

SERVED: March 5, 2008

NTSB Order No. EA-5371

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of February, 2008

_____)	
ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18012
v.)	
)	
KENNETH L. BLUM,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued August 9, 2007, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge upheld the Administrator's

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

allegation that respondent violated 14 C.F.R. §§ 91.139(c), 99.7, 91.131(a)(1), and 91.13(a) of the Federal Aviation Regulations (FAR),² and affirmed the 30-day suspension of respondent's private pilot certificate. We deny respondent's appeal.

The Administrator's April 13, 2007 order, which served as the complaint in this proceeding, alleged that on March 27, 2006, respondent was pilot-in-command (PIC) of a Cirrus SR-20, number N657CD, on a flight inbound to the Baltimore-Washington International Airport (BWI), Maryland. The order alleged that respondent did not comply with the special security procedures and flight rules of NOTAM 6/2550, in effect for the airspace within the Washington, D.C. ADIZ. The order also alleged that respondent did not obtain a clearance to enter the Class B airspace at BWI before doing so and that respondent's operation

² Section 91.139(c) states that when a NOTAM (Notice to Airmen) is issued under § 91.139, "Emergency Air Traffic Rules," no person may operate an aircraft within the airspace so designated except in accordance with the conditions, authorizations, and terms in the regulation covered by the NOTAM. Section 99.7 requires compliance with special security instructions, issued by the Administrator in the interest of national security by agreement with the Department of Defense or a Federal security or intelligence agency, in addition to other rules in Part 99, "Security Control of Air Traffic," when operating in an ADIZ (air defense identification zone). Section 91.131(a)(1) states that, before operating an aircraft within Class B airspace, a pilot must first receive air traffic control (ATC) clearance from the ATC facility having jurisdiction. Section 91.13(a) prohibits operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another.

of the aircraft in violation of these requirements constituted a careless or reckless act that could endanger the lives and property of others.

At the hearing, the Administrator presented the testimony of Angelo Sorrentino, support manager for quality assurance at the Potomac Terminal Radar Approach Control (PCT) located in Warrenton, Virginia. Mr. Sorrentino identified an air traffic plot of the radar data showing the course flown by N657CD on March 27, 2006. Exh. A-1. He also identified a transcript of ATC radio tapes regarding this incident, and the PCT ADIZ transcript of a telephone conversation with respondent. Exhs. A-2, A-3. Exhibit A-1 includes a matrix with data showing the transponder beacon code transmitted by N657CD. ATC assigned 4701 to N657CD as its ADIZ discrete beacon transponder code. According to the radar plots, N657CD was transmitting 1200 for 65 seconds, or 2½ miles, after entering the ADIZ. When PCT advised N657CD that it did not observe the discrete code, respondent said that he was squawking 4710 (but even 4710 was the wrong code; he should have been squawking 4701), when he was actually still squawking 1200.

PCT ATC Specialist Jeffrey Sparrow testified that when he noticed N657CD was squawking 1200, he asked respondent about his position. Mr. Sparrow then noticed that, "at that point it rolled over to a 4710 squawk." By that time, N657CD was in

Class B airspace, and Mr. Sparrow asked N657CD to descend below Class B airspace. Respondent did not begin squawking the correct code (4701) until he re-entered Class B airspace, which was almost 3 minutes after entering the ADIZ. Mr. Sparrow testified that N657CD did not receive a clearance to enter Class B airspace before doing so.

Aviation Safety Inspector Richard Eilinger testified that his office prepared the Enforcement Investigative Report in this case, and that NOTAM 6/2550 was in effect on March 27, 2006. He opined that respondent was the PIC, but confirmed that he did not have to be the PIC to violate the rules regarding ADIZ and Class B airspace; it was enough that respondent simply operated or flew the aircraft. Mr. Eilinger identified the FAA Sanction Guidance Table, and indicated that the sanction guidance for the ADIZ violation was 30 to 90 days. He said that respondent told him on March 31, 2006, that he had filed an Aviation Safety Reporting Program (ASRP) report.

Respondent testified at the hearing that he had about 250 flying hours at the time of the incident. He said that this was his first time to fly in a Cirrus aircraft and the first time to fly with this instructor in this initial training flight to get checked out in that particular aircraft. Respondent testified that the instructor filed the flight plan, and that this was respondent's first time to fly out of BWI in 25 years, so the

instructor was also instructing him on how to fly in and out of BWI in light of the ADIZ rules. Respondent said that he and the instructor preflighted the aircraft and the instructor assisted in taxiing to the runway. Although disputing that he was the PIC, respondent admitted that he operated or flew the aircraft in the Class B and ADIZ airspace. Respondent offered Exhibit R-4, a report filed pursuant to the ASRP.³

After considering the evidence, the law judge held that respondent violated the FAR as alleged. He rejected the defense that respondent was eligible for a waiver of sanction based on his filing of an ASRP report, finding that the violations were not inadvertent.⁴

Respondent argues that the Administrator did not meet his burden of proving that respondent was the PIC. He also argues that the law judge erred when he "refused to accept the NASA report." The Administrator opposes these arguments and urges us

³ Under the ASRP, sanction may be waived, despite the finding of a regulatory violation, if certain requirements are satisfied. Aviation Safety Reporting Program, Advisory Circular 00-46D at ¶ 9c. This program involves filing a report with the National Aeronautics and Space Administration (NASA) concerning a FAR violation. Such filing will obviate imposition of sanction if: (1) the violation was inadvertent and not deliberate; (2) it did not involve a criminal offense, accident, or action found at 49 U.S.C. § 44709; (3) the person has not been found in an enforcement action to have committed a regulatory violation in the past 5 years; and (4) the person mails a report of the incident to NASA within 10 days.

⁴ See footnote 3 above at subparagraph (1).

to affirm the law judge's decision.

Respondent's appeal brief states that the "determinative issue ... is who was the pilot in command of the aircraft when the individual in the left seat was receiving dual instruction on how to operate the aircraft and the other seat was [] an individual who was holding herself out to be a 're-certified master flight instructor'...." Respondent's Br. at 2 (emphasis omitted). Respondent does not recognize, however, that the decision in this case does not rest on the determination of who was the PIC.

At the hearing, respondent's counsel referred to an ADIZ case he had recently defended, and which this Board has since decided.⁵ In that case, the respondent was a certified flight instructor (CFI) on an instructional flight and respondent's counsel argued that respondent was not the PIC. Although we found that respondent was the PIC, and we discussed the issue at some length, we must point out that the PIC issue was not the determinative issue in that case because, regardless of whether the respondent was the PIC, he committed a violation by his operation of the aircraft, without regard to whether he was "in command." For the same reason, the PIC issue is also not determinative in our decision here.

⁵ See Administrator v. Moeslein, NTSB Order No. EA-5354 (2008).

As Mr. Eilinger testified, and as the Administrator points out in his reply, in order to establish violations in this case, all that need be shown is that respondent operated or flew the aircraft in the Class B and ADIZ airspace. The Administrator has done that, and respondent does not contest the fact that he so operated the aircraft. Further discussion on this issue, therefore, is unnecessary. We find that respondent violated the regulations as alleged. Although the Administrator undertook to show also that respondent was the PIC, the Administrator has not been able to do so, primarily because this was an instructional flight and an instructor was on board.⁶ We conclude that respondent was not the PIC; the law judge's initial decision should be modified accordingly.

Whether the Administrator could prove that a pilot is the PIC in a case like this is another question, but we have long held that an instructor is the PIC on an instructional flight,⁷ and that the PIC is not necessarily the pilot who operates the controls or directs the course of a flight.⁸ As respondent points out, the other pilot on this flight was a CFI who filed the flight plan, signed respondent's logbook as CFI, and then,

⁶ See discussion below.

⁷ Administrator v. Hamre, 3 NTSB 28, 31 (1977); see also Administrator v. Strobel, NTSB Order No. EA-4384 (1995).

⁸ Administrator v. Jeffreys, 4 NTSB 681, 682 (1982); see also Administrator v. Funk, NTSB Order No. EA-2915 (1989).

3 months and 6 flights following the flight at issue, signed respondent's logbook with the notation: "SR20 transition trng [training] complete-BFR (biannual flight review)." Exh. R-2.

Whether respondent relied on his instructor is a defense that respondent did not affirmatively raise. Respondent might have relied on the pilot with the superior certificate to obtain the discrete transponder beacon code and to ensure that the aircraft was squawking that code; to comply with the conditions, authorizations, and terms of the NOTAM; to comply with the special security instructions of the ADIZ; and to receive an ATC clearance before entering Class B airspace. But he fails to make that argument. Respondent might have raised an affirmative defense of reasonable reliance.⁹ We do not normally entertain, however, arguments that are not presented to us. Although respondent has not raised this as a defense, to avoid a later assertion that it was raised based on the evidence and the appeal brief, we address it only to the extent of noting that, as the record stands, respondent did not meet the conditions of the defense. By way of illustration, as a qualified,

⁹ We have held, in a multi-crew aircraft, for example, that while a PIC may be otherwise responsible for overall safe operation of the aircraft, if a task is the responsibility of another or if the PIC has no independent obligation or ability to intervene, and he has no reason to question the performance of the other, then we may find no violation. See Administrator v. Fay and Takacs, NTSB Order No. EA-3501 (1992). The rationale of that opinion is applicable in other cases as well.

certificated pilot and, here, the flying pilot, respondent had an independent duty to comply with the requirements of the airspace in which he operated.

Respondent argues that the law judge erred when he did not accept respondent's ASRP defense, and contends that the violations were inadvertent. We note that respondent did not raise this defense in his answer to the complaint. We treat respondent's assertion that he is eligible for a waiver of sanction under the ASRP as an affirmative defense.¹⁰ In asserting an affirmative defense, respondent must fulfill the burden of proving both the factual basis for the defense and the legal justification.¹¹ He must satisfy the burden of establishing that he meets all criteria of the ASRP, and is therefore eligible for a waiver of sanction. Respondent has not done so. He argues only that his violation was inadvertent and, at the hearing, presented evidence only that his report was timely, but no evidence to show that he fulfilled the remaining criteria.¹² Even had he presented evidence on the other

¹⁰ See Moeslein, supra, citing Administrator v. Smith, 5 NTSB 1560, 1564 (1986); accord Administrator v. Baehr, NTSB Order No. EA-4075 (1994).

¹¹ See Administrator v. Gibbs, NTSB Order No. EA-5291 at 2 (2007); Administrator v. Kalberg, NTSB Order No. EA-5240 at 3 (2006); Administrator v. Tsegaye, NTSB Order No. EA-4205 at n.7 (1994).

¹² We note that there is some evidence that respondent had no

criteria, however, we find that respondent has not produced sufficient evidence to dispute the finding that his violations were not inadvertent. We are reminded of the discussion regarding the distinction between the terms "inadvertent" and "not deliberate," as discussed in the seminal case of Administrator v. Ferguson and Bastiani, 3 NTSB 3068 (1980), where we held that a violation must be both "not deliberate" and "inadvertent" for immunity to apply. In affirming our decision, the United States Court of Appeals for the Ninth Circuit used the following for illustration:

A person who turns suddenly and spills a cup of coffee has acted inadvertently. On the other hand, a person who places a coffee cup precariously on the edge of a table has engaged in purposeful behavior. Even though the person may not deliberately intend the coffee to spill, the conduct is not inadvertent because it involves a purposeful choice between two acts—placing the cup on the edge of the table or balancing it so that it will not spill. Likewise, a pilot acts inadvertently when he flies at an incorrect altitude because he misreads his instruments. But his actions are not inadvertent if he engages in the same conduct because he chooses not to consult his instruments to verify his altitude.

Ferguson v. NTSB and FAA, 678 F.2d 821, 828 (9th Cir. 1982). The very same rationale applies here. Whether he intended to violate the FAR, respondent was not unaware that he was flying into restricted airspace. That he chose not to ensure that he

(..continued)
violation history, but he presented no argument on this.

was complying with the restrictions and limitations of that airspace does not transform his actions from deliberate or advertent to not deliberate or inadvertent. We find that respondent is not eligible for a waiver of sanction under the ASRP.

We find that safety in air commerce or air transportation and the public interest require us to affirm the order of suspension and the decision of the law judge, as we have modified them.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed as modified herein; and
3. The 30-day suspension of respondent's private pilot certificate shall begin 30 days after the service date indicated on this opinion and order.¹³

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

¹³ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

UNITED STATES OF AMERICA
 NATIONAL TRANSPORTATION SAFETY BOARD
 OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *

In the matter of:	*	
	*	
MARION C. BLAKEY,	*	
ADMINISTRATOR,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	
v.	*	Docket No.: SE-18012
	*	JUDGE FOWLER
KENNETH L. BLUM,	*	
	*	
Respondent.	*	

* * * * *

General Services Administration
 429 L'Enfant Plaza
 Washington, D.C. 20024

Thursday,
 August 9, 2007

The above-entitled matter came on for hearing, pursuant
 to Notice, at 9:15 a.m.

BEFORE: WILLIAM E. FOWLER, JR.,
 Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

TIM TRAINOR, Regional Counsel
SUSAN CARON, Regional Counsel
Federal Aviation Administration
Office of the Chief Counsel
800 Independence Avenue, SW 9th
Washington, DC 20591
(202) 267-9863

On behalf of the Respondent:

JAY FRED COHEN
100 Church Lane
Baltimore, Maryland 21208
(410) 484-3050

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22 ORAL INITIAL DECISION AND ORDER

23 JUDGE FOWLER: This has been a proceeding before the National
24 Transportation Safety Board, held pursuant to the provisions of
25 the Federal Aviation Act of 1958 as that act was subsequently

1 amended, on the appeal of Kenneth L. Blum from an Order of
2 Suspension dated April 13th, 2007, which seeks to suspend
3 Respondent Blum's Private Pilot's Certificate No. (omitted) for a
4 period of 30 days.

5 The Administrator's Order of Suspension duly promulgated and
6 issued, pursuant to the National Transportation Safety Board's
7 Rules of Practice in Air Safety Proceedings, by the Enforcement
8 Division of the Chief Counsel's Office of the Federal Aviation
9 Administration has been heard before this United States
10 Administrative Law Judge. As provided by the Board's Rules of
11 Practice, specifically Section 821.42 of those rules, as the Judge
12 in this proceeding, I have chosen to invoke the option granted to
13 me under that section and issue an oral initial decision forthwith
14 at this time, as opposed to a subsequent written decision.

15 Following notice to the parties, this proceeding came on for
16 trial in Washington D.C. on August 9th, 2007. The Respondent
17 Kenneth L. Blum was very ably represented by Jay Fred Cohen,
18 Esquire. The Federal Aviation Administration was also very ably
19 represented by Tim Trainor, Esquire and Susan Caron, Esquire of
20 the FAA's Enforcement Division, Chief Counsel's Office.

21 Both parties have been afforded the opportunity to offer
22 evidence, to call, examine, and cross-examine witnesses. In
23 addition, the parties were afforded the opportunity to make
24 argument in support of their respective positions.

25 I have reviewed the testimony and the evidence in this

1 proceeding, which consist of three witnesses on behalf of the
2 Administrator. There was one witness on behalf of the Respondent,
3 that being the Respondent himself. There were six exhibits
4 adduced by the Administrator and four exhibits by the Respondent,
5 all duly admitted into the hearing record of this proceeding as
6 it's presently constituted.

7 The issues to be decided here, in this Order of Suspension of
8 April 13th, 2007, is the Administrator has alleged the incursion
9 into the ADIZ as set forth in FDC NOTAM 6-2550, as well as the
10 allegation that there was an incursion into the Class B airspace
11 in this area.

12 It is my determination and conclusion that the
13 Administrator's case was strong, clear, compelling, and logical,
14 and in other words, very persuasive. The Administrator's three
15 witnesses, Mr. Sorrentino, Mr. Sparrow and Inspector Richard
16 Eilinger; I believe Mr. Sorrentino and Sparrow monitored the ADIZ
17 as part of their official and daily duties, and you might say they
18 were direct witnesses to the incursion without the proper
19 compliance with the restrictions imposed, because of security
20 procedures and precautions, that Respondent Kenneth L. Blum did
21 not observe in his incursion into the ADIZ governed by NOTAM 6-
22 2550 on March 27th, 2006.

23 Now, as I said, these three witnesses' testimony was very
24 logical, compelling and persuasive. I was impressed by Aviation
25 Safety Inspector Eilinger, who on the record was designated as an

1 aviation safety expert in aviation matters. I cannot differ with
2 or negate his determinations. While we have, as the
3 Administrator's Order of Suspension spells out, two incursions
4 here, one of the ADIZ and one of the Class B airspace, Inspector
5 Eilinger said in his opinion the incursion of the ADIZ was
6 inadvertent by Respondent Blum, but that the incursion of the
7 Class B airspace was deliberate and intentional.

8 As you may have gathered by the gist of my statements so far
9 and my determination about the overwhelming evidence that the
10 Administrator has adduced, the sanctions sought by the
11 Administrator of 30 days is the minimum sanction that can be
12 imposed. It certainly could have been much more because, as the
13 documentary exhibit setting forth the sanctions that the
14 Administrator is empowered to impose, this could be anywhere from
15 30 on up to 100 days, I think it is. And I think the
16 Administrator has been very thoughtful in seeking the sanction
17 that the Administrator seeks to impose.

18 Unfortunately, I cannot find anything particularly mitigating
19 here, and in view of the totality of the evidence, I would not,
20 even if I desired to, reduce the sanction here of 30 days, which
21 is the minimum sanction, taking into account all of the facts and
22 circumstances.

23 Now, the Respondent attempted to make much of the fact that
24 Respondent Blum was not the pilot-in-command on this flight on
25 March 27th, 2006. That, in my estimation, based on the totality

1 of the evidence, has not only been successfully rebutted, but it
2 has been is shown, by the evidence, and particularly by the
3 aviation expert Eilinger, that not only was Respondent Blum the
4 operator of the aircraft, but that he was, in fact, the pilot-in-
5 command of the aircraft.

6 And I think the Administrator was certainly validly premised
7 in bringing this action, because as we all know the only time an
8 aircraft goes into an ADIZ zone without getting clearance or
9 without having a beacon transponder code on, and without receiving
10 a separate clearance to enter the ADIZ, is when he is in violation
11 in being in the ADIZ. And this ADIZ here in this area, as well as
12 the Class B airspace, is heavy with traffic. So the mere fact that
13 Mr. Blum was in the ADIZ and the Class B, airspace, his aircraft
14 being there constituted a hazard.

15 Squawking the beacon code on his transponder of 1200 before
16 he entered the ADIZ, there is nothing wrong here, but he went into
17 the ADIZ on that code and subsequently received the proper code of
18 4701, the code assigned to him after he entered the ADIZ. He was
19 in the ADIZ for about seven miles before he exited, and then
20 subsequently went into the Class B airspace without first
21 obtaining a clearance.

22 So, ladies and gentleman, as I stated a moment ago, the
23 Administrator's case is very clear and compelling and the evidence
24 is quite persuasive. I cannot do otherwise than to affirm the
25 Administrator's Order of Suspension of April 13th, 2007.

1 Accordingly, I will now proceed to make the specific findings
2 of fact and conclusion of law:

3 One, it is found that the Respondent in this proceeding,
4 Kenneth L. Blum, holds Pilot's Certificate No. (omitted).

5 Two, it is found that under Section 91.39 of the Federal
6 Aviation Regulations, the Administrator has established special
7 security procedures that are under air traffic rules for flights
8 in the Washington D.C. metropolitan area where ready
9 identification, location and control of aircraft is necessary for
10 reasons of national security. These procedures and air traffic
11 rules were published in the flight data center, FDC Notice to
12 Airman, NOTAM 6-2550, effective March 1, 2006, until further
13 notice, which established the Washington D.C. metropolitan area
14 defense identification commonly known as the DC ADIZ.

15 Three, it is found that on March 27th, 2006, Respondent Blum,
16 acted as pilot-in-command of civil aircraft N657CD, a Cirrus SR-
17 20, in a flight inbound to the Baltimore Washington International
18 Airport in Maryland.

19 Four, it is found that FDC NOTAM 6-2550 was in effect March
20 27th, 2006.

21 Five, it is found that FDC NOTAM 6-2550 requires in part that
22 a pilot must a) transmit a discreet beacon transponder code at all
23 times while operating in the DC ADIZ, and b) properly be operating
24 within Class B airspace, that is within the DC ADIZ receive a
25 separate clearance to enter the Class B airspace.

1 Six, it is found that during the flight on March 27th, 2006,
2 Respondent Blum operated his aforesaid aircraft N657CD contrary to
3 the security procedures, the flight rules established by NOTAM 6-
4 2550 and that at approximately 14:58 local time, Respondent
5 operated the aforesaid aircraft within the airspace covered by the
6 aforesaid NOTAM without transmitting Respondent's assigned
7 discreet beacon transponder code. And, b) before operating within
8 Class B airspace that lies within the D.C. ADIZ, Respondent failed
9 to obtain a separate clearance to enter that Class B airspace.

10 Seven, it is found that by operation of an aircraft within
11 the aforesaid ADIZ, when not complying with the special security
12 procedures, established, in the aforesaid NOTAM, that this
13 constituted a careless act that could potentially endanger the
14 lives and property of others.

15 Eight, it is found the reason of the foregoing facts and
16 circumstances that Respondent, Kenneth L. Blum, violated the
17 following Federal Aviation Regulations: a) Section 91.139(c), I'm
18 incorporating by reference these sections as set forth in the
19 Administrator's Order of Suspension what that section spells out;
20 b) a violation of Section 99.7, also incorporating by reference as
21 to what that section spells out in the Order of Suspension; c)
22 Section 91.131(a)(1), incorporating by reference as well what that
23 section spells out; and d) Section 91.13(a), in that the
24 Respondent operated an aircraft in a careless manner so as to
25 potentially endanger the lives and property of others.

Nine, safety in air transportation and air commerce and the public interest does require the affirmation of the Administrator's Order of Suspension dated April 13th, 2007. In view of the Respondent's violation of Section 91.139(c), Section 99.7, Section 91.131(a)(1), and Section 91.13(a) of the Federal Aviation Regulations as set forth earlier in the decision that I'm in the process of issuing.

ORDER

It is ordered, adjudged, and decreed that the Administrator's Order of Suspension dated April 13th, 2007, be, and the same is hereby, affirmed.

EDITED & DATED ON
AUGUST 29, 2007

WILLIAM E. FOWLER, JR.
Administrative Law Judge

APPEAL

Either party may appeal the Judge's Oral Initial Decision just issued. The Appellant should file his Notice of Appeal within ten days following the Judge's decision, which is dated August 9th, 2007.

For the Appellant to perfect his appeal, he must file a brief within 50 days following the date of the Judge's decision, setting forth his objections to the Judge's Oral Initial Decision.

The Notice of Appeal and the brief may be filed with the National Transportation Safety Board, Office of Judges, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594. If no appeal

1 to the Board by either party is received, or if the Board, of its
2 own volition, does not choose to review the Judge's Oral Initial
3 Decision within the time allowed, then the Judge's decision will
4 become final. Timely filing of such an appeal, however, shall
5 stay the Order as set forth in the Judge's Oral Initial Decision.

6 (Off the record.)

7 (On the record.)

8 JUDGE FOWLER: In the issuance of my decision, I
9 neglected to mention that the Respondent had mentioned early at
10 the outset of this proceeding that he had filed a NASA report.

11 However, it is my determination that the incursion of the
12 Class B airspace, being deemed intentional, I believe would tend
13 to negate the efficacy of this NASA statement and tend to reduce
14 its validity. The Administrator has come forth with a minimum
15 sanction here, as stated earlier, which could have been more than
16 the 30 days. I'm stating that based on my experience with some
17 other cases that I've had the pleasure of hearing.

18 The Counsel for the Administrator, where the NASA report was
19 concerned, said the Administrator was not on notice that such a
20 report had been filed, although apparently it was valid. This
21 apparently was an inadvertent oversight on the part of the
22 Administrator. Inspector Eilinger indicated that he had
23 remembered there was such a NASA report and he thought it had gone
24 forward with the filing of same, but apparently either it did or
25 it didn't and the FAA was not cognizant of it, at least not for

1 preparation and prosecution of this action as we've had it.

2 I don't think, that this is germane, pertinent and relevant
3 to the outcome of the case or to the sanction imposed. Off the
4 record.

5 (Off the record.)

6 (On the record.)

7 JUDGE FOWLER: Let the record indicate that Respondent
8 in this proceeding has indicated that he will be filing a Notice
9 of Appeal from the Judge's Oral Initial Decision just issued. I'm
10 sure you remember the parameters, Mr. Cohen. Ten days to file a
11 Notice of Appeal from the date of today's decision, and 50 days
12 from the date of decision to file a brief setting forth your
13 objections.

14 Very well. If there's nothing further at this time, I would
15 declare the hearing closed. Before we go off the record I would
16 like to express my deep and profound thanks to Counsel,
17 Mr. Trainor, Ms. Caron, and Mr. Cohen for their diligent,
18 industrious, and erudite efforts on behalf of their respective
19 clients.

20 I would also like to express my thanks to the witnesses for
21 their help, assistance, and cooperation. During the course of
22 this proceeding. Thank you all very much. We stand adjourned.
23 (Whereupon, at 3:00 p.m., the hearing in the above-entitled matter
24 was adjourned.)