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Action in Propria Persona

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY STICH,)
) Civil Action C 80 4526 SAW
Plaintiff,)
) STATEMENT OF GENUINE ISSUES
v.) IN OPPOSITION TO MOTION FOR
) DISMISSAL/SUMMARY SAFETY
NATIONAL TRANSPORTATION)
BOARD, UNITED STATES)
OF AMERICA,)
)
Defendants.)

1. ARGUMENT

In this action the plaintiff seeks a court order directing the National Transportation Safety Board (NTSB) to properly investigate the matter of crew partying reportedly associated with the September 25, 1978 crash of PSA flight 182 at San Diego, California.

The plaintiff's qualifications for bringing this action is that he has evidence strongly indicating that such partying occurred and that he has the technical background and knowledge to recognize the importance of this evidence. Plaintiff has been a military, airline and general aviation pilot since 1942; by law, he held the technical competency and legal responsibility for establishing such determinations while a Federal Aviation Administration air safety investigator; he has written numerous air safety reports, guides, manuals, and two books in wide circulation involving aviation crashes and the politics of air safety. The latest book, *The Unfriendly Skies--an aviation Watergate*, pertains to this action, and is submitted as a book-affidavit in support of this action.

Plaintiff has appeared for technical discussions of the air safety environment on over 400 radio and television shows during the last three years; and he has worked with the NTSB in an official capacity while a government air safety investigator, familiar with the inner problems of this key government air safety agency. While in this capacity the plaintiff had identified in official writings, and so reported, deliberate NTSB cover-ups of major material facts, tampering with investigative reports to show the cause as other than indicated by the "doctored" records. This observed and reported doctoring of official reports has resulted in numerous air safety deficiencies and irregularities going uncorrected, and playing a causative role in subsequent crashes, as identified in submitted book-affidavit.

Making such chronic misconduct possible, the book-affidavit shows the part played by the Department of Justice, showing that they and the United States Attorney have a strong vested interest in stopping this action before it receives public attention.

Based upon the plaintiff's earlier official findings of NTSB misconduct, and upon the evidence plaintiff has discovered while an air safety consultant associated with the PSA San Diego crash, plaintiff is convinced that the NTSB acted contrary to law in failing to carry out its duties pertaining to the PSA San Diego crash; that it aggressively and deliberately covered up for sensitive evidence that, if true, would have revealed the underlying cause of the crash. The NTSB conduct was contrary to that of an investigative agency as it pertains to the reported crew partying, acting to suppress rather than develop the evidence. By excluding witnesses that would otherwise be a key part of this investigation, and by ignoring glaring signs supporting the reported crew partying, the NTSB was able to "doctor" the accident report, thereby corrupting the official government accident investigation.

The NTSB acted in such a way that a prudent investigator or evaluator of the available data and NTSB conduct could reach two conclusions. One: a strong probability that part of the PSA flight crew attended a party in one of the crew rooms at the Host International Hotel in Sacramento; that the party lasted most of the night, until five am in the morning, two hours prior to the flight's departure for Los Angeles and San Diego; that a considerable amount of Johnny Walker Red Label had been consumed; that the purpose of the party was to celebrate the upcoming birthday of one of the pilots; and that some members of the crew appeared greatly fatigued, as if they had little if any sleep.

The second conclusion: The NTSB deliberately covered up for the reported crew partying, refusing to subpoena witnesses who overheard detailed discussions by three working PSA crewmembers as they talked about the party they had just attended. The NTSB refused to have the PSA passenger testify, who overheard these detailed conversations. The NTSB refused to subpoena the hotel maids who cleaned the crew rooms and would have knowledge of partying evidence in the rooms they cleaned. This refusal became even more suspicious because shortly after two PSA representatives and the hotel manager questioned the maids about evidence of partying, an NTSB "investigative" team arrived at the hotel to question the maids, and were refused access to them, the NTSB never pursuing the matter.

The composition of the "investigative" team, the determination of high ethanol alcohol levels in the body of some of the crew members, and the other aspects of this aspect of the crash suggests without question that the NTSB, at best, did a thoroughly inadequate investigative job, abusing its discretion, and at worst--and most probably--deliberately covered up by falsifying the events that preceded the crash and contributed to it. As a former official air safety investigator, such tampering is common NTSB practice--and the public has paid with their lives for this in past air disasters.

Seeking to legitimize the official report on the underlying cause of that tragic disaster, and to focus attention on a common problem, plaintiff is seeking a court order directing the NTSB to complete its investigation into the reported partying, subpoenas being issued to all appropriate witnesses.

Plaintiff suspects that the probable purpose for the NTSB cover-up of the reported partying was to avoid public outrage from such a discovery, such outrage possibly bringing about a major investigation into all aspects of the air safety environment, risking

possible exposure of past Federal Aviation and National Transportation Safety Board misconduct.

The primary motion before the court at this time is plaintiff's motion to enter default. Defendant's motion to Dismiss/Summary Judgment was filed weeks after it had been in default and no longer entitled to file any such motion. Plaintiff's complaint was filed on December 28, 1980, and the defendants defaulted by not responding to the complaint. As required by Rule 56(e) of the Federal Rules of Civil Procedures, plaintiff filed a motion to enter default. It was not until March 6 and then on March 12, 1981, that the plaintiff was contacted by assistant United States Attorney George Stoll, and this telephone contact did not cure the defendant's default.

Based upon the statements made by the office of the United States Attorney that it was going to recommend that the NTSB be required to reopen the accident investigation, plaintiff would have been willing to agree to an extension of time. Statements made by assistant United States Attorney George Stoll differ greatly from the brief subsequently filed. After investigating the merits of my action, during the March 6 and March 12th telephone conversations the United States attorney stated:

“It's ridiculous that the NTSB did not investigate further into the reported partying... The investigation should be reopened. I am going to bring pressure on them [NTSB] through the Department of Justice to see if they won't reopen the investigation... the government has responsibility to see to it that its agencies do their jobs. . . I can go ahead and file a motion to dismiss in the next few days, but I'm not satisfied with that because I don't think in this case the government skirts are totally clean, and I don't think it's my job to cover up... I agree with you that what she said [PSA passenger who overheard, during two separate conversations and locations on board the PSA flight] was far more than an investigator in many cases is reasonably likely to hear. It certainly is pregnant with some very serious implications... It is ridiculous [referring to the NTSB reaction to the reported partying].”

Despite the recognition of NTSB wrongdoing, despite the air safety consequences of such cover-up, the Department of Justice, through the office of United States Attorney, is itself covering up, its previous cover-up being protected if it succeeds. After admitting to the plaintiff during earlier phone conversations that the NTSB accident investigation was a farce, the office of the United States Attorney writes in its motion for Dismissal-Summary Judgment (pg 2--par 21 and 22): “There is no question in this case that the Board has performed its duty and conducted a substantial investigation.”

From a practical standpoint, the NTSB abused its discretion--at best; and more realistically, engaged in a deadly cover-up. The court should enter the default and order the NTSB to conduct the investigation into the partying aspects of the PSA crash, recognizing that the nation still has a very serious problem on its hands with the government misconduct, cover-up and scandal that has been paid for in lives needlessly sacrificed to protect the government scandal.

From a judicial standpoint, the plaintiff argues that he has standing, as supported in the points and authorities. This standing was acknowledged in a previous action filed against the Federal Aviation Administration in the United States District Court for Northern District of California (C740982 RHS).

In that earlier action plaintiff had sought to expose the FAA misconduct, similar to the present action seeking to expose NTSB wrongful acts. Seeking to stop the action

before receiving public attention, the United States District Court and the United States Court of Appeals ruled that plaintiff was asking the courts to conduct an investigation, and dismissed the action. During this judicial fabrication plaintiff repeatedly argued he was not asking the courts to conduct an investigation, that he wouldn't trust the politically sensitive courts with such a matter, and that he was ready, willing and able to proceed as his discovery activity very well illustrated.

In its motion filed during default, when it was no longer authorized to file such papers, the defendants argue that the court doesn't have jurisdiction to intervene in this action, that it is up to the Court of Appeals, citing 49 U.S.C. 1903(d). But this pertains to "orders" of the NTSB, and not to gross abuse of discretion or misconduct of this nature. For this type of government misconduct, the "mandamus act," 28 U.S.C. § 1361 is the appropriate statute for providing jurisdiction. Section 1007 of the Federal Aviation Act, codified as 49 U.S.C. 1487, provides also for judicial jurisdiction if any person, and this can be interpreted to mean a government body, violates any provision of the Federal Aviation Act. This act is violated when the NTSB corrupts its investigative responsibilities. For liberal causes the courts have stretched themselves far beyond any intelligence application of the Constitution or the statutes; this action has ample statutory and case laws to give the United States District Courts jurisdiction, if it will accept its moral and legal responsibilities to do so.

There is also the right of the plaintiff or non-moving party for dismissal or summary judgment to have the value of discovery.

II CONCLUSION

The federal courts have played a part in obstructing an exposure and correction of factors playing a major role in air disasters. For the court to dismiss this action will continue the sordid behind-the-scene politics of air safety that is endangering everyone who flies. Plaintiff requests that the court exercises its moral and legal responsibilities in this matter. Plaintiff request that the court:

1. Enters default of the defendant and set hearing for judgment.
2. In the alternative, set aside the default and assign a date for hearing arguments on defendants motion for Dismissal/Summary Judgment, providing plaintiff 90 days for discovery.

Plaintiff requests findings of facts and conclusions of law in the event this action is dismissed.

Dated: April 11, 1981.

Rodney F. Stich, plaintiff
In Propria Persona