And see also the expressions of Chief Justice Marshall in the Charming Betsy, 1804, 2 Cranch., 64, 120. However, in Wellvisne v. Cone, 1802, 4 Cranch., 209, the court recognized the validity of the law of New Jersey which prohibited the expatriation of certain English sympathizers described, insisting that they were still citizens of New Jersey.

The Kentucky, in Alsberry v. Hawkins, 1839, 9 Dana, 177, 178 had, however, no doubt upon the matter. In the course of the opinion of Chief Justice Robertson, the following doctrine was announced.

> Whatever may be the speculative or practical doctrines of feudal governments or ages, allegiance in these United States, whether local or national, is, in our judgment, altogether conventional, and may be repudiated by the native as well as adopted citizen with the presumed concurrence of the government without its formal or expressed sanction. Expatriation may be considered a practical and fundamental doctrine of America. American history, American institutions, and American legislation, all recognize it. It has grown with our growth and strengthened with our strength. The political obligations of the citizen and the interests of the republic may forbid a renunciation of allegiance by his mere volition or declaration at any time, and under all circumstances, and therefore the government, for the purpose of preventing abuse and securing public welfare, may regulate the mode of expatriation. But when it has not prescribed any limitation on the right and the citizen has, in good faith, abjured his country and become a subject or citizen of a foreign nation, he should, as to his native government, be considered as denationalized especially so far as his civil rights may be involved, and at least so long as that government shall seem to acquiesce in his renunciation of his political rights and obligations.

The same view, substantially, was expressed by one of the Federal circuit courts in Stoughton v. Taylor, before 1840, 2 Paine C. C., 656, 661: "In this country," said Van Ness, J., "expatriation is conceived to be a fundamental right. As far as the principles maintained and the practice adopted by the Government of the United States is evidence of its existence, it is fully recognized. It is constantly exercised and has never in any way been restrained."

The above cases represent thoroughly the legal thought on the question during the period covered by the cases. As will be noted, the earlier cases, with the exception of the earliest, and all of the Supreme Court cases, seem uncertain as to the right of expatriation in an American citizen in the absence of some authorizing statute of Congress. Some of the State courts and one of the circuit courts used strong language, however, in favor of that right. The matter stood thus until 1866, when, owing to the Fenian trouble in Great Britain, and the consequent troubles into which some naturalized Americans fell, Congress passed an act "concerning the rights of American citizens in foreign States," the preamble of which read:

> Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and
>
> Whereas, in the recognition of this principle, this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and
>
> Whereas, it is claimed that such American citizens, with their descendants, are subjects of foreign States owing allegiance to the governments thereof; and
>
> Whereas, it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, * * *

Since the passage of this Act the question does not seem to have been squarely raised in the Supreme Court , and consequently its meaning with reference to the right of American citizens to expatriate themselves has not by that body been pronounced upon. The act has, however, been before the Federal courts a number of times; but the results have not been uniform.

In 1879, in United States v. Crook, 5 Dill., 453, 464, the court, in passing upon the right of an Indian to forsake his tribal relations, took occasion to speak of the right of expatriation, which he denominated a "God-given right." In 1897, Jennes v. Landes, 84 Fed., 73, 74, the statute was expressly referred to by the court, and an interpretation given of its meaning, Hanford, district judge, saying:

> A change of allegiance from one government to another can only be effected by the voluntary action of the subject, complying fully with the conditions of naturalization laws, so that there is concurrent action and assent on the part of both the subject and the government to which the new allegiance attaches. Authorities entitled to great respect have been cited in the argument, holding that it is also necessary to have assent on the part of the government renounced. In my opinion that rule no longer obtains in the United States, since Congress, by the act of July 27, 1868, now

> reenacted in section 1999, Revised Statutes, has expressly declared it to be the policy of our Government that the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness.

A different view of the act, however, was taken in Comitis v. Parkerson, 1893, 56 Fed., 556, 559, where the court, after discussing the early cases and the uncertainty which had existed in the various departments of the Government as to the right of expatriation on the part of an American citizen, and, further, after a careful analysis of the statute itself and its terms, expressed the following conclusion:

> It is to be observed that the act itself, as does its title, deals only with the protection of aliens by birth who have become citizens by naturalization. As to them it declares it to be the determination of the United States to accord to them when in foreign states the same protection as is accorded to native-born citizens similarly situated. The whole scope and force of the act, when most liberally construed, even when expanded by the more general terms of the preamble, declares that naturalized citizens having, according to the principles of our Government, the same rights as native-born citizens shall have by law the same protection abroad. As to whether allegiance can be acquired or lost by any other means than statutory naturalization is left by Congress in precisely the same situation as it was before the passage of this act. During the year 1868, and since, five treaties have been entered into between the United States and foreign governments based upon this statute, in which the right of expatriation is dealt with, * * * and in all these treaties the right, is confined, as is the statute, to that of citizens or subjects of our country who have become citizens or subjects of others by direct statutory naturalization. So that, with reference to the question before the court, the law is left where it was previous to the year 1868 and Congress has made no law authorizing any implied renunciation of citizenship.

This view of the statute seems sound, and the question, therefore, is still more or less an open one whether a native American citizen may expatriate himself.

Section 2.—What may amount to expatriation.

It has been said "that a man could not throw off his natural allegiance, except in assuming some new citizenship," Baird v. Byrne, 1845, 3 Wall., jr., 1, 12; and, as already suggested above, other courts have held that it must be with the sanction of the government being forsaken. See also Shearer v. Clay, 1822, 1 Litt. (Ky.), 260.

A. EXPATRIATION BY TAKING OATH OF ALLEGIANCE TO A FOREIGN GOVERNMENT

One of the earliest cases in which the question was presented as to the effect upon American citizenship of the taking of an oath of allegiance to a foreign power was presented in Talbot v. Janson, 1795, 3 Dall., 133, 164, and the court, in denying that such had the effect of expatriating the citizen, used the following language:

> Admitting he had a right to expatriate himself without any law prescribing the method of his doing so we surely must have some evidence that he had done it. There is none, but that he went to the West Indies and took an oath to the French Republic and became a citizen there. I do not think that merely taking such an oath and being admitted a citizen there in itself is evidence of a bona fide expatriation or completely discharges the obligations he owes to his own country. Had there been any restrictions by our own law on his quitting this country, could any act of a foreign country operate as a repeal of these? Certainly not. When he goes there, they known nothing of him, perhaps, but from his own representation. He becomes a citizen of the new country at his peril. The act is complete if he has legally quitted his own; if not, it is subordinate to the allegiance he originally owed. By allegiance I mean that tie by which a citizen of the United States is bound as a member of the society. Did any man suppose when the rights of citizenship were so freely and honorably bestowed on the unfortunate Marquis de la Fayette that that absolved him as a subject or citizen of his own country? It had only this effect; That whenever he came into this country and chose to reside here he was ipso facto to be deemed a citizen without anything further. The same consequence, I think, would follow in respect to rights of citizenship conferred by the French

> Republic upon some illustrious characters in our own and other countries. If merely intended, as ingeniously suggested at the bar, that upon going to France and performing the usual requisites they should be then French citizens, where is the honor of it, since any man may avail himself of an indiscriminate indulgence granted by law. Some disagreeable dilemmas may be occasioned by this double citizenship, but the principles, as I have stated them, appear to me to be warranted by law and reason, and if any difficulties arise they show more strongly the importance of a law regulating the exercise of the right in question.

In the Charming Betsy, supra, the same result was reached with reference to one who had taken the oath of allegiance to Denmark and in Fish v. Stoughton, 1801, 2 Johns. Cas., 407, the court held that where a naturalized citizen, formerly a British subject, had taken the oath of allegiance to the King of Spain and had been appointed consul for Spain in New York, he still remained an American citizen. However, in Brown v. Dexter, 1884, 66 Cal., 39, the court regarded as an alien one who had moved from the United States into Canada and had there taken the oath of allegiance and become a permanent resident. And see Kircher v. Murray, 1893, 54 Fed., 617.

B. BY PERFORMANCE OF OFFICIAL DUTIES UNDER APPOINTMENT FROM A FOREIGN GOVERNMENT.

As already pointed out in the case of Fish v. Stoughton, supra, the performance of the duties of consul for another country, even if accompanied by an oath of allegiance, has no effect upon the citizenship of the person so acting. A similar result was reached with reference to the holding of local offices in Calais v. Marshfield, 1849, 30 Me., 515.

C. PERFORMANCE OF MILITARY DUTY.

(a) EXPEDITIONS AGAINST NEUTRALS.

In Santissima Trinidad, 1821, 1 Brock., 478, s.c. on appeal 7 Wheat., 283, it appeared that an American citizen had notified the American consul in a foreign port of his intention to expatriate himself, and that he subsequently went into the naval service of a neutral country. The court held that these acts would not amount to an expatriation. In Kircher v. Murray, supra, however, where an American citizen emigrated to Texas and served in the Texas army during its revolutionary struggles, and through his services was made a citizen of the State of Texas, the court held not only that he had himself become a citizen but that his wife was also a citizen of the State

of Texas. This case does not of itself go to the point that the husband or wife had expatriated themselves since the case could have been decided the same way by recognizing dual allegiance.[3]

(b) EXPEDITIONS AGAINST THE UNITED STATES.

In State v. Adams, 1876, 45 Iowa, 99, it appeared that an American citizen had involuntarily served in the Canadian army during the war of 1812 between England and the United States. The court held that such involuntary service did not amount to an act of expatriation. And see McIlvaine v. Coxe, supra. In Burkett v. McCarty, 1874, 10 Bush., 758, the validity of an act of the Kentucky legislature was called in question, known as the expatriation act, which provided that those who joined the Confederate army should be dee to have denationalized themselves, and so, of course, have forfeited their citizenship. The court held that such an act was unconstitutional and that citizenship was not forfeited by fighting in the Confederate army. (It should be noted that this seemingly involved the question of state citizenship only.)

D. EXERCISING THE FUNCTIONS OF A CITIZEN.

The courts have also held that it is immaterial that an American citizen moves to a foreign country and there exercises the functions of a citizen, such as voting; he still retains in spite of this his former citizenship. Calais v. Marshfield, supra; State v. Adams, supra; Ware v. Fisher, 1883, 50 Fed., 310.

E. RESIDENCE

A number of cases have stated that in order to effect a change of allegiance there must be a change of domicil. Thus where an American citizen, while announcinghis intention to expatriate himself, went personally to a foreign country but left his family in the United States, it was held that he had not changed his domicil. Santissima Trinidad, supra; McIlvaine v. Coxe, supra. In some cases the term expatriation seems to have been made also synonymous with emigration. Jansen v. Brigantine, 1794, Bee, 1123; Murray v. McCarty, 1811, 2 Munf., 393, 397.

* * *

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[3] In Calais v. Marshfield, supra, the citizen had performed voluntary service in the local militia, but this was declared to be insufficient to produce expatriation.

F. MARRIAGE TO A FOREIGN SUBJECT.

This question has already been treated above in connection with the cases of Jennes v. Landes, 1897, 84 Fed., 73; Pequignot v. Detroit, 1883, 16 Fed., 211; Comitis v. Parkerson, 1893, 56 Fed., 556. In the case first named the court recognized that there might be expatriation by virtue of marriage to a foreign subject. In the second case it was expressly held that marriage of a native American woman to a foreign subject denationalized the woman. The third case, which is distinguishable from the last preceding on its facts (and was so distinguished by the court), is in spirit contrary to it, and held that marriage to an alien who was a resident in this country had no such effect.

The Secretary of State's report discusses the laws of citizenship by deserting soldiers in the following terms:

Section 1.--Deserting soldiers.

By an act approved March 3, 1865 (Stats. at Large, chap. 79, sec. 21), Congress provided--

> That in addition to the other lawful penalties of the crime of desertion from the military or naval service, all persons who have deserted the military or naval service of the United States, who shall not return to said service or report themselves to a provost-marshal within sixty days after proclamation hereinafter mentioned, shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens.

This act has been before the courts in a number of cases, and while the courts have sustained it, they have construed it very strictly, and consequently have insisted that in order for it to apply the person in question must have been convicted by a court-martial. Goetcheus v. Matthewson, 1875, 61 N.Y., 420; Huber v. Reily, 1866, 53 Pa. St., 112; State v. Symonds, 1869, 57 Me., 148; Severance v. Healey, 1870, 50 N.H., 449; Holt v. Holt, 1871, 59 Me., 464; and see United States v. Snow, 1877, 2 Flipp., 113. Moreover, it must appear that the finding of the court-martial was approved.

"It (the act) means," said the court, "that the forfeiture which it prescribes, like all other penalties for desertion, must be adjudged to the convicted person, after trial by a court-martial, and sentence approved." (Huber v. Reily, supra.) And the conviction in such case can be proved only by a duly authenticated record. Gostchcus v. Matthewson, supra.

Victor C. Woerheide

VENUE
Place of Bringing Prosecution; Offenses against U.S.; Treason

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Mr. John L. Burling

Elmer M. Million

Treason Prosecutions As Affected by 28 U.S. Code, Sec. 102

I. THE OFFENSE OF TREASON AGAINST THE UNITED STATES CAN BE COMMITTED IN A FOREIGN COUNTRY.

No constitutional obstacle prevents the punishment for treason, of a person owing allegiance to the United States, for treasonable activity in a foreign country committed when the United States is at war. The statutory definition of treason includes the words "giving them /enemies of the United States/ aid and comfort within the United States or elsewhere." 18 U.S.C., Sec. 1. It, therefore, follows that treason against the United States, although committed in a foreign country, is within the jurisdiction of the United States courts. See United States v. Bowman, 260 U.S. 94 (1922); Charge to Grand Jury—Treason and Piracy, Fed. Cas. No. 18,277 (C.C. D. Mass., 1861). Cf. United States v. Villato, 2 Dall. 370 (C.C. D. Penn., 1797) (apparently assuming this point). Jurisdiction, in this sense, refers to the existence of the offense and the authority of the Federal courts to punish that offense.

II. THE VENUE OF PROSECUTIONS FOR TREASON COMMITTED IN A FOREIGN COUNTRY IS GOVERNED BY 28 U.S.C., SEC. 102.

> "The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought." (28 U.S.C., Sec. 102).

A. This section clearly applies to all offenses against the United States, including treason and other capital offenses, and includes offenses in any of the following areas:

(1) Offenses on the high seas.

(2) Offenses on islands within the jurisdiction (i.e., power) of the United States, but not within any specific state or federal judicial district. Jones v. United States, 137 U.S. 202 (1890).

(3) Offenses against the United States committed in a foreign country, in an area under the exclusive jurisdiction of a foreign power.

...of Criminal Division.

...Brookley.

In many instances a federal court cannot convict for a wrong committed in a foreign country. For example, 20 Op. A. G. 590 (1893) stated that the federal courts could not try a person for a murder committed on a foreign island. The opinion related to the murder, by an American citizen, of a native in the New Hebrides. The United States exercised no jurisdiction over those islands. Great Britain, which exercised some slight authority over the islands, had declined to take jurisdiction of the case. No question of venue was involved, and the opinion did not imply that 28 U.S.C., Sec. 102 was inapplicable to capital offenses. The opinion meant only that, generally speaking, the commission of murder in a foreign country is not an offense against the United States.

28 U.S.C., Sec. 102 applies to capital offenses. Although in its 1825 form (Act, March 3, 1825, Ch. 65, Sec. 14) this venue provision appeared as the final sentence of a section whose earlier sentence related to non-capital offenses, it nonetheless has always extended to capital offenses. In Jones v. United States, 137 U.S. 202 (1890), the defendant was indicted in the United States District Court for Maryland for a murder committed on Navassa Island /a "guano island"/, an island under exclusive United States jurisdiction and not within the jurisdiction of any particular State or district. A verdict of guilty was returned. In affirming the conviction the Supreme Court said (p. 212):

> "R.S. Sec. 730 /28 U.S.C., Sec. 102/ . . . clearly include murder committed on any land within the exclusive jurisdiction of the United States and not within any judicial district, as well as murder committed on the high seas. Ex parte Bollman, 4 Cranch 75, 136; United States v. Bevans, 3 Wheat. 336, 390, 391; United States v. Arwo, 19 Wall. 486."

Since 28 U.S.C., Sec. 102 applies to other capital offenses, and since, for purposes of that section, there is no reason for distinguishing between treason and other capital offenses, the section expressly mentioning neither, it may be concluded that Section 102 extends also to treason.

Ex parte Bollman, 4 Cranch 75, presented a motion for habeas corpus on behalf of persons who had been committed by the Circuit Court for the District of Columbia on a charge of treason against the United States. In directing the discharge of the prisoners, the Supreme Court, speaking through Chief Justice Marshall, stated that there was insufficient evidence to warrant committing the prisoners for treason. Some evidence indicated that the prisoners had violated an Act of Congress which forbade the setting on foot or preparation of a military expedition against a foreign power with whom the United States was at peace. Concerning this latter offense, the Court said (p. 135):

> "But that no part of this crime was committed in the district of Columbia, is apparent. It is, therefore, the unanimous opinion of the Court that they cannot be tried in this district. */p. 136/ The law read on the part of

> the prosecution is understood to apply only to offences committed on the high seas, or in any river, haven, basin or bay, not within the jurisdiction of any particular state. In those cases, there is no court which has particular cognisance of the crime, and therefore, the place in which the criminal shall be apprehended, or, if he be apprehended, where no court has exclusive jurisdiction, that to which he shall be first brought, is substituted for the place in which the offence was committed.
>
> "But in this case, a tribunal for the trial of the offence, wherever it may have been committed, had been provided by congress; . . . "

Since the Bollman opinion disposed of the treason charge on the merits, it did not have to consider whether the venue statute applied to treason. The opinion contains no intimation that the venue statute did not so apply. Despite Justice Marshall's statement that "The law . . . is understood to apply only to offenses committed on the high seas, or in any river . . . or bay, not within the jurisdiction of any particular state," the opinion did not exclude from the operation of the statute offenses committed on foreign owned soil, but was intent on excluding the areas comprising United States territories not within any State. The original section from which the present 28 U.S.C., Sec. 102 is derived, was Section 8 of the Act of April 30, 1790, ch. 9, 1 Stat. 114. That original section consisted of several clauses. The first clause created offenses, making punishable as capital offenses all misconduct "upon the high seas, or in any river, haven, basin, or bay . . ." which other United States laws made punishable by death if committed on land. The final clause of the section was the one from which 28 U.S.C., Sec. 102 derives, and did not restrict itself to, nor mention, "river, haven, basin or bay." Hence, the limitation in the first portion of the original section did not apply to the final clause.

In United States v. Bowman, 260 U.S. 94 (1922), the defendants were indicted for conspiracy to defraud a corporation in which the United States was a stockholder (Crim. Code, Sec. 35, now 18 U.S.C., Sec. 80). The 1st count laid the offense as committed on the high seas; the 2nd count laid it as committed on the high seas and in Rio de Janeiro; the 3rd count laid it as committed in Rio de Janeiro; etc. The District Court, sustaining a demurrer to the indictment, held that the 1st count was bad for lack of jurisdiction; a fortiori the other counts were bad. The District Court concluded that, since Section 35 of the Criminal Code did not specifically refer to the high seas as a part of the locus of offenses defined by that section, it did not extend to acts committed on the high seas. In reversing this judgment, the Supreme Court stated that although statutes punishing crimes against private individuals or their property would not be construed to extend beyond the territorial jurisdiction of the Government, that rule of interpretation was inapplicable to statutes punishing offenses against the existence or operation of the Government. As to the latter types of offenses [which would include treason], the Court said that failure of the statute to specify that the locus shall

include the high seas and foreign countries does not prevent an inference that the statute shall so extend. The Court also quoted Section 41 of the Judicial Code [28 U.S.C., Sec. 102], and said (p. 102):

> "The three defendants who were found in New York were citizens of the United States and were certainly subject to such laws as it might pass to protect itself and its property. Clearly it is no offense to the dignity or right of sovereignty of Brasil to hold them for this crime against the Government to which they owe allegiance."

It should be noted that the Southern District of New York, in which the indictment was brought, was the District into which the defendants were first brought and were found (p. 96).

That 28 U.S.C., Sec. 102 applies to the offense of treason may be inferred from the following cases:

> In Charge to Grand Jury--Treason and Piracy, 30 Fed. Cas. 18,277 (C.C. D. Mass., 1861), Sprague, District Judge, instructed that (p. 1049) "offenses committed without the limits of the United States upon the ocean must be tried in the judicial district into which the offender is first brought, or in which he shall be first apprehended."

The Judge also stated that British recognition of the existence of a southern confederacy left the United States free to treat its seceding citizens "as traitors or pirates, according to our own sense of justice and policy." This charge tacitly recognizes that the statute applies to the offense of treason. See also Charge to Grand Jury--Treason, 30 Fed. Cas. 18,274 (D.C. D. Mass., 1863); United States v. Bird, Fed. Cas. 14,597. And see United States v. Villato, 2 Dall. 370 (C.C. D. Penn., 1797), where, although the point was not mentioned, it apparently was assumed that the 1790 statute provided a venue for treason committed on the high seas or in the West Indies.

B. 28 U.S.C., Sec. 102, is solely a venue statute; it does not confer jurisdiction in the narrower sense; it does not create offenses.

No offense can be punished under this section unless, independently of this section, it is an offense against the United States; that is, this section does not extend the area in which wrongful conduct can be declared criminal. Rather, it provides only for the place of indictment and trial.

III. THE VENUE REQUIREMENT OF 28 U.S.C., SEC. 102 CAN BE WAIVED.

A. Venue, or place of trial, is not jurisdictional and can be waived. Since 28 U.S.C., Sec. 102 is only a venue statute, its provisions can be validly waived. In this respect there is no reason for distinguishing between

venue under 28 U.S.C., Sec. 102, and venue in general. Constitutional authority for the enactment of 28 U.S.C., Sec. 102 is found in the same provision which governs venue of offenses committed within the United States.

> "The trial of all the crimes . . . shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." (U.S. Const., Art. 3, Sec. 2, Cl. 3.)

It has been held that this constitutional provision as to venue of offenses committed within the United States can be waived. In Hagner v. United States, 54 F. (2d) 446 (App. D.C., 1931), the indictment in the District of Columbia charged an offense committed in Pennsylvania and not in the District of Columbia. The defendant pleaded not guilty, was tried and convicted. The Court of Appeals held that this "jurisdictional" defect (that is, improper venue) was waived by failure to make seasonable objection. This decision was affirmed on another ground, without discussion of the waiver point. Hagner v. United States, 285 U.S. 427 (1932).

CYC. FED. PROCEDURE (2d Ed., 1943), Sec. 3754:

> "The right to urge objection to the venue or place of trial is a personal one and may be waived. It is waived by failure to objection until after verdict. It is not waived by failure to assert it until at the close of the prosecution's case."

Accord: Bowers, Law of Venue, Sec. 380; 16 C.J. 187 "Crim. Law," Sec. 261, n. 31 (citing state cases).

In Marvel v. Zerbst, 83 F. (2d) 974 (C.C.A. 10th, 1936), the defendant was indicted in the Eastern Division of a district, on counts some of which were charged as committed in such Eastern Division and others in the Western Division of that district. The defendant, on arraignment in the Eastern Division, pleaded guilty to the counts charged as committed in the Western Division. Subsequently, the defendant sought habeas corpus, relying on the provisions of 28 U.S.C., Sec. 114:

> "All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, . . . upon the application of the defendant, shall order the cause to be transferred to another division of the district. . . . . "

The District Court's denial of the writ was affirmed unanimously by the Circuit Court of Appeals, which stated [p. 977]:

> "Section 114 gave the defendant the right to be tried in the western division, but the right was a personal one going to venue only and not to the court's jurisdiction which was co-extensive with the district. It was a right which could be waived and petitioner waived it by submitting to arraignment without objection and entering his pleas of guilty in the eastern division."

This decision was affirmed by the Supreme Court. Marvel v. Zerbst, 299 U.S. 518 (1936) (memo. citing, without other comment, Salinger v. Loisel, 265 U.S. 224, 235, 237), rehearing denied 300 U.S. 686.

In Salinger v. Loisel, 265 U.S. 224, 232 (1924), where the appellant sought to prevent his removal to the District of South Dakota, the Court said [p. 232]:

> ". . . circumstances are disclosed which make it appropriate that we consider . . . two of the objections urged against a removal.
>
> "Both objections go to the jurisdiction of the court before which it is proposed to take and try the accused. One is that under the Sixth Amendment to the Constitution there can be no trial in the District of South Dakota because the indictment shows that the offense charged was not committed in that district but in a district in Iowa, and the other that, even if the indictment be taken as charging an offense in the District of South Dakota, it shows that it was returned in a division of that district other than the one in which the offense was committed.
>
> "It must be conceded that under the Sixth Amendment to the Constitution the accused can not be tried in one district on an indictment showing that the offense was not committed in that district; and it also must be conceded that there is no authority for a removal to a district other than one in which the Constitution permits the trial to be had. We proceed therefore to inquire whether it appears, as claimed, that the offense was not committed in the district to which removal is sought."

Despite the foregoing quotation, the Court permitted removal, having concluded that the indictment charged an offense committed in the district to which removal was sought. Accordingly, the above quotation would seem to be dictum rather than a holding. In any event, since removal proceedings are involuntary from the viewpoint of the prisoner, the question of express waiver of venue could not have arisen in the case. It follows, therefore, that the foregoing quotation does not question the principle that venue may be waived.

B. Since the constitutional guaranties to the accused of trial by jury and the assistance of counsel can be waived, a fortiori, the venue requirement of 28 U.S.C., Sec. 102, may be waived. The Constitution provides that "the trial of all crimes. . . shall be by jury" (Art. 3, Sec. 2, Cl. 3) and "in all criminal prosecutions the accused shall enjoy the right to a . . . . trial by an impartial jury of the state and district wherein the crime shall have been committed . . . and to have the assistance of counsel for his defense" (Sixth Amendment).

Patton v. United States, 281 U.S. 276, in answer to a certified question, upheld the validity of a Federal felony conviction based on the verdict of a jury of 11 persons. The majority of the court expressed the opinion that, under proper circumstances, a jury could be waived entirely and the offense tried before the judge. Moreover, in Adams v. United States Ex rel. McCann, 317 U.S. 269 (1942), the court held, six to three, that under proper circumstances a layman accused of a felony against the United States could, without the advice of counsel, validly consent to be tried by the court without a jury.

C. The right of trial by jury in civil actions, guaranteed by Amendment 7 of the Constitution, can be waived. See federal Rules of Civil Procedure, Rule 38(d).

D. The power of the accused to waive jury trial cannot be distinguished from his power to waive proper venue, on any theory that the former is a "right" which can be waived whereas the latter is a mandatory requirement which cannot be waived. Both waivers must be treated alike unless, indeed, the waiver of jury trial is to be considered as presenting the more difficult problem. The Constitution uses the same language in speaking of venue that it uses in speaking of the right to jury trial in criminal cases.

(1) U.S. Const., Art. III, Sec. 2, Cl. 3:

> "The trial of all crimes . . . shall be by jury; and such trial shall be held in the state where the said crimes .. /were/ committed; but when not committed within any State, the trial shall be at such place as . . . Congress may . . direct."

It should be noted that in all three of the above provisions, the words "shall be" are used.

(2) The Sixth Amendment speaks of "the right", but equally applies to the right to counsel, the right to proper venue, and the right to jury trial:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . trial, by an impartial jury of the State and

district wherein the crime shall have been committed . . . and to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Presumably, no one believes that the accused is to be compelled to use compulsory process to obtain witnesses; he may have no witnesses, or those he has may come voluntarily. Since the Supreme Court has recognized that the right to counsel may be waived; that the right to trial by jury may be waived; and that, in certain circumstances, the right to trial by jury may be waived without the advice of counsel, it follows that the necessity of proper venue, whether it is deemed to be based on Art. III, Sec. 2, Cl. 3, or on the Sixth Amendment, is equally the subject of waiver.

It seems unnecessary to observe that the Sixth Amendment refers to the district in which the crime is committed, and that 28 U.S.C., Sec. 102, does not have the effect of creating an offense in the district to which it bestows venue.

(3) Although 28 U.S.C., Sec. 102, states that the trial "shall be" in the designated district, instead of saying that the defendant has a right that it be in such district, the fact remains that this statute exactly parallels the language of Art. III, Sec. 2, Cl. 3, upon which this statute rests.

IV. THE ISLAND OF PUERTO RICO IS A "DISTRICT" WITHIN THE MEANING OF THAT WORD AS TWICE USED IN 28 U.S.C., SECTION 102.

A. In both its uses of the word "district," 28 U.S.C. 102 includes all federal judicial districts having courts with general jurisdiction of offenses against the United States, and is not limited to districts within the 48 states or districts having constitutional district courts.

(1) The clause "offenses committed . . . out of the jurisdiction of any particular state or district" is not so limited.

(a) Ex parte Bollman, 4 Cranch 75, decided before the words "or district" were added to this clause, held the clause inapplicable to the federal judicial district for the Territory of Louisiana.*

(b) United States v. Chapman, 14 F. (2d) 312 (W.D. Wash., 1926), granted an application to remove the defendant from Washington to the United States Court for China, for trial for the offense of embezzlement committed

*During the period 1804-1812, the region below 33° North was technically the Territory of Orleans.

in Shanghai. The District Court for Washington, in holding that it did not have jurisdiction, stated that the District for China came within the word "district" as that term was used in the above clause. The court also held that the word "district" as used in the federal removal statute also included the United States judicial district for China.

(c) 28 Op. A.G. 24/(1909) [Wickersham]:
"I am of the opinion that 'district' as used [in this statute] includes every territory within which there are courts regularly organized and having jurisdiction over offenses against the United States; such courts as are mentioned in R.S., Sec. 1910 . . "
[R.S., Sec. 1910 was later repealed. This opinion held that the Philippines were not a "district," since not then having a court with general jurisdiction of offenses against the United States.]

(d) In re Ross, 140 U.S. 453 (1891). An American seaman committed murder aboard an American ship in Yokohama harbor, and was tried in 1880 by the United States Consular Court in Japan. A federal statute had created such Consular Court pursuant to a Treaty with Japan. After being imprisoned in the United States, the defendant sought habeas corpus. The lower court denied the writ. The Supreme Court, in affirming, stated that the statute conferring jurisdiction on the Consular Court and the above general statute (28 U.S.C. 102) must be so construed as to give effect to each; hence, the latter statute did not apply to the case. This opinion, without expressly so stating, in effect holdsthat offenses committed within United States consular jurisdiction in Japan are within a "district" within the above clause.

(e) United States v. Murphy, 4 Alaska 275 (semble).

(f) Cyc. Federal Procedure, 2d Ed., Sec. 3761.

(2) The clause "[the trial] shall be in the district where the offender is found or first brought" is also not limited to districts having constitutional district courts.

(a) United States v. Murphy, 4 Alaska 275 (holding).

(b) See United States v. Chapman, 14 F. (2d) 312, 313 (W.D. Wash., 1926), which held the United States court for China to be in a "district" within the federal removal statute.

(c) 28 Op. A.G. 24, 27, ". . . the accused may be tried in any judicial district, either in a State or a territory of the United States, into which they shall be first brought."

(d) Cyc. Federal Procedure, 2d Ed., Sec. 3761 (citing United States v. Murphy, supra).

(3) Puerto Rico is a "district" within the second use of that term in 28 U.S.C. 102.

Admittedly, the United States District Court for Puerto Rico is not a constitutional district court and would not come within the meaning of every statute using the term "any district court of the United States." Balzac v. Porto Rico, 254 U.S. 298 (1922); Porto Rico Ry. (etc.) v. Colom, 106 F. (2d) 345 (C.C.A. 1st, 1939), cert. denied 308 U.S. 617. It has already been shown that 28 U.S.C. 102 is not restricted to constitutional district courts. In fact, the section does not speak of "district court" but, more broadly, of "district."

48 U.S.C. 861: ". . . the Legislature of Puerto Rico shall have authority . . . to modify the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

48 U.S.C. 863: "Puerto Rico shall constitute a judicial district to be called 'the district of Puerto Rico'. The President . . . shall appoint one district judge . . . /for term of 8 yrs./. . . . The district court for said district shall be called 'the District Court of the United States for Puerto Rico'. . . . Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner . . ." /Emphasis supplied./

V. CONSTRUCTION OF THE WORDS "FOUND" AND "BROUGHT" AS USED IN 28 U.S.C., SECTION 102.

A. The word "found" appears to be synonymous with the word "apprehended."

The original statute (1 Stat. 114) provided for trial "in the district where the offender is apprehended, or in which he may first be brought;" and the same phraseology appears in the Act of April 20, 1818, ch. 88, sec. 4, 3 Stat. 448-450, punishing certain offenses against neutrality.

The Act of ~~March 3, 1819~~ May 15, 1820, ch. 113, sections 3, 4, 3 Stat. 600-601, provides that certain piracies committed outside the United States shall be tried in the district in which the offender shall be brought or "found."

The Act of March 3, 1825, ch. 65, sec. 14, 4 Stat. 118-123, a predecessor to 28 U.S.C. 102, also provides that the trial of all offenses committed out of the limits of any state or district shall be tried "in the district where the offender is apprehended or into which he may be first brought."

The Act of March 3, 1847, ch. 51, 9 Stat. 175, provides for the punishment of certain piracies in any United States circuit court "for the district in which such person may be brought, or shall be found . . ."

Kerr v. Shine, 136 Fed. 61 (C.C.A. 9th, 1905), after quoting from the above statutes, holds that the word "found" as used in the present statute is synonymous with the word "apprehended" in the 1847 statute.
Accord: United States v. Townsend, 219 Fed. 761 (S.D. N.Y., 1915); United States v. Bird, Fed. Cas. 14,597 (D. Mass., 1855); United States v. Hughes, 70 Fed. 972 (D. S.C., 1895); Cyc. Federal Procedure, 2d Ed., Sec. 3762.

From the foregoing cases it is clear that a person is not "found" by having come into a district voluntarily and leaving that district before being apprehended.

B. "Brought" does not include voluntary entry into a district, but refers to the defendant's entry into the district while under arrest or detention, following his apprehension in an area not within any district.

In Kerr v. Shine, 136 Fed. 61 (C.C.A. 9th, 1905) a ship's officer who, after his alleged offense and without having been arrested, helped bring the ship into Hawaii, and left Hawaii with the ship prior to the filing of a complaint in Hawaii, was held to have been neither "brought" nor "found" in Hawaii. In United States v. Hughes, 70 Fed. 972 (D. S.C., 1895), the accused after committing the offense, first took his ship to New York, then brought it to South Carolina where he was arrested. Held, that trial must be in South Carolina and not in New York.

Accord: United States v. Bird, Fed. Cas. No. 14,597 (D. Mass., 1855) (leading case);
United States v. Townsend, 219 Fed. 761 (S.D. N.Y., 1915);
Cyc. Federal Procedure, 2d Ed., Sec. 3762.

C. 28 U.S.C. 102 does not confer venue on a district in which the ship or airplane containing the accused temporarily stops enroute to its ultimate destination.

Pedersen v. United States, 271 Fed. 187 (C.C.A. 2nd, 1921) held that the Southern District of New York, and not the Eastern District, had jurisdiction under this statute to try a defendant being brought to the United States

from Europe, although the ship stopped temporarily at Quarantine in the Eastern District, before proceeding to its pier in the Southern District. The court stated /p. 189/:

> "The decision of the Supreme Court in the case of United States v. Arwo, 19 Wall. 486, and of the Circuit Court in the case of United States v. Baker, Fed. Cas. 14,501, show that the temporary stop at Quarantine did not constitute a bringing into the Eastern District of New York."

Although this point was presented to the court in United States v. Arwo, the memorandum decision in that case does not indicate which of several grounds it was based upon. Therefore, although consistent with this doctrine, it is hardly authority for it. In United States v. Baker, the statement is a semble rather than a holding. See, as consistent with this rule but not turning on it or discussing it, United States v. Thompson, Fed. Cas. 16,492 (Circuit Court D. Mass., 1832); Kerr v. Shine, 136 Fed. 61 (C.C.A. 9th, 1905).

D. 28 U.S.C. 102 does not give the Government an option as to which of two districts in which to lay venue.

The proper interpretation of the statute is that, if the accused is first apprehended in any district of the United States, the venue shall be in that district. If the apprehension occurs outside any district of the United States, the venue is in the first district into which the accused is thereafter brought. This is, apparently, the view accepted by Attorney General Wickersham in 28 Op. A.G. 24, where he advised that the place in which the accused was apprehended and was being held was not within any district, and that the accused should be brought into the district in which the trial could most conveniently be held. United States v. Bird, Fed. Cas. 14,597 (D. Mass., 1855), expressly holds that the statute does not give the Government an option, and explains the contrary statement of United States v. Thompson, Fed. Cas. 16,492 (Circuit Court D. Mass., 1832), as a casual and unnecessary observation. Kerr v. Shine, 136 Fed. 61 (C.C.A. 9th, 1905), quotes from both the Thompson and Bird decisions, and approves the latter. The court also approves as "an instructive exposition of the Act . . . and what we concede to be its true meaning" the statement in Ex parte Bollman, 4 Cranch 75, 136, that the trial shall be in the district in which the criminal is apprehended or, if he is apprehended where no court has jurisdiction, in the district to which he shall first be brought. United States v. Arwo, 19 Wall. 486 (1873), was presented with this and other questions, but its memorandum opinion does not disclose the basis of the decision. United States v. Baker, Fed. Cas. 14,501 (Circuit Court, S.D.N.Y. 1861), is a holding contrary to the foregoing principle, and should be considered as erroneous. That case is the sole authority cited by Wharton, Criminal Law (11 Ed., 1912) Vol. I, Sec. 313, in stating that the statute gives concurrent jurisdiction to the place of arrest and the place to which the defendant is first brought. Cyc. Federal Procedure, 2d Ed., Sec. 3762, indicates that no objection exists.

VI. DOES 28 U.S.C., SECTION 102, APPLY TO MILITARY SEIZURES AS WELL AS TO ARRESTS BY UNITED STATES MARSHALS?

No definite answer can be given to this question, but it seems that the statute would apply. The point was argued by both sides in Ex parte Bollman, 4 Cranch 75, 111, 117, 122, in which the court, speaking through Chief Justice Marshall, said /p. 136/:

> "It would, too, be extremely dangerous to say, that because the prisoners were apprehended, not by a civil magistrate but by the military power, there could be given by law a right to try the persons so seized in any place which the general might select, and to which he might direct them to be carried."

While it might be argued that the Bollman case could be distinguished from one in which the accused was brought into the United States by military authority without any charge having been preferred against him, some of the following cases disclose instances in which the accused was brought into the United States by ship officers who could not know the specific offense for which the accused would be indicted:

28 Op. A.G. 24, apparently, assumes that the Navy can "apprehend" aboard ship one of its officers accused of murder on the high seas.

United States v. Townsend, 219 Fed. 761 (S.D. N.Y., 1915), states that "brought" includes situations where the violator is taken into custody aboard ship upon the high seas.

Cyc. Federal Procedure, 2d Ed., Sec. 3762, n. 84: "Apprehended does not imply legal arrest, to the exclusion of military arrest or seizure. Ex parte Bollman."

See United States v. Baker, Fed. Cas. 14,501 (Circuit Court S.D. N.Y., 1861), where the accused were apprehended at sea by a United States warship.

VII. VALIDITY AND EFFECT OF WAIVER OF THE VENUE PRESCRIBED BY 28 U.S.C., SECTION 102.

A. This Writer's Conclusions:

As has been stated, supra, the venue designated by 28 U.S.C., Section 102 is not jurisdictional in the narrow and fundamental meaning of that term but can validly be waived. The venue prescribed by the Constitution for offenses committed within the United States can be waived. See United States v. Strewl, 99 F. (2d) 474 (C.C.A. 2nd, 1938), cert. denied on another ground sub nom. Strewl v. United States, 306 U.S. 638. The same rule should apply to both situations.

(1) Implied Waiver.

Waiver of venue is not readily implied. Even where the accused had counsel (no express waiver having been made) an objection to the venue can be effective although first raised at the close of the prosecution's case. United States v. Strewl, 99 F. (2d) 474 (C.C.A. 2nd, 1938), cert. denied on another ground, 306 U.S. 638. Where accused had counsel, however, objection to venue would seem to come too late where raised for the first time after verdict. Gowling v. United States, 64 F. (2d) 796, 798 (C.C.A. 6th, 1933) (dictum).

(2) Express Waiver.

The rules regarding attempted express waiver of objection to venue seem to be as follows:

(a) An oral waiver, if made in open court, can be effective /Irvin v. Zerbst, 97 F. (2d) 257 (C.C.A. 5th, 1938) certiorari denied 305 U.S. 597/, but proper practice indicates a written waiver, subscribed both by defense counsel and the government's attorney, and by the accused himself, and approved by the trial judge.

(b) The trial judge apparently has a duty to determine whether the accused, in waiving venue, was acting intelligently and with understanding. See Dillingham v. United States, 76 F. (2d) 36, 39 (C.C.A. 5th, 1935) (waiver of jury). The fact that the accused's counsel agreed to such waiver would lessen, but not wholly eliminate, the court's duty in this respect. A trial court probably could, in its discretion and on its own motion, refuse to take jurisdiction where the venue properly lay only in another district.

(c) However formally executed, a waiver entered into prior to the time of the indictment of the accused would not be irrevocable. If the accused's counsel had advised the accused of his rights and joined in the waiver and, if when the case came on for trial, such waiver was presented to the court without objection from the accused, the effect would seem to be the same as though the waiver were executed in open court. Therefore it would seem immaterial whether a waiver prior to indictment is considered either (i) valid but not irrevocable, (ii) voidable, (iii) void but capable of ratification (that is, validatable), (iv) void, but the accused being estopped by his subsequent conduct.

(d) Once the court is ready to begin hearing testimony relative to the alleged offense it would seem to be too late for the accused to withdraw his waiver, where the waiver had been intelligently and voluntarily entered into by the accused and his counsel.

(e) Because of the traditional protective value of the venue requirement, waiver should be strictly construed and limited.

(f) Whether the point beyond which an express waiver becomes irrevocable should be the point at which jeopardy can be said to have attached, or a point somewhat earlier is not clear, but it would seem that the former indicates the final point beyond which, where the waiver was validly entered into and no good cause for its renunciation is shown, the action of the trial court in refusing to permit withdrawal of the waiver would not be reversible error. Arraignment would seem, in any event, to be the earliest point at which the waiver could be treated as irrevocable.

(g) Knowledge by the grand jury that there had been a waiver would seem unnecessary, and possibly improper. The grand jury need not even know of the Constitutional provisions relative to venue. However, if the grand jury were aware of the venue provisions, it might refuse to return an indictment despite the waiver.

Whether an accused who, intelligently and with advice of adequate counsel, enters into a formal waiver of proper venue and thus induces the consideration of his case by a grand jury of another district should be held to have bound himself by such waiver, cannot be positively stated, but such a result is believed most unlikely. See (c) and (f) supra. In any event, no such result would occur if the indictment covered substantially different offenses from those anticipated by the waiver.

(h) Since to allege an offense committed in the forum and prove an offense committed in another district would constitute a variance, would not proper practice in the event of a waiver be to allege the offense as committed in the place in which the evidence will prove it to have occurred? The fact that the face of the indictment alleged an offense outside of the district should not deprive the court of jurisdiction or render the proceedings null. The apparently contrary assertion in Salinger v. Loisel, 265 U.S. 224 (1924) is not a holding with respect to this point, but related to a removal proceeding against a non-consenting accused.

B. Authorities and Analogies.

(1) Waiver of trial by jury in civil actions.

Although the 7th Amendment declares that: "In suits at common law . . ., the right to trial by jury shall be preserved . . ." the validity of waiver of the jury in civil suits has long been recognized. Indeed, the federal Rules of Civil Procedure, promulgated by the Supreme Court itself, provide /Rule 38(d)/ "The failure of a party to serve a demand /for a jury/ as required by this rule /i.e., not later than 10 days after service of the last pleading. 38(b)/ constitutes a waiver by him of trial by jury." The rule regarding waiver of jury in civil cases affords but little assistance in determining the validity or effect of such waiver in criminal cases. Particularly is this true as to the revocability of waiver. Also, the Rules of Civil Procedure imply a waiver. See United States v. Strewl, 99 F. (2d) 474 (C.C.A. 2nd, 1938), HUGHES, Fed. Pr. (1940) Sections 23081, 23232. /As to withdrawal of waiver of jury in civil cases under the old practice, see HUGHES, FEDERAL PRACTICE (1931) Section 3832 (at p. 369)./

(2) Waiver of trial by jury /and of the right to counsel/ in criminal prosecution.

Waiver of the right to counsel in a federal felony prosecution is not readily imputed to the accused, Johnson v. Zerbst, 304 U.S. 458 (1937); Glasser v. United States, 315 U.S. 60 (1942). Moreover, the conviction of an accused who expressly waived counsel will not be upheld unless such waiver was intelligently made, the accused understanding his rights and the possible consequences of the waiver. See Adams v. United States ex rel. McCann, 317 U.S. 269, 275 (1942), United States ex rel. McCann v. Adams, U.S. , 12 Law Week 4010. The oft quoted language in Patton v. United States, indicating that the trial judge has a personal duty to determine whether the waiver is made intelligently and with full understanding of the possible consequences, would seem equally applicable to waiver of venue. (See III, D supra).

At the present time it is settled in the federal courts that the right to jury trial in federal felony prosecutions:

(a) Is a right of which the accused cannot be deprived without his consent, freely and intelligently given. See United States ex rel. McCann v. Adams, U.S. , 12 Law Week 4010.

(b) Is not a mandatory requirement which, although both the accused and government counsel wish to waive it, the trial court is powerless to dispense. Patton v. United States, 281 U.S. 276 (1930).

(c) Is not the privilege of the accused exclusively; i.e., the accused cannot insist on waiver of jury, if the prosecuting attorney objects to such waiver /United States v. Dubrin, 93 F. (2d) 499 (C.C.A. 2nd, 1937); Rees v. United States, 95 F. (2d) 784 (C.C.A. 4th, 1938)/, or if the trial court feels such waiver would be inadvisable. See Patton v. United States, supra.

TLC:VCW:mab

146-7-51-1708 February 10, 1947

Honorable Leverett Saltonstall
United States Senate
Washington, D. C.

My dear Senator Saltonstall:

Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, has referred to me your letter concerning Miss Mildred E. Gillars, sometimes referred to as "Axis Sally". I am pleased to reply to your inquiry.

Representatives of the Criminal Division last year conducted an extensive investigation into the activities of a number of American nationals who were connected in various capacities with the German radio during the war years. Miss Gillars was one of these persons, and her case, like a number of others, is now in a pending status within the Criminal Division, receiving active consideration. She has not been indicted in the United States, but is at the moment being held in custody in Germany by the military authorities.

As you know, Douglas Chandler and Robert H. Best, two of the principal political commentators of American nationality who worked for the German radio during the war, have been returned to the United States for trial. Although they had previously been indicted for treason in 1943, new indictments based on the recently obtained evidence were returned by a federal grand jury in Boston, Massachusetts, on December 30, 1946. These cases will be brought to trial at the earliest possible date.

The United States treason statutes, Constitution, Article III, Section 3 and 18 U.S.C. Section 1, are unique among criminal statutes as regards the stringent requirements of proof which it places upon the prosecution in such cases. The government is required to allege specific overt acts upon the part of the accused and to prove each of these acts by the testimony of two witnesses to the particular act. Recent decisions, as you are aware, have placed a narrow and restrictive interpretation upon

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the statute. Cramer v. United States, 325 U.S. 1.

The alleged offenses involved in the cases pending in the United States District Court in Boston are, of course, without precedent in the history of the law. No similar case has proceeded to trial, and it is to be expected that the rulings by the court in these cases and the general course that the proceedings take will be of great assistance to the government in properly disposing of the other pending cases.

Our investigation in Europe has revealed facts which indicate that there may be some confusion on the part of many people of Miss Gillars with Miss Rita Louise Zucca, an Italian national who broadcast from a German operated station in the Italian Alps. Miss Zucca had the microphone name of "Sally". Many of the broadcasts which since have been attributed to Miss Gillars apparently were actually made by Miss Zucca. Incidentally, Miss Zucca is reported to have been convicted by an Italian tribunal on the charge of "collaboration" with the Germans, receiving a sentence of several years' imprisonment. We have also been informed unofficially that after having served a portion of this sentence she has been released on parole.

Since the Criminal Division still has Miss Gillars' case under active consideration I cannot, of course, advise you of what future action it may take with regard to her. As I have stated previously, she is now in military custody, being held for the disposition of the Department of Justice. She could not, of course, travel voluntarily to the United States from Germany as an American citizen without previously having obtained a passport from the State Department. The Department of Justice has received no information either from the Department of State or from the United States military authorities in Germany indicating that Miss Gillars has attempted to effectuate her return to this country.

Respectfully,

For the Attorney General

THERON L. CAUDLE
Assistant Attorney General

Dual Radio Role:

TIMES-HERALD
WASHINGTON--Sept. 4, '48

Axis Sally's Work as 'Midge' Seen as Her Treason Defense

By RUTH MONTGOMERY

Axis Sally will probably stake her defense against treason charges on the claim that as "Midge" she "patriotically" brought hope and comfort to thousands of frantic American parents and wives.

This developed yesterday with the disclosure that Mildred Gillars, the former Portland (Me.) native who faces a treason hearing here, was not only the tantalizing Radio Berlin Sally who urged American GI's to desert and go home—she was also Midge.

It was understood that the Justice department has evidence of the woman's dual personality and is undoubtedly presenting this, along with other testimony, to

[redacted]

wave messages that Johnny or Harry was "safe" in a German camp, she was familiar to every U.S. radio ham.

Hundreds of them hung eagerly on her messages each evening and devoted all their spare time to relaying the information about captured GIs to their anxious families.

It became one of the most unusual home-front enterprises of

(Continued from First Page)

[redacted]

of "Dotty" from imprisoned GIs.

Using postal cards, they then notified the families to whom Midge had directed her information. Some relayed as many as 13,000 messages each, during the war.

Apprised that Midge and Axis Sally were the same person, the hams were divided in their reactions.

Irwin F. Bender of Harrisburg, Pa., immediately rallied to Miss Gillars' defense.

"We have all wondered who that wonderful person was," he exclaimed, referring to Midge. "She was so cultured and displayed such sympathy that I am positive she is a fine, patriotic citizen who risked her life to help America."

Charges She's "Railroaded"

Revealing that he has kept carbon copies of all her messages beamed to the U. S., Bender said: "If the truth were known about how she is being railroaded, wives and mothers of America whom she helped would rise up in righteous indignation."

But two other prominnt hams emphatically disagreed with their colleague. E. E. Alderman of Dayton, Ohio, who has been credited with originating the relay hobby, exploded: "I am convinced that Midge was a traitor."

"The names and addresses were part of a scheme to get Americans to listen to the rest of the propaganda stuff. She hoped the Nazis would win so that she would be all set up with a good job after the war."

Agreeing, R. Sanford Lowe of New York City said she "very definitely was not sending the messages for patriotic reasons."

Propaganda in Messages

"She doesn't even deserve to be called an American," he observed caustically. Lowe said he has saved enough of her propaganda messages, interspersed with the names and addresses of prisoners, to "convict her in almost any court."

Former Rep. O'Connor (D) of New York, who learned of his eldest son's capture via Midge and the hams, was surprised that Midge and Axis Sally were the same.

He said he immediately wrote the attorney general that he "wanted to be sure Midge was tried for treason and not for something else—like those horrible mass sedition trials in Washington."

Expressing gratitude for the service Midge rendered U. S. parents, "even if her motives were ulterior," he added: "I doubt if that was treason. She's probably just a nut."

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Der Polizeipräsident in Berlin

Abteilung K

KJ F 2 — Fahndungskartei —

Berlin C 2, den 8. März 1946
Dircksenstraße 13—14

Grossfahndung!

Nach der Ausländerin Mildred Elisabeth **Gillars**, die unter dem Decknamen Barbara **Mome** in Berlin auftritt. Sie verfügt über Personalpapiere auf dem Namen Mome, geb. am 29. 11. 09 in Portland.

Beschr.: Mittelgroß, schlank, pechschwarzes Haar, rehbraune Augen, vorstehende Zähne, etwas wulstige Lippen, spricht fließend Deutsch mit leichtem Akzent und gibt sich als Schriftstellerin aus.

Festnahme! Bei Erfolg Nachricht an: KK Zehlendorf, Tel.: 24 22 41, Apparat 20 und an KJ. F. 2 (Fahndungskartei) Tel.: 42 53 21, Apparat 25.

Im Auftrage: Born.

Kenn-Nr. 42. Druck: A. W. Hayn's Erben, Berlin SO 36, Schlesische-Str. 26. Aufl. 2000. 8. 3. 46/12.


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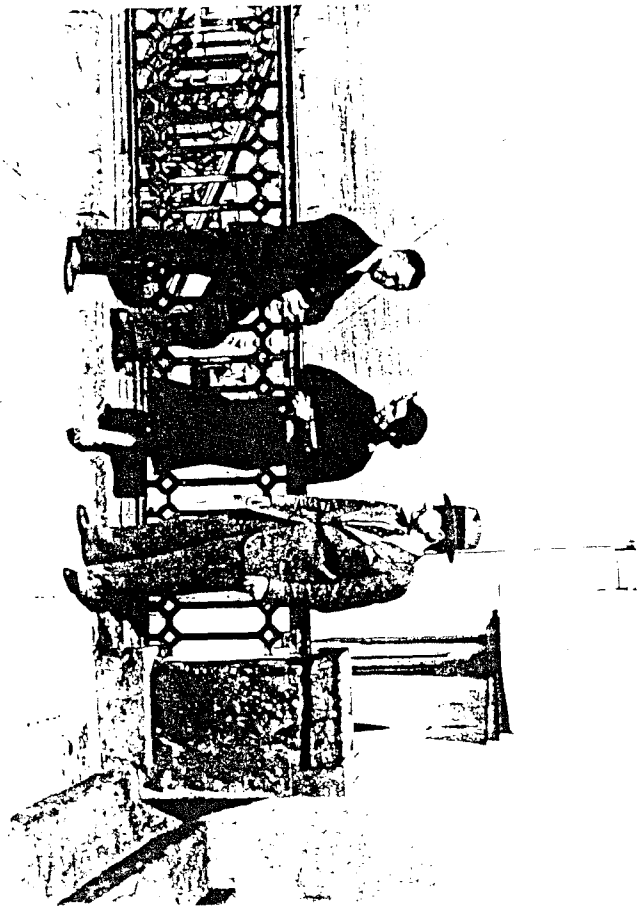

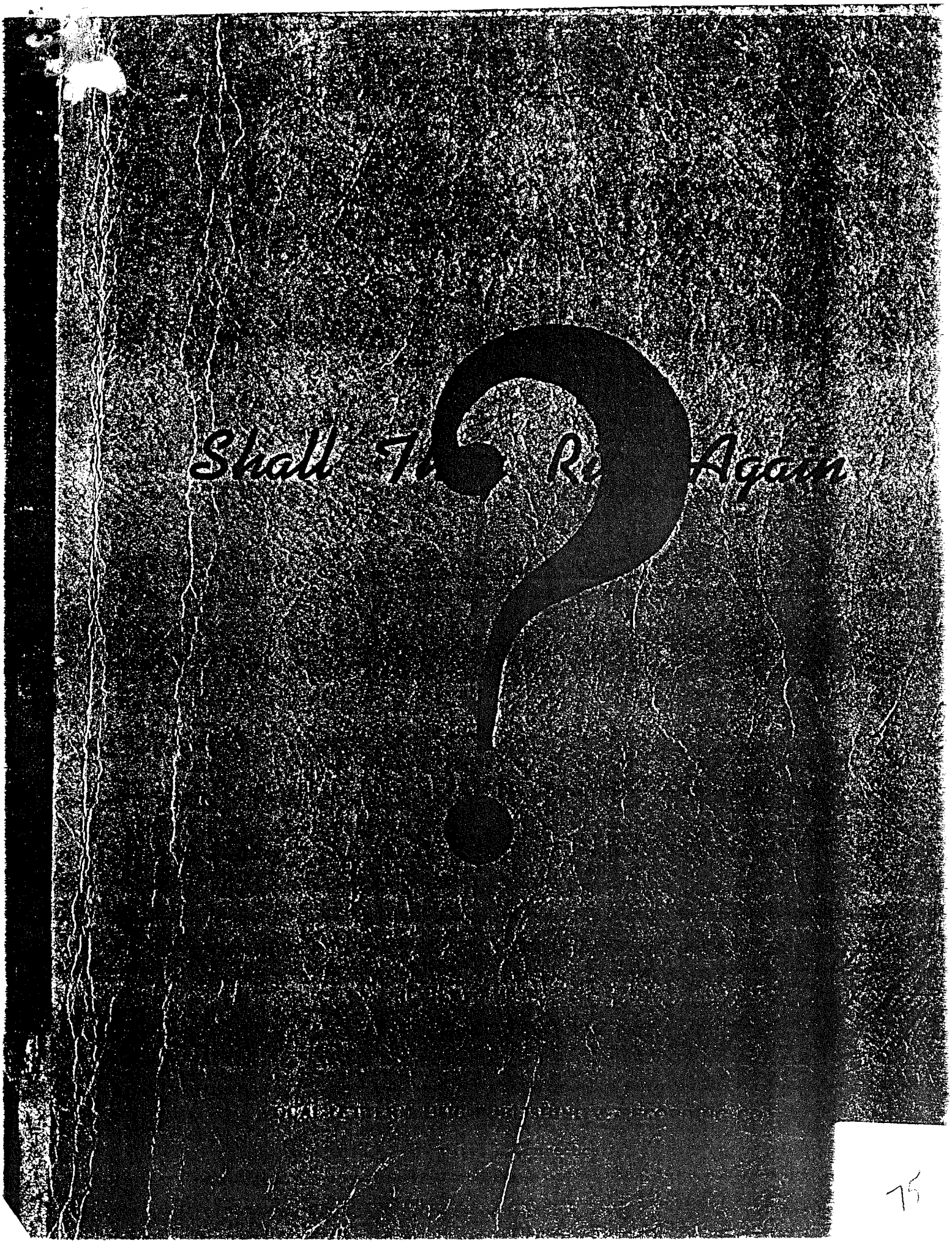
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As a complete unit intact, we offer you in its original form (no copies having been made or sold by us) our complete series of 135 records (cut at 33-1/3 R.P.M.) beginning with the preliminary broadcast dated June 5th, 1944 at 11:50 P.M. (E.W.T.):

"W A R N I N G! ALL PEOPLE LIVING WITHIN 35 KILOMETERS OFF THE COAST, LEAVE YOUR HOMES AT ONCE!"

These recordings consist of Actual Voices, Languages, Text and Data of on-the-spot Eyewitness Accounts of Events as they Happened; Details, Comments, Sounds of Battle, Shell Fire, Detailed Reports of Battle Progress, Claims and Counter-claims of the Invasion; Notifications by Allied High Command; Briefing of Paratroopers; Instructions to Paratroopers before taking off on Invasion Mission; Gen. Eisenhower's Orders of the Day; American Denials of Invasion; Germany's News-Beat of the Invasion; Reactions from many parts of the World on receiving the news of Invasion; German, British and American News and Views of the General War Situation in Europe; Damages and Losses and the progress of the Invasion from their standpoint of view; Names, addresses, serial numbers of U.S. soldiers taken prisoners of war in Italy, Germany and Japan, together with Messages to their "Loved Ones" and Medical reports;

German Propaganda directed to Allied Soldiers and people in America; Consecutive reports of the war situation from Germany, Italy, Japan, Britain and America; Reports and denials of Germany's Unconditional Surrender; Reaction and actual celebrations; Comments and Statements of High Officials, Commanders, Generals, Admirals and interviews with Soldiers and others from many parts of the world; Statements after capture of German War Criminals; Atrocities related by Prisoners of War released from Concentration Camps; Special Historic Events up to present date; Speeches and Addresses by the following:

AMERICA

Pres. F. D. Roosevelt - Pres. H. S. Truman - Ex. Pres. Hoover - Secretary of State Stettinius - Acting Secretary Grew - Atty. Gen. Biddle - Chief Justice Jackson - Mayor (N.Y.) LaGuardia - Gov. (Conn.) Baldwin - Gen. Dwight D. Eisenhower - Gen. Doolittle - Gen. Patton - Gen. Hodges - Gen. Drumm - Gen. Dempsey - Gen. DeWitt - Gen. Kennedy - Lt. Gen. Clark - Brig. Gen. Hines - Gen. Pershing - Gen. MacArthur - Gen. Bradley - and many others. Ad. Lahey - Vice Ad. Mitcher - Ad. Nimitz and others. American Commentators from U. S. and abroad.

LONDON

King George VI - Prime Minister Churchill - Foreign Secretary Eden - Prime Minister Chamberlin - Lord Halifax - Mr. Bivvins -

Edward Ward (for two years a prisoner of war) - Arch Bishop of Canterbury - Lloyd George - Lady Alexander - Mr. McCauley - Field Marshal Montgomery - Field Marshal Sir Harold Alexander - Gen. Devers - Allen Melville - Chester Willmott - Wickham Steed - Peter Watson - Frank Gillard - Gene Witaker - Howard Marshall - Robert Barr - Patrick House and many other British commentators.

RUSSIA

The Metropolitan of the Russian Orthodox Church - Foreign Minister Molotov - Marshal Zhukov - and many others.

GERMANY

Robert H. Best (B.B.B.) - Lord Haw Haw - The Nazi Commentator Midge - O.K. German Commentator - and other un-named German commentators.

BERNE, SWITZERLAND

Un-named Commentator.

ITALY

Mike Reynolds and other Correspondents.

FRANCE

British, American and French Commentaries by Generals and news commentators - Sounds and Action of Battles - German war commentators and others.

JAPAN

Tokyo Rose - Un-named commentators, and War News - Japanese Vocal and Musical selections - Prisoners of War and others.

IN THE FOLLOWING YOU WILL FIND THE EXACT SEQUENCES IN WHICH THESE BROADCASTS WERE RECORDED BY US. YOU WILL NOTE BY THE TEXT OF VARIOUS RECORDINGS THAT ENGLAND, GERMANY AND FRANCE BROADCAST EYEWITNESS ACCOUNTS OF THE INVASION, LANDING OF TROOPS, AND PROGRESS OF BATTLE BEFORE THERE WAS ANY CONFIRMATION OF THE INVASION FROM AMERICAN NEWS SOURCES!

"MY FELLOW AMERICANS! LAST NIGHT WHEN I SPOKE WITH YOU ABOUT THE FALL OF ROME, I KNEW AT THAT MOMENT THAT TROOPS OF THE UNITED STATES AND OUR ALLIES WERE CROSSING THE CHANNEL IN ANOTHER AND GREATER OPERATION. IT HAS COME TO PASS A SUCCESS THUS FAR, AND SO IN THIS POIGNANT HOUR I ASK YOU TO JOIN WITH ME IN PRAYER.

ALMIGHTY GOD! OUR SON, PRIDE OF OUR NATION, THIS DAY HAS SET UPON A MIGHTY ENDEAVOR. Etc."

Pres. Franklin Delano Roosevelt
D-Day Speech to the Nation

JUNE 5th, 1944

11:50 P.M. (E.W.T.)

SPECIAL BROADCAST

American Broadcast notification of warning to people in Holland to evacuate, etc.

JUNE 6th, 1944

12:55 A.M. (E.W.T.)

British Broadcasting Co., London, Allied High Command --

> "Notice to all civilians of Holland living within 35 kilometers off the coast - leave your homes at once! Stay away from all main highways, railroads, military installations and bridges! Take to the open country!"

1:05 A.M. (E.W.T.)

German D.N.B.

> "This morning the long awaited British and American Invasion began. Paratroopers landed in the area of the Somme Estuary. The Harbor of Le Havre is being fiercely bombarded at the present moment. Giant forces of the German Naval Unit are off the coast fighting the enemy and wiping them out. Etc."

2:31 A.M. (E.W.T.)

B.B.C. London - Communique No. 1: Allied Command announces that the Invasion has started; sound of planes taking off.

General Eisenhower's Order of the Day --

> "Soldiers, Sailors and Airmen of the Allied Expeditionary Force, you are about to embark upon the great crusade for which we have striven for these many months. The eyes of the world are upon you. The hopes and the prayers of the Liberty

Loving Peoples everywhere march with you. You will bring about the destruction of the German War Machine; the elimination of the Nazi tyranny over the oppressed peoples of Europe; security for ourselves, and a free World. Your task will not be an easy one. Your enemy is well trained, well equipped and battle-hardened. He will fight savagely. Etc."

Briefing of troops and 5-point special instructions as to conduct upon arrival on coast of France were given.

LONDON Broadcast at time of INVASION --

"As Major Richardson came within the barbed wire enclosure of his own squadron, he blew a long shrill blast on his whistle. The pilots, co-pilots, navigators and radio-men clustered around him. 'Come into the briefing room', he said. There he stood in front of a large scale map on which the course was flagged. As quickly as his men were all in the room, Major Richardson said 'Do you know your stuff?' 'Get your stuff and report to the operations room immediately. I'm going down to the Colonel to get the weather report. I think this is it. Good luck!' As the crowd started to leave the room, Major Richardson said, 'You want to get back, don't you?' There was a quick murmur of assent. 'Then damn it, get in there and fight!' Etc."

B.B.C. LONDON

Pre-Invasion Report

"In the first hour of D-Day by British summer time or a little more than an hour before D-Day began by Greenwich mean time, the first spearhead of Allied Forces for the liberation of Europe landed by parachute in Northern France. Etc."

Full details.

D.N.B. BERLIN

FLASH

"At 4:10 A.M. fighting is going on between German and Allied troops 10 miles inland from the coast of Normandy. Allied troops have been reinforced at the mouth of the Seine at dawn. Etc."

B.B.C. LONDON

Eye-witness account of first paratroopers landing given in full detail from a C-47.

3:32 A.M. (E.W.T.)

British Broadcast

Commentary on the Invasion; interviews and comments of flyers returning from first trip to Normandy coast.

* * * * *

Text of Gen. Eisenhower's broadcast to European Underground; word picture of the Invasion in action; review of pre-Invasion instructions and reactions of those about to make the flight; last minute details of H-Hour instructions.

B.B.C. LONDON

London confirms Invasion. With Gen. Eisenhower's words "LET'S GO", the invasion was on.

"Here is an accurate eye-witness account of the Invasion as it took place. With the exception of tanks which are moving up the roads toward the beach-heads or are hiding in the hedges, we saw no signs of enemy resistance. As our flight of 54 Marauders made their bomb runs along the enemy coast, we were met by only a few bursts of inaccurate flak and by machine gun firing from 40 or 50 tanks. Everything that flew in the air or sailed on the sea was definitely ours. At the briefing we were instructed to stay below 6000 feet as higher up and lower down the air was full of other planes strung out like sausages. We crossed the enemy territory and began our bomb run down the coast. As long as these men live the evening of June 5th will always be to them the night before D-Day. Etc."

Complete eye-witness account of the bombing and its results followed.

A broadcast from a Flag Ship in the invading Armada.

BERLIN D.N.B. BROADCAST

"The first British division of paratroops has been very badly mauled. We are repulsing the enemy at every turn. Etc."

B.B.C. LONDON

Gen. Eisenhower explains reason for withholding invasion news and said, "The Germans were given the news beat on the invasion to protect our positions. Etc."

D.N.B. BERLIN

Nazi's description of the invasion on the Normandy coast.

B.B.C. FLASH

Gen. Eisenhower, in a special broadcast to France and other Coastal countries, advised that the Air attack would take place in less than an hour after planes dropped printed warnings and instructions to the underground.

B.B.C. LONDON

Full description of first foot soldiers landing in France.

D.N.B. BERLIN

FLASH

Germans boasting of special organization of shock troops organized to wipe out any possible invaders.

B.B.C. LONDON

"I have just seen the first American troops preparing to storm ashore onto the continent of Europe. They were about to land on the northern

coast of France at 6:30 British summer time this morning. At 6:23 the Marauder bomber in which I was riding dropped the last load of bombs to be launched onto the coastal targets before H-Hour a few minutes later. Already several thousand paratroopers are awaiting further inland to join forces with the landing parties, Etc."

Full description of the results of bombing.

D.N.B. SPECIAL BULLETIN

Germans claim that their battle ships set the whole Seine area afire with their shells, Etc. (Full details of operations.)

B.B.C. LONDON

SPECIAL BROADCAST

From Supreme Allied Headquarters - Description of the take-off of the 1st. Airborne troops from the field in London.

Eye-witness account while enroute --

"We have not seen a plane outside our own formations. The Fighters must have done their work well for there was no sign of enemy aircraft about. Etc."

"'Tiny, tell the Colonel it is 30 minutes until jump time,' yelled pilot Pete. None of us spoke, but each looked at the other. Now the paratroopers were on their feet, each adjusting his packs and snapping his rip cord over the static line, a cable which ran along the center of the cabin ceiling so that each 'chute would open automatically as its wearer jumped through the door. Etc."

Full description of the first take-off of paratroopers and trip.

JUNE 6th, 1944

6:23 A.M. (E.W.T.)

Washington acknowledges invasion has taken place.

Pre-Invasion descriptions from London and France.

Commentary from U.S. re. Invasion. London broadcast reported that the German people were not advised of the Invasion. Gen. Eisenhower's Order of the Day from Allied Headquarters. Eye-witness account of the landing of Allied troops in France. General war news from LONDON, FRANCE and GERMANY.

JUNE 7th, 1944

Big Ben; orchestral music; eye-witness account of actual battle progress and landing of additional troops.

B.B.C. LONDON

Communique No. 4 issued from Supreme Allied Headquarters --

> "Allied troops have cleared all beaches of the enemy and have, in some cases, established links with flanking beachheads. Inland fighting generally is heavy. Enemy resistance is stiffening as our reserves come into action. Shortly before dawn today light coastal forces, while sweeping to the eastward, encountered a superior force of enemy craft. Etc."

> "Just before we left French soil for the return trip to England, I watched from the rear door of our plane as seventeen American paratroopers led by a Lt. Colonel jumped with their arms, ammunition and equipment into German occupied France. Etc."

JUNE 8th, 1944

British Commentator from somewhere in France. Sounds of battle in France from a glider landing field under heavy fire from the enemy.

Paratroops in action: -

> "They're showering in. There's no other word for it; pouring in in threes and fours and fluttering down in perfect formation just as we've seen on the newsreel in their exercises and here they are doing the real thing, and believe me, they haven't come any too late. Etc."

D.N.B. BERLIN

(Midge - Female Commentator)

Berlin broadcasts names of soldiers taken as prisoners.

German war communique --

> "On the coast of Normandy, the enemy succeeded in reinforcing his beachheads although at the cost of heavy losses inflicted upon him by attacking German Naval forces and Luftwaffe formation. Etc."
>
> "On June 7 and in the following night they sank 6 transports totaling 38000 tons and a landing vessel. Etc."

Full details of the Invasion from German standpoint.

B.B.C. LONDON

Details of Gen. Eisenhower's visit to beachhead.

Progress of rangers on Normandy coast.

Details of assult troops.

Details and interviews with returned thunderbolt flyers.

British commentary on war thus far.

Comments on Allied air activity.

Proclamation by Gen. Eisenhower has been dropped on German held areas in France and it has also been posted on the parts newly liberated by the Allied forces. It tells the French people -- "The day of liberation has come!"

The proclamation declares --

> "I rely on the assistance of the French people in the final crushing of Hitlerite Germany. Etc."

Details of amount of shipping losses.

New territories taken by Allied forces reported.

JUNE 9th, 1944

B.B.C. LONDON

Broadcasting from an Allied strong point somewhere in France --

"The Airborne Troops were landed in France last night. Now at 9 o'clock a whole mess of gliders have just come in having been towed across the channel from Britain. The flak is going up all around us because we are hemmed in on all sides by the Germans. The Germans have failed to stop our Airborne troops and are now beginning to shell landings along the rock where the gliders are coming in. Etc."

D.N.B. BERLIN

SPECIAL BULLETIN

"Here are messages from Prisoners of War to their Loved Ones. Calling Mrs.------ at ------- South ------- Chicago, Illinois (names, addresses and serial numbers deleted here by us). Here is a message from -----. His serial number is -------. Here is his message - 'Getting along fine. Hope you are the same. I'm getting fat. Say hello to Fat for me and God Bless You.' Sign. ------. Other messages in part - 'Having plenty to eat and am feeling fine and am securing fine treatment.' 'The Germans are fine people. They are treating us fine.' 'Don't believe all you hear about bad treatment to prisoners of war.' Etc."

We interrupt this program to bring you a flash from the Invasion front -
'London - Before American soldiers in England can be put on the unfit for service list, they will have to undergo more rigid examinations than heretofore. Etc."

German female announcer -

"You are listening to a program coming to you from Berlin in the German Overseas Service, and now it is time for the G.I.'s letter-box, a half hour of messages from American prisoners of war to their Loved Ones in America. (Musical number 'When My Dream Boat Comes Home') Here is the G.I.'s Letter-Box bringing you messages from American Prisoners of War now in Germany. Now that the Invasion has begun and hundreds of thousands of American boys

have gone bravely to their doom, all of you are more anxious than ever to hear from your boy. Through this program you may be able to hear much sooner that your soldier is one of the few lucky enough to have escaped alive and been taken a prisoner. Etc."

Additional names, addresses and serial numbers, together with messages, of Prisoners of War to their Loved Ones.

D.N.B. BERLIN

"Here is a FLASH from the invasion front. Berlin - We furnish you now with a list of several United States formations which, according to statements made by Prisoners of War, have already been employed by Gen. Montgomery in the invasion. The units in question are the 1st, 4th, 9th, 29th and 90th; United States Infantry Division; also the 82nd and 101st United States Paratroop Division. Etc."

Additional messages from Prisoners of War.

Program closed with vocal "So Many Memories of You".

D.N.B. BERLIN

SPECIAL NEWS FLASHES

German survey of the invasion. Survey of the situation on the late afternoon of the 4th day of the invasion.

"Only on a few points the enemy possesses beachheads, a larger one which begins west of the Aisne Estuary and a smaller one. Both beachheads are being reinforced by the enemy. Etc."

"The surprise movement has failed completely. All of these operations in which the Allies have gained nothing within the first four days have cost Gen. Eisenhower the employment of eighteen divisions of men up to now. Etc."

"Although the enemy formation tried to conceal itself behind a smoke screen, their coastal batteries continued fire until the ships were beyond reach of the target. With regard to the relations between the French inhabitants and the German troops in the fighting zones, their experiences so far have shown

D.N.B. BERLIN

By: THE NAZI COMMENTATOR

"Let's quit pretending! The new Communistic Imperialism - The Soviet Union will forcibly convert Europe to Communism and add it to the Bolshevist State peacemeal. Already Stalin insists upon his first fruits of agression. If he took the Baltic Sea and parts of Finland and Poland in 1939 and '40, why should he not take Rumania and Hungary in 1944, Germany in 1945 and France in 1946? I am not trying to argue out of fighting a war. All I am suggesting is that you stop to think. You are fighting this war for yourself, when in reality you are fighting it for the Soviet Union and the triumph in Europe. Etc."

D.N.B. BERLIN

SPECIAL BROADCAST

By: A FEMALE ANNOUNCER

"I shall now read some messages from American Prisoners of War. I will call Cincinnati, Ohio, then Coral Gables, Fla. and Rochester, N.Y. Etc."

Excerpts from some of the messages --

"Dear Mother: I am well and in good health. Etc."
"Dearest ---: I miss you my sweet terribly. Don't want any fretting at home. Am at a permanent Prison Camp. Am well. There is no room for complaint here. That should be a load off your mind."
-- "Dearest: Am at a permanent Prison Camp. Am well. Miss you more than ever. Keep a high heart and God Bless You. Etc."

War commentary continues after all messages are read.

"We will now have a half hour of dance music entitled 'Chase Away the Blues'."

D.N.B. BERLIN

THE NAZI COMMENTATOR

Full details of:

News of the Invasion front.

Details and descriptions of electrically-controlled rocket batteries.

Curfew in Paris modified as a token to the people willingly assisting Germany.

Allied Paratroops landing on the beachhead wiped out.

> "The enemy has succeeded in increasing his beachhead, though at the cost of heavy losses inflicted upon him by attacking German Naval Forces and heavy Luftwaffe!"

Gives full description in detail of German counter-attacks.

Gloats over the success of the mighty Luftwaffe and relates the heavy losses incurred by the Allies from the mined fields, etc.

Program closes with additional names of newly captured American flyers.

JAPAN

Music and songs; names, addresses, serial numbers, messages, and medical reports of U.S. soldiers now Prisoners of War.

B.B.C. LONDON

London reports surveying war program to date --

> "From an advanced post in northern France, reporter explodes the theory that the west wall is just a myth. Etc."

Reviews of the invasion from eye-witness accounts to date, viz --

> "The country bristled with machine gun nests, strong posts, field guns and mortars. Those devastating mortars in fixed positions and in long range batteries for many miles were arranged in the infernal path our troops had to travel. The losses incurred in the course of operations must

phase of the invasion battle has taken on dimensions which already now mark it as the hardest struggle of this war, and as a decisive struggle. The battle will, of course, not be decided on the coast itself within range of the enemy's heavy naval artillery. It will be decided in a big land battle! The Atlantic wall on the coast of Normandy has fulfilled all expectations. It served to break the first wave thrown against it by the enemy. It supplied sufficient time for the German troops to be moved up to the points of penetration. The German troops who still stand in the fortifications on the coast of Normandy have inflicted such terrific losses on the enemy during its first assault that these could be only balanced by the ruthless use of men and material. Etc."

D.N.B. BERLIN

Commentator reviews headlines of London daily papers and gives general review of Allied losses and German gains to date. Etc.

Names, addresses and serial numbers of additional American soldiers taken prisoners in southern Italy.

D.N.B. BERLIN

"Sgt. Harry Dunnet who was taken prisoner during these engagements said, when he was cross-examined, and I quote -

'Of the two paratroop regiments which bailed out here, I believe all men were killed with the exception of barely a hundred who were taken prisoners. Being shot at while still in the air was the worst of all. These were Hellish seconds!' end of quote."

Gives information on Luftwaffe successes in detail.

Gives additional names, addresses and serial numbers of prisoners taken in southern Italy.

D.N.B. BERLIN

NAZI COMMENTATOR

"Good evening listeners in America. The invasion is a week old today. Etc."

Gives Germans' views of war results.

D.N.B. BERLIN

THE NAZI COMMENTATOR

"The news from the invasion fronts, in many respects, is unsatisfactory. Do you remember that early in March the four leading American networks had laid the groundwork for what they described the biggest job of news coverage in history - the western invasion of Europe? They sent special commentators abroad with special instructions. Etc."

Relates how American Broadcasting Companies and News Agencies suppressed the true facts.

"Nobody reveals what American mothers, wives and sweethearts would like to know! - How heavy are the losses? American commentators sometime ago predicted that about a half million would be killed in case of an invasion. So far, it is estimated that only three hundred to four hundred thousand Americans, Canadians and British are taking part in the invasion operations and this is also merely a guess, but, to be sure, the invasion is still in its essential stage. All reports from both sides agree that the human tragedy is overwhelming. Etc."

D.N.B. BERLIN

Robert H. Best in one of his famous B.B.B. broadcasts --

"Mr. and Mrs. America and the oncoming generation of young Americans, two generations of Americans whom their children and children's children will view with disgust and even curse with hate unless they soon begin to show more backbone in freeing our government of the cronies of the 'kike' and the 'kike' criminality in general. Stalin, that Lenin launched with hobo heroes of the Hebrew hell-hound on the road towards his present position, not because he possessed any great personal talent, but partly because of his absolute lack of scruples and partly because, in the year 1907, he passed over to Lenin a large part of the swag which he himself had netted by instigating and watching from a safe roof top a bank robbery that cost the lives of some four dozen men, women and children. Such being the case, you may ask with some wonder, such being the case, how did Stalin succeed in following the Lenin road so successfully to the apparently all powerful position which he now occupies in the political setup of that huge den of shenified savagery which we know as the Soviet Union. Etc."