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WILLIAM L. WHITTAKER  
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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RODNEY STICH,	)	
	)	CIVIL NO. 80-4526-SAW
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
NATIONAL TRANSPORTATION	)	
SAFETY BOARD; UNITED STATES	)	
OF AMERICA,	)	
	)	
Defendants.	)	

This is an action brought by a member of the public appearing in propria persona in which he claims that the National Transportation Safety Board did not conduct an adequate investigation of a plane crash.

The Board is an independent agency created by Congress to perform a number of tasks related to safety in transportation. One specifically assigned task is the investigation of aircraft accidents; 49 U.S.C. §1441(a)(2), 49 U.S.C. §1903(a)(1)(A). The Board determines and reports the circumstances of such accidents; it also attempts to discover measures which would prevent future accidents. 49 U.S.C. §1441(a)(5) and 49 U.S.C. §1903(a)(3). The Board performs its accident investigation functions as an advisory body; its safety recommendations are not binding on the recipients. 49 U.S.C. §1906.

In the instant case the plaintiff, a member of the general public, seeks a determination that the Board has performed

1 its job poorly and an order specifying how it should perform its  
2 duties.

3 Congress in establishing the Board provided for limited  
4 judicial review, in the Courts of Appeal, of only certain of the  
5 Board's functions. 49 U.S.C. §1903(d). Such review is exclusive.  
6 49 U.S.C. §1486. Provision was not made for judicial review in any  
7 court of the Board's accident investigations. Rather, Congress in-  
8 dicated in the enabling legislation that the Board's accident  
9 investigation reports could not be used as evidence in any court  
10 proceedings. 49 U.S.C. §1903(c). The absence of a review provision  
11 coupled with the insulation of Board investigations from litigation  
12 provides substantial reason to believe Congress intended there to be  
13 no judicial review.

14 The two bases of jurisdiction relied upon by the plaintiff  
15 are the "mandamus act", 28 U.S.C. §1361, and the Federal Aviation  
16 Act of 1958, 49 U.S.C. §1487.

17 The "mandamus act" gives district courts jurisdiction to  
18 compel government officials to perform ministerial and non-discre-  
19 tionary acts. Wilbur v. U.S. ex rel. Kadrie, 281 U.S. 206 (1930);  
20 Jarrett v. Resor, 426 F.2d 213 (9th Cir. 1970). There is no  
21 question in this case that the Board has performed its duty and  
22 conducted a substantial investigation; a copy of the report is in  
23 the appendix to this brief. The question plaintiff seeks to raise,  
24 the manner and mode of that investigation, is a matter specifically  
25 entrusted by Congress to the discretion of the Safety Board.

26 "(b) Powers of Board.--(1) The Board, or upon  
27 the authority of the Board, any member thereof,  
28 any administrative law judge employed by or  
29 assigned to the Board, or any officer or employee  
30 duly designated by the Chairman, may for the  
31 purpose of carrying out this title, hold such  
32 hearings, sit and act at such times and places,  
administer such oaths, and require by subpoena  
or otherwise the attendance and testimony of  
such witnesses and the production of such evidence  
as the Board of such officer or employee deems  
advisable...." (emphasis added) 49 U.S.C.  
§1903(b)(1).

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The "mandamus act" does not provide courts with oversight over such discretionary acts.

The plaintiff's reliance upon the Federal Aviation Act, 49 U.S.C. §1487, is likewise misplaced. That section does not authorize private parties to sue the Board concerning an accident investigation.

The plaintiff having failed to establish the jurisdiction of this court as required by Federal Rule of Civil Procedure 8(a), the action must be dismissed.

The action is also subject to dismissal because the plaintiff does not have standing because he has suffered no cognizable injury and asserts no legally sufficient interest in the outcome of the case. Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1979).

For both of the above reasons,  
IT IS ORDERED that the ACTION is DISMISSED.

DATED:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE