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Federal Venue of Offense Allegedly Begun in One District and Completed in Another

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NOTES

FEDERAL VENUE OF OFFENSE ALLEGEDLY "BEGUN" IN ONE DISTRICT AND "COMPLETED" IN ANOTHER

I. INTRODUCTION

The Constitution of the United States requires that criminal trials be held in the state and district wherein the offense was committed.[1] The offense for a continuing crime is committed in each district wherein the alleged acts were performed.[2] Consequently there may be more than one place of trial or venue for continuing offenses. Section 3237(a) of Title 18, United States Code, provides for the multiple-venue of this type of offense.

> "Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed. . . ."[3]

The problem is what offenses warrant application of the continuing offense or multiple-venue statute. Since the purpose of the statute is to broaden venue provisions, "if a statute defining a criminal offense has its own venue provisions, which are broader than the venue provisions of § 3237(a), the venue provisions of the specific statute are applicable."[4] A

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1. U.S. Const. art. III, § 2; U.S. Const. amend. VI. See United States v. Johnson, 323 U.S. 273, 275 (1944); Haas v. Henkel, 216 U.S. 462, 473 (1910) "The right secured by Art. III, § 2 of, and the Sixth Amendment to, the Constitution is the right of trial in the district where the crime shall have been committed." Fed. R. Crim. P. 18 provides for prosecution in both the district and division where the alleged offense was committed.

2. United States v. Cores, 356 U.S. 405 (1958). Venue under the Federal Constitution is viewed as a personal right to the defendant and may be waived. Levine v. U.S., 182 F.2d 556, 558-59 (8th Cir. 1950), **cert. denied,** 340 U.S. 921 (1951). **Contra,** United States v. Bink, 74 F. Supp. 603, 609 (D. Ore. 1947). See also United States v. Bryson, 16 F.R.D. 431, 434 (N.D. Cal. 1954) where request for transfer under Fed. R. Crim. P. 21(b) was held a waiver of venue.

3. 62 Stat. 826 (1948), 18 U.S.C. § 3237(a) 1958. Fed. R. Crim. P. 18-22 provide rules for transferring venue. Rule 21(b) allows transfer to another district only when offense was partially committed in the transferee district.

> "The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

For an interesting analysis of Fed. R. Crim. P. 21(b) see Orfield, **Transfer of Federal Offenses Committed in More than One District or Division,** 51 Mich. L. Rev. 31 (1952).

4. United States v. Bushwick Mills, Inc., 165 F.2d 198 (2nd Cir. 1948). See Annot., 5 L. Ed. 2d 973, 974 (1961).

recent decision held that the broad provisions of the multiple-venue statute supersede the narrower venue provisions within a criminal statute.[5]

All crimes against the federal government are statutory crimes.[6] In the absence of specific venue provisions the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it, and thus proper venue.[7] For a single offense which occurs clearly and distinctly in only one district there is no problem of determining venue. But in those cases where more than one district is involved, as where the crime is alleged to have begun in one district and completed in another, the construction of the criminal statute to determine what the offense is and where it was committed is vital for the proper laying of venue.

The scope of this article will be limited to a discussion and analysis of cases involving offenses allegedly begun in one district and completed in another. The second section will discuss venue analysis for the offense of filing a false non-communist affidavit in violation of the Taft-Hartley Act. The third section will include general venue determination in analogous false filing cases.

II. FILING OF FALSE STATEMENTS IN VIOLATION OF TAFT-HARTLEY ACT

A. General Background and Theories

The filing of false statements with a governmental department or agency presents one of the most problematic areas of venue determination. Section 1001 of Title 18, United States Code, provides that it is a criminal offense to "make or use" any false statement in any matter "within the jurisdiction" of a governmental agency.[8] To determine venue it is necess to decide whether the filing of a false statement is a sii

5. United States v. Olen, 183 F. Supp. 212 (S.D.N.Y. 1960).

6. There is no such thing as a common law crime which is recognized by the federal courts, although the common law of crimes can be looked to for definition.

7. United States v. Anderson, 328 U.S. 699, 703 (1946).

8. 62 Stat. 749 (1948), 18 U.S.C. § 1001 (1958) states:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements . . . or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, . . . shall be fined . . . or imprisoned. . . ."

act, a continuing act or an offense which may be separated into distinct parts. Although venue is controlled by *where* the offense is committed, there is a split of authority on the question of *what* is the offense under the provisions of Section 1001.

According to one view, the technical act of filing the fraudulent statement is a condition precedent to the commission of the offense since only upon filing is there "any matter *within the jurisdiction* of any department or agency" of the government.[9] All other acts leading to this filing, including the execution and mailing of the statement, are outside the jurisdiction of the governmental agency. Thus proper venue in such cases is only in the district of filing.

A second view would recognize that the offense must have a beginning and that the single act of filing is not the only element of the offense.[10] By application of the continuing offense statute these decisions hold that venue is proper either in the district of preparation, where the statement is executed and mailed, or in the district where the statement is filed with the government agency.

B. Travis v. United States

In *Travis v. United States*,[11] the Supreme Court has taken a clearly restrictive stand on the make-file issue. The Court held that the proper district for prosecution of a violation of the Taft-Hartley Act[12]—which made filing of non-communist affidavits by labor union officers a prerequisite to the use of the National Labor Relations Board—was the district of filing, and not the district where the acts of preparation occurred.

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9. United States v. Valenti, 207 F.2d 242 (3rd Cir. 1953); United States v. Lefkoff, 113 F. Supp. 551 (E.D. Tenn. 1953); United States v. Borow, 101 F. Supp. 211 (D.N.J. 1951).

10. Henslee v. United States, 262 F.2d 750 (5th Cir.), **cert. denied,** 359 U.S. 984 (1959); De Rosier v. United States, 218 F.2d 420 (5th Cir.), **cert. denied,** 349 U.S. 921 (1955); Bridgeman v. United States, 140 Fed. 577 (9th Cir. 1905).

11. 364 U.S. 358 (1961).

12. Labor Management Relations Act (Taft-Hartley Act) § 9(h), 61 Stat. 146 (1947), 29 U.S.C. § 159(h) (1951):

> "No investigation shall be made by the Board of any question . . . raised by a labor organization . . . **unless there is on file with the Board an affidavit** executed . . . by each officer of such labor organization . . . that he is not a member of the Communist Party or affiliated with such party . . . ." (Emphasis added.)

This section goes on to state that § 35(a) of the Criminal Code (now covered by 18 U.S.C. § 1001) **shall be applicable in respect to such affidavits.** (Emphasis added.)

The circuit court in the *Travis* case[13] held that venue was properly laid in Colorado under the continuing offense statute; and that venue could not be attacked on the theory that the making or using of the affidavit was completed in Colorado prior to the time when the matter came within the jurisdiction of any department or agency of the United States.

The Supreme Court in reversing this decision construed the provision of the Taft-Hartley Act as controlling when the matter came within the jurisdiction of an agency of the government. They held since filing was a condition precedent to the use of the Board's procedures, it must also be a condition precedent before there is a matter within the jurisdiction of a government agency within the meaning of the false statement statute.

The *Travis* ruling was based on *United States v. Valenti*,[14] which reversed the conviction of a union leader for filing a false non-communist affidavit with the NLRB on the ground that the offense was committed only in the district of filing. In reaching this conclusion the *Valenti* court relied on *Lombardo v. United States*.[15] This case determined that venue for a willful *failure* to file a statement required by statute could only be laid in the district where the statement was to be filed. It appears that the theory of the *Lombardo* case should not be controlling in either the *Valenti* or *Travis* rulings, since the charge in these cases is not based on the *failure* or omission to perform a duty, but on the affirmative acts of executing and mailing.[16]

In dissenting to the *Travis* holding Mr. Justice Harlan considered separately the statutes involved to determine the nature of the offense. The offense charged was the making and filing of a false affidavit under the terms of the false statement statute,[17] which the Taft-Hartley Act applied in

13. Travis v. United States, 247 F.2d 130, (10th Cir. 1957).

14. 207 F.2d 242 (3rd Cir. 1953).

15. Lombardo v. United States, 241 U.S. 73 (1916). Involved in this case was the failure to file with the Commissioner of Immigration certain information concerning an alien woman whom the defendant was harboring for purposes of prostitution. In reply to the argument that venue could be placed in the district where the defendant failed to mail the statement, the Court held that the offense was not a continuing one which was justiciable in either district since the act of mailing was not filing within the meaning of the statute.

16. Travis v. United States, 364 U.S. 631, 639 (1961) (Harlan, J., dissenting).

17. 62 Stat. 749 (1948), 18 U.S.C. § 1001 (1958). **Supra** note 8.

respect to the affidavits filed.[18] The elements of the crime then should be interpreted in accordance with the false filing statute and all that section 9(h) of the Taft-Hartley Act does is supply the "jurisdiction of . . . (an) agency of the United States" required by this statute.[19] The fact that the act of filing was necessary to complete the offense by bringing the matter within the jurisdiction of the Board would not "detract from the conclusion that the offense was begun when and where the affidavit was executed. Indeed this would seem to be the very type of situation contemplated by . . . (the continuing offense statute)."[20]

It is important to note that in the cases decided since *Valenti,* regarding the application of section 1001 to the Taft-Hartley Act, not one decision followed the conclusion as to venue laid down in that case, with the exception of the instant *Travis* case.[21] Indeed in analogous cases the courts have largely ignored this ruling and distinguished it when possible.[22]

With the reaffirmation by the *Travis* case of the *Valenti* ruling, it is submitted that both at the local and national levels, potential future injustice may result since venue may only be laid in the district of filing. The defendant now is required to defend himself in the foreign district where the filing was done. The government may not initiate the proceeding in the

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18. 61 Stat. 146 (1947), 29 U.S.C. § 159(h) (1951). **Supra** note 12.

19. Travis v. United States, 364 U.S. 631, 641 (1961) (Harlan, J., dissenting). As stated in summary of this reasoning:

> ". . . since it is 18 U.S.C. § 1001, 18 U.S.C.A. § 1001 which defines the offense, § 9(h) only supplying the requisite jurisdiction of the agency of the United States, and since by § 1001 the offense consists of **falsifying** a material fact, **making** a false statement, or **making** or using any false writing or document, it seems eminently reasonable to consider that the offense is at least definitively begun at the place where the false affidavit is actually made, sworn and subscribed."

Note that the dissent did not distinguish the act of mailing as a possible element of the offense, and apparently took the stand that the acts of making and swearing to the affidavit alone are a sufficient beginning of the offense to warrant application of the multiple-venue statute.

20. Travis v. United States, 364 U.S. 631, 641 (1961) (Harlan, J., dissenting).

21. This conclusion is weakened by the fact that only two cases took issue with the question of venue in a violation of § 9(h). A careful distinction must be made between those cases dealing with a filing at one of the branch offices of the Board in the case of local union officers, and for a filing in Washington, D.C. where the headquarters of the National Labor Relations Board are located in the case of officers of international unions. Only the latter type case is involved here. The two cases are: United States v. Bryson, 16 F.R.D. 450 (N.D. Cal. 1953) and Travis v. United States, 247 F.2d 130 (10th Cir. 1957).

22. See De Rosier v. United States, 218 F.2d 420, 422 (5th Cir.), **cert. denied,** 349 U.S. 921 (1955); United States v. Dolan, 119 F. Supp. 309, 310 (E.D.N.Y. 1954).

district of execution, and the defendant may not have the proceeding transferred to that district.

C. Prosecution in the District of Mailing Under the Continuing Offense Statute

Although mailing is not itself an offense which will support venue, many cases have construed the act of knowingly mailing a false statement to be filed with a governmental agency as an affirmative beginning of events which would naturally culminate in the commission of an offense.[23] These cases allow prosecution of the offense in the mailing district under the continuing offense statute[24] since the offense was construed to have begun in that district. It is immaterial that the offense is not completed until filing.

The Supreme Court in *Travis* expressly rejected prosecution in the district of mailing. The Court said: "Venue should not be made to depend on the chance use of the mails, when Congress has so carefully indicated the *locus* of the crime."[25] However, in *De Rosier v. United States*,[26] the court stated that the commission of the offense must be viewed in retrospect. Thus, even though filing is necessary to complete the offense the false statement should be traced back to its source where the acts of executing and mailing took place.

In holding that venue could not be laid in the district of mailing the *Travis* court relied on the dictum of the *Valenti* case which implied that venue was improper in the district of mailing. It is believed that a distinction can be made between the *Valenti* case and the instant *Travis* case. The *Valenti* indictment did not allege that the affidavit had been mailed from the district of prosecution and such allegation was necessary to bring the offense within the purview of the continuing offense statute. Although the two-judge majority stated that even a presumption of mailing would be insufficient for determining venue,[27] one judge considered the act of mailing as sufficient under section 3237(a).[28] He concurred with the

23. Henslee v. United States, 262 F.2d 750 (5th Cir. 1959); United States v. Miller, 246 F.2d 486 (2d Cir.), **cert. denied,** 355 U.S. 905 (1957); De Rosier v. United States, 218 F.2d 420 (5th Cir.), **cert. denied,** 349 U. S. 921 (1955).

24. **Supra** note 3.

25. 364 U.S. 631, 636 (1961).

26. 218 F.2d 420, 422 (5th Cir. 1955).

27. United States v. Valenti, 207 F.2d 242, 245 (3d Cir. 1953).

28. **Id.** at 246. (Hastie, J., Concurring).

majority's reversal of the conviction only on the ground that the Government failed to prove the fact of mailing.[29] The concurring judge has then created a *locus poenitentiae* during the time of preparation when the actor has not decisively committed himself and thus would be guilty of no offense. But upon deposit of the affidavit in the mails the affiant has begun the offense which is clearly within the purview of the continuing offense statute. Thus venue could be laid in the district of mailing, as well as the district of filing.

It is submitted that to supersede the multiple-venue statute Congress must expressly (and not impliedly or indirectly) provide for venue of a particular offense. When an offense in any way results, is committed or completed by use of the mails, venue may be laid either in the district of mailing (where most generally the preparatory acts took place and also which is the district of residence for the defendant) or in the district of filing.

III. PROSECUTION IN ANALOGOUS FALSE FILING CASES

Venue for false filing cannot be laid in a district where the defendant prepared the statement and subsequently delivered it personally to the foreign district for filing.[30] It also appears that the district wherein the defendant merely omits to prepare a statement required by law will not support venue.[31] This latter conclusion was recently contravened and venue was held to be the district where the defendant resided. The court reasoned that the offense of failure to file continues where the defendant is personally present.[32]

In cases where there has been a mailing of illicit matter to a foreign district, the decisions are unsettled whether prose-

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29. See Note, **Federal Venue Requirements and Prosecutions for False Filing,** 63 Yale L.J. 426, 427 (1954) (criticism of Valenti decision).

30. Reass v. United States, 99 F.2d 752 (4th Cir. 1938); United States v. Borow, 101 F. Supp. 211 (D.N.J. 1951).

31. United States v. Lombardo, 241 U.S. 73 (1916); New York Central & H.R.R. Co. v. United States, 166 Fed. 267 (2d Cir. 1908). This rule has been extended to violations of the Selective Training and Service Act. Johnston v. United States, 351 U.S. 215 (1956); Jones v. Pescor, 169 F.2d 853 (8th Cir. 1948).

32. United States v. Valenti, 120 F. Supp. 76 (E.D.N.Y. 1954). In applying § 3237(a) the district judge stated:

> "Failure to make application being negative in nature, it is difficult to ascertain its beginning or completion. However, for present purposes it is reasonable to say that it continues where the defendant is personally present and where he resides so long as the application is not made."

cution can be had in the mailing district. Venue for violation of the Mail Fraud Statute[33] was restricted by an early ruling that only the act of depositing the matter was an offense.[34] More recent decisions have allowed prosecution either in the district of deposit or delivery on the basis of the multiple-venue statute.[35]

In an analogous situation, the Supreme Court in *United States v. Johnson*[36] construed the Federal Denture Act as making the offense the act of depositing the dentures. Congress reacted by broadening the provisions of 18 U.S.C. § 3237(a) to allow prosecution either in the district of deposit or delivery.[37] It appears from the instant *Travis* case and a number of other decisions that the courts have evaded the implied intent and import of the Congressional attack on the *Johnson* decision.[38] A large number of cases do apparently recognize this liberal intent and have adopted it when applying section 3237(a) to filing offenses involving the use of the mails.[39]

In a recent series of cases involving violations of the Securities Exchange Act,[40] section 3237(a) was liberally interpreted. In one decision it was held that even though the rules designated the place for filing, this would not preclude prosecu-

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33. 62 Stat. 763 (1948), 18 U.S.C. § 1341 (1958).

34. United States v. Sauer, 88 Fed. 249 (W.D. Mich. 1898). See, **e.g.,** Horner v. United States, 143 U.S. 207 (1892); United States v. Conrad, 59 Fed. 458 (D.W.Va. 1894); United States v. Comerford, 25 Fed. 902 (W.D. Tex. 1885).

35. Kreuter v. United States, 218 F.2d 532 (5th Cir.), **cert. denied,** 349 U.S. 932 (1955). See, **e.g.,** Palliser v. United States, 136 U.S. 257 (1890); Andre v. United States, 16 F.2d 776 (5th Cir. 1827).

36. 323 U.S. 273 (1944).

37. 62 Stat. 826 (1948), 18 U.S.C. § 3237(a) (1958). Congress added the provision that:

> "Any offense involving the use of the mails, . . . is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matter moves."

The revision notes to this section state:

> "The revised section removes all doubt as to the venue of continuing offenses and makes unnecessary special venue provisions except in cases where Congress desires to restrict the prosecution of offenses to particular districts . . . ." 80th Congress, House Report No. 304.

38. Travis v. United States, 364 U.S. 631 (1961); United States v. Valenti, 207 F.2d 242 (3d Cir. 1953); United States v. Ross, 205 F.2d 619 (10th Cir. 1953); United States v. Lefkoff, 113 F. Supp. 551 (E.D. Tenn. 1953), this decision in effect being reversed by United States v. United States District Court, 209 F.2d 575 (6th Cir. 1954).

39. United States v. Pope, 189 F. Supp. 12 (S.D.N.Y. 1960); Henslee v. United States, 262 F.2d 750 (5th Cir. 1959); United States v. Miller, 246 F.2d 486 (2d Cir.), **cert. denied,** 355 U.S. 905 (1957); De Rosier v. United States, 218 F.2d 420 (5th Cir.), **cert. denied,** 349 U.S. 921 (1955).

40. See 15 U.S.C. ch. 2B (1958).

tion in the district of preparation since an equally important element along with filing is the ingredient of falsity.[41] *United States v. Olen*[42] held that a special venue provision in the Securities Act allowing prosecution either in the district of transmission or in the district of receipt did not restrict venue. The court may allow a transfer under Rule 21(b) and section 3237(a) to a third district which is the defendant's district of residence wherein the books of the corporation were maintained, and which was the place of inception of the alleged false information. This rule applied even though neither the specified act of transmission nor receipt took place in the transferee district. It appears here the court bent over backwards to construe the offense as having begun in the resident district to allow transfer under Rule 21(b), and thus to avoid the auxiliary venue provisions in the Act itself. This is an interesting if not useful judicial interpretation which allows a general venue statute to supersede the specific venue provisions within a criminal statute. The fate of this ruling awaits future litigation.

The mailing of false income tax returns for filing in a foreign district raises a problem of venue determination due to the lack of any specific venue provision in the income tax law.[43] A failure to file an income tax return may only be prosecuted in the district where the return was to be filed and not where it could have been prepared or forwarded for filing.[44] Several cases have avoided this rule by construing the indictment as not charging the failure to pay the tax, but instead charging the attempt to evade and defeat the payment of the tax.[45] Venue is then in the district where the acts transpire which cause the tax to be incurred.

In *United States v. Lefkoff*[46] the court, located in the district of preparation and mailing, refused to accept a transfer of the case under Rule 21(b) from the court in the district of

41. United States v. Pope, 189 F. Supp. 12 (S.D.N.Y. 1960).

42. 183 F. Supp. 212 (S.D.N.Y. 1960). See United States v. Cashin, 281 F.2d 669 (2d Cir. 1960).

43. 68A Stat. 851 (1954), 26 U.S.C. 7201 (1958) provides:
"Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or payment thereof shall, . . . be guilty of a felony. . . ."

44. United States v. Yarborough, 16 F.R.D. 212 (D. Md. 1954).

45. Beach v. United States, 240 F.2d 888 (D.C. Cir. 1957); Reynolds v. United States, 225 F.2d 123 (5th Cir.), **cert. denied,** 350 U.S. 914 (1955), **reh. denied,** 350 U.S. 929 (1956).

46. 113 F. Supp. 551 (E.D. Tenn. 1953).

filing. In a subsequent application for mandamus to compel the court to accept the transfer of the case, the Sixth Circuit Court granted this relief and deemed the offense to have been committed in both districts.[47] This decision has been used extensively as authority for allowing prosecution in the district of preparation under 18 U.S.C. § 3237(a).[48]

Probably because of the split of authority that followed the *Lefkoff* decision,[49] Congress enacted an amendment to 18 U.S.C.§ 3237 in 1958 which guaranteed to a tax evader the right of election to be prosecuted in the district of his residence.[50] In the first decision to apply the amendment a motion to transfer under the statute was denied due to a technical question of delay in making the motion.[51] The court expressly gave leave to the defendant to renew a motion to transfer under Rule 21(b) if a bill of particulars was furnished by the government showing that offenses were committed in the resident district.[52]

The court in the Fifth Circuit held recently that an indictment may initially be brought in the defendant's home district wherein the fraudulent preparation and mailing took place,

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47. United States v. United States District Court, 209 F.2d 575 (6th Cir. 1954). The dissenting judge contended that 18 U.S.C. § 3237(a) would not apply since it provides only for the institution and not removal of proceedings in a district where the offense was begun, and that removal proceedings under Rule 21(b) are "dependent upon the offense being committed in both districts."

48. Kowalsky v. United States, 290 F.2d 161 (5th Cir.), **cert. denied,** 368 U.S. 875 (1961); Ashe v. United States, 288 F.2d 725 (6th Cir. 1961); Beaty v. United States, 213 F.2d 712 (4th Cir. 1954), **vacated per curiam,** 348 U.S. 905, **cert. denied,** 349 U.S. 946, **reh. denied,** 350 U.S. 855 (1955).

49. **Compare** United States v. Aaron, 117 F. Supp. 952 (N.D. W. Va. 1953); United States v. Wyman, 125 F. Supp. 276 (W.D. Mo. 1954); United States v. Warring, 121 F. Supp. 546 (D. Md. 1954); **with** United States v. Gross, 276 F.2d 816 (2d Cir.), **cert. denied,** 363 U.S. 831 (1960); United States v. Hoover, 233 F.2d 870 (3d Cir.), **cert. denied,** 352 U.S. 840 (1956); United States v. Albanese, 117 F. Supp. 736 (S.D.N.Y. 1954), **aff'd,** 224 F.2d 879 (2d Cir.), **cert. denied,** 350 U.S. 845 (1955).

50. 62 Stat. 826 (1958) 18 U.S.C. § 3237(b) (1958). The statute provides in part:

> "... where an offense involves use of the mails and is an offense ... and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion ... elect to be tried in the district in which he was residing at the time the alleged offense was committed. Provided, that the motion is filed within twenty days after arraignment of the defendant upon indictment or information."

51. United States v. Abrams, 166 F. Supp. 509 (S.D.N.Y. 1958), **appeal dismissed,** 260 F.2d 892 (2nd Cir. 1958). Court denied motion to transfer under the new amendment since thirty-five days rather than the twenty days had elapsed after arraignment. The Court rejected defendant's excuse that where the arraignment occurred prior to the effective date of the statute, the motion, as filed here, should be filed within twenty days of the statute's effective date.

52. **Compare** United States v. Abrams, **supra** note 51, **with** United States v. Aaron, 117 F. Supp. 952 (N.D. W. Va. 1953) which would appear opposite to the strict interpretation given the tax evasion offense by the latter court. See United States v. Kimble, 186 F. Supp. 616 (S.D.N.Y. 1960).

notwithstanding the fact that the return was filed in a foreign district.[53] A similar conclusion was also reached in the Sixth Circuit when it supported a transfer under Federal Rule 21(b) from the district of filing to the district of preparation.[54] The indictment in this case had been supplemented by a bill of particulars which showed where the tax returns were signed, and where the acts relied upon to show fraudulent intent had been committed. The court held that even when the indictment charges the filing of a fraudulent income tax which is an offense only in the district of filing, it does not preclude a transfer under Rule 21(b) to the district of preparation when a subsequent bill of particulars is filed. These two latest venue decisions appear to be a conclusive answer to any objection against prosecution in the district of preparation and mailing when the defendant through inadvertant delay fails to make a proper motion for transfer to his district of residence under section 3237(b).

IV. CONCLUSION

In the absence of special venue provisions for false filing offenses, it would seem from the *Travis* rule that both parties are denied the choice of litigating in the district of preparation and mailing. Restricting prosecution to the district of filing on the basis of technical completion of the offense in that district appears to impose an unnecessary limitation on both the Government and the defendant. Since the filing district is usually different and may be at great distance from the defendant's district of preparation and mailing, it is doubtful that the Congressional intent was to compel the defendant to defend himself, often at great expense and inconvenience, in the foreign district of filing.[55] Indeed, the drafters of the Constitution sought to guarantee a trial in the defendant's home area close to his evidence and friends. A denial of such right would appear to be in conflict with these constitutional provisions.[56]

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53. Kowalsky v. United States, 290 F.2d 161 (5th Cir.), **cert. denied,** 368 U.S. 875 (1961).

54. Ashe v. United States, 288 F.2d 725 (6th Cir. 1961).

55. See Note, 63 Yale L.J. 426, 429 (1954), which points out that there are twenty states that have fewer tax districts than judicial districts. (North Dakota is not in this group). Other examples may be seen where there is one governmental agency designed to serve a large geographical area. This area often extends into several states as well as several judicial districts. In these situations difficulty may arise by required prosecu-

In view of the Congressional attack on the restrictive holding of the Supreme Court in *United States v. Johnson*, [57] and the Congressional reaction to the conflict between the courts as to the venue of the offense of filing false income tax returns,[58] it would seem that the Supreme Court has taken a backward step in the *Travis* ruling.

Because of the decisions of many lower courts allowing prosecution in either the district of mailing or filing under the multiple-venue statute, it is believed that the scope of the *Travis* ruling will be limited to cases involving false affidavits required to be filed as a condition precedent to the use of the services of some governmental agency. This narrow application of the *Travis* decision can be justified on the basis of the unique wording in the Taft-Hartley Act making filing a condition precedent to the use of the facilities of the Labor Relations Board. Since the Supreme Court narrowly construed this to require a filing before there was a matter within the jurisdiction of a government agency, it is submitted that future false filing cases can be distinguished on this basis.

However, if *Travis* is widely followed, Congress again will have to modify section 3237 to specifically allow prosecution either in the district of preparation and mailing or in the district of filing.

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tion in the district of filing rather than in the district of preparation and mailing. This often will necessitate great expense to transport lawyers, witnesses, records and other evidence to the foreign district of filing. See United States v. White, 95 F. Supp. 544 (D. Neb. 1950).

56. See United States v. Parker, 19 F. Supp. 450 (D.N.J. 1937), **aff'd**, 103 F.2d 857 (3d Cir.), **cert. denied**, 307 U.S. 642 (1939).

57. **Supra** note 36.

58. **Supra** note 50.