

Sylvia: This is a copy of the Docketing Statement which we will file Monday April 19.

Any ideas, suggestions or comments?

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JOHN NICHOLS,)
Appellant,)
vs.)
THE UNITED STATES OF AMERICA:)
ARCHIVIST OF THE UNITED STATES,)
JAMES B. RHOADS, THE GENERAL)
SERVICES ADMINISTRATION, AND)
SECRETARY OF THE NAVY, JOHN H.)
CHAFEE,)
Appellees.)

APR 15 1 48 PM '71
PATHOLOGY & ONCOLOGY
UNIV. KANSAS MED. CENTER

FORWARDED

DOCKETING STATEMENT

Comes now the appellant, John Nichols, in the above captioned cause, and states and alleges to the court as follows:

NATURE OF THE PROCEEDINGS

This action is an appeal from a ruling of the United States District Court for the District of Kansas, entered on February 24, 1971, sustaining a motion of the defendants to dismiss, treated as a motion for summary judgement, and appealing a subsequent ruling of said court entered on March 22, 1971, denying plaintiff's motion of March 22, 1971, to reopen the case for additional briefs, arguments, evidence, documents, and interrogatories.

DATES OF ORDERS SOUGHT TO BE REVIEWED

The orders sought to be reviewed bear the dates of February 24, 1971, and March 22, 1971. The appellant filed his Notice of Appeal from the orders, aforesaid, on March 22, 1971.

STATEMENT OF THE CASE

John Nichols, the appellant herein, is a physician duly licensed by the Kansas State Board of Healing Arts; he is further certified by the

American Board of Pathology, and has previous experience in the assessing of gun - shot wounds and X - ray interpretation thereof. Due to his general interest in scientific matters, more particularly pathology and allied areas of research, and in an effort to resolve conflicting opinions, conclusions, and uncertainties concerning the death of the late President John F. Kennedy, the appellant has, on numerous occasions, unsuccessfully attempted to obtain information by examination of certain items held in the custody of the Archivist of the United States and within the custody and/or command of the United States Department of the Navy.

Following the death of the late President and as an integral part of his autopsy, whole body X - ray films were exposed, developed and interpreted during the autopsy by a radiologist of the United States Navy Hospital in Bethesda, Maryland. In addition, gross photographs of the body were taken as both black - white negatives and color transparencies. These X - ray films and photographs, together with articles of the late President's clothing worn at the time of assassination, were transferred by an unstated person to the National Archives. On October 29, 1966, the Administrator of the General Services Administration entered into an agreement with the Executor of the estate of the late President, whereby the X - ray films, gross photographs, and items of clothing aforesaid were suppressed by the terms of said agreement.

Further, the appellant has made numerous requests to the Archivist of the United States to obtain information of a professional nature from the examination of additional items. Said additional items have heretofore been considered by a commission appointed by the President of the United States, hereinafter referred to as the Warren

Commission, and all said items have been assigned appropriate exhibit numbers for purposes of ready identification. Said items are explained in detail and further identified by Commission Exhibit number in pages 4 - 10 of the Complaint filed by appellant in the United States District Court for the District of Kansas.

Notwithstanding repeated requests by the appellant to inspect and examine all items heretofore mentioned, the Archivist has denied all requests as made. Following denials of said requests, the appellant, pursuant to those provisions of 41 C F R § 105 - 60. 404 pertaining to appeals within United States Government Agencies of such denials, did submit proper appeals to the Director of Information. Said appeals have been denied on the ground that requests of the appellant go beyond the scope of the Freedom of Information Act, 5 USC § 552 et seq. . Having exhausted all administrative remedies, the appellant then sought relief in the District Court of the United States for the District of Kansas.

In addition to items aforementioned, there are other items which should properly be within the custody and/or command of the United States Department of the Navy, which the appellant desires to inspect and examine. Said items are described in detail in the Complaint, filed by the appellant in the United States District Court, at pages 12 - 14. Accordingly, requests were directed to various officers of the Bethesda Naval Hospital and to Vice Admiral George M. Davis, Surgeon General, United States Navy. Requests for permission to examine and inspect said items were denied and the appellant subsequently appealed said denials as required by provisions of 32 C F R § 701. 1(k) which refer to appeals within the purvue of 5 USC § 552.

Briefly stated, the appellant desires to inspect, study, examine and as to some materials outlined, submit said materials to harmless "Neutron Activation Analysis". He has at no time requested custody of any such materials, but simply asked the right to inspect and examine same, and any examination requested will in no manner change the substance of or change the property of any item sought within the custody of any agency of the United States Government. A majority of those items requested by the appellant for examination, inspection, and study were not considered to be "records", within the meaning of the Information Act, by the United States District Court. Further, that Court has ruled that the "letter of agreement", executed on behalf of the executors of the Kennedy Estate, forecloses the right of the appellant to examine items specifically referred to in said "letter of agreement". Ruling on a motion of the defendants for summary judgment herein, the Court has further found that the appellant has not challenged affidavits of Vice Admiral Davis, which affidavits deny custody and control by the United States Navy of certain items requested by the appellant.

Following the ruling of the District Court dated February 24, 1971, the appellant filed a motion to reopen the case, the purpose of which was to controvert the affidavits of Vice Admiral Davis, and the appellant further moved the Court for an order allowing interrogatories to be submitted to Admiral Davis, the purpose being to controvert said affidavits. This latter motion was, in turn, denied on March 22, 1971.

QUESTIONS PRESENTED ON APPEAL

I The District Court erred, as a matter of law, in its definition of the term "records" as used in 5 USC § 551 and 552, as used in 44 USC § 3301, and as used in 41 CFR § 105 - 60. 104(a) and (b).

(a) The Court used a dictionary definition of the term "records" without taking into consideration the express wording of the statutes and regulations concerned and without taking into consideration the full intent and purposes thereof.

(b) The dictionary definitions as used by the Court in this instance were out - of - date, selective, and incomplete, evidencing minimal relation to the factual considerations before the Court for decision and ultimate disposition.

(c) The Court overstressed a literal definition of the term "records" while failing to give ample consideration to the relative merits of a complex factual situation.

II The District Court erred in not following the express dictates of the Court of Appeals as applicable to Motions for Summary Judgment, which dictates take into account the fact that the relief contemplated by Rule 56 is drastic, to be applied with caution to the end that the litigants will have a trial on bona fide factual disputes, further taking into account that Motions as such shall not be sustained where some margin exists for disposition of the factual issues.

(a) Adequate explanation of the true and scientific purpose of the use of records sought by the appellant in this instance was excluded from balanced consideration by the ruling of the Court.

(1) Under any circumstance counsel would be unable to demonstrate effectively, through brief and oral argument, the intricate, compelling, and specific contours of the appellant's claim

(2) The Court, in effect, severed the appellant's rights

under consideration prior to affording the appellant opportunity to demonstrate the factual merits of the claim herein.

(b) A factual interpretation of what a "record" is requires a penetrating analysis which probes more deeply than does the amplification of a changable dictionary definition of the term "records".

III The Court overstated the Government's right to receive items for safe - keeping irrespective of the authority of the donor to so donate said items.

(a) Applicable statute, 44 USC § 2107 and 2108(c).

(b) The Archivist Division of the General Services Administration does not possess authority to receive "records" from any given donor without taking into account the title or right of possession of said donor with respect to items so donated.

IV The decision of the District Court leaves unconsidered and undecided, other than in a summary manner, the status of several items requested by the appellant herein, namely X - ray films, photographs, and articles of clothing transferred to the Archivist Division of the General Services Administration by the executors of the Kennedy Estate.

V In ruling upon the validity of a letter of agreement between the executor of the Kennedy Estate and the Archivist Division of the General Services Administration, the District Court erred in that it either oversimplified or underestimated the intent and purposes of the appellant with respect to requests for examination and inspection of items requested.

(a) The Court did not take into consideration nor did it comment

upon those overt statements of the appellant to the effect that the appellant at no times requested custody, possession, or control, even though temporary, of items requested for examination and inspection.

(b) The decision of the Court failed to take into account or by-passed the significant legal question of ownership of X-ray films and photographs.

VI It is the position of the appellant that Congress has not ordained that administrative rules and regulations pertinent to the disposition of items deposited with the National Archivist for safekeeping are final in all respects.

(a) Administrative rules and regulations are not final and are subject to judicial scrutiny and interpretation.

(b) It is the position of the appellant that the rules and regulations promulgated by the Archivist Division of the General Services Administration were arbitrary and are open to correction by the judiciary in this instance.

(c) The District Court erred in failing to comment upon, much less interpret, said administrative rules and regulations, thus abdicating an integral segment of the judicial function.

VII That the District Court erred in denying appellant's motion to reopen the case for the reasons that:

(a) The two affidavits submitted by Vice Admiral Davis were and remain both patently false.

(b) The inaccuracy of the affidavits aforesaid was clearly set forth and indicated in the motion of appellant to reopen the case.

VIII In denying the appellant's relief, the District Court referred to "Exemptions" in the Information Act without amplifying the meaning or relevancy of the term as it applies to the facts of the instant case.

LIST OF AUTHORITIES

Machinery Center v. Anchor National Life Insurance Company,
434 F. 2d, 6, 10th Cir. (1970).

Time Inc., v. Hill, 385 US 374 (1967).

New York Times v. Sullivan, 376 US 254 (1964)

5 USC § 551 - 52.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that a true, correct, and faithful copy of the foregoing Docketing Statement was mailed to each of: William D. Ruckelshaus, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; Robert J. Roth, United States Attorney, Federal Building, Topeka, Kansas 66601; Harlan J. Leathers, Department of Justice, Washington, D. C. 20530; Edward H. Funston, Assistant United States Attorney, Federal Building, Topeka, Kansas 66601; and Jeffery F. Axelrod, Department of Justice, Washington, D. C. 20530; by depositing said copies in the United States Mails first class postage prepaid and certified at Topeka this nineteenth day of April 1971.