



SERVED: August 22, 1979

NTSB Order No. EA-1322

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 9th day of August 1979,

LANGHORNE M. BOND, Administrator,  
Federal Aviation Administration,

Complainant,

vs.

LARRY WESLEY UNDERWOOD,

Respondent.

Docket SE-4012

OPINION AND ORDER

Respondent has appealed from the initial decision of Administrative Law Judge William E. Fowler, Jr., rendered orally at the conclusion of the evidentiary hearing held on January 24 and 25, 1979, in San Diego, California.<sup>1/</sup> The law judge therein found that the Administrator had established the charges specified in his order of suspension. These charges were predicated upon respondent's operation, as pilot-in-command, of civil aircraft N38515, a Piper PA-28-161, the property of another, on a passenger-carrying, visual flight rules flight, which terminated in

<sup>1/</sup> An excerpt of that portion of the hearing transcript containing the initial decision is attached hereto.

a crash landing on the athletic field at San Diego State University. The law judge further found that during the portion of the flight which was over the University campus, respondent operated the aircraft at altitudes as low as 400 feet above ground level<sup>2/</sup> and thereby had violated Federal Aviation Regulations (FAR) sections 91.79(a) and (b)<sup>3/</sup> and 91.9.<sup>4/</sup> He thereupon affirmed the Administrator's order suspending respondent's private pilot certificate for 180 days.

In support of his appeal, respondent, through counsel, has filed a brief wherein he argues that the engine oil pressure inexplicably rose while he was over the campus and that this constituted an emergency within the purview of FAR section 91.3(b),<sup>5/</sup> thus allowing him to descend below permissible altitudes in order to effectuate an emergency precautionary landing. He urges, in this regard, that his subjective determination

<sup>2/</sup> Unless otherwise stated, all altitudes hereinafter given refer to height above ground level.

<sup>3/</sup> Section 91.79(a) and (b) provides as follows:

"§91.79 Minimum safe altitudes; general.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) Over congested areas. Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft."

\* \* \* \* \*

<sup>4/</sup> Section 91.9 provides as follows:

"§91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

<sup>5/</sup> Section 91.3(b) provides as follows:

"§91.3 Responsibility and authority of the pilot in command.

(b) In an emergency requiring immediate action, the pilot in command may deviate from any rule of this subpart or of Subpart B to the extent required to meet that emergency."

\* \* \* \* \*

of the existence of an emergency should control, insofar as the applicability of FAR section 91.3(b) is concerned, and that the Federal Aviation Administration should not be permitted to impose after the fact criteria on what constitutes an emergency.

The Administrator has submitted a reply brief, opposing the appeal. He argues therein that, objectively viewed, respondent's situation did not amount to an emergency and that, in any event, respondent's actions after discovering the high oil pressure were careless.

Upon consideration of the briefs of the parties, and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. Except as modified herein, we adopt the findings of the law judge as our own.

The pertinent facts of this case are dealt with in ample detail in the initial decision and need only be summarized herein. On April 6, 1978, respondent rented an aircraft at Montgomery Field in San Diego and departed with three passengers on board. The stated purpose of this flight was to drop marshmallows over certain sorority houses at San Diego State University in order to publicize and promote a charitable fund raising event taking place at the university. Upon reaching the vicinity of the campus, respondent discovered that his oil pressure gauge was indicating a pressure in excess of the "red line" marking on the instrument.<sup>6/</sup> Respondent testified that he determined it would be more

---

<sup>6/</sup> The maximum operating oil pressure in this aircraft is 90 pounds per square inch (p.s.i.). Post crash testing indicated that the system oil pressure was 100 p.s.i. at an engine speed of 1800 revolutions per minute. Tr. 173.

prudent to attempt a power-on precautionary landing on the campus athletic field, rather than risk a complete power loss while enroute back to Montgomery Field, over terrain which he considered unsuitable for an emergency landing. While descending, respondent circled around the campus three times before his aircraft struck a tree and crashed into the athletic field causing injuries of varying degrees to all four occupants.

At the outset we note that respondent's brief cites a number of judicial and academic authorities in support of his contention that he should be held to a different (lesser) standard of care in a perceived emergency situation than would otherwise be required. Our examination of the sources cited by respondent discloses that they are exclusively concerned with civil tort litigation. The standards applied in such cases are not comparable to those used in an administrative action such as an air safety proceeding. We, therefore, find that the cases and other materials cited by respondent are inapposite herein.

In our view, the most appropriate course of action for respondent, upon discovering the high oil pressure indication in his aircraft, would have been to immediately return to Montgomery Field. The airport was approximately five miles <sup>7/</sup> away, and the flying time should have been no more than 3 minutes. During this time he could have appraised control tower personnel of his problem, allowing them to provide him with special handling during his approach. Since the evidence established (and respondent concedes) that he remained airborne over the

campus for approximately 5 minutes after noticing the high oil pressure,<sup>8/</sup> it seems clear that he would have had no difficulty in reaching Montgomery Field.

The Board realizes that in reaching the foregoing conclusion it has the benefit of hindsight, which, of course, was unavailable to respondent. Therefore, in order to view the facts of this case in a light most favorable to respondent, we will assume, arguendo, that under the circumstances herein,<sup>9/</sup> respondent's decision to make a power-on precautionary landing on the campus athletic field was not, in itself, careless operation. Nevertheless, as noted in our ensuing discussion, respondent's actions after reaching that decision were so unreasonable that they amounted to carelessness on his part, thereby establishing a basis for the violations alleged by the Administrator.

There are several factors concerning the manner in which respondent conducted his descent and approach for landing which form the basis for the foregoing conclusion. The most prominent among these is the fact that respondent did not use any flaps during his attempted landing. The athletic field is under 400 feet long, which is considerably less than the required landing distance for his aircraft, even with the use of flaps. Without flaps, the stall speed was increased, thereby forcing respondent to use a higher landing speed. Such a configuration increased the likelihood that he would run off the end of the field, even if the touchdown portion of his landing was successful, thereby risking considerable damage to the aircraft and potential injury to the occupants.

---

<sup>8/</sup> In fact, the evidence seems to indicate that the engine in respondent's aircraft continued to develop power until ground impact.

<sup>9/</sup> These circumstances would include the fact that respondent was a "low time" pilot (with less than 150 hours of flying time) who may have been under considerable stress when confronted by a high oil pressure indication, the potential consequences of which he was uncertain. Also a factor, in this regard, would be the lack of a suitable emergency landing site between the campus and Montgomery Field.

The location and pattern used by respondent during the course of his descent created serious additional hazards, beyond those already inherent in an off airport precautionary landing. After selecting the athletic field as a landing site respondent circled about the far side of the campus while allowing his aircraft to descend through 400 feet before finally turning towards the field for his approach. An engine failure during this descent (particularly the later portions) would have necessitated a crash landing in the midst of the congested portion of the campus. It is precisely this situation (i.e., a crash landing on unsuitable terrain) which respondent was allegedly seeking to avoid by landing at the athletic field. It seems clear that the more prudent course of action would have been to descend directly over, or adjacent to, the athletic field, thereby assuring a landing there in the event of a power loss. Consequently, since respondent's altitude was below that from which a safe emergency landing could be made (and well below 1000 feet), violation of FAR section 91.79(a) and (b), has been clearly established.

It further appears from the record that respondent was circling in a manner which would require him to execute a sharp 180° left turn, in the direction opposite to his descending turns, in order to align himself for final approach. It seems apparent that, in a situation where engine difficulties are suspected, excessive maneuvering which would adversely effect the handling characteristics of an aircraft should be avoided.<sup>10/</sup> In this instance, a safer descent pattern would have been one which involved

10/ A steep turn, such as that required here, would significantly increase the stall speed of the aircraft and may also result in a loss of altitude during the course of the maneuver.

only left hand turns, thereby permitting respondent to transition directly from the pattern to his final approach course without any unnecessary maneuvers.

We also note that respondent did not use the available shoulder harness during his attempted landing and he did not advise the other occupants of the aircraft with respect to his intentions. These omissions increase the risk already inherent in the type of landing being conducted by respondent. In our view they further demonstrate and substantiate the lack of any exercise of reasonable care by respondent in executing the precautionary landing.

In light of the foregoing, the Board finds that, notwithstanding the propriety (or lack thereof), of respondent's decision to land at the athletic field, his handling of the aircraft subsequent to making that determination was careless and demonstrated poor judgment on his part. Therefore, his actions were not "required to meet (the) emergency" situation in which respondent felt he had been placed, and the affirmative defense of an emergency within the purview of FAR section 91.3(b), does not excuse his otherwise proven violations.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal be and it hereby is denied;

2. The Administrator's order and the initial decision be and they hereby are affirmed; and

3. The 180-day suspension of respondent's private pilot certificate shall become effective 30 days after the date of service appearing on the face of this order. <sup>11/</sup>

KING, Chairman, DRIVER, Vice Chairman, McADAMS, and GOLDMAN, Members of the Board, concurred in the above opinion and order.

BURSLEY, Member, did not participate.

11/ For the purpose of this order respondent must physically surrender his certificate to an appropriate representative of the Federal Aviation Administration pursuant to section 61.19(f) of the FAR.

SERVED: 1/25/79 463

1 UNITED STATES OF AMERICA  
2 NATIONAL TRANSPORTATION SAFETY BOARD

3  
4 In the Matter of:  
5 LANGHORNE M. BOND, Administrator  
6 FEDERAL AVIATION ADMINISTRATION,

7 Complainant,

8 and

9 LARRY W. UNDERWOOD,

10 Respondent.

11 :  
12 :  
13 :  
14 :  
15 :  
16 :  
17 :  
18 :  
19 :  
20 :  
21 :  
22 :  
23 :  
24 :  
25 :  
Docket No. SE-4012

Room 2-S-16  
Federal Courthouse  
880 Front Street  
San Diego, California  
Thursday, January 25, 1979

ORAL INITIAL DECISION

14 JUDGE FOWLER: I would like at the outset to  
15 express my thanks and appreciation to counsel for both sides  
16 for their erudite, diligent, and learned efforts on behalf  
17 of their respective clients, the Repondent, Mr. Underwood,  
18 and of course the Administrator of the Federal Aviation  
19 Administration.

20  
21 Gentlemen, we've had a very interesting two-  
22 day hearing concerning a very interesting fact pattern that  
23 occurred on April 6, 1978, in the vicinity of San Diego State  
24 University here in San Diego, California. We've had a total  
25 of nine witnesses that have testified during the course of

1 this proceeding, six for the Administrator, three for the  
2 Respondent, including the Respondent himself. And we have  
3 amassed a total of 24 exhibits that have been entered into  
4 the hearing record, 22 for the Administrator and two for the  
5 Respondent.

6  
7 Now, after reviewing the testimony and the  
8 documentary exhibits in this case, as I see it, the  
9 components of what justiciable controversy we have here in  
10 this proceeding are comprised of the following:

11 Did the Respondent, Larry Wesley Underwood,  
12 on April 6, 1978, fly his aircraft over a congested area, to  
13 wit, the campus of San Diego State University, at an altitude  
14 as low as 400 feet above ground level?

15 Could the Respondent's altitude during the  
16 course of that flight, I mean, in view of that altitude,  
17 could an emergency landing have been made without undue  
18 hazard to persons or property on the surface?

19 Another component is whether the Respondent's  
20 operation of this flight at the aforesaid date, time, and  
21 place was careless or reckless so as to cause substantial  
22 damage to the aircraft or injuries to persons or passengers  
23 and endangerment to persons and property on the surface.

24 And lastly a component of this justiciable  
25 controversy to be decided here is: Was there an emergency, a  
valid emergency, that caused the pilot to do as he did in

1 this fact pattern as set forth in the Administrator's Order  
2 of Suspension of September 7, 1978?

3 Now, there is no disputing the factual  
4 allegations here, certainly what I previously mentioned  
5 about the low flight. We have had four witnesses testify -  
6 Witness Hopkins, Witness Lynch, Witness Lewis, and Witness  
7 Holder - unequivocally that they witnessed the Respondent's  
8 aircraft at the aforesaid date, time, and place flying at  
9 less than 400 feet above buildings on the campus of the San  
10 Diego State University, so that aspect of this case is not  
11 in issue.

12 We also know by the facts in this case that,  
13 according to the Respondent's own testimony, he deemed him-  
14 self to be in an emergency situation, and he attempted to  
15 land without hazard to persons or property on the surface  
16 and, unfortunately, he was unable to do so. And I would have  
17 to find, hold, and conclude that a substantial part of the  
18 unsuccessful attempt of the Respondent to land his aircraft  
19 was due to the fact that he was flying at such a low  
20 altitude. That would certainly dispose of the second aspect  
21 that's in dispute as to whether or not because of the  
22 altitude of his flight, that he could safely land during the  
23 course of the emergency without undue hazard to persons and  
24 property on the surface.

25 Concomitantly speaking, based upon my review

1 of all the testimony, flying an aircraft over a congested  
2 area, which ~~of course~~ here is the campus of the San Diego  
3 State University, at an altitude of less than a thousand  
4 feet - in fact, we've had substantial testimony that the  
5 altitude was below 400 feet - that this certainly has to be  
6 classified as careless operation of an aircraft and if some  
7 other elements are present, even possibly reckless operation  
8 of his aircraft.

9  
10 However, upon due consideration of all of the  
11 testimony and the documentary exhibits here, it is my  
12 judgment that the Respondent's operation of his aircraft was  
13 careless. I do not find that it was willful or wanton with  
14 a total disregard of life, limb and property to himself and  
15 others, so I will not make a finding that the flying pattern  
16 and behavior of Mr. Underwood was reckless; but I will find  
17 and hold and conclude that it was careless, taking all the  
18 circumstances into consideration.

19 Now, the Respondent has, during the course of  
20 this proceeding, come forth with what has to be deemed  
21 affirmative defense, to wit, he was caught in an emergency,  
22 and the emergency was that the aircraft was not operating  
23 properly. According to the Respondent, the oil pressure  
24 gauge was registering an unusually high amount of pressure  
25 and that this, together with the fact that the engine sounded  
differently to him, that in the Respondent's opinion and

1 viewpoint, that this was an emergency, that that oil gauge  
2 needle being in the red area on the gauge, the area that is  
3 colored red, the high area, that this the Respondent deemed  
4 to be an emergency.

5 Now, we have had the testimony of a number  
6 of people pertaining to that. We have had, I would think on  
7 balance I would have to give more credence to the two FAA  
8 inspectors, Inspector Walter Langham, who is an aviation  
9 safety inspector for the FAA, and Inspector Don Smith, who  
10 is also an aviation safety inspector with the FAA. Both of  
11 these gentlemen are very experienced, well-seasoned, possess  
12 a wealth of expertise where aircraft and aviation is  
13 concerned. These gentlemen were of the opinion, and  
14 particularly Inspector Smith, that there was no emergency  
15 because of the high oil pressure. Both Inspector Smith and  
16 Langham were of this opinion, and in addition, as a result of  
17 their investigation following the accident of Respondent's  
18 aircraft, you may recall that it was the testimony and  
19 opinions of Inspector Smith and Langham that there was  
20 absolutely nothing wrong mechanically speaking with  
21 Respondent's aircraft. The engine was in good shape, and all  
22 the other component parts of the aircraft they could deter-  
23 mine prior to the crash was in good shape. In other words,  
24 it was a thoroughly airworthy aircraft. There is no evidence  
25 in this case of any malfunction of any part.

1 There was testimony, of course, by Inspector  
2 Langham that the high oil gauge registration was indicative  
3 of high oil pressure, but this did not constitute an  
4 emergency. It did not mean that anything was seriously  
5 wrong with the aircraft unless the aircraft had continued to  
6 have been operated on that basis over a long and lengthy  
7 period of time.

8  
9 Now, there is another aspect to the case here  
10 which is more important, which I have not mentioned up until  
11 this part, and that is: Did the Respondent, Larry Wesley  
12 Underwood, as a certificated private pilot, exercise that  
13 degree of care, judgment, and responsibility required of the  
14 holder of a private pilot's certificate? Upon consideration  
15 and review of the evidence here, I would have to hold in the  
16 final analysis that he did not. First of all, Montgomery  
17 Field was within five miles of the campus of San Diego State  
18 University. Had he tried, he very well could have succeeded  
19 in reaching this field and making a landing there rather  
20 than continue to circle over and above the San Diego State  
21 University campus as he did. This was an error in judgment.  
22 It was also an error in judgment on the Respondent's part to  
23 feel that the high oil pressure indication on the oil gauge  
24 was an emergency. The overwhelming authority, as exemplified  
25 by Inspector Langham and Inspector Smith, is to the effect  
that when the needle goes in the red area, this is not an

1 emergency; this is a warning to the pilot, a warning to him  
2 that he is to get down as soon as he can. While I would have  
3 to say that Respondent, involved in the situation that he  
4 was in, tried to do the best that he could, it must be  
5 borne in mind that the Respondent only had a hundred or a  
6 hundred and forty hours of flying experience, and certainly  
7 you could not equate his guilt with that of a more seasoned  
8 or veteran pilot. Nevertheless, rather than trying to land  
9 on the campus, it would have been the better part of valor  
10 and discretion, as well as the exercise of sound, prudent,  
11 and reasonable judgment, for him to have gone on five miles  
12 over to Montgomery Field and made his landing there.

13 There has also been a great deal of testimony  
14 during the course of this proceeding that at no time did  
15 the Respondent's engine in his aircraft stop running. It  
16 was running to the very end. Respondent, as a matter of  
17 fact, I believe testified to that himself. So that,  
18 gentlemen, what we have here, we have a flight of four young  
19 people who, obviously, shall we say, carried away with a  
20 deal of youthful zeal and exuberance in connection with a  
21 charitable fund-raising celebration that was going on at the  
22 time at San Diego State University campus, thought that they  
23 would fly over the campus and drop marshmallows from the  
24 Respondent's aircraft on the campus, which they attempted to  
25 do, and which even after they found would not be successful

1 that is, as to where they could see the marshmallows - they  
2 aborted this effort to drop the marshmallows. But,  
3 unfortunately, they were still flying at an altitude  
4 substantially less than 1,000 feet above buildings on the  
5 campus at San Diego State University, which is a violation  
6 of a very fundamental Federal Aviation regulation. This, in  
7 and of itself, was a hazard to people and property on the  
8 ground beneath them and certainly it's unfortunately further  
9 borne out by the crash of the aircraft by the Respondent.  
10 Even though he tried to do the best he could under the  
11 circumstances to make a successful and safe landing,  
12 unfortunately a tree was struck, and the aircraft <sup>was</sup> ~~is~~  
13 substantially damaged, and all four people on board the air-  
14 craft were injured, not seriously, thank goodness, but  
15 injured to a minor extent.

16  
17 During the course of his final argument, the  
18 Administrator, counsel for the Administrator, made two  
19 motions. The first was to amend the Order of Suspension to  
20 make it an Order of Revocation of Respondent Underwood's  
21 private pilot's certificate. I have seriously considered  
22 this, and based upon all the facts and circumstances of this  
23 proceeding, taking into account, of course, the testimony and  
24 documentary exhibits as well as the timeliness of the  
25 motion, I would deny the motion to amend the Order to make it  
an Order of Revocation. This, in effect, would be giving the

1 Administrator two bites of the apple. It would be taking  
2 unfair advantage of Respondent. The Respondent has come here  
3 in this proceeding to defend himself against an Order of  
4 Suspension, not an Order of Revocation, and the Administrator  
5 has had ample time, many, many months, since the inception  
6 of this Complaint, to amend his order if he wanted to do so.  
7 I would deny the Administrator's order to amend the Order of  
8 Suspension to an Order of Revocation.

9 The second motion was to make as a part of  
10 the sanction that if there was a period of time of suspen-  
11 sion, that such period of suspension would continue  
12 indefinitely until the Respondent satisfactorily completed  
13 an examination in emergency procedures and techniques. My  
14 inclination is to deny that motion, and I will so deny it  
15 for several reasons: First, I do not have the authority as  
16 an Administrative Law Judge to increase the sanction in any  
17 way; that is, the sanction as set forth in the Administra-  
18 tor's Order of Suspension.

19 In addition to that, the Respondent, Mr.  
20 Underwood, is a senior college student, is possessed of a  
21 good deal of intelligence. He has been through a very  
22 traumatic experience, I'm sure, in the crash of this air-  
23 craft involving himself and three other people, all of whom  
24 he knew and were probably his friends. I'm certain that he  
25 is not going to forget about that soon, and I'm sure he has

1 been made very cognizant of what shortcomings he possesses  
2 as a private pilot, and that he will endeavor, as he himself  
3 testified to, to improve himself, to improve his overall  
4 knowledge of aviation and the operation of aircrafts and  
5 that concomitantly this will involve knowing emergency  
6 procedures and techniques, and also in view of the fact that  
7 he aspires to become instrument rated and additionally some-  
8 day to become commercially certificated, that this will take  
9 care of the remedial aspects where emergency procedures and  
10 techniques are concerned. So I would deny the Administra-  
11 tor's second motion as well.

12 So that, gentlemen, without additionally  
13 belaboring the facts of this case, based upon my complete  
14 and entire review of all of the testimony coupled with the  
15 documentary exhibits, this Administrative Law Judge would  
16 make the following specific findings of fact and conclusions  
17 of law:

- 18 1. The Respondent, Larry Wesley  
19 Underwood, admits and it is found that he is now  
20 and at all times mentioned herein the holder of  
21 Private Pilot Certificate No. 568049956, with  
22 airplane and single-engine land rating.
- 23 2. The Respondent admits, and  
24 it is found, that on or about April 6, 1978, the  
25 Respondent acted as pilot in command of civil

1 aircraft N-38515, a Piper PA-28-161, the property  
2 of another on the flight in the vicinity of San  
3 Diego State University, San Diego, California.

4 3. The Respondent admits, and  
5 it is found, that during the above flight the  
6 Respondent carried three passengers.

7 4. The Respondent admits, and  
8 it is found, that the purpose of the above flight  
9 was to drop marshmallows from the aircraft onto  
10 the campus as a stunt in connection with a  
11 fraternity/sorority fund-raising event.

12 5. It is found that while over the  
13 campus, a congested area, the Respondent, Larry  
14 Wesley Underwood, operated the aircraft at altitudes  
15 as low as 400 feet AGL.

16 6. It is found that the above  
17 flight terminated when the aircraft struck a tree  
18 and crash-landed in the sports and athletic field  
19 at San Diego State University.

20 7. It is found that Respondent's  
21 altitude during the above flight was such that an  
22 emergency landing could not have been made without  
23 undue hazard to persons and property on the  
24 surface.

25 8. It is found that the Respondent's

1 operation, as described above, was careless and  
2 has caused substantial damage to the aircraft,  
3 injury to Respondent's passengers, and endanger-  
4 ment to persons and property on the surface.

5 9. It is found that by reasons  
6 of the foregoing circumstances, the Respondent,  
7 Larry Wesley Underwood, violated the following  
8 Federal Aviation regulations:

9 A. Section 91.9

10 in that the Respondent operated an air-  
11 craft in a careless manner so as to  
12 endanger life or property of another.

13 B. Section 91.79(a)

14 in that when it was not necessary  
15 for takeoff or landing Respondent  
16 operated an aircraft below an alti-  
17 tude which if the power unit had  
18 failed would have allowed an  
19 emergency landing without undue  
20 hazard to persons or property on  
21 the surface.

22 C. Section 91.79(b)

23 in that when it was not necessary for  
24 takeoff or landing, the Respondent  
25 operated an aircraft over a congested.

1 area of the city, to wit, San Diego  
2 State University campus, below an alti-  
3 tude of 1,000 feet above the highest  
4 obstacle within a horizontal radius  
5 of 2,000 feet of the aircraft.

6 10. It is found that safety ~~and~~ <sup>IN</sup>  
7 air commerce or air transportation <sup>HND</sup> ~~is~~ the public  
8 interest does require the affirmation of the  
9 Administrator's Order of Suspension, dated  
10 September 7, 1978, in view of Respondent's  
11 violation of Section 91.9, 91.79(a), 91.79(b)  
12 of the Federal Aviation Regulations.

13 Order: It is ordered that the Administra-  
14 tor's Order of Suspension of September 7, 1978, be and the  
15 same hereby is affirmed. This order is issued by William E.  
16 Fowler, Jr., United States Administrative Law Judge.

17 Now, under the heading of appeal, either  
18 party to this proceeding may appeal the judge's Oral  
19 Initial Decision. The appellant shall file his Notice of  
20 Appeal within ten days of the Oral Initial Decision and he  
21 must, within 40 days of this decision, file a brief in which  
22 he is to set forth his objections to the judge's Oral Initial  
23 Decision. A Notice of Appeal and brief shall be filed within  
24 the National Transportation Safety Board docket section,  
25 2100 Second Street Southwest, Washington, D.C., 20594.

1 If no appeal to the Board from either party  
2 is received, or if the Board does not file a motion to  
3 review the judge's Oral Initial Decision within the time  
4 allowed, then the Oral Initial Decision shall become final.  
5 Timely filing of such an appeal, however, shall stay the  
6 order as set forth in the judge's Initial Decision.

7 Off the record.

8 (Off-the-record discussion.)

9 JUDGE FOWLER: Back on the record. You may make  
10 your request on the record now.

11 MR. NEVILL: Your Honor, my request is that the  
12 Board address its specific finding No. 5, "The Respondent  
13 operated an aircraft over the campus at an altitude of  
14 400 feet above ground level", and direct that finding as to  
15 whether or not the emergency had occurred, at least subjec-  
16 tively occurred, in the Respondent's mind prior to that  
17 violation or subsequent to that violation.

18 JUDGE FOWLER: All right. Anything else?

19 MR. NEVILL: Thirdly, I would like to have your  
20 Honor address those documents known as CAM 3, specifically  
21 the intent of the FAA to establish an emergency in this case.

22 JUDGE FOWLER: I'm sorry. I don't understand.

23 MR. NEVILL: Specifically the document known as  
24 CAM 3.

25 JUDGE FOWLER: Yes. What about it?

1 MR. NEVILL: Under which this document was  
2 certified and the intent of the FAA through that document to  
3 show an emergency circumstance and as to why, then, the  
4 Court would be willing to find that in view of the FAA's  
5 intent in that case, this hearing is not willing to establish  
6 that there was, in fact, an emergency.

7 JUDGE FOWLER: Well, anything else?

8 MR. NEVILL: No, your Honor.

9 JUDGE FOWLER: All right. Let the record indicate  
10 that as to finding No. 5: While over the campus, a  
11 congested area, Respondent operated his aircraft at an  
12 altitude as low as 400 feet AGL, when in his own mind  
13 subjectively thinking and believing, the Respondent felt he  
14 was in an emergency situation.

15 Off the record.

16 (Off-the-record discussion.)

17 JUDGE FOWLER: Let the record indicate that counsel  
18 for both sides have indicated and stated that at least as of  
19 this time they are uncertain as to whether or not they will  
20 file a Notice of Appeal from the Initial Decision just  
21 issued.

22 Gentlemen, if there is nothing further at  
23 this time, I would declare the hearing closed, but before I  
24 do so, I wish to thank both sides for their help, partici-  
25 pation, and cooperation during the course of this

1 proceeding. Thank you very much.

2 (Whereupon the proceedings were closed at

3 2:05 p.m.)

4 SERVICED:

5 Larry W. Underwood  
5912 Meinhardt  
6 Westminster, CA 92638

7 Robert L. Nevill, Esq.  
2441 E. ST.  
8 San Diego, California 92102

9  
10 Matthew Z. Markotic, Esq.  
Office of Regional Counsel  
11 Federal Aviation Administration  
P.O.Box 92007 Worldway Pstl Ctr  
12 Los Angeles, California 90009

*Edited*  
*1/26/79*  
*H/26/79*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25