

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Criminal No. 05-
v. : 18 U.S.C. §§ 1993, 1001 and 2
DAVID W. BANACH : **INDICTMENT**

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT 1

(Interference with Pilots of an Aircraft)

1. At all times relevant to this Indictment, defendant DAVID W. BANACH was a resident of New Jersey.

2. At all times relevant to the Indictment, the Atlantic Aviation Flight Services charter jet bearing tail number N102FS [the “Aircraft”] was a “vehicle” within the meaning of Title 18, United States Code, Section 1993(c)(9).

3. At all times relevant to this Indictment, the Aircraft was a vehicle used for “mass transportation,” within the meaning of Title 18, United States Code, Section 1993(c)(5) and Title 49, United States Code, Section 5302(a)(7).

BACKGROUND

4. On or about December 29, 2004, the Aircraft was carrying approximately six (6) passengers while flying en route from Boca Raton, Florida to Teterboro, New Jersey. While on its approach into Teterboro Airport, the Aircraft was traveling at approximately 250 knots and flying at about 3,000 feet. Furthermore, the Aircraft was operating in a high-traffic area due to

its proximity to several airports.

5. During the approach, the pilot and co-pilot observed a green-colored laser beam strike and illuminate the Aircraft's windshield on approximately three (3) occasions. The laser beam flashes illuminated the cockpit, causing both pilots a temporary loss of night vision. This loss of vision briefly prevented the pilots from observing the Aircraft's flight instruments and other aircraft in the vicinity. After regaining his vision, the lead pilot radioed the Federal Aviation Administration ("FAA") regional air traffic controller to report the incident.

6. At the time the laser struck the Aircraft, causing the pilots a temporary loss of their night vision, the Aircraft was engaged in its landing approach, a critical juncture in the operation of the Aircraft.

7. Defendant BANACH shined the laser on the Aircraft on December 29, 2004, and later admitted doing so in a handwritten statement he provided to law enforcement authorities.

8. On or about December 29, 2004, in Morris County, in the District of New Jersey and elsewhere, defendant

DAVID W. BANACH

did knowingly and willfully interfere with, disable, and incapacitate a driver, captain, and person, namely aircraft pilots, while those aircraft pilots were employed in operating and maintaining a mass transportation vehicle, namely the Aircraft, with reckless disregard for the safety of human life.

In violation of Title 18, United States Code, Sections 1993(a)(5), 1993(b), and 2.

COUNT 2

(False Statements to Law Enforcement Officers)

9. Paragraphs 1 through 7 of Count 1 are incorporated as if set forth at length herein.

10. At all times relevant to this Indictment, the Federal Bureau of Investigation (“FBI”) was a component of the United States Department of Justice.

11. On or about December 31, 2004, law enforcement agents were investigating the incident described in Paragraphs 4 through 7 of Count 1 [hereinafter the “12/29 incident”]. A pilot from the Aircraft accompanied law enforcement agents in a Port Authority Police Department (“PAPD”) helicopter used to identify the aeronautical location of the 12/29 incident. Using an FAA-generated aeronautical mapping of the Aircraft’s flight path, the pilot directed the helicopter to the vicinity from where the laser beams originated on or about December 29, 2004. While circling above this location, the helicopter was struck with a laser beam which the Aircraft pilot described as very similar to the one that struck his Aircraft on or about December 29, 2004. A helicopter crewmember shined a spotlight on the house where this latest laser beam emanated.

12. Law enforcement officers on the ground responded to the residence identified by the helicopter. Defendant BANACH exited this residence to inquire about the police activity. When informed of the nature of the investigation, defendant BANACH stated, in substance and in part, that it was daughter who had shined the laser on the PAPD helicopter. Defendant BANACH’s daughter was 7 years old at all times relevant to this Indictment.

13. Defendant BANACH returned inside and retrieved a black box that contained a silver cigar-shaped object identified by defendant BANACH as the aforementioned laser. The law enforcement officer activated the laser which produced a bright green light. Defendant

BANACH cautioned the officer, in substance and in part, not to shine the laser in his eyes because it could blind him. The laser was later identified as a Jasper Class IIIa laser manufactured by a company known as “Bigha,” and capable of generating up to 5 milliwatts of power.

14. On or about December 31, 2004, at approximately 7:45 p.m., agents from the Federal Bureau of Investigation (“FBI”) arrived and spoke with defendant BANACH about the laser incident. When asked about the laser, defendant BANACH stated, in substance and in part, that the laser can reach approximately one (1) mile into the sky, and that he uses the laser to teach his children about astronomy. FBI agents explained that it was a crime to lie to law enforcement agents, to which defendant BANACH indicated that he understood. During the interview, defendant BANACH reiterated, in substance and in part, that it was his daughter who shined the laser on the helicopter earlier that evening.

15. Defendant BANACH was re-interviewed by FBI agents that same day at approximately 9:00 p.m. Defendant BANACH then stated, in relevant part, that he, rather than his daughter, shined the laser on the helicopter earlier that evening. Upon arriving at the residence, agents earlier noticed a telescope on the dining room table and asked defendant BANACH about it. Defendant BANACH explained, in substance and in part, that he brought the telescope out once he heard the police arriving because he wanted the police to believe he was teaching his children astronomy and observing stars with the laser.

16. While interviewing defendant BANACH, law enforcement agents also discussed the 12/29 incident. Defendant BANACH said, in substance and in part, that he was familiar with this incident from news reports, but denied any involvement in that incident. Defendant

BANACH claimed, in substance and in part, that the night of December 31, 2004 was the first time he had used the laser outside of his house.

17. After further questioning, defendant BANACH stated, in substance and in part, that he had used the laser outside of the house on other occasions, but not on December 29, 2004. Defendant BANACH further stated that he had used the laser in his bedroom on December 29, 2004, and that the laser beam may have been directed accidentally out of his bedroom window into the sky. Defendant BANACH then agreed to accompany FBI agents to their office for further interview.

18. At the FBI office, defendant BANACH was given his Miranda rights and voluntarily agreed to further discuss the incidents with law enforcement. On or about January 1, 2005, defendant BANACH provided a handwritten statement admitting that he shined the laser on the helicopter, but he continued to deny any involvement in the 12/29 incident.

19. Following an intervening investigative event occurring on or about January 1, 2005, defendant BANACH stated, in substance and in part, that he had lied to law enforcement and that he shined laser beams on both the helicopter earlier that evening, and the Aircraft on December 29, 2004. BANACH provided a second handwritten statement acknowledging that he “withheld the truth” and had shined the laser on the Aircraft.

20. On or about December 31, 2004, in the District of New Jersey and elsewhere, in a matter within the jurisdiction of the executive branch of the Government of the United States, namely the Federal Bureau of Investigation, defendant

DAVID W. BANACH

knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, namely that he did not shine the laser beam on the Aircraft on or about December 29, 2004.

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

COUNT 3

(False Statements to Law Enforcement Officers)

21. Paragraphs 1 through 7 of Count 1 and Paragraphs 10 through 19 of Count 2 are incorporated as if set forth at length herein.

22. On or about December 31, 2004, in the District of New Jersey and elsewhere, in a matter within the jurisdiction of the executive branch of the Government of the United States, namely the Federal Bureau of Investigation, defendant

DAVID W. BANACH

knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, namely that his daughter shined a laser beam on the helicopter on December 31, 2004, while teaching her astronomy.

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
United States Attorney