

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**

**Table of Cases:**

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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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2 presented by the plaintiffs. Facts can be persistent things.

3 The plaintiffs respectfully request that the Ninth  
4 Circuit Court examine the facts and remand this case to the  
5 lower court for a trial.

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7 **2. Procedural Facts:**

8 On August 25, 1998, plaintiffs Val Albert and Galen  
9 Cook filed two virtually identical complaints against separate  
10 defendants in federal court. (Civil Docket 1). Under objection  
11 by the plaintiffs, the Honorable Judge Thomas Zilly consolidated  
12 the cases on December 8, 1998. (CD 16). Citing the potential  
13 for bias because Judge Zilly presided over a court action  
14 involving the plaintiffs and Local 302 in 1997, the  
15 plaintiffs motioned for recusal on January 9, 1999. (CD 24).  
16 Judge Zilly denied voluntary recusal on January 15, 1999.  
17 (CD 27).

18 On April 30, 1999, the plaintiffs motioned for leave  
19 to request an extension of time for discovery completion. (CD  
20 52). On May 21, 1999, the defendants motioned for partial  
21 summary judgment as to claims of Galen Cook. (CD 58). On May  
22 28, 1999, the defendants motioned for summary judgment as to  
23 claims against Val Albert. (CD 63). On May 29, 1999, the  
24 plaintiffs motioned to compel disclosure of the defendant's  
25 telephone records. (CD 68). Over the opposing response by  
26 defendants, the request for discovery extension was granted  
27 to the plaintiffs on June 4, 1999. (CD 74; Ex 1, p.3 of Excerpts  
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of Record).

Plaintiffs requested 8 subpoenas to be issued in furthering discovery on June 16, 1999. (CD 76). On June 18, 1999, the defendants motioned for a protective order, accompanied with a motion to shorten time, relating to the plaintiff's subpoena for phone records. (CD 80).

On June 25, 1999, plaintiffs motioned for an extension of time to oppose the defendant's motion for summary judgment. (CD 84). The motion to shorten time was granted to the defendants (CD 83), and the protective order was granted on June 29, 1999. (CD 91; Ex 2 of the Excerpts of Record).

On August 13, 1999, the plaintiffs filed their combined opposition to summary judgment with a declaration containing 23 Exhibits, including some phone records of the defendants. (CD 126). [Phone records have been placed under seal by the court sua sponte]. On August 27, 1999 the Honorable Thomas Zilly granted the defendant's motion for partial summary judgment as to Galen Cook. (CD 148; Ex. #4 in the Excerpts of Record).

Reacting to the "Hanson Report," which was published by a third-party after the 1999 union election, the defendants motioned for a hearing on contempt on November 24, 1999. (CD 175). A show cause hearing was conducted on April 21, 2000 relating to the defendant's contempt motion. (CD 196).

On May 11, 2000, the Honorable Thomas Zilly granted the defendant's motion for summary judgment as to claims of Val Albert. (CD 199; Ex. #6 of the Excerpts of Record).

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The notice of appeal was filed by the plaintiffs on June 8, 2000.

On October 10, 2000 the Honorable Thomas Zilly denied the defendant's motion for contempt.

**3. Substantive Facts:**

**a. Facts pertaining to claims of Val Albert**

In 1988, Val Albert was the first-ever duly elected business manager to come directly from the rank-and-file of Local 302. Albert was the reform candidate and garnered a large majority of the votes cast. (CD 126). Albert fired long-time union attorney Russell Reid and replaced him with another attorney. (CD 217).

In 1990, Albert agreed to special election one-year before his term was due to expire. Ken Allen was sent from the International office of I.U.O.E. to run the election. Allen, a non-member, became the election committee chairman. The union bylaws require that the chairman be a member. Albert lost the election to Larry Johnson, who immediately rehired Russell Reid as the union attorney. (CD 217).

In 1993, Albert ran against Johnson again and was defeated. (CD 126).

In 1994 and 1995, Albert independently investigated the results of the 1993 election. Through a membership survey, Albert determined that election fraud in 1993 was statistically a very high probability. (CD 126).

1  
2 Albert ran against Johnson for business manager in  
3 1996. Three months before the election, an election committee  
4 of five members was selected. Barry Riedesel, a member, became  
5 the committee chairman. (CD 126).

6 Galen Cook, a friend of Albert and a long-time member  
7 who was on an honorable withdrawal, volunteered to assist as  
8 Albert's campaign manager. (CD 126). Cook, who was not paid,  
9 served in an advisory capacity.

10 In July of 1996, Albert filed a complaint for injunctive  
11 relief against Local 302. (Ex. #7 of Excerpts of Record). The  
12 complaint asked the federal court to grant adequate safeguards  
13 to ensure a fair union election. Albert believed he could not  
14 get a fair election against the entrenched incumbents. The  
15 election supervisor concurrently served as the union's accountant  
16 and auditor. He was also a well known social friend of Russell  
17 Reid. Albert believed an undisputable conflict of interest  
18 existed. It appeared to Albert that the very people who  
19 controlled the election procedure had a personal interest in  
20 the outcome of the election. The suit was dismissed prior to  
21 the election because the judge stated she didn't know if she  
22 had jurisdiction to rule on the case. (CD 126).

23 A news article about the pre-election lawsuit ran  
24 in the July 25, 1996 edition of the Seattle P.I., from which  
25 both Albert and Johnson were interviewed by a reporter. (Ex.  
26 #8).

27 Documenting election irregularities, Albert and his  
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2 entire slate of challengers lost to Johnson and his team in  
3 late August 1996. (CD 126).

4 Albert received a September 6, 1996 letter from the  
5 union stating that election committee chairman Barry Riedesel  
6 had filed three charges against Albert for alleged violations  
7 of the constitution and the bylaws during the election. (Ex.  
8 #9). Albert countered with his own charges against Riedesel  
9 and business manager Johnson. (Ex. #10). In a November 1, 1996  
10 letter from the union, Albert's charges were summarily dismissed  
11 by the Executive Board, a union body entirely comprised of  
12 entrenched incumbents. (Ex. # 11).

13 On the evening of November 1, 1996, Val Albert's  
14 union trial was conducted. The tribunal was comprised of the  
15 incumbent officers and approximately 100 members, mostly biased  
16 friends of the incumbents. President Clyde Wilson presided.  
17 Albert had a prepared written defense statement that identically  
18 matched the charges as enumerated by Riedesel. The union  
19 prosecutors reversed the order of the charges, frustrating  
20 Albert's self-defense. Wilson did not allow Albert to fully  
21 read his defense statement and after a few minutes Wilson ruled  
22 Albert out of order. Secretary Jakubiec yelled at Albert and  
23 demanded that Albert immediately surrender his written defense  
24 statement. (Ex. #15). Albert complied. Wilson ordered Albert  
25 to leave the union hall during the vote on the first charge.  
26 (CD 126).

27 Albert had become confused and angry during the  
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1 proceedings, as the incumbent union officers ganged-up on him  
2 and humiliated him in front of the members. Albert left the  
3 premises not knowing if he was allowed to return and continue  
4 to defend himself.

5 In Albert's abstentia that evening, he was summarily  
6 convicted on all three charges. Monetary sums approaching  
7 \$11,000 were levied on two of the charges. Expulsion from  
8 membership was levied against Albert by President Wilson on  
9 the third charge. Albert had served the union as a member  
10 in good standing for 40-years. (CD 126).

11 Albert was officially informed of the trial results  
12 by union letters of November 4, 1996. (Ex. #13). Several members  
13 signed sworn affidavits stating that Clyde Wilson abused his  
14 powers of president by not allowing Albert a fair trial before  
15 an unbiased tribunal. (Ex. #14). Under sworn oath, Wilson later  
16 provided an obscured version of the events of the trial in which  
17 he presided. (Ex. #15).

18 In May of 1997, Larry Johnson retired and Wilson was  
19 appointed by the Executive Board as the new business manager.  
20 Wilson hired the former election chairman, Barry Riedesel, as  
21 a union agent. (Ex. #15). Riedesel soon became the union  
22 vice-president (appointed by the Executive Board) and a Trustee  
23 on the union's \$2.5 billion Pension Fund. Riedesel is currently  
24 the editor of the union newspaper. (CD 126).

25 Under sworn oath, Riedesel stated that he drafted  
26 the charges against Albert even though Riedesel couldn't remember  
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