

1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 BEFORE: HONORABLE ROBERT H. SCHINACKE, JUDGE

4  
5 RODNEY F. STICH, )

6 Plaintiff, )

7 vs. )

No. C 74-0982 RHS

8 UNITED STATES OF AMERICA, )  
9 FEDERAL AVIATION ADMINISTRATION, )  
10 ALEXANDER P. BUTTERFIELD, as )  
Administrator of Federal Aviation )  
Administration, )

11 Defendants. )  
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16 REPORTER'S TRANSCRIPT

17 February 28, 1975  
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A P P E A R A N C E S :

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For the Plaintiff: In Propria Persona

RODNEY F. STICH  
1416 Carleton Drive  
Concord, California 94520

For the Defendant:

STEPHEN A. SHEFLER, Esq.  
Assistant United States Attorney

RICHARD F. LOCKE, Esq.  
Assistant United States Attorney

1 FEBRUARY 28, 1975

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4 THE CLERK: Civil 74-982, Stich vs. United States,  
5 motion to dismiss for summary judgment and preliminary pretrial.  
6 Your appearances, please.

7 MR. SHEFLER: Mr. Shefler, S-h-e-f-l-e-r, for the  
8 United States Government and Richard Locke, L-o-c-k-e for the  
9 United States Government.

10 MR. LOCKE: Your Honor, I would like to take this  
11 opportunity to introduce Mr. Shefler to the Court. He is a  
12 recent appointee to the office and he is handling this base  
13 on behalf of the Government.

14 THE COURT: Mr. Shefler, glad to have you here.

15 MR. SHEFLER: Thank you.

16 THE COURT: Mr. Stich.

17 MR. STICH: My name is Rodney F. Stich, S-t-i-c-h.  
18 Plaintiff.

19 THE COURT: I have reviewed the documents. Would you  
20 like to speak in opposition to the motion?

21 MR. STICH: Yes, sir, I would.

22 Briefly, Your Honor, I will try to be much more brief  
23 than my filings here.

24 First this is a very serious matter and I realize on  
25 the initial pleadings it sounds a little bizarre, but I don't

1 Federal Aviation inspector, identified as existing.

2 The primary intent of the FAA during this hearing was  
3 to deny the existence of safety irregularities that they already  
4 knew to exist, already officially established and I brought out  
5 during the hearing, somewhat by accident, I say serious mis-  
6 conduct that went even to what was for the long time the world's  
7 largest air carrier, the DC-8 crash into Brooklyn. I had the  
8 safety program shortly after that happened. I uncovered as  
9 part of my official duties, extremely serious misconduct, mis-  
10 conduct which I would hope to present during the trial that  
11 existed from the year 1960 to the present.

12 Well, what happened thereafter, Your Honor, is we  
13 did have air crashes, the air carrier crashes did continue but  
14 in one case I was able to closely associate the misconduct  
15 during this 3500-page hearing transcript with the Salt Lake Cit  
16 crash.

17 THE COURT: Mr. Stich, we are not primarily concerned  
18 with the factual situation so much as meeting the objections  
19 that the Government has raised on their motion.

20 MR. STICH: All right, Your Honor. I will try to  
21 direct myself to those then.

22 One of the primary, one of the primary things I feel  
23 I have to answer is the exhaustion of my administrative remedie  
24 to the Civil Service Commission. I feel, Your Honor, that I ha  
25 been denied my administrative remedies. I appealed to the Civi

1 Service Commission, as described in my written filings. I  
2 appealed to the Civil Service Commission following my refusal  
3 to work under the corrupt and criminal conditions. I requested  
4 in two documents a hearing, I believe that's Exhibits 30 and  
5 33 that I submitted.

6 Now, by law, under one of the Federal Personnel Manual  
7 and as part of my appeal process to the Civil Service Commission  
8 they are to provide me with a hearing, or if I refuse, to  
9 request I submit a written denial of a hearing.

10 This hearing was never offered to me, no allegation  
11 was ever made during the writings I had with the Civil Service  
12 Commission that I had refused such a hearing and that aspect  
13 did not occur until the Civil Service Court of Appeals had  
14 reviewed the decision of June 7th, 1968, then identified me as  
15 having refused a hearing, which was not the case.

16 The documents I submitted up to now I think pretty  
17 well show that I continually requested a hearing before the  
18 federal -- before the Civil Service Commission, twice during  
19 the appeal process and probably many times before that. The  
20 hearing had been denied to me all the way along.

21 Now, the Civil Service Commission states that I  
22 refused to cooperate with the -- the defendants allege I refused  
23 to cooperate with the Civil Service Commission investigators.  
24 That also is not correct and my documents show that.

25 On the first visit I had with the Civil Service

1 Commission investigator, it was not an investigation, it was  
2 simply a visit. He asked me to submit a statement. I did  
3 submit a statement that I felt was responsive by making  
4 reference to numerous other writings that the Civil Service  
5 Commission had. Now, I felt that was responsive and so did the  
6 investigator at that time.

7 The next thing I know the Civil Service Commission  
8 Regional Office in Dallas closed out the investigation, said  
9 I refused to cooperate and the documents I believe show pretty  
10 much I did not.

11 Well, I appealed this and the Civil Service Commission  
12 the Regional Office, again sent an investigator out six months  
13 later.

14 The investigator came to my home and acted quite  
15 casual about it and stated this was the first of several  
16 meetings we would have. He asked me several questions that I  
17 felt required a little more time, possibly some legal assistance  
18 and I suggested to him "Why don't we put it in writing and I  
19 will answer these questions in writing" which was agreeable to  
20 him.

21 Now, there was a witness present who has also made  
22 an affidavit and a statement to this effect. At no time was  
23 there any disagreement here.

24 Also at no time was there any hearing offered to me.  
25 The next I know, here I am waiting for the written questions to

1 arrive and instead I am being accused of failing to cooperate  
2 and answer questions.

3 I again protested this and then that was followed by  
4 the Civil Service Commission Board of Appeals and Review  
5 decision that I had refused to participate in a hearing.

6 I refused to help them determine why I was not at  
7 work, which they already knew, they certainly had ample docu-  
8 ments from me on that. All along they called it a job abandon-  
9 ment. A job abandonment, by the Federal Personnel Manual,  
10 refers to when an employee leaves and they don't know why he  
11 leaves. I simply refused to work under the corrupt and  
12 criminal conditions that I alleged to exist, then I was ready  
13 to protest, submit data to prove it and I feel the Civil Service  
14 Commission has denied me my administrative remedies and that  
15 to this date I have not had these remedies. I feel that they  
16 were so closely involved in the original coverup of the FAA  
17 acts all along that they did not want me to succeed in seeking  
18 a judicial review.

19 Now, as to standing, I feel I have standing both as  
20 myself, as being injured or subject to injury as a pilot and  
21 air carrier -- as a pilot of my own aircraft, as a passenger  
22 on air carrier aircraft and as a member of a class I most  
23 certainly also, the class has been subject to injury and I  
24 refer to specific individuals such as Mrs. Benham (phon.) and  
25 her two daughters that were cremated in the Salt Lake City crash

1 They were injured quite fatally.

2 I feel we are both members of the same class and they  
3 were injured. I seem to be the only one ready, willing and able  
4 to identify an existing FAA misconduct that has existed for  
5 years, the House Aviation Subcommittee is coming to identify  
6 as shown in their December, 1974 report of the FAA. That we  
7 have an air safety crisis today I think is quite well identified  
8 and so did the House Aviation Subcommittee identify it.

9 As to standing to seek back pay from the United  
10 States Government, of course that is self-explanatory and also  
11 job reinstatement.

12 The job reinstatement I would not be in any way  
13 interested in unless something can be done about the FAA.  
14 The back pay is simply a matter that arose out of the original  
15 cause of action.

16 The United States Court of Claims does have juris-  
17 diction over money matters and if that was the only thing I  
18 was interested in, my job would be much easier in court and  
19 I would have appealed to the United States Court of Claims, but  
20 the basic action here is seeking a Writ of Mandamus concerning  
21 the Government misconduct, seeking to have judicial review of  
22 the Government misconduct and as such I believe my job  
23 reinstatement and back pay would be an ancillary jurisdictional  
24 aspect.

25 Title 5 of the Government Organization on Employees



1 Statute, Title 5 -- 702 and 706 pertain to right of review and  
2 judicial review.

3 Title 28, the Section 1361, the Mandamus Venue Acts,  
4 the Administrative Procedure Act, Title 28 - 702, the -- and  
5 Title 42, 1988, civil rights on interference with my official  
6 duties while I was a Federal Aviation Inspector.

7 The First Amendment and due process was being denied  
8 and the statute of limitations I feel we have continuing claims  
9 as to the first cause of action being the FAA misconduct. That  
10 I feel and I feel I can prove that, that for 346 persons who  
11 died in a DC-10 crash --

12 THE COURT: Shall we hear from your opponent, sir?

13 MR. STICH: Pardon?

14 THE COURT: Shall we hear from your opponent, sir?

15 MR. SHEFLER: Your Honor, in the presentation of the  
16 plaintiff in this case, he has stressed two points. One, he  
17 has stated that this is essentially a case in which he seeks to  
18 have the activities of the Federal Aviation Administration  
19 investigated for a period going back to the year 1960.

20 THE COURT: No, he says the recurrent circumstances  
21 are such that they deserve investigation.

22 MR. SHEFLER: Correct.

23 THE COURT: And that they have been that way for a  
24 long time. But if they are a continuing circumstance, the fact  
25 that it started a long time ago wouldn't prevent his seeking to

1 cure them if it were being done in an appropriate fashion.

2 MR. SHEFLER: Your Honor, our position is he is not.  
3 In the Sierra Club vs. Morton case, which we cite in our  
4 memorandum, we do not believe that an individual traveler in  
5 the airplane system has standing to bring a suit to ask for  
6 this kind of relief. Further, Your Honor, as plaintiff himself  
7 has stated, the House Aviation Subcommittee is investigating  
8 this matter and has been in the process of investigating this.

9 THE COURT: Isn't the fear or the threat of accident  
10 from improperly enforced safety requirements even a greater  
11 basis for standing than the desirability of standing in the  
12 shade of a tree?

13 MR. SHEFLER: Well, people might disagree on that.  
14 Some would say that the right to breathe clean air is a definite  
15 health hazard and has been argued in many of the cases pursuant  
16 to Sierra Club.

17 THE COURT: It is not quite as immediate a health  
18 hazard as having two planes trying to land on the same runway  
19 at the same time is it?

20 MR. SHEFLER: Well, that is something, a question of  
21 factual consideration and some people will argue it is, and I  
22 myself would say that they are both equally dangerous situations.

23 THE COURT: Well, I am inclined to think there is a  
24 substantial public interest in having the fair safety require-  
25 ments appropriately carried out.

1 MR. SHEFLER: I cannot agree with Your Honor more.

2 THE COURT: It could well be that the Court is not  
3 endowed with any special qualities to enforce those.

4 MR. SHEFLER: The second point that I would seek to  
5 make, Your Honor, is as plaintiff has noted here, the House  
6 Aviation Subcommittee has been investigating the misconduct or  
7 the alleged misconduct of the Federal Aviation Administration.

8 A recent article in the Harvard Law Review called  
9 "Mutinous is the Law," 873, there are a number of citations  
10 that go to the fact that where the Congress is involved in an  
11 investigation of administrative misconduct on a large scale, as  
12 it is in this case, that it is improper for the Court to inter-  
13 vene and conduct a second investigation, a parallel investiga-  
14 tion.

15 The proper place for that investigation is in the  
16 Legislative Branch.

17 THE COURT: I am inclined to agree with that. It is  
18 obvious that any air safety requirements must involve vast areas  
19 of discretionary activity. Preferably it should involve a  
20 certain amount of expertise. The Court has no power to direct  
21 discretionary activity by Government functionaries and there is  
22 no suggestion there haven't been exercises of discretion over  
23 the years. It is just that the plaintiff, with some justifica-  
24 tion, may be saying they weren't properly exercised. I can't  
25 second-guess the appropriate officials in their discretionary

1 determination. I have no power to do that.

2 Well, I am inclined to agree with the Government with  
3 respect to each of its bases for dismissal and on each of the  
4 grounds suggested.

5 The motion will be granted.

6 MR. SHEFLER: Thank you, Your Honor.

7 THE COURT: Would you prepare an order to that effect?

8 MR. SHEFLER: Your Honor, I think there was an order  
9 submitted. It probably is buried in the file. I will prepare  
10 another one and submit it to the Court.

11 THE COURT: Thank you, gentlemen.

12 THE CLERK: That is our calendar.

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14 (Proceedings adjourned.)  
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