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Action in Propria Persona

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

RODNEY STICH,

Plaintiff,

v.

NATIONAL TRANSPORTATION
SAFETY BOARD, UNITED STATES
OF AMERICA,

Defendants.

Civil Action No. C 80 4526 SAW

POINTS AND AUTHORITIES

I FACTS

In this action the plaintiff seeks a court order directing the National Transportation Safety Board (NTSB) to properly investigate the PSA San Diego crash of September 25, 1978, and specifically, the reported partying by unknown crewmembers. While the NTSB has discretion, by law, as to how it will conduct such investigations, the courts have jurisdiction to intervene when gross abuse of discretion, deliberate cover up, is undertaken by a government agency. This is especially true when safety is involved, as any coverup would result in uncorrected safety problems, setting the stage for still other crashes. Unfortunately, the plaintiff's past experience as a government air safety investigator shows such cover ups to occur when special interests are involved, the public subsequently paying the tragic price.

The plaintiff is qualified to pursue this action from a technical and operational aspect, and is the only person that has been ready, willing and able to tackle the problems in the two government air safety agencies, which includes the NTSB.

II ARGUMENT

A. As to plaintiff's alleged lack of Standing.

Defendants claim that the plaintiff does not have standing in this matter. Supreme Court 73-762 states: "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *Baker v. Carr*, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." *Flast v. Cohen*, supra, at 99-100.

"Standing to sue, under 5 USC § 702 is not limited to those who have been 'significantly' affected by agency action;" 'identifiable trifle' is enough for standing to fight out a question of principle, such trifle being basis for standing and the principle supplying motivation. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)* (1973) 412 US 669, 37 L Ed 2d 254, 93 S Ct 2405.

There must be a named plaintiff initiating the action who has an existing controversy with the defendant, whether the plaintiff is suing on his own behalf or on behalf of a class as well. (Supreme Court 73-762).

The plaintiff, as a result of findings while acting as a government air safety investigator, has the knowledge and the evidence to pursue this matter of NTSB falsification or tampering with official accident investigations. There is no other person ready, willing and able to step forward and devote the time and effort in bringing this matter before the court. He is deeply motivated and technically qualified to make the determinations he has, and to present the court with material facts to support his allegations. As such,

1 B. As to court's alleged lack of jurisdiction.

2 Defendants claim that the federal courts do not have jurisdiction
3 where gross abuse of discretion exists. They know better.

4 1. 28 USCA 1361 Action to Compel an Officer of the United States
5 to Perform his Duty. The district courts shall have original jurisdiction of
6 any action in the nature of mandamus to compel an officer or employee of
7 the United States or any agency thereof to perform a duty owed to the plain-
8 tiff. Added Pub. L. 87-748 § 1 (a), Oct. 5, 1962, 76 Stat. 744.

9 2. While the Mandamus and Venue Act, 28 USCA § 1361 is couch-
10 ed in terms of a mandamus action, its liberalizing purpose, xxx was intend-
11 ed to permit district courts generally to issue appropriate corrective orders
12 where federal officials are not acting within the zone of their permissible
13 discretion but are abusing their discretion or otherwise acting contrary to
14 law, and hence to entertain a civil action under § 10 of the Administrative
15 Procedure Act (28 USCA § 702). Peoples v. United States Dept. of Agricul-
16 ture (1970) 138 App D C 291, 427 F2d 561.

17 3. 28 USCA § 1361, note 3: Mandamus may only properly compel
18 an official to perform a nondiscretionary duty, but mere categorization of a
19 duty as discretionary does not, in and of itself, foreclose judicial inquiry.
20 Carlson v. Schlesinger, D.C.D.C. 1973, 364 F. Supp. 626.

21 4. 28 USCA § 1361, note 4: (Determination of duties). Suits by
22 those who seek performance of constitutional duties owed them by defendants
23 who have a clear duty to perform said duties and where no other relief is
24 available are within the scope of this section. Etheridge v. Schlesinger, D.
25 C. Va. 1973, 362 F. Supp. 198.

26 5. 28 USCA § 1361, note 4a: Generally speaking, mandamus re-
27 quires three elements: (1) a clear right in plaintiff to the relief sought. (2)
28 a clear duty on the part of defendant to do the act in question, and (3), no
29 other adequate remedy available. Yahr v. Resor, D.C.N.C. 1972, 339 F.
30 Supp. 964.

31 6. 28 USCA § 1361, note 2: Purpose. Purpose of this section is to
32 permit district court generally to issue appropriate corrective orders where

1 federal officials are not acting within zone of their permissible discretion
2 but are abusing the discretion or otherwise acting contrary to law. State
3 Highway Commission of Missouri v. Volpe, C. A. Mo. 1973, 479 F. 2d
4 1099.

5 7. 28 USCA 1361, note 5: Question whether a particular matter is
6 ministerial or discretionary is a question of law for the court to decide. Mar-
7 quez v. Hardin, D. C. Cal. 1969, 339 F. Supp. 1364.

8 8. Sui Generis claim. Of its own kind, peculiar because of the
9 nature of the claim and the conduct of the government defendants.

10 9. Federal Aviation Act. Public Law 85-726 (72 Stat. 797) Judicial
11 Enforcement. Jurisdiction of Court. Section 1007. (a) If any person violates
12 any provision of this Act, or any rule, regulation, requirement, or order
13 thereunder, or any terms, condition, or limitation of any certificate or per-
14 mit issued under this Act, the Board or Administrator, as the case may be,
15 their duly authorized agents, or, in the case of a violation of section 401 (a)
16 of this Act, any party in interest, may apply to the district court of the United
17 States, for any district--wherein such person carries on his business or
18 wherein the violation occurred, for the enforcement of such provision of this
19 Act, or of such rule, regulation, requirement, order, term, condition, or
20 limitation; and such court shall have jurisdiction to enforce obedience there-
21 to by a writ of injunction or other process, mandatory or otherwise.

22 10. The courts are given broad grants of general jurisdiction which
23 enable them to protect the rights of individuals. Kendall v Beiling, 295 Ky
24 782, 175 SW 2d 489. Contrary to statements sometimes made, administra-
25 tive adjudications involving private rights are subject to some judicial re-
26 view in almost all cases. Report of the Attorney General's Committee on
27 Administrative Procedure.

28 11. A common characteristic of all the rules evolved by the courts
29 dealing with judicial control of administrative action is that no matter how
30 narrowly a rule appears to limit the availability or scope and extent of judi-
31 cial control, there is nearly always a saving clause that, irrespective of the
32 legal terms used by the courts, in substance reserves to the courts power to

1 interfere with administrative action whenever exceptional circumstances
2 may require. The courts have rarely, if ever, felt themselves so restrained
3 by technical rules that they could not find some remedy consistent with the
4 law for acts, whether done by government or by individual persons, that
5 violated natural justice or were hostile to the fundamental principles devised
6 for the protection of the essential rights of property. *Monongahela R. Co.*
7 *V. United States*, 216 US 177, 54 L ed 435, 30 S Ct 356.

8 C. As to Summary Judgement.

9 Summary judgment is not appropriate at this time because of the
10 presence of triable issues of fact; unresolved issues; noncompletion of dis-
11 covery; complex issues involved; complex and intricate scheme of fraud in-
12 volved; national importance of issues raised; facts in dispute.

13 1. Plaintiff alleges that defendant National Transportation Safety
14 Board deliberately concealed material facts concerning possible causative
15 factors involved in the PSA San Diego crash. The court's function is to de-
16 termine whether such a condition exists.

17 Genuine Issue of Material Fact. General principles and
18 leading cases indicate in ruling on a motion for summary judg-
19 ment, the court's function is to determine whether such a genuine
20 issue exists, not to resolve any existing factual issues. Ref: *Gross*
21 *v. Southern Ry.* (CA 5th, 1969) 414 F2d 292, 13 FR Serv 2d
22 56c41, Case 1: *Chesapeake & O. Ry. v. International Harvester*
23 *Co.* (CA 7th, 1959) 272 F2d 139; *Riedel v. Atlas Van Lines, Inc.*
24 (CA 8th, 1959) 272 F2d 901; *Brawner v. Pearl Assur. Co.* (CA
25 9th, 1958) 267 F2d 45.

26 " Rule 56 should be cautiously involved to the end that par-
27 ties may always be afforded a trial where there is a bonafide dis-
28 pute of facts between them. "

29 The non-moving party should have the benefit of completing
30 discovery before considering motion for summary judgment. Rule 5
31 56(c) provides that a motion for summary judgment is to be sus-
32 tained and summary judgment rendered "if the pleadings, deposi-
tions, answers to interrogatories, and admissions on file, toge-

1 tions, answers to interrogatories, and admissions on file, toge-
2 ther with the affidavits, if any, show that there is no genuine
3 issue as to any material fact and that the moving party is entitled
4 to a judgment as a matter of law. "

5 . The courts have been in entire agreement that the moving
6 party for summary judgment has the burden of showing the absence
7 of any genuine issues as to all the material facts, which, under
8 applicable principles of substantive law, entitle him to judgment
9 as a matter of law. Ref: Sheridan v. Garrison (CA 5th, 1969)
10 415 F2d 467, 13 FR Serv 2d 56e. 51, Case 3; Evers v. Buxbaum
11 (CA DC 1958) 253 F2d 356, 25 FR Serv 56c. 41, Case 6; Koepke
12 v. Fontecchio (CA 9th, 1949) 177 F2d 125, 13 FR Serv 19a. 1,
13 Case 4; Kasper v. Baron (CA8th, 1951) 191 F2d 737, 16FR Serv
14 56c. 41, Case 7; Fairbanks, Morse & Co. v. Consolidated Fish-
15 eries Co. (CA3d, 1951) 190 F2d 817, 15 FR Serv 56c. 41, 56c.41,
16 Case 14.

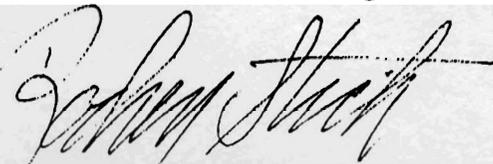
17 Since plaintiff has raised triable issues of material fact, especially as
18 it pertains to deliberate coverup by the National Transportation Safety Board,
19 case and statutory law prevents granting of summary judgment.

20 III CONCLUSION

21 The court has to decide whether the rights of the plaintiff and the rights
22 of the public are to be outweighed by the attempts of the Department of Justice
23 to continue the long-standing coverup, part of the price being continued loss
24 of lives. Statutory and case laws makes the court's responsibility clear.

25 This action should continue to trial, with discovery commencing as soon as
26 possible.

27 Dated: April 11, 1981



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29 RODNEY STICH, plaintiff
30 In Propria Persona
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