Statement of Michael G. Cherkasky, Election Officer

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Committee on Education and the Workforce

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Chairman Hoekstra and distinguished members of this House Subcommittee on Oversight and Investigations, thank you for this opportunity to testify on the subject of the 1989 Teamsters Consent Decree and the importance of supervising the rank-and-file election required by that agreement.

My name is Michael Cherkasky and on December 2, 1997, Judge David Edelstein of the Federal District Court for the Southern District of New York appointed me to serve as the Election Officer under the 1989 Consent Decree. My mandate from the Court is to conclude the International Brotherhood of Teamsters 1996 International officer election. My objective is to have an election that is fair, honest and executed with integrity; to have an election that gets more of the IBT membership to participate voluntarily and actively in choosing their top leaders; and to complete the election with the installation of IBT International officers.

Stated generally, the objectives of fairness, integrity, and free voter choice could be applied to almost any situation that uses balloting to express an electorate's choice. I suspect that everyone would agree with the general idea that a fair election process should give the voters the opportunity to vote according to their views and without any intimidation or coercion. There is, however, a special purpose that animates Consent Decree supervision of the IBT International officer election. The nation's single largest trade union is an undeniable force that reaches into every nook and cranny of the American economy. The work of 1.4 million rank-and-file Teamsters broadly affects what the public pays, and what the business sector pays to buy goods and deliver services. The union is an economic force as important as Microsoft, Exxon, or any number of other huge national enterprises.

Turning the IBT into a true democracy will eliminate the corrupt use of the labor force and help drive corruption and criminality out of the businesses that use IBT labor. That is the ultimate end of the election supervision.

A short review of law enforcement directed at labor racketeering will show just how important this project is to our nation. Forty years ago, Senator McClellan convened hearings that examined the issues of labor racketeering in the United States. Those landmark congressional hearings examined Organized Crime's infiltration of the

Teamsters. The Nation learned from that work the economic costs paid by every citizen when a labor force, corruptly deployed, becomes a tool of crime. In the years that followed, federal and state investigators and prosecutors brought criminal cases against the individuals that had corrupted labor unions. Cases involving the IBT alone resulted in the conviction and removal of hundreds of union officials over several decades.

The effort and money expended by investigation and prosecution was enormous. But the phoenix of mob corruption rose from the ashes after every criminal case. One convicted and removed leader would be replaced by another just as willing to make a devil's pact with criminal bosses.

I know how labor racketeering schemes work, and how they used to work through the IBT, because I spent 14 years as a prosecutor in the New York District Attorney's Office. I investigated labor racketeering cases and saw how organized crime groups would use labor unions as one instrument to control some line of business – construction, food handling, clothing shipment – to extract a "mob tax" from businesses that could not afford to have projects, inventory, or work delayed. I saw how businesses, squeezed by Organized Crime, ultimately passed that cost on to consumers throughout the economy.

I know of no tabulation of the cost of the federal and state resources devoted nationwide to the prosecution strategy. I do not doubt, however, that hundreds of millions of dollars were spent and that the criminal problem seemed inevitable and endless.

In the 1980s, a law enforcement revolution occurred when the Federal Government used the Civil RICO statute to attack organized crime corruption of labor unions. Instead of only picking off a corrupt individual that would be replaced, one trial at a time, Civil RICO suits sought to reform the way unions conducted their business so that the leadership would actually represent the interests of the rank-and-file membership.

The 1989 Consent Decree that settled the Civil RICO action against the IBT, was the first comprehensive attack on systemic corruption of an International union. The reform strategy had two elements: first, investigators and adjudicators independent of the union itself stepped-up discipline of union officials under the IBT's own constitution; and second, giving the rank-and-file the right to elect the IBT's top officers. The Consent Decree processes of union discipline and democratic self-determination for the rank-and-file are very cost-effective law enforcement compared to the regular criminal justice model of conviction and punishment. The election feature especially is a structural change that effectively inoculates the IBT against criminal

infiltration and stops those who would try to use the union as an adjunct to criminal enterprise in the larger economy before they can start.

The Consent Decree uses the rank-and-file election process to break the power of corrupt forces to pick individual leaders and as a long-term defense against renewed infiltration. Civil RICO did not require the use of this election process: the field was open to try any number of remedies. In a creative stroke, the parties turned to the ballot box, and the empowerment of the rank-and-file membership as the best defense against control of the labor force by a few corrupted leaders selected by outside forces. The control of this union was transferred by the ballot from the mobster to the teamster.

The Consent Decree made the election process part of the IBT's constitution. The Election Officer, however, was only provided for in the 1991 and (if the government so chose) the 1996 elections. The reason for this special court-appointed officer is obvious. The Consent Decree required the IBT to use a democratic procedure to elect its officers. Democracy, however, was not practiced in the IBT at this level before the Consent Decree. Thus, the Election Officer's special oversight of this process is intended to allow a culture of democratic participation to take root and flourish.

Do not forget the IBT's recent history: three International conventions ago, in 1986, the IBT was still in the grip of organized

crime, and union members had no effective forum in which to debate policies. The brawling debate of issues in the 1991 and 1996 IBT International officer elections is a new and novel phenomenon for this union. The Election Officer's process created the environment for this rank-and-file participation.

These big, law enforcement objectives must be kept in mind when designing and implementing the detailed Election Rules for the IBT International officer election. I have studied the general procedures used in 1991 and 1996 and I believe that they were sound, reasonable systems for promoting democratic participation of the membership in the union's affairs. Additional rules, fashioned from the experience of the initial 1996 election and already approved by the District Court for the rerun election, should build the confidence of IBT members, the public, and of the Congress, in the rerun election process. These rules are aimed specifically at making this rerun an election of, by and for the rank-and-file Teamsters. These new rules include the following:

First, only contributions from active IBT members will be allowed in the rerun. There is one exception to that, required by Supreme Court case law, for services from accountants or lawyers necessary to comply with election rules. The money to support candidate campaigning in the rerun, however, is limited to money that members decide voluntarily to donate.

Second, an IBT member can contribute only up to a limit of $1,000 cash per independent candidate or slate. Candidates themselves are limited to contributing $5,000 cash from their own funds to the entire election.

Third, candidates and independent committees are required to identify all contributors regardless of the amount donated. In the initial election, detailed financial reporting applied only to contributions greater than $100. In the rerun election, every dollar must be reported to the Election Officer, and the information made available for rank-and-file scrutiny.

Fourth, candidates will submit their financial reports to the Election Officer monthly, not quarterly, and a report will be required on the eve of mailing the ballots to give the Election Officer a snapshot of fundraising and expenditures before the voting starts. In the final two weeks of the campaign before the mailing of ballots to the rank-and-file membership, I will direct all of the investigative and auditing resources of the Election Office to track as thoroughly as possible all major expenses and the flow of contributions to the various campaigns. In that regard, I expect to require the national campaigns to give a daily report to the Election Officer detailing contributions received and expenditures made the previous day.

Fifth, and perhaps most important, the Election Office will review the detailed financial reports from candidates, conduct spot audits of candidates, vendors, and contributors and promptly remedy any violations. Oversight of finances will be as contemporaneous as possible with the receipt and expenditure of funds. Among other things, this audit will test whether any candidate has received contributions from prohibited sources; whether from an employer, a non-IBT member, a labor union, or, as happened in the initial election, from inside the IBT itself. Evidence gathered in any protests relating to campaign finance violations will be used together with the audits to guard against contributions from improper sources.

I believe that the Election Rules, modified as I have described for the rerun election, will allow for effective oversight. A sound compliance program requires clear rules of conduct that candidates and members can understand, rules that are not so onerous as to deter voluntary compliance, and an active enforcement program to detect violations promptly and impose a punishment or remedy. No set of laws or rules can eliminate all misconduct. We still have crimes despite the existence of criminal laws. A determined miscreant will commit an offense and run the risk of punishment.

Still, the vast majority of our citizens are honest and law-abiding. I believe that intensive auditing of candidate financial reports, and the attendant publicity, will produce a high rate of compliance with the Election Rules.

Let me turn briefly to my ruling, issued on April 27, 1998, on the election protest alleging financial misconduct by James Hoffa and the Hoffa Slate. This ruling disposes of the last protests involving conduct from the initial 1996 election. I believe that my ruling reflects a thorough and complete examination of the Hoffa Slate campaigns. My investigation found serious violations of the Election Rules and ordered remedies proportionate to the violations found. I have ordered fines against Mr. Hoffa of $30,910 in connection with financial reporting violations; I found that Richard Leebove, an employer who worked as Mr. Hoffa's principal press spokesperson, improperly contributed $167,675 to the campaign and have barred Mr. Leebove from participating in the rerun election; and I have ordered the publication of a notice in the *Teamster* magazine that goes to all members that will summarize Mr. Hoffa's failure to testify fully and accurately about his financial reporting. The parties have an opportunity to appeal this ruling, and I cannot comment on how I balanced the various facts to arrive at these remedies. I ask that you read the ruling itself for the best explanation of the investigation and its result.

Notwithstanding the possibility of appeals, I will soon ask Judge Edelstein to set a new timetable for the rerun election. With the end of matters relating to the initial election, this process must now move forward, as swiftly as is fair, to give the IBT membership the election process and the elected leadership it deserves.

Let me close with a word about funding. This type of supervision does cost money. For the rerun election, the ultimate expense will be far less than that of the initial election mostly because the process will be run by permitting all previously nominated candidates still eligible for office to appear on the ballot as candidates. In addition, the previously-elected convention delegates will be able to make supplemental nominations by mail ballot during a short period at the start of the process. The rerun will not involve the time and expense of conducting and supervising delegate elections at the more than 500 IBT local unions, or the time and expense of a national, in-person nominating convention.

The process that I have outlined, however, can only happen with funding. I have not heard anyone seriously question the need to have this rerun election supervised in order to preserve the gains won for the rank-and-file, and the American public, from the operation of the Consent Decree. Valuable time that needs to be spent on moving the rerun process ahead is now being wasted because, despite Court rulings

on the subject, the funding issue has not been resolved in practice. I urge this Subcommittee to examine all of the available alternatives, and to assist in making sure that the Election Office gets funded so that this work can be completed.

We have in place the means to supervise and conduct a free, fair and honest election for IBT International officers. We should now go ahead with that process so that the practice of democracy will take permanent root in the International Brotherhood of Teamsters.

Thank you again for the opportunity to appear before you and testify today. I would be happy to respond to any questions from the Subcommittee.