Union Trusteeships and Union Democracy

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I start from the fundamental premise that unions should be democratic. They must be democratic if they are to serve the union movement's own mission and if they are to serve our society's democratic values.

The historic tradition of the labor movement was to enrich democratic values in society by making workers full members of society and enabling them to have a greater voice in shaping society. Consistent with that purpose, unions in their internal governing structure have almost uniformly been built on the democratic model, with officers elected by the vote of the members and decisions made by vote in open meeting or by elected representatives.

The declared purpose of the Wagner Act,\(^1\) enacted fifty years ago, was to encourage and promote collective bargaining. One of its goals was to bring a measure of democracy to the workplace by giving workers an effective voice in decisions governing their working lives. Neither the historic purpose of unions nor the public purposes of the Wagner Act can be fulfilled if unions are not internally democratic and members do not have a free and open voice in choosing their officers and in deciding union policies.

It was to help ensure that union members have such a free and open voice that Congress enacted the Landrum-Griffin Act\(^2\) over thirty years ago. Title I constructed a Bill of Rights for union members, guaranteeing freedom of speech and assembly, equal rights in decision making, fair trial, and right

\(^1\) Delivered as an address at the conference "The Government and Union Democracy," held at the University of Michigan on March 17, 1990. Co-sponsored by the Association for Union Democracy, Inc. and the University of Michigan Journal of Law Reform, the conference focused on methods of restoring democracy to troubled unions and on reforming union grievance procedures. Several citations are provided to aid the reader.

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to legal recourse. Title IV established standards for fair and open campaigns for union office and honest elections. In addition, Title V imposed on union officers the fiduciary duty to serve the interests of the union and its members.

One premise of Landrum-Griffin was that ensuring the democratic process in unions would curb corruption and abuse of power, thereby reducing the need for legal intervention. As Senator McClellan said:

If we want fewer laws—and want to need fewer laws—providing regulation in this field, we should start with the basic things. We should give union members their inherent constitutional rights, and we should make those rights apply to union membership as well as to other affairs of life. We should protect the union members in those rights. By so doing we will be giving them the tools they can use themselves.\(^3\)

This brings us to a troubling fundamental question. If we believe in union democracy, in the right of union members to elect their officers and to decide their union’s policies, how can we justify imposing a trusteeship which displaces the officers and deprives members of full control of their union? How can we reconcile Landrum-Griffin’s purpose of reducing the need for governmental intervention with the government’s naming a trustee to run the union and supervise its affairs? The use of government-imposed trusteeships must be troubling to anyone who believes in the values of union democracy and union freedom from government control.

We might comfort ourselves by remembering that unions themselves have historically recognized the need to impose trusteeships on local unions for corruption, abuses of power, and violations of constitutional procedures. The effect of such trusteeships is to suspend the democratic process at the local level, its most vital place in the union structure, until the abuses are corrected and the democratic process is reinstated. The Landrum-Griffin Act, in Title III, provides for such trusteeships to correct corruption or undemocratic practices, makes them presumptively valid for eighteen months, and allows them to continue as long as is needed to correct the evils that caused them to be established.

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Unions' use of trusteeships, however, provides small comfort to us, for their use has often been abusive, with the very purpose of curbing opposition groups at the local level and reinforcing dictatorial control by national officers. Also, a trusteeship imposed by the union does not raise the same problem with union autonomy as a trusteeship imposed by government. The troubling question of how to reconcile union democracy and government trusteeship remains.

I find the trusteeship device distasteful and disturbing, but when I look at the conditions that caused the courts to impose them, I have a far more bitter taste and deeper disturbance. Let us look at the facts of two of those cases.4

The first RICO trusteeship5 was imposed in 1986 on Local 560 of the Teamsters Union, aptly called the "Provenzano Local." Tony Provenzano, a made member of the Genovese Mafia family,6 with his brothers, was designated by the Genovese family to gain control of Local 560 with some 10,000 members so the family could use and exploit it for their benefit. They infiltrated and captured the union, with Tony becoming president in 1958. He became president after hijacking trucks and taking payoffs from employers for labor peace. In 1960 he falsely registered voters and otherwise manipulated the local union election. When the secretary-treasurer politically opposed him, Provenzano had him murdered by Mafia hit men. One of the murderers was later made business agent of the local. In 1963, a union member who spoke up in a union meeting to oppose the appointment of a business agent was shot down in front of his home the next morning.

Fear and intimidation effectively silenced all opposition. Members who dared to raise questions were beaten or, with the cooperation of the employer, discharged. Stewards refused

4. For a summary description of these two cases, along with other union trustee cases, see the excellent article by Professor Goldberg, Cleaning Labor's House: Institutional Reform Litigation in the Labor Movement, 1989 DUKE L.J. 903. For two different views on the appropriateness of trusteeships, see Note, Government Civil RICO Actions and Labor Unions: Reorganization and Innocent Persons, 58 GEO. WASH. L. REV. 125 (1989) (authored by Michael G. Liebman) (trusteeships violate RICO), and Note, Union Receiverships Under RICO: A Union Democracy Perspective, 137 U. PA. L. REV. 929 (1989) (authored by Eric Ames Tilles) (trusteeships can be necessary remedy).
6. Id. at 304.
to file grievances or the grievances were denied through a rigged procedure, and the discharged employees were driven from the industry. Contributing to the climate of fear and intimidation was the Provenzano Executive Board's systematic appointment of known criminals and labor racketeers to positions of control such as business agent and trustee. Members who might raise their voices well knew, or soon learned, the kind of persons with whom they would have to contend.

Criminal prosecutions did not loosen the grip of the Provenzano group, for the Mafia could always provide replacements. The Provenzanos themselves played musical chairs when one or another was criminally convicted and barred from union office. When Tony was sent to prison for labor extortion, he made his brother Nunzio, who had previously been convicted of labor extortion, president of the local. After Tony was released and was eligible, he was made secretary-treasurer and in effect ran the union. When he was again sent to prison for causing the murder of his rival, taking kickbacks on member benefit funds, and extortion, he made his daughter secretary-treasurer. When Nunzio was sent to prison, brother Salvatore became president.

For nearly 30 years the Provenzano group ruled Local 560 with iron fists of physical violence and through control of members' jobs. During this time the forms of democratic process were observed. Officers and stewards were elected, almost always unopposed, union meetings were held, and votes taken—by show of hands—always supporting the Provenzano group. For example, while Tony was in prison on a life sentence for murdering his political opponent, and concurrently serving sentences for selling labor peace and taking kickbacks on a union benefit fund, the Executive Board proposed to give him a $65,000 a year pension. To demonstrate that all democratic forms were followed, the Board mailed notices to all members, held an open meeting, made a motion to grant the pension, and opened the floor for discussion. Numerous members made speeches praising Tony, no one spoke in opposition, and the vote by show of hands was unanimous. Democracy in Local 560 was completely dead; there was no voice of opposition to even the most gross abuses. The forms of democracy were but a shell, cynically observed to obscure the reality that the members had no voice.
The Philadelphia Roofers provide another example. For twenty years, the election of the business manager, who was the chief officer of the local union, had never been contested. In 1981, the business manager was murdered by a Mafia hit man, shot in his home on Christmas Eve by a man delivering a poinsettia as a "gift." His successor, Stephen Traitz, was elected unopposed; his opponent, the acting president, withdrew his candidacy and left the industry when he learned that the local leader of the Mafia had sent out the word that Traitz was "their man."

The union officers and business agents engaged in a systematic program of terrorizing nonunion roofers and their employers by threatening to throw them off roofs, beating them up, slashing tires, vandalizing trucks, and destroying roofs. The main object was to compel payments into the union's medical, welfare, and legal funds which the officers then milked for other purposes, including making "gifts" to local judges. Mafia associates and convicted criminals were given jobs, and business agents served as Mafia enforcers. As a result of these activities, thirteen of the officers and business agents were convicted on more than 160 counts of coercion and corruption.

Because these convictions disqualified the officers from continuing to serve, the officers called a special election and named a slate of candidates made up of business agents and others who had been part of their support group. An opposing slate was formed, but its candidates and their supporters were threatened in the union hall and disrupted in their efforts to distribute campaign literature. They were followed to their jobs, where they and their employers were threatened; they were discharged and denied referrals from the hiring hall. The convicted officers' slate won the election and reappointed all of the business agents who had served the old regime. As the court observed, the result was that union members legitimately "fear attending meetings . . . . Their fear is that if they go to the Union Hall to resolve a dispute or problem . . . they will be outnumbered, intimidated, threatened with physical violence and/or physically beaten." Terror, not democracy, continued to reign in the union; members dared not raise their voices concerning the conduct of union affairs.

8. Id. at 1162.
The other cases in which trusteeships have been imposed have had the same general characteristics. Local 6A of the Cement and Concrete Workers was alleged to have become a captive organization of the Columbo Crime Family, and to have been used to extort payoffs from contractors, to steal union funds, and to create a climate of intimidation and fear by physical violence and control of jobs. The union agreed to a consent decree creating what was termed a trusteeship.\(^9\) Teamster Local 814 was alleged to be in the stranglehold of the Bonanno Crime Family, with the officers engaged in extortion and labor racketeering. Again, the union agreed to a consent decree.\(^10\)

When we look squarely at the facts of these cases, the seeming contradiction between union democracy and union trusteeships disappears. The trusteeship in Local 560 did not destroy union democracy; it did not deprive the members of control over their union. Democracy in Local 560 was dead; the Provenzano group had seized control and exploited it for the benefit of the Mafia. Stephen Traitz was not chosen by the members of the Roofers Local, but by the Mafia, and he served the Mafia's purposes. The new officers were not freely chosen by the members, but were chosen by convicted officers and elected in a climate of intimidation produced by pervasive violence and denial of job rights.

We know now from sad experience that although Senator McClellan was largely correct that the democratic process can, in most cases, curb corruption and oppression, those controlling a union can effectively destroy the democratic process and foreclose its regeneration. We see from these cases that even the most vigorous criminal prosecution may not free a union from the Mafia's tentacles. New heads and arms appear to replace those cut off. Those sent to prison name their successors and return to power when their time is served.

What shall we do when racketeers have gained such influence and control? Shall we, in the name of union democracy, leave union members in the grip of those who have mocked or destroyed union democracy? Shall we, in the name

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10. This was part of a larger effort against an organized crime family. See United States v. Bonanno Organized Crime Family, 683 F. Supp. 1411, 1419 (E.D.N.Y. 1988) (summarizing government actions against the Bonanno Family), aff'd, 879 F.2d 20 (2d Cir. 1989).
of union autonomy, withhold the hand of government and leave unions in the hands of the Mafia? These are the only alternatives—leave the union and its members in the grip of those who subvert and destroy the democratic process, or impose a trusteeship that will restore the union to its members and the democratic process. When viewed in their factual contexts, these trusteeships do not contradict fundamental principles of union democracy and union autonomy. Indeed, for one who believes deeply in union democracy, these trusteeships offer the last hope that these unions can fulfill the labor movement's traditional purposes and society's democratic goals.

The justification for imposing trusteeships in these cases dictates the limits within which the remedy should be used and the purposes toward which the trusteeship should be directed. First, a trusteeship should not be imposed except where it is clear that corrupt and abusive leadership has obtained such a stranglehold that members no longer have the possibility of removing the officers, ending the corruption, and deciding union policies through the democratic process. This will seldom be the case except where there is pervasive intimidation from fear of physical violence or loss of livelihood. It will be most often the case where the Mafia has obtained significant influence and control.

Second, the central purpose of the trusteeship should not be just to remove the officers, or to end the corruption and abuse of powers, necessary as these are. The ultimate and overriding objective must be to reestablish an effective and vital democratic process within the union. With democracy restored, the union can again fulfill its historical social and political purpose, and the members can help protect the union from those who would exploit it for their own ends. Only solidly established democracy offers any hope of permanent cleansing.

This leads to the crucial practical question: How shall the trusteeship be constructed and conducted? What powers and functions should the trustee have, and how should they be exercised? What measures are necessary to plant solid democratic roots in a union that has been controlled so corruptly as to justify imposing a trusteeship? We do not know the full answer, for our experience is limited, and none of the trusteeships have thus far been fully successful in reestablishing membership control through a solidly rooted
democratic process. Our experience has taught us more of what will not work than what will work.

We can, however, learn some significant lessons by examining the operation of judicial intervention in Local 560 and the Philadelphia Roofers. Judge Ackerman, in imposing the Local 560 trusteeship, ordered that the current executive board be removed and replaced by a trustee with "all authority and power to act as he may . . . see fit to administer the affairs . . . of Local 560, and to create and foster conditions under which reasonably free, supervised elections can be held . . . ." The trusteeship was to continue for such period of time as might be necessary to eliminate the racketeer influence and restore democratic processes in the union. Judge Ackerman concluded:

The current Executive Board members must be removed as a predicate to the restoration of union democracy within Local 560 . . . . The evidence clearly points to the fact that the members view the leadership of the Local as a single, monolithic control organization. So long as it, or any portion of it, remains in actual control of Local 560 . . . it will be very difficult to remove the sense of fear which the members now experience. This sense of fear within the Local—causing members to believe that it is not safe to protest or organize—is so overwhelming that it is not likely to correct itself in the foreseeable future.¹²

Judge Ackerman correctly granted the trustee all of the powers required and perceptively pointed out the measures needed. Unfortunately, the trustee did not exercise those powers fully and did not take the necessary measures.

The remedy was stayed during two years of appeal. During those two years, President Salvatore Provenzano was convicted of defrauding a local benefit fund and taking kickbacks on a dental plan. He was replaced by Mikey Sciarra, a protégé of Tony Pro and a member of the executive board. The pattern of corruption and intimidation continued, while the Provenzano group planned how to deal with the trusteeship.

When the trustee was appointed, he failed to recognize the pervasiveness of fear and the monolithic character of the control organization. For more than six months he retained business agents from the old regime, including Joseph Sheridan, who had been removed as vice-president, and he left in place the shop stewards who had served under the old regime. He left hanging in a prominent place in the union hall a large portrait of Tony Provenzano, symbolically honoring him and legitimizing his regime. The court's presumption that an election would be held within eighteen months\textsuperscript{13} was not contradicted by the trustee. In the meantime, the Provenzano group, led by Sciarra, formed a "Teamsters for Liberty" organization opposing the trusteeship, demanding an election, and preparing to return to power. Sciarra and the Teamsters for Liberty did not repudiate the Provenzanos or the practices of the old regime. On the contrary, Tony continued to be an idol, and the trustee the destroyer of democracy and membership control.

The message to the union members was clear. When the trusteeship was terminated, the Provenzano group would return to power and its practices would be resumed. Anyone who criticized the Provenzano regime or opposed Mikey Sciarra or the Teamsters for Liberty would suffer the same fate as those who preceded them. Understandably, no significant opposition emerged.

After a year, Judge Ackerman appointed a new trustee,\textsuperscript{14} who removed Tony's portrait, improved administration of the union's pension and benefit funds, and published a monthly newspaper. However, he treated Sciarra and the reincarnated Provenzano group as a legitimate political organization, allowing it to use the newspaper to praise the Provenzanos and condemn the trusteeship. Shop stewards, carried over from the old regime, with their control over grievances, comprised the backbone of the Teamsters for Liberty and coerced members to sign petitions opposing the trusteeship and demanding an election. As a result, union members still saw little real prospect that the grip of the Provenzano group would be broken, and few were willing to risk their futures by supporting an opposition group. Although no strong opposition group had emerged, and the dominant voice in the union

\textsuperscript{13} Id. at 337.

\textsuperscript{14} United States v. Local 560, 126 L.R.R.M. (BNA) 2190 (D.N.J. 1987).
was one praising Tony and the old regime, the trustee scheduled the election after an additional year. In doing so, he relied in part on the expectation that Sciarra could be barred from running, and that without him as a candidate the Teamsters for Liberty would split or become ineffective.

When Sciarra and John Sheridan, vice-president under the Provenzanos, were nominated, the government brought proceedings to have them disqualified because of their connections with the Mafia, continued use of intimidation, misuse of union funds, making of sweetheart agreements, and other acts of corruption during the two years the trusteeship order was on appeal. Judge Debevoise, before whom these proceedings came, declared, "If they [Sciarra and Sheridan] are now returned to office upon the termination of the Trusteeship, it is highly likely that the Genovese Family, through them, would reassert control over Local 560."

He enjoined Sciarra and Sheridan from running for office, but he did not grant the government's request to bar them from participating in union activities. The Teamsters for Liberty immediately substituted Mikey Sciarra's brother, Danny, and Joseph Sheridan's nephew, Mark, as candidates. The ballot thus carried the names of Sciarra and Sheridan, and everyone understood who were the real candidates.

The members' fears were self-fulfilling. The Provenzano group returned to power and one of its first acts was to appoint Mikey Sciarra business agent. The government asked Judge Debevoise to bar Sciarra from serving as business agent and participating in the union's affairs, but this request was rejected. Sciarra immediately proceeded to dominate union meetings, telling his brother how to proceed, answering questions directed to the chair, and making long speeches from the podium concerning union policies and insisting that he should be made a trustee of the union benefit funds. Those at the meeting treated him as de facto president and his brother as a figurehead. Although the trustee continued to exercise some supervisory functions, particularly over union funds, the Provenzano-Sciarra group regained effective control.

A year too late, Judge Debevoise, who had refused to bar Mikey Sciarra from becoming business agent, confronted by videos of union meetings and other evidence of Sciarra's role

in the union, ordered him removed as business agent and barred him from any further participation in union activities.\textsuperscript{16} By that time the Provenzano-Sciarra group had entrenched itself and a new leader acceptable to the Mafia could be designated to continue the pattern of corruption and intimidation. The "sense of fear" which Judge Ackerman recognized would continue "so long as it [the Executive Board of the Local], or any portion of it, remains in actual control of Local 560\textsuperscript{17} has not dissipated. The nascent political activity that temporarily existed in the local has withered and will quickly disappear.

The Philadelphia Roofers story is shorter but not sweeter. Judge Bechtle acknowledged that the abuses were so serious and pervasive that the most drastic remedy, including dissolving the union, would be justified. However, because "court-imposed trusteeships have not worked as well as expected," he did not appoint a trustee but a "Chief U.S. Court Liaison Officer," terming the arrangement a "Decreeship."\textsuperscript{18} The liaison officer was to observe all face-to-face negotiations between the union and employers, have access to all of the union's records, approve the use of any union funds for other than ordinary business expenditures, and make an audit of the local's treasury and its various pension and benefit funds.\textsuperscript{19}

The defect of a trusteeship, Judge Bechtle said, was that it attempted to force onto the union leadership and membership an "authority figure... replacing individuals and policies that have theretofore in great measure been supported, enforced, or at least tolerated by the very membership who would be ruled over by the unwanted trustee."\textsuperscript{20} The thirteen convicted officers and business agents were barred from holding any union office or position of authority in the industry, but the court left in office their replacements. The new officers had been subordinates in the old regime, and were elected on a slate hand-picked by those convicted, in an election permeated

\begin{thebibliography}{9}
\bibitem{19} \textit{Id.} at 1171-74.
\bibitem{20} \textit{Id.} at 1167.
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with intimidation by threats of violence, retaliatory discharges, and job denial. The message to the membership was explicit: the old regime with new faces remained in control, with the court's endorsement. The members' fears of retaliation did not dissipate, and few would dare to criticize or oppose the leadership.

The results were foreseeable. Union financial practices have improved, but there has been little progress toward internal union democracy. Any who raise their voices in protest or oppose the officers are denounced in union meetings, risk discharge by their employers, and are denied referrals at the union hiring hall. The court ordered an election one year after the "decreeship" was established, but that election, like the preceding one, was permeated with intimidation. At a membership meeting prior to the election, the incumbents generated enough hostility toward the opposition candidates to drive them from the meeting. Although Judge Bechtle said that the decree should be applied "to protect, as much as possible, the right of Union members to fully participate in the Union affairs, including the right to vote, to assemble, to speak freely, to be treated fairly," the decree did not make possible the protection of democratic rights. It left the union in the control of "authority figures" who were part of the regime that had systematically denied these rights.

The experiences in these two cases, confirmed in other cases, demonstrate what must be done if the trusteeship is to have any reasonable hope of success in reestablishing the democratic process within the union. Decriminalization of a union requires measures not unlike those used to "de-Nazify" occupied Germany after World War II. Because racketeer control relies heavily on intimidation, making members fearful for their lives or their livelihood, the court and trustee must make clear that they will take whatever steps are needed to eliminate all influence or control by the old regime. By their conduct they must give members positive assurance that those who were in power will not return to power. Only then can the fear that silences and paralyzes the members be sufficiently dulled. Only then will new political groups and leaders emerge to repudiate those whose practices required the trusteeship, to establish a solidly rooted democratic

21. Id. at 1173.
process, and to develop a leadership dedicated to preserving that process.

The first step must be to remove from office and positions of influence all of those who were part of the corrupt regime and bar them from participating in union affairs for a substantial period of time. This was the most crucial weakness in both the Local 560 and Philadelphia Roofers cases. It is not enough to remove the officers, for they will be replaced by subalterns or relatives. The members will not be reassured by a game of musical chairs. Nor is it enough to remove those proven guilty of wrongdoing; they are but the most visible fraction of the control group. As Judge Ackerman rightly observed, union members view the leadership as a monolithic control organization, and so long as any portion of the leadership remains in control the members will continue to have a sense of fear and believe that it is not safe to protest or organize.

Removal of all those associated with the old regime may reach some who have not been guilty of any personal wrongdoing, and even some who found the coercion and corruption distasteful. But all of them knew of the activities, participated in them, personally benefitted from them, and held themselves out as supporters of them. They are not innocents, and by continuing in the administration of the union they will perpetuate the members' fear that nothing will change.

The leadership must not only be removed, but must be barred from participating in union affairs for a substantial period to ensure that the chain of control is completely broken. Although the leaders are removed from office, the roots of the racketeering organization remain, and the members' fear persists. If those associated with the leadership continue to be politically active, deposed leaders like Sciarra in Local 560 can resume a leadership role, reconstitute their organization, again subvert the democratic process and return to power. An open political process cannot develop, nor can a fully free election be held, as long as members see that prospect. Political rights ought not be denied lightly, but those whose conduct has brought about the need for the trusteeship have forfeited those rights by their gross abuse of them.

Second, when the trusteeship is established, no fixed termination date should be stated or even suggested. The decree should state explicitly that the trusteeship will continue for as long as is needed to reestablish the democratic process. This is a central weakness in the consent decree with
the International Brotherhood of Teamsters,\textsuperscript{22} which requires that the election be held at the end of two years. Although the investigation officer has authority to bring charges against and remove officers of the union, it is not likely that he will be able to eliminate the Mafia influence within that time limit. In cases like Local 560 it is impossible to know in advance how long it will take for the fear to dissipate, for open debate to appear, and for political groups with credible leadership to emerge. When the members have been intimidated and all opposition silenced for years, the habits of noninvolvement have become ingrained, skills of political leadership have been lost, and many members have come to accept passively that they have no voice in the union.

If it is indicated that the trusteeship will terminate on some fixed date, the ousted group, like the Teamsters for Liberty, will use all available means, including harassing litigation, to frustrate the trusteeship and delay any corrective action before that time. They know that they need only hold their organization together until an election is held and the trusteeship is terminated. The members are put on notice that after that date they will lose protection and the paralyzing fear will continue. If the court and trustee make clear at the outset that the trusteeship will continue until all influences of the corrupt regime are eliminated, until members freely discuss union leadership and policies, until political groups have developed, and until a fully fair and open election can be held, the racketeers will likely see little future in the union and will leave.

Trusteeships may need to be extended for substantial periods. Rooting out an entrenched corrupt leadership and eradicating the effects of years of intimidation and oppression cannot be accomplished quickly, even with the most vigorous purgative action. The danger is that the court and trustee, out of impatience, frustration, or weariness with the burden of administration, and with over-optimism from small signs of political activity will, as with Local 560, terminate the trusteeship too soon, and the old regime will return to power. Experience counsels that doubts ought to be resolved in favor of extending the trusteeship to reduce the likelihood that the whole effort will have been in vain.

\textsuperscript{22} For a description of that consent decree, see United States v. International Bhd. of Teamsters, 905 F.2d 610, 613 (2d Cir. 1990).
There is one crucial test of whether the union is ready for an election. Until the dominant political voices in the union explicitly denounce the leadership and policies that led to the trusteeship, there is no assurance that an election will not simply reincarnate the old regime. Open and general denunciation of the old regime is the best evidence that the residue of fear has dissipated and that the democratic process will prevent a recurrence of corruption and oppression. In Local 560, the Teamsters for Liberty, which was the strongest and most vocal political group within the union, continued to praise the Provenzanos, and Sciarra continued to tout Tony as his idol. Those facts alone made clear that the union was not yet ready for an election, and that the political process would not prevent recurrence of the evils which required the trusteeship. Holding an election at that time was equivalent to holding an election in occupied Germany, with the strongest party campaigning on a platform praising Hitler and the Third Reich and running a slate headed by former leaders in the Nazi regime.

The third crucial requirement is that union officers be deprived of the ability to exercise arbitrary control over members' jobs through the grievance procedure or the hiring hall. These are more subtle instruments for intimidation than physical violence, but more readily available and equally effective. The legal duty of fair representation and the section 8(b)(2) prohibition against discrimination are wholly inadequate to assure members who have been systematically victimized in the past that they will not continue to be subject to retaliation for opposing union leaders or criticizing their policies. The union procedures must be reconstructed to prevent such victimization. Members who are discharged or otherwise disciplined, or who claim discrimination, must be guaranteed ultimate recourse to a neutral arbitrator free from union influence. The hiring hall procedures must be restructured to guarantee that all job referrals will be made on preestablished objective standards and will be open to scrutiny by any member.

Termination of the trusteeship requires holding an election, and it is crucial that this be conducted in a way that helps root and reinforce the democratic process. As already stated, those who were part of the old regime and were removed
should be disqualified as candidates and barred from actively participating in the election campaign. Also, the election should not be held until a rebirth of political activity in the union gives positive assurance that the corrupt leadership and practices will be repudiated.

More is required, however. All political groups and candidates must have full and equal opportunity to make their views known to the members. This requires open access to membership lists and to the union newspaper, and the right to mail campaign literature to the members. The polling places must be policed, and the counting of the ballots supervised. In short, the court's supervision of the election process should be at least as intensive, if not more intensive, than a court-supervised election under Title IV of Landrum-Griffin. For years elections have been exercises measuring members' fears and ratifying racketeer control. Special protection is required to assure members that this election will fairly measure their preferences and will provide a model for future elections.

When the trusteeship does not remove the officers, as in the case of the Philadelphia Roofers and the consent decree with the International Brotherhood of Teamsters, the need for special supervision and rules for the election is much greater. The incumbent officers have large built-in advantages in the election. They have name recognition and control of the channels of communication, the leverage to raise campaign funds and ready access to the membership lists, and a paid staff whose continuing contact with local union officers and members provides daily opportunities to do favors and solidify support. Special measures need to be taken to help offset these advantages or the election will only reconfirm the incumbents' control.

In constructing the election process, the court should consider the importance of reducing the officers' monolithic control, which helps corrupt groups maintain power. Unions tend to become one-party bureaucracies, with the administration having a monopoly over channels of communication, patronage, naming of committees and subordinates, and the ability to do favors for supporters. This monolithic control can be contained by creating voting districts with officers elected by separate constituencies. These officers, with their separate political bases, can loosen the monolithic control, for they have a measure of independence from the central administration
and can provide leadership and political support for opposition groups. They provide a potential for ousting corrupt leadership through the democratic process.

An example of how an election might be constructed and timed to maximize the likelihood of establishing a lasting democratic process might be seen in the lost opportunity of Local 560. Shop steward elections could have been held first, for political groups can emerge more quickly where members have daily contact. These elections would have provided members with political experience, generated political groups, and given the elected shop stewards leadership experience and recognition. The conduct of these elections would also have enabled the court and trustee to test the political climate and judge whether the union was ready for further elections. Election of business agents could have been the next step, with each business agent elected by the district that he or she served. This would have given the members additional political experience, developed larger political groupings, and produced potential leaders. These elections would have further indicated the vitality of the political process, and the advisability of holding an election of officers and terminating the trusteeships. This process would have assured that the trusteeship did not end with the old regime in control, and would have established shop stewards and business agents with a measure of political independence, enabling competing political groups to survive.

It is quite true, as Judge Bechtle observed, that trusteeships have not worked as well as expected, but that is not because judicial intervention has reached too far, but because it has been too limited and too quickly withdrawn. It is not so much that the court has imposed an authority figure on the union, as it is that the court has permitted those who participated in the abuses that required the trusteeship to remain or reestablish themselves as authority figures. There has been an unwillingness to take the measures or the time needed to remove the roots of control and eradicate the fear on which it feeds.

This raises the final question: why has there been an unwillingness to take the measures necessary to give trusteeships a hope of success? First, there is an understandable and quite proper reluctance to intervene in the internal processes of unions. That reluctance is born of a recognition that unions
should govern their own affairs, and that courts are poor instruments for correcting internal union problems. Although confronted with evidence of massive corruption, the systematic use of violence, the denial of jobs to perpetuate racketeering control, and the death or perversion of democratic processes, the courts and trustees are pressed to adopt the least intrusive solutions. The very burden of supervision encourages over-optimism that the job has been accomplished and that the trusteeship can be terminated.

Second, there has been an understandable failure to recognize how difficult it is to root out racketeer influence when it has become entrenched in the union. The officers are able, by their control of the union, to build an organization whose tentacles penetrate the whole union structure. The corrupt leaders and their organization are also supported by those members for whom they have found jobs or done other favors. When the trusteeship removes the officers, the underlayers of the administration remain; those who owe their positions or jobs to the deposed leaders or who have received favors may remain loyal, and the organization survives with replaced leaders. Many other members are unaware of the corruption and oppression; they do not know that their benefit funds are being looted, that sweetheart contracts are being made, and that payoffs are being taken for labor peace. They have jobs, and the union leaders negotiate increased wages and benefits, so the members ask no questions and have no problems. Dissenters who have been discharged or denied work at the hiring hall are no longer present to protest. Disclosure of abuses by the trusteeship proceedings may weaken but not dissolve the corrupt regime’s support, for many will not believe or will discount the disclosures. The officers may solidify their support by painting the trusteeship as another attack on the labor movement, and this claim is strengthened when echoed by the AFL-CIO.

Removing racketeer influence is even more difficult when the union has been infiltrated by the Mafia. Mafia members and associates in the union are difficult to identify and remove. Its organization, being outside the union, remains untouched. The Mafia can continue to supply leaders and enforcers to reassemble remnants of the corrupt regime, maintain the climate of fear, and regain control with a new cast of characters.
We ought not judge the courts too harshly for their reluctance to intervene more forcefully, for the evils should be remedied with the least intrusion possible. Nor ought we to criticize too sharply their failure to realize that deeper intrusion was necessary, for probably no one fully recognized the difficulty of eliminating racketeer control, and particularly Mafia influence, from a union and restoring the democratic process. Experience has now taught us that the lesser measures used are not sufficient; more forceful and longer continued measures are needed. We do not know yet from experience whether greater trusteeship intervention can free unions from the grip of racketeers. But a trusteeship properly empowered and pursued offers hope that a union now captured by such corruption can be freed and returned to the control of its members. We must keep trying, for otherwise we surrender these unions to the Mafia and send the message that other unions are theirs for the taking.