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action) generally,⁸⁹ and under the recent amendments⁹⁰ defendant may enter a motion for a more direct statement only when the pleading "is so vague or ambiguous that a party cannot be reasonably expected to frame a responsive pleading."⁹¹ With respect to preparations for trial both parties may utilize the various means of discovery provided by the Federal Rules.⁹² This discovery procedure is certainly one of the most significant innovations of the new rules.⁹³ "The various instruments of discovery now serve (1) as a device, along with pre-trial hearing under Rule 16, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues. Thus civil trials in the federal courts need no longer be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial."⁹⁴

Walter G. Schwartz.

THE ENFORCEMENT OF SAFETY REGULATIONS BY THE CIVIL AERONAUTICS AUTHORITY

One of the primary purposes of the Civil Aeronautics Act of 1938 is to promote "the highest degree of safety" in air transportation.¹ To accomplish this purpose, numerous regulatory powers have been

⁸⁹ Authorities cited in note 11, *supra*.

⁹⁰ These amendments were adopted by the Supreme Court on December 27, 1946 to take effect three months subsequent to the adjournment of the first regular session of the present Congress but not earlier than September 1, 1947. See (1947) 6 Fed. Rules Dec. 229. For the text of the amendments including explanatory notes of the advisory committee, see (1946) 5 Fed. Rules Dec. 433; 28 U. S. C. A. (1946 Supp.) following § 723c.

⁹¹ Rule 12(e), (1946) 5 Fed. Rules Dec. 441; 28 U. S. C. A. (1946 Supp.) following § 723c. Under the present Rule 12(e), a party may move for a more specific statement or for a bill of particulars of any matter not averred with sufficient particularity to enable him properly to prepare his responsive pleading or to prepare for trial. See Brinley v. Lewis (M. D. Pa. 1939) 27 Fed. Supp. 313.

⁹² See Rules 26 through 34, FED. RULES CIV. PROC., 28 U. S. C. (1940) following § 723c.

⁹³ For discussions of the discovery procedure see: Armstrong, *Report of the Advisory Committee on the Federal Rules of Civil Procedure Recommending Amendments* (1946) 5 Fed. Rules Dec. 339, 353-357; Holtzoff, *Instruments of Discovery Under the Federal Rules of Civil Procedure* (1942) 41 MICH. L. REV. 205; Pike, *The New Federal Deposition-Discovery Procedure and the Rules of Evidence* (1939) 34 ILL. L. REV. 1; Pike and Willis, *The New Federal Deposition-Discovery Procedure* (1938) 38 COL. L. REV. 1179; Pike and Willis, *Federal Discovery in Operation* (1940) 7 U. OF CHI. L. REV. 297; *Discovery Procedure Symposium before the 1946 Conference of the Third United States Circuit Court of Appeals* (1946) 5 Fed. Rules Dec. 403; *Report of the Proposed Amendments by the Advisory Committee on Rules for Civil Procedure* (1946) 5 Fed. Rules Dec. 433, 453-463; (1946) 46 COL. L. REV. 873.

⁹⁴ *Hickman v. Taylor*, *supra* note 88, at 501.

¹ 52 STAT. (1938) 980, 1008, 49 U. S. C. (1940) §§ 402(b), 402(e), 551(b); Susott, *Airman Certif.* (1941) 5 C. A. B. 119, 125.

vested in a Board and in an Administration which together constitute the Civil Aeronautics Authority.² In the exercise of its powers, the Board has promulgated many safety regulations governing flight operations and setting the standards to which airmen and aircraft must conform.³ In the event that violation of these regulations occur, it becomes the Authority's duty to take appropriate steps for enforcement. The procedure involved in enforcement is somewhat unique, bearing little resemblance to that which is involved in enforcing similar regulations governing the operation of automobiles. The purpose of this comment is to provide a brief sketch of the procedure which is employed by the Authority.

Preliminary proceedings.

Proceedings for the enforcement of safety regulations usually originate with a member of the CAA inspection staff, whose duty it is to discover and report all violations. The inspector's report, setting forth the pertinent facts, is sent to the regional attorney in charge of the area in which the violation occurred; or if an air carrier is involved, the report is sent directly to the Administration's General Counsel in Washington. The regional attorney or the General Counsel, as the case may be, then determines what action should be taken.⁴

If the inspector was reasonably certain that a violation had occurred but was unable to obtain competent evidence of it, his report is filed for record only. A report may also be filed for record when an airman has committed an act which, though not a violation, is not good practice.⁵ If a violation is a minor one, or if it is the airman's first offense, a letter of reprimand may be sent to him calling attention to the violation, and stating that it will be considered in the event further violations occur.⁶ For violations which are more serious, two choices are available: a civil monetary penalty may be imposed, or action may be taken toward the suspension or revocation of the violator's airman certificate. Criminal penalties are not available except in a very narrow class of cases.⁷

² 52 STAT. (1938) 977, 49 U. S. C. (1940) §§ 401-682; Reorg. Plan No. III § 7, 54 STAT. (1940) 1233; Reorg. Plan No. IV § 7, 54 STAT. (1940) 1235. See also, *Effect of Reorganization Plans No. III and No. IV* (1940) 11 J. OF AIR L. & COMM. 352.

³ See 14 C. F. R. (Cum. Supp.). Violation of these regulations is unlawful. 52 STAT. (1938) 1012, 49 U. S. C. (1940) § 560 (a).

⁴ C. A. R. §§ 651. 21, 11 Fed. Reg. 177A-320; Civil Aeronautics Authority, Preliminary Instructions for Attorneys and Field Personnel Handling Legal Aspects of Safety Regulation Enforcement, June 23, 1945 (hereinafter cited as "Prelim. Inst'sns"); U. S. Att'y Gen'l, Com. on Ad. Proc., Mono. #19, The Civil Aeronautics Authority, 98 (hereinafter cited as "Mono. #19"). Violations may also be reported by private persons to any regional or district office of the Administration.

⁵ Prelim. Inst'sns; Mono. #19, 98.

⁶ Prelim. Inst'sns; C. A. R. § 651.21(a), 11 Fed. Reg. 177A-320.

⁷ 52 STAT. (1938) 1015, 49 U. S. C. (1940) § 622. Criminal penalties apply to forging or altering certificates, and to displaying misleading lights or signals.

Civil penalties.

Any person who violates the safety provisions of the Civil Aeronautics Act may become subject to a civil penalty of not more than \$1,000.⁸ This sanction may be invoked in cases involving the operation of aircraft, such as where a pilot flies a ship without a proper pilot certificate, or where a person having custody of an airplane authorizes its use when it is not in safe condition.⁹

Although it appeared somewhat doubtful for a time, there seem to be no flying activities which may not be reached by a civil penalty.¹⁰ The Act authorizes the imposition of a penalty when a person operates an aircraft in "air commerce", air commerce being defined as "any operation or navigation of aircraft . . . which may endanger safety in, interstate, overseas, or foreign air commerce".¹¹ The doubt arose in respect to such matters as crop dusting operations, flights entirely intrastate in character and far from the limits of any civil airway. In *U.S. v. Drumm*,¹² however, a United States district court held that "any operation of any aircraft" came within the definition of the Act.¹³ This case may be regarded as settling the question for the time being.¹⁴

The procedure by which civil penalty is imposed is unusual. Once it has been decided that a civil penalty is the proper sanction to fit a particular violation, a letter is sent to the alleged violator advising him of the facts and suggesting an amount which would be acceptable as an offer of compromise. The violator may then offer to pay the sum specified. His offer and remittance are submitted to the Administrator in Washington, along with a recommendation respecting its acceptance. Acceptance by the Administrator constitutes full settlement of any civil penalties arising from the violation.¹⁵

If a compromise of the penalty cannot be reached either because the violator refuses to make any offer or because his offer is not acceptable to the Administrator, the case is turned over to the Department of Justice for collection proceedings in the federal courts.¹⁶ The action

⁸ 52 STAT. (1938) 1015, 49 U. S. C. (1940) § 621.

⁹ 52 STAT. (1938) 1012, 49 U. S. C. (1940) § 560.

¹⁰ Mono. #19, 101.

¹¹ 52 STAT. (1938) 1012, 977, 49 U. S. C. (1940) §§ 560(a), 401(3).

¹² (D. Nev. 1944) 55 Fed. Supp. 151.

¹³ *Ibid.* at 155.

¹⁴ See (1944) 5 C. A. A. JOURNAL 67.

¹⁵ 52 STAT. (1938) 1015, 49 U. S. C. (1940) § 621; C. A. R. § 651.21(b), 12 Fed. Reg. 41. The penalty provision in the Civil Aeronautics Act was taken from the Air Commerce Act of 1926, 44 STAT. (1926) 574. Similar penalty provisions may be found in statutes relating to customs, narcotics, immigration and navigation laws. See *United States v. Batre* (C. C. A. 9th, 1934) 69 F. (2d) 673, 675.

¹⁶ 52 STAT. (1938) 1017, 49 U. S. C. (1940) § 623(b); C. A. R. § 651.21(b), 12 Fed. Reg. 41. Two penalty cases which have been reported are *U. S. v. Drumm* (D. Nev. 1943) 50 Fed. Supp. 451, (1944) 55 Fed. Supp. 151; *Rosenban v. U. S.* (C. C. A. 10th, 1942) 131 F. (2d) 932, *cert. den.*, (1943) 318 U. S. 790. For similar penalty cases under

to collect the penalty is a civil action,¹⁷ conforming "as nearly as may be" to a civil suit in admiralty, except that the issues of fact must be tried by jury.¹⁸ The court may assess the penalty in such an amount as it considers proper, and need not impose the full amount asked by the Administrator.¹⁹

If an aircraft is involved in a safety regulation violation and the violation is committed by the "owner or person in command" of it, the aircraft is subject to a lien for the amount of the civil penalty. An aircraft subject to such a lien may be summarily seized and placed in the custody of the Civil Aeronautics inspectors. Proceedings *in rem* against the aircraft in the federal courts are then authorized for the enforcement of the lien.²⁰

Would an airplane be subject to a lien if the pilot committed a violation contrary to the instructions of the owner? It has been indicated that the "person in command" must be in command with the authority of the owner in order for a penalty to become a lien,²¹ so the owner may well be protected if a thief takes possession and commits a violation. If similar protection were given to a chattel mortgagee where the mortgagor is the violator, however, it would become simple to avoid enforcement of penalties by the device of mortgaging the aircraft in advance. For this reason it was held under the Air Commerce Act of 1926 that a penalty lien should be given priority over a pre-existing chattel mortgage.²² The similarity of the penalty provisions make the same result probable under the present Act.

Suspension and revocation of airman certificates.

When an airman has demonstrated that he is unfit to participate further in aeronautics, his certificate will be revoked or suspended. Airman certificates are issued by the Administrator to all pilots, control tower operators, parachute riggers, and so forth, who are found

other statutes, see *U. S. v. One Pitcairn Biplane* (W. D. N. Y. 1935) 11 Fed. Supp. 24; *U. S. v. Hunter* (C. C. A. 5th, 1936) 80 F. (2d) 968.

¹⁷ See *U. S. v. Regan* (1914) 232 U. S. 37, 46: "[A]s respects a pecuniary penalty for the commission of a public offense, Congress competently may authorize . . . the enforcement of such penalty by either a criminal prosecution or a civil action . . . such an action is to be conducted and determined according to the same rules and with the same incidents as are other civil actions." See also Angel, *Airman Certif.* (1940) 5 C. A. B. 10, 12.

¹⁸ 52 STAT. (1938) 1017, 49 U. S. C. (1940) § 623(b)(1).

¹⁹ *U. S. v. Drumm*, *supra* note 12, at 156.

²⁰ 52 STAT. (1938) 1015, 1017, 49 U. S. C. (1940) §§ 621(b), 623(b); 14 C. F. R. (Cum. Supp.) § 531.1.

²¹ *U. S. v. Drumm* (D. Nev. 1943) *supra* note 16, at 452.

²² 44 STAT. (1926) 574; *U. S. v. Batre*, *supra* note 15. For a similar case involving a pre-existing lien for repairs, see *U. S. v. Northwest Air Service* (C. C. A. 9th, 1935) 80 F. (2d) 804, *rev'g* (W. D. Wash, 1934) 6 Fed. Supp. 579.

to possess the requisite skill and training.²³ If his certificate is suspended or revoked, the airman may not lawfully continue to engage in any such pursuit. Violation of a suspension or revocation order may be enjoined.²⁴

In cases of emergency, the Administrator has the power to suspend a certificate for thirty days, without notice or hearing.²⁵ This power has been delegated to the CAA inspectors, who do not exercise it, however, unless the safety violation is a serious one and suspension is necessary to avert injury to persons or property.²⁶ The violator is entitled to a speedy hearing on the matter; and if the hearing is not completed within a limited time, his certificate must be returned to him.

Except for emergency suspensions, the power to suspend or revoke certificates is vested in the Civil Aeronautics Board.²⁷ Suspension and revocation proceedings before the Board are essentially judicial in character. The rules governing such proceedings are the Rules of Practice adopted by the CAB and, wherever they are applicable, the rules of civil procedure of the United States district courts.²⁸

Proceedings to suspend or revoke a certificate are initiated by the Administrator by filing a complaint with the Board. The Board may also commence proceedings on its own initiative,²⁹ but seldom does so. The Rules of Practice formerly provided that a complaint could be dismissed if it were not filed within six months of the violation, except where good cause for the delay could be shown.³⁰ This rule has now been dropped, leaving it questionable whether or not there is any limitation upon the time for filing complaints.

After the complaint is filed, an order to show cause why his certificate should not be suspended or revoked is sent to the violator, and he is given ten days within which to answer. Failure to answer within the prescribed period is taken as an admission of the allegations of the

²³ 52 STAT. (1938) 1008, 49 U. S. C. (1940) § 552. Among others who must have certificates are aircraft mechanics and dispatchers. After August 1, 1947, navigators will also be required to have certificates. C. A. R. §§ 34.0 *et seq.*, 12 Fed. Reg. 3029.

²⁴ 52 STAT. (1938) 1012, 1025, 49 U. S. C. (1940) §§ 560(a), 647(a).

²⁵ 52 STAT. (1938) 1011, 49 U. S. C. (1940) § 559.

²⁶ Mono. #19, 112; Prelim. Inst'ns.

²⁷ 52 STAT. (1938) 1011, 49 U. S. C. (1940) § 559.

²⁸ C. A. R. §§ 97.10 *et seq.*, 11 Fed. Reg. 14257-14260, 12 *ibid.* 64, 1509. These rules also govern proceedings to review action of the Administrator in denying issuance or renewal of an airman certificate. C. A. R. § 302.1(c)(9), 12 Fed. Reg. 4022. Similar rules govern proceedings before the Administrator to alter, amend or modify certificates. C. A. R. § 652.1 *et seq.*, 12 Fed. Reg. 2014-2015.

²⁹ C. A. R. § 302.7(c), 11 Fed. Reg. 177A-361; §§ 97.10-97.11, 11 Fed. Reg. 14257.

³⁰ 14 C. F. R. (Cum. Supp.) § 97.19; Whittier, *Airman Certif.* (1943) 5 C. A. B. 481, 482; Nance, *Airman Certif.* (1941) 5 C. A. B. 201, 208.

complaint.³¹ If the violator desires a hearing, he must request it; otherwise, he will be considered to have waived his right to it.³²

Hearings are waived in about 90% of the cases.³³ The initial decision in such cases is made by a trial examiner upon the basis of the pleadings and the documentary evidence submitted by the parties. If no appeal to the Board is taken after the decision is served upon the parties, and if the Board takes no action on its own initiative, the initial decision becomes final without further proceedings.³⁴

The hearing, in cases in which it has been requested, is conducted by the trial examiner at a place which is convenient for the parties.³⁵ The examiner is furnished by the Board,³⁶ and is vested with substantially the same powers of control over the proceedings as a judge: he may administer oaths, examine witnesses, rule upon offers of proof, issue subpoenas, and so forth.³⁷ The hearing itself is conducted in accordance with the general rules of evidence followed in civil proceedings, and the matters alleged must be established by a fair preponderance of the evidence.³⁸ Each party presents his case by oral or documentary evidence, conducts cross-examinations, and may object to the admission of improper evidence.³⁹

The Authority's case against the violator is presented by an attorney from the Administrator's office.⁴⁰ Although it was the former practice to allow the trial examiner to present the Authority's case at the same hearing over which he presided, this practice has now been

³¹ C. A. R. §§ 97.13-97.14, 11 Fed. Reg. 14257.

³² C. A. R. § 97.16, 11 Fed. Reg. 14258. *Cf.* the earlier practice. Mono. #19, 110 n. 106. The right to a hearing is provided by statute. 52 STAT. (1938) 1011, 49 U. S. C. (1940) § 559.

³³ Mono. #19, 112; MS., Glen D. Woodmansee, Regional Attorney, to Edwin Duval, April 21, 1947.

³⁴ C. A. R. § 97.22, 11 Fed. Reg. 14258. The violator may secure judicial review of the decision, but the fact that he waived a hearing may deprive him of the right to complain that the administrative agency refused to consider evidence which he submitted to it. *Cameron v. C. A. B.* (C. C. A. 7th, 1944) 140 F. (2d) 482.

³⁵ Hearings are usually held not further than 40 miles from the violator's residence. C. A. R. § 97.17, 11 Fed. Reg. 14258; § 302.7(c)(5), 11 Fed. Reg. 177A-361.

³⁶ C. A. R. § 302.2(b)(4)(iii), 11 Fed. Reg. 177A-358.

³⁷ Safety matters are handled by the Safety Enforcement Proceedings Division of the Office of the Trial Examiners. The examiner is designated by the Chief Trial Examiner or an Assistant. C. A. R. §§ 302.2(e), 302.5(c), 302.7(c)(3), 12 Fed. Reg. 4022.

³⁸ C. A. R. § 302.7(c)(6), 11 Fed. Reg. 177A-361; § 97.28, 11 Fed. Reg. 14259; *Allman, Airman Certif.* (1940) 5 C. A. B. 8. Proof need not be beyond a reasonable doubt. *Angel, Airman Certif.* (1940) 5 C. A. B. 10.

³⁹ C. A. R. § 97.28, 11 Fed. Reg. 14259.

⁴⁰ C. A. R. § 302.7(c)(5), 11 Fed. Reg. 177A-361. The actions are prosecuted by the General Counsel or a regional attorney. C. A. R. § 650.12(b)(5), 11 Fed. Reg. 177A-315; § 650.52(a)(3), 11 Fed. Reg. 177A-318.

abandoned.⁴¹ The violator may also be represented by counsel if he so desires.⁴²

The trial examiner is authorized to hold pre-hearing conferences with the parties for the purpose of simplifying the issues between them.⁴³ Except insofar as the issues may be so defined, however, a violator apparently has no assurance that the scope of the hearing will be limited to the violations charged in the complaint or order to show cause. In the discretion of the examiner, the order to show cause may be amended during the hearing by adding new charges to the violations already set forth; provided, of course, that the violator is allowed sufficient time in which to prepare a defense to the amended charges.⁴⁴

At the close of the hearing, the examiner renders his initial decision, either orally or in writing. As in the cases where a hearing is waived, the initial decision becomes final without further proceedings unless the parties promptly appeal to the Board or unless the Board takes the case up on its own motion.⁴⁵ An appeal to the Board may be made by filing a writing clearly stating the exceptions and assignments of error upon which the appeal is based, along with a request for oral argument if such is desired. In due course, the Board renders its final decision. The parties are then allowed a limited time in which to petition for a rehearing.⁴⁶

Orders of the Board may be reviewed by the United States circuit courts of appeals or the court of appeals for the District of Columbia.⁴⁷ Filing a petition for a review does not alone stay the effectiveness of the Board's order, but the courts have power to grant such relief if it is necessary.⁴⁸ The scope of the review is restricted by the usual rule that the findings of the Board shall be conclusive if supported by substantial evidence.⁴⁹

⁴¹ For criticism of the former practice, see Mono. #19, 123-4; *O'Carroll v. Civil Aeronautics Board* (App. D. C. 1944) 144 F. (2d) 993.

⁴² No application for admission to practice before the Board is required. C. A. R. § 97.19, 11 Fed. Reg. 14258; § 302.7(c)(5), 11 Fed. Reg. 177A-361. Formerly, proceedings were generally conducted without the aid of counsel on either side. Mono. #19, 122.

⁴³ C. A. R. § 97.29(g), 11 Fed. Reg. 14259, 12 Fed. Reg. 64.

⁴⁴ C. A. R. § 97.18, 11 Fed. Reg. 14258; *Raymond Lee Kidd, Airman Certif.* (1941) 5 C. A. B. 47. *Cf.* Mono. #19, 116-120; *Boone, Airman Certif.* (1940) 1 C. A. A. 671, 676.

⁴⁵ C. A. R. § 97.23, 11 Fed. Reg. 14259. Formerly, the trial examiner had power to make recommendations only. Mono. #19, 125 *et seq.*; 14 C. F. R. (Cum. Supp.) §97.18.

⁴⁶ C. A. R. §§ 97.23, 97.27, 11 Fed. Reg. 14259; § 302.7(c)(8), 11 Fed. Reg. 177A-361.

⁴⁷ 52 STAT. (1938) 1024, 49 U. S. C. (1940) § 646(a).

⁴⁸ 52 STAT. (1938) 1024, 49 U. S. C. (1940) § 646(d); C. A. R. § 97.26, 11 Fed. Reg. 14259. It is likely that the courts will feel reluctant to stay orders of the Board. See *Brown v. C. A. A.* (C. C. A. 9th, 1940) 112 F. (2d) 737, *dismissed as moot*, (1941) 119 F. (2d) 172.

⁴⁹ 52 STAT. (1938) 1024, 49 U. S. C. (1940) § 646(e); *Cameron v. Civil Aeronautics Board* (C. C. A. 7th, 1944) 140 F. (2d) 482, *cert. den.*, (1944) 323 U. S. 716.

Choice of sanctions.

There are no strict rules to be applied in determining whether a particular violator's certificate should be suspended or revoked, whether a civil penalty should be imposed, or whether a letter of reprimand should be sent to him. In each case all the surrounding facts and circumstances are considered and the sanction is chosen which would seem to be the most effective for promoting the safety of flight operations. The purpose of disciplinary action is said to be remedial, not punitive, the policy of Administration being "not to 'ground' a pilot unless he is a hazard while operating an airplane."⁵⁰

If the particular violation consists of the operation of an airplane without proper certification, there is of course no choice but to impose a civil penalty. Minor violations such as a student pilot's flying beyond the limits of his flight area, may require either a penalty or a reprimand. More serious offenses, such as flying while intoxicated, flying too low over congested areas, and so forth, may call for revocation of the violator's certificate. Repeated violations, no single one of which is sufficient to warrant suspension or revocation, may be enough when they are considered together. In very extreme cases, the action taken may include both revocation of a certificate and the imposition of a civil penalty, but this is not ordinarily considered necessary.⁵¹

Many diverse factors have been taken into consideration from time to time in determining just what sort of disciplinary action should be chosen. If the violator is wealthy, suspension or revocation may be called for; if he is poor, or if he makes his living by flying, a civil penalty may be adequate.⁵² The violator's skill and previous flying record,⁵³ the willfulness of his violation,⁵⁴ and whether or not his deficiency may be easily remedied⁵⁵ are relevant factors. In one instance it was decided that the fact that the violator was making an important contribution to the war effort made suspension of his certifi-

⁵⁰ MS., Glen D. Woodmansee, Regional Attorney, to Edwin Duval, April 21, 1947. "It is far more important that the C. A. B. anticipate and prevent the creation of hazards to air commerce than it is to take remedial and punitive steps after losses of life and property have actually occurred . . ." Wallis, *Airman Certif.* (1941) 5 C. A. B. 87, 92.

⁵¹ Prelim. Inst'ns.

⁵² Mono. #19, 103.

⁵³ Keith, *Airman Certif.* (1939) 1 C. A. A. 471.

⁵⁴ Reid, *Airman Certif.* (1940) 5 C. A. B. 4; Peters, *Airman Certif.* (1942) 5 C. A. B. 346.

⁵⁵ If the violator is merely ignorant of air traffic rules, his certificate will be suspended until he can pass an examination. *Brown v. C. A. A.* (C. C. A. 9th, 1940) 112 F. (2d) 737, (1941) 119 F. (2d) 172; *Brown, Airman Certif.* (1940) 1 C. A. A. 666; *Ingalls, Airman Certif.* (1939) 1 C. A. A. 512. But if the violator has demonstrated that he is inherently unfit to continue flying, his certificate will be revoked. *Angel, Airman Certif., supra* note 17, at 13.

cate improper.⁵⁶ In another, an instructor's certificate was suspended because, although he had not violated any safety regulations, his downwind landings were setting a bad example for his students.⁵⁷ It has also been suggested that although a civil penalty would be sufficiently severe as far as the violator is concerned, revocation may still be the desirable action because the greater publicity resulting from revocation proceedings will have a salutary effect on other airmen.⁵⁸

It does not appear that suspension or revocation proceedings have ever been selected solely as a threat to compel an unwilling violator to pay a civil penalty, although the possibility that this might happen is suggested by the language in one Board decision.⁵⁹ The Civil Aeronautics Act does not expressly prohibit the use of such a device to collect a civil penalty. It may be prohibited by implication, however, on the grounds that the Act's express provision for judicial proceedings and jury trial is intended to be exclusive. To hold otherwise would have the possible effect of substituting an administrative tribunal for a judicial one.

Conclusions.

On the whole, the procedure of the Civil Aeronautics Administration appears to be adequate both to secure effective enforcement of safety regulations and to insure a fair hearing for violators.

The civil penalty may be criticized on the grounds that the burden and expense of collecting small sums in the federal courts will impair its effectiveness.⁶⁰ Such an objection does not apply to the power to suspend or revoke certificates, however, which is the sanction generally recognized as being the most effective in securing compliance with traffic regulations.⁶¹

As the increase in flying produces greater numbers of violations, the Authority's practice of channeling many matters through Washington may become too roundabout for speedy and effective enforcement. This difficulty has already led the Authority to delegate greater

⁵⁶ Moon, *Airman Certif.* (1942) 5 C. A. B. 288, 290. See also, Woods, *Airman Certif.* (1942) 5 C. A. B. 338, 339.

⁵⁷ Dutton, *Airman Certif.* (1940) 1 C. A. A. 565.

⁵⁸ Prelim. Inst'ns.

⁵⁹ Mono. #19, 104. The decision referred to is Peters, *Airman Certif.* (1942) 5 C. A. B. 346, where the Board dismissed a revocation proceeding and recommended a civil penalty, but expressly reserved the right to reopen the proceeding in the event the violator failed to pay the penalty.

⁶⁰ Cf. in this respect the experience of the Bureau of Marine Inspection and Navigation. U. S. Att'y Gen'l, Com. on Ad. Proc., Mono. #10, Bureau of Marine Insp'n & Nav., 48-59.

In the first year of the Authority's existence, 91 cases were compromised, and 15 sent to the Attorney General for enforcement. U. S., C. A. A., Annual Report (1939) 38. In the second year, the figures were 169 and 61, respectively. *Ibid.* (1940) 15.

⁶¹ WARREN, *TRAFFIC COURTS* (1942) 167.