

CASE NO. 00 - 35555

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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VAL ALBERT and GALEN COOK,

Appellants, pro se,

v.

LARRY JOHNSON, LOCAL 302 of the INTERNATIONAL  
UNION of OPERATING ENGINEERS, CLYDE WILSON,  
JACK JAKUBIEC, and BARRY RIEDESEL,

Respondents.

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Appeal from the U.S. District Court for Western Washington  
at Seattle  
Cause No. C98 - 1180Z  
The Honorable Judge Thomas Zilly, Presiding

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OPENING BRIEF

Submitted by Appellants, Pro se

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**A. QUESTIONS PRESENTED**

**As to Claims of Val Albert:**

1. Are there genuine issues of material facts to show that Local 302 of the International Union of Operating Engineers (I.U.O.E.) and its officers violated Val Albert's union membership rights and the law under Titles I and VI of the Labor-Management Reporting and Disclosure Act (LMRDA)?
2. May Val Albert pursue his pendent state claims in federal court against Local 302 and union officers for conspiracy, fraud, illegal scheme and intentional infliction of emotional distress?

**As to Claims of Galen Cook:**

1. Did the Court rely on a double standard and thereby abuse its discretion when granting the defendant's motion for summary judgment as to pro se co-plaintiff Cook?
2. Are there genuine issues of material facts to show that Local 302 and its officers violated the union constitution and Title VI of the LMRDA by cancelling Galen Cook's honorable withdrawal card?
3. May Galen Cook pursue his pendent state claims in federal court against Local 302 and union officers for conspiracy, fraud, illegal scheme, intentional infliction of emotional distress and conversion?

**As to Claims of Val Albert and Galen Cook:**

May Val Albert and Galen Cook subpoena and admit into evidence the applicable, outgoing long-distance phone records of certain individuals in order to "fully develop their case" and to rebut the false denials of defendants under sworn oath?

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**B. TABLE OF AUTHORITIES**

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**C. STATEMENT OF JURISDICTION**

(a) This action involves a controversy arising under Titles I and VI of the Labor-Management Reporting and Disclosure Act (Landrum-Griffen Act 1959; 29 U.S.C.A. §401 et seq.) The federal questions posed by the plaintiffs require jurisdiction to go to the U.S. District Court in Western Washington at Seattle. The plaintiffs and the defendants reside in the Seattle, Washington area. Also, the plaintiffs properly filed pendent state claims arising out of the same transaction. The U.S. District Court may exercise jurisdiction over these claims when the state claims and the federal claims arise from a common nucleus of operative facts.

(b) The U.S. District Court granted the defendant's motion for summary judgment, thereby dismissing both plaintiffs and all of the plaintiff's claims. The Court's Order is final and therefore appealable under Fed. R. Civ. P. 56(b). The plaintiffs filed a proper and timely appeal with the Clerk of the U.S. District Court (FRAP 3). The United States Court of Appeals for the Ninth Circuit has jurisdiction to hear this case, as the plaintiffs have the right of appeal to the proper circuit.

(c) The date of entry of the judgment as to all claims of Galen Cook was ordered on August 27, 1999. The date of entry of the judgment as to all claims of Val Albert was ordered on May 11, 2000. Pursuant to FRAP 4(a)(1)(A), the date of the plaintiff's notice of appeal was timely filed on June 8, 2000,

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3 **D. STATEMENT OF THE CASE**

4 **1. Introduction:**

5 Evidence from a decade of concerted abuse by Local  
6 302 officers and their union attorney should have shocked the  
7 conscience of the court. Instead, the court closed its eyes  
8 and turned its head, effectively allowing union democracy to  
9 fail.

10 The defendants shielded themselves behind the cloak  
11 of Title IV of the LMRDA. After legally pursuing their rights  
12 to obtain adequate safeguards to ensure a fair union election  
13 in 1996, the plaintiffs were punished by the union. The  
14 plaintiff's combined fifty-five years of union membership was  
15 wiped-out by the defendants during a union trial that involved  
16 violations by the defendants of Titles I and VI of the LMRDA.  
17 When the plaintiffs acquired probative evidence to prove their  
18 allegations at a trial, the court again turned its head the  
19 other way.

20 When the evidence against the defendants became too  
21 probative in value, the defendants reacted in obfuscations and  
22 motioned for contempt against the plaintiffs. The court suddenly  
23 became interested and entertained the defendant's motion.

24 The court ultimately denied the defendant's contempt  
25 motion. However, records show that more time and energy was  
26 spent by the Court attempting to view the case through the  
27 defendant's smoke screen than was spent considering the facts  
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