that of a signator--in this instance Friedman--since his reliance on Wilks mischaracterizes both that situation and the one at hand. In Wilks, a class action suit by black firefighters in Birmingham, Alabama, resulted in a desegregation and affirmative action consent decree (the "Birmingham consent decree") which intended to integrate the Birmingham Fire Department. A group of white firefighters, who were not parties, intervenors, amici, or in any way involved in the original suit, subsequently challenged the Birmingham consent decree in a civil rights suit under Title VII. The District Court dismissed the later challenge as an impermissible collateral attack on promotion decisions made pursuant to the Birmingham consent decree. A divided Supreme Court upheld the Eleventh Circuit's reversal of the District Court's dismissal, holding that a group which was in no way a party or intervenor to a litigation cannot be barred from litigating those issues in a later suit.

The factors underpinning the Wilks decision may be distinguished from the situation in the current IBT litigation. First, Hughes had his interests represented in this Consent Decree

by the IBT defendants. The original complaint which ultimately resulted in the Consent Decree named the "International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO"--in other words, the IBT's international organization and headquarters (the "International IBT")--and the General Executive Board of the IBT as defendants. The International IBT is the leadership, and designated representative sitting atop the IBT hierarchy. The General Executive Board includes the highest elected officials of the whole IBT.

The International IBT, as the elective and administrative leadership of the IBT membership, litigated the suit and entered into the Consent Decree as the representative of its membership and considered the Consent Decree consonant with its member's interests.[14] In fact, the only logical purpose for the existence of the International IBT is to represent and protect its constituent members, including representing the IBT rank and file as a whole in lawsuits.

The defendant International IBT intended to represent the entire membership, both in the original litigation, and later in the implementation of the Consent Decree. In this situation, the IBT membership as a whole, and Hughes' interests in particular,

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[14]As an example, the IBT leadership has contested the expenditures of the Court Officers--costs to be borne by the IBT--in carrying out the Consent Decree. The IBT justifies its intense oversight as fulfilling its duty to protect its member's money. Scores of IBT members have written the Court protesting the disbursement of IBT money for expenses they consider wasteful, and applaud their leadership's crusade to protect their financial interests.