

06-1264-CV

IN THE
UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

GARY R. WALL,
WILLIAM COOKSEY, SR.

Plaintiffs-Appellants

v.

CONSTRUCTION & GEN. LABORER'S UNION, LOCAL 230, JOHN
PEZZENTE, CHARLES LECONCHE, DOMINICK LOPREATO

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

**PLAINTIFFS-APPELLANTS APPEAL MEMORANDUM
WITH ATTACHED APPENDIX**

Submitted By:

GARY R. WALL, Plaintiff-Appellant
60 Carriage Hill Drive
Wethersfield, CT. 06109
860-529-2651

WILLIAM COOKSEY SR
1097 Maple Avenue
Hartford, CT.

DATED: October 1, 2007

APPEAL MEMORANDUM

This appeal is being filed in the form of Appeal Memorandum and Appendix rather than brief by reason of the following facts. On 9/24/07 (7 days ago), this plaintiff-appellant filed a 28 USC 455 Application for Disqualification in this case 06-1264CV against Chief Judge Jacobs by reason of the fact that he put himself as Chair of a panel that Ruled on 8/31/07 on (3) Motions filed 7/24/07 and made this Memorandum Scheduling Order, doing so while a judicial fraud complaint against Judge Jacobs is pending involving Judge Jacobs committing Judicial fraud on the 28 U.S.C. 351 Supreme Court Conduct Committee, and in addition, while another 28 U.S.C. 455 Application for Disqualification is pending against him in a companion case 06-2810CV in the Second Circuit.

Said Ruling was another fact fraud Ruling by Chief Judge Jacobs the intention (Mens Rea) being the protection of the corrupt influence of the Department of Justice's and Robert D. Luskin's "Operating Agreement" had on the district below (Bridgeport) and has on the Second Circuit.

There are two issues in this appeal concerning Rulings in the Court below (Bridgeport). One is the dismissal of LMRDA discipline claims (101, 609) (See Ruling Appendix Item No. 1), the other a jury ruling against LMRDA Membership Rights and ERISA Pension Rights (See Appendix Item No. 2 Appendix copy of Verdict Form and Judgment). Before going any further with this memorandum, Lead pro se plaintiff-appellate (Wall) filed 7 days ago his second 455 Application and affidavit to Disqualify Judge Jacobs, by reason of the fact that while an additional 455 Application for Disqualification is pending in companion case 06-2810CV, Judge Jacobs put himself on a

panel in this case 06-1264CV. This plaintiff-appellant also has experienced Judge Jacobs (indefensible if read) committing acts of fraud on the Supreme Court's Conduct Committee (under Judicial Council Rule 18(e)) and furthered the frauds to the Judicial Conference of the United States. The plaintiffs/appellants cannot trust anything Judge Jacobs even touches. This plaintiff-appellant has no idea whether or not Judge Jacobs will continue on this panel or insidiously form another Set-up Panel to obstruct facts and truths. There must be transparency and accountability with an honest panel not influenced and contaminated by (Sub Rosa) Walker, D.O.J./Jacobs obstruction. A Published Opinion is a Right concerning the extortion of LMRDA Membership Rights

**FIRST: DISMISSAL OF THE LMRDA DISCIPLINE CLAIMS BY
 JUDICIAL OBSTRUCTION AND FRAUD**

Judge Hall and the court below committed intentional fact fraud dismissal of LMRDA unlawful discipline claims, dismissing the 101, 609 discipline claims in her Ruling, see Appendix Item No. 1 doing so, using a case authority applied to a personal vendetta (Sua Sponte) that being; Maddalone v. Local 17 152 Fed 3d 178, 185 (2d Cir. 1998). The plaintiff in that Federal Complaint acknowledges that his complaint was based on a "personal vendetta" eliminating his standing under the LMRDA. In this case at panel, the intentional and willful Sua Sponte Article II Scheme applying Maddalone "personal vendetta" facts to this Federal Complaint was committed to eliminate two (2) years of discovery. This is an open invitation to the defendant-appellees to show where in the pleadings at the district level they pleaded "personal vendetta". They cannot show that they ever pleaded anywhere in 10 years personal vendetta. Wall Supra 224 Fed 3d 168 (2d Cir. 2000) made clear it was "the union" that unlawfully disciplined Wall and Cooksey. Wall Supra would have never been written if it were a personal vendetta. That

Sua Sponte Scheme was not only for the protection of the D.O.J.'s corrupt agreement with LIUNA but was also intended to punish Wall for bringing 28 U.S.C. 351

Complaints against Judge Hall and Judge Nevas in the Bridgeport Division. See

Appendix Item No. 1 Ruling – page 17,

“However, even if true, prejudicial statements made in front of the union members that advance a vendetta rather than for example announcing a tribunal holding against Wall do not constitute discipline by Local 230 under Section 101(a)(5) or 609.”

See now Status Conference (Record on Appeal) July 28, 2005 relevant excerpt quoted:

Mr. Wall: *the membership issue without discipline is zero, meaningless.*

The Court: *But it's still a cause of action.*

Mr. Wall: *It is not a cause of action. The discipline is the whole thing. The discipline is the protection of the ethics and disciplinary procedure for the Northern District of Illinois and the Justice Department. That's what it is, Your Honor. That's why everyone is blocking it.”*

The governance structure of LIUNA has been identified by President Reagan's Crime Commission as a criminal enterprise in the meaning of 18 U.S.C. 1961(4). The governance structure is unchanged, and protected by the D.O.J.'s “Operating Agreement” meaning an OCCA/RICO Enterprise has full knowledge that they influence and corrupt the district below and the Second Circuit. Give some thought to that.

This case in the district below was bifurcated by an intentional judicial fraud insidiously engineered by district Judge Nevas (via Sub Rosa shared Hall Law Clerks). Doing so in collusion with Judge Hall in order to protect his former D.O.J. colleague (inter olios) Robert D. Luskin and his corrupt D.O.J. agreement with LIUNA. The acts below are shameful and disgusting Article II High Crimes committed in such a flagrant and bold manner, they are indefensible if read (the reason for (7) 28 U.S.C. 351

Complaints and (3) 28 U.S.C. 455 Complaints over a (4) year period, hidden from “public visibility” by continuous judicial acts of fraud.

If this is an honest panel and not another (Sub Rosa) Set-up Panel by Walker/D.O.J., Jacobs then take the time to read Wall Supra, and it will be clear that the dismissal of the 101, 609 LMRDA unlawful discipline claims were manufactured by judicial frauds in the Court below using the same criminal style of changing the Facts so they do not apply to the Statute, doing so using the assumed integrity of a Federal Judge against the assumed ignorance of a pro se citizen plaintiff. The reason as stated was not only to protect the D.O.J./LIUNA corrupt agreement “Operating Agreement”, it was to stop any mention of the illustrated LMRDA unlawful discipline actions by Local 230 and LIUNA while the “Operating Agreement” was in effect. The LMRDA violations were committed by an 18 U.S.C. 1961(4) Criminal Enterprise indisputably proven in (2) years of discovery. Facts showing (inter alia) (5) five million embezzlement of pension money, facts showing the Local 230 still has the same trustees and pension officers. Facts showing the intentional facilitating of 29 U.S.C. 529 assault and 18 U.S.C. 1951 Hobbs Act violations against Federal Affiants, and the indisputable embezzlement of union funds in violation of 29 U.S.C. 501(c) (inter alia).

The plaintiffs/appellants in this 10-year multi case matter have followed the Rule of Law and have been polite to everyone. We have experienced extreme reckless unstable judicial crimes in the district below. Insidiously committed by Judge Nevas using, in collusion, a just confirmed judge at the time (Judge Hall, October 1997), and using an 82 year-old incapable judge’s signature (Judge Eginton) to commit his (Nevas) judicial obstruction in the Bridgeport Division.

RELIEF

If this appeal has reached a legitimately paneled panel who will write a Published Opinion, then the plaintiffs-appellants respectfully request Your Honors find by reading the record that the integrity of the Judicial System of the United States must be protected no matter who tries to harm it including by documented fact the Second Circuit's two consecutive Chief Justices and the Bridgeport Division below. It is a shame what the corrupt use and procurement of a Congressional Act, the Organized Crime Control and Safe Streets Act 1970 (RICO) directly did to the Judicial Branch of the United States and directly did to the two plaintiff-appellant members (proximate harm) of a national trade union and indirectly to its 800,000 members whose 30 billion in pension assets are in serious jeopardy. It is time to stop punishing plaintiff-appellants Cooksey and Wall for protecting our Civil Rights and Rights to Self-Determination and exposing the corrupt use of a Congressional Act. Robert D. Luskin and the Judges, that he directly or indirectly "Racketeering Influenced" (RICO) should be punished for conspiring to defraud and actually defrauding the Lawful Functions of the United States. But, Your Honor's first priority after 10 years of harm and abuse to the plaintiffs-appellants is to Remand the 101, 609 Discipline Claims (LMRDA) back to the District of Connecticut not to the Bridgeport Division, preferably to the Honorable Janet Arerton who this case was transferred from on October 23, 1997, and in doing so, do it at the speed of a criminal complaint. Technically, this is a Civil LMRDA Complaint; factually, there is a pattern of Title 18 Federal Crimes that have violated the plaintiffs-appellants LMRDA Rights.

**FABRICATION OF THE 12-MONTH MEMBERSHIP RULE BY COLLUSION
PERJURY AND JUDICIAL FACILITATING**

See first Appendix Item No. 2 copy of Verdict Form and Judgment. Take notice that the union's fabricated and trial perjury supported the 12-month Rule was the only questioned put to the jury. Now see Appendix Item No. 3 defendant-appellee Lopreato Material Perjury excerpt. Take notice of the intentional, bold print statement by Lopreato to the jury on why he fired Wall as steward. Re-quoted for convenience.

Lopreato answering on direct by Wall:

“Lopreato: “When you were a steward on the job State Street in Hartford. I appointed you as a steward and you went on your own to hire people that were in favor to you to pick up numbers for some people and that's when I let you go as a steward.”

Now see Wall Supra 224 F3d Id 171:

“The NLRB found that the union removed Wall as shop steward in November 1985 in retaliation for refusing to follow directions involving the ‘shake-down’ of laborers for money”

Lopreato overturns by trial perjury Wall Supra.

[Background Lopreato] See U. S. v. Lopreato 83 F3d 571 (2d Cir. May 8, 1996) convicted two 18 U.S.C. 1954 “rebate of unlawful welfare fund payments” – overt acts – one count 18 U.S.C. 371, two counts 18 U.S.C. 1621(1) Federal perjury – three counts 26 U. S.C. 7206(1).]

Magnifying that perjury to the jury in addition to Judge Hall being aware of the finding in Wall Supra because it was her district case remanded, just prior to the trial at a pre-trial status conference, Judge Hall asked Wall to file a copy of the 1988 NLRB Order and finding. Wall did so by motion dated 10/25/05 (see record on appeal).

See now Appendix Item No. 3 again excerpt of Material Perjury collusion by witness Mr. Robert D. Luskin re-quoted Material Perjury re 28 U.S.C. 402(o)

Membership Rights:

“Atty. Cheverie: “Were either Mr. Cooksey or Mr. Wall ever investigated by your office concerning barred conduct?”

Luskin: “No they were not.”

See Now Wall Supra 224 Fed 3d Id 178 Chief Winter:

“The record is clear that, when the true purpose of the leadership had been exposed in late 1995/early 1996, appellants sought to resolve the readmission dispute internally, and LIUNA, through Luskin, conducted an investigation of the matter. That investigation in which appellants’ attorney and the Union took part, resulted in a determination by Luskin that appellants were entitled to exercise their readmission right and his “direct[ing]” that the Union permit appellants to do so in July 1996.”

See also Wall Supra Id 177:

“Indeed, arguably the sole unequivocal denial of readmission in the course of appellants’ pursuit of internal union remedies occurred only after the suit was brought when Luskin adopted the leadership’s position against readmission in September 1997.”

See Appendix Item No. 4 Attorney Marc Mercier Affidavit, see Sworn Statement #4

“During the course of my representation, I was informed by laborers International Union of North America General Executive Board Attorney Robert Luskin that Mr. Wall and Mr. Cooksey were not allowed into Local 230 because they were barred. When I informed him that there had been no notice or hearings with respect to such status, Mr. Luskin requested that my clients participate in an investigation concerning their alleged status.”

The criminal material perjury committed by Witness Luskin was for the purpose of extorting 28 U.S.C. 402(o) LMRDA Membership Rights by falsely stating that plaintiffs-appellants never tried to exhaust internal union remedies in compliance with LMRDA Laws, protecting the affairs of a Captive Labor Organization (Local 230) in the meaning of 18 U.S.C. 1961(4). Not one example of the fabricated 12-month Rule was demonstrated from Local 230. Instead, Luskin’s finding used letters (defendant’s #53) that went back (pre-ERISA) to 1967 and were signed by officers of LIUNA who at that time were all identified by President Nixon’s Crime Commission as Major National

Labor Racketeers. Keep in mind that Luskin's perjury to a Federal Jury was committed using his former capacity as General Counsel of the Organized Crime Division of the Department of Justice, and at the time of the perjury under his signatory powers of 18 U.S.C. 1961(7).

Next see in facial showing of trial perjury collusion testimony of Thaddeus Grabowski Appendix Item No. 3. Please remember Witness Luskin testified he was appointed G.E.B. Attorney In-House Prosecutor pursuant to the "Operating Agreement" to remove organized crime from LIUNA. Witness Lopreato testifies he fired Wall as steward for shaking down laborers the opposite of the NLRB Finding in Wall Supra. Witness Grabowski testified he was pulled over by the F.B.I. and warned of his physical safety being in jeopardy by Wall. See after the quoted Grabowski testimony also in Appendix Item No. 3 F.O.I.A. response from the United States Attorney's Office Northern District of Illinois. There is also pending in F.O.I.A. requests to the Federal Bureau of Investigation and the Department of Justice. Witness Grabowski was never pulled over by the F.B.I. the F.O.I.A request will prove it. Witness Grabowski was a perjury collusion witness. All of the defendant-appellees witnesses were officers of Local 230, LIUNA or employees of Local 230 including also Vere O. Haynes, a signatory to the "Operating Agreement" and cited target in a 212-page draft OCCA/RICO Complaint. Arthur Coia, SR appointed all the defendant-appellees in this Federal Complaint. No workers (who the Ruling effects) testified to the 12-month Rule. They do not know it exists because Local 230 is a "Captive Labor Organization" in the meaning of 18 U.S.C. 1961(4).

DISTRICT JUDGE HALL FACILITATING EXTORTION OF ERISA PENSION RIGHTS AND "RULE OF PARITY"

See First: Judge Hall at sidebar speaking to Wall trial testimony at page 465:

“The Court: *“”You need to ask yourself a question. It has to relate to the right to readmission. I will not let you proceed with talking on and on about credits for pension because it is not relevant to the case.”*

Now See: Judge Hall intentionally directing the Jury to unknowingly harm and usurp

ERISA Pension Rights trial testimony at page 468:

“However, you should not consider in any way questions about his pension, is he entitled to one or not or does he have one or not. It is only in connection with whether you will find there was a 12 month rule or there wasn’t a 12 month rule or how as it applied in the case. Things having to do with the question of readmission.”

See Now “Shawley v. Bethlehem Steel Corp. 998 F2d 652 (3th Cir.) 2d 653 – Holding No. 4”:

“4. Pensions ‘Rule of Parity’ provides that, if employee is rehired after break in service, credited service will count toward pension benefits if, on date of rehire, employee’s years of credited service are longer than the period of layoff and the employee works for a full year after rehiring Employee Retirement Income Security Act of 1974, 203(b)(3)(D)(i)(11) 29 U.S.C.A. 1053(b)(3)(D)(i)(11).”

See Appendix Item No. 2 Verdict Form take notice the unions fabricated trial perjury

supported, judicially facilitated 12 month rule was the only question put to the jury.

JUDGE HALL’S PROTECTION OF D.O.J.’S FACILITATING ENTERPRISE EMBEZZLEMENT UNDER 29 U.S.C. 501(c)

See Now Page 15 July 28, 2005 Status Conference:

“Mr. Wall: *We’re not people of financial means. We’re laborers. The money stolen from me – I was a jackhammer. The money stolen from me when I was young all those years I was a jackhammer. Mr. Cooksey and I spent \$25,000 on depositions. \$25,000 just the printing fees. Mr. Cooksey let his car go so he can pay his end. The money strap on us why are we going to trial on membership then come back and go to trial on discipline. And we’re being taxed and their embezzling money in violation of a signed agreement with the Department of Justice.”*

Now see LIUNA/D.O.J. “Operating Agreement” [29 USC 501(c) Clause] pleaded and illustrated multiple times in the division below:

--“in order to accomplish more fully the purposes of the LIUNA Ethical Practice Code and the LIUNA Ethics and Disciplinary Procedure, it is hereby declared to be the policy of the General Executive Board that union funds may not be used for the payment of legal fees or expenses for the representation of any officer, member, or employee at any stage of a criminal matter or at any stage of a civil action claiming a breach of fiduciary duties prior to the resolution of the allegation or charge”

RULE OF WAIVER

See First Page 27 July 28, 2005 Status Conference:

“Mr. Wall: *“One of our affiants gets assaulted, one gets threatened to get shot six times in the head. You want us to trust this Courtroom. We can’t trust the Courtroom.”*

See Status Conference July 28, 2005 page 20:

“Mr. Wall: *“---this is definitely obstruction of justice coming in. That’s what’s filed in the 351 Complaints.”*

“The Court: *“I understand you filed complaints. But I would like to have you focus on this case. You have a case here in this Court that is ready to be tried. Are you going to comply with the pre-trial order?”*

“Mr. Wall: *“I guess I have to otherwise you will dismiss it. I will comply under objection.”*

“Mr. Wall: *“We have not trust. I told you that last time we were here.”*

“The Court: *“I understand you don’t have trust. But that doesn’t change the fact that the case is assigned to me and I have an obligation to bring it to trial to final judgment. I see no reason why we shouldn’t be doing that. So I’m going to”-*

“Mr. Wall: *“I will do it under objection.”*

In Ending: See Appendix Item No. 4 Affidavit of Ron Fino classified by the Department of Justice as an expert witness on organized crime and trade unions. **IN CONCLUSION**, the plaintiffs-appellants in the Court below (Bridgeport Division) have had their Civil Rights, Liberties and Statutory Rights harmed by the defendant-appellees and the “Operating Agreement” between the D.O.J. and LIUNA an immediate Remand of this shameful and handling of this matter in the court below is a Constitutional Right.

Submitted By: _____
GARY WALL, Plaintiff-Appellant WILLIAM COOKSEY, Plaintiff-Appellant
60 Carriage Hill Dr., Weth., CT. 06109 (860)529-2651

CERTIFICATION

This is to certify that a copy of “Plaintiffs-Appellants Appeal Memorandum with its attached Appendix” has been mailed first class postage pre-paid this 29th day of

September 2007 to:

John Fussell, Esq.
Cheverie & Associates
333 East River Drive
East Hartford, CT. 06108-4203

Lauren M. Nash, Esq.
A.U.S.A.
157 Church Street
New Haven, CT. 06510
(Representing at Depositions former Federal Agents Gilbert Heitert, Sheryl McLaughlin)

Jonathan B. Kreisburg, Esq.
N.L.R.B. Region 34
280 Trumbull Street, 21st Floor
Hartford, CT. 06103
(Updated for Discovery Purposes)

Submitted By:

GARY R. WALL, Pro se Plaintiff-Appellant