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JURISDICTION IN HIGH SEAS CRIMINAL CASES — PART I

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THE title to this article could well be the question — “Where, for the past year and a half, could a common law crime, even murder, go unpunished in any court of law?” The answer, as given by a ruling of one of our Federal Courts, would appear to be — “On a U.S. commercial airliner flying over the high seas. . . .” The only U.S. case in point, and therefore the leading one on this subject, is the unfortunate decision in the U.S. District Court (Eastern District of New York), on March 17, 1950, *U.S. v. Cordova and Santano* (89 F. Supp. 298). It was held that the Federal courts are without jurisdiction to punish the crime of assault and battery, committed by two Puerto Rican passengers against the pilot and the stewardess, while a plane was flying from Puerto Rico to New York.

It is problematical whether that decision would or should stand up, if another similar but better argued and considered case should come to trial today, *ie.* even before the rectifying Congressional action recommended by the court is taken. Four Bills¹ have been introduced in Congress to plug this gap in the law, and, at the same time of writing this article all four appear to be still pending in the respective Judiciary Committees. All have the identical purpose of adding a new subsection (5) to section 7 of title 18, U.S. Code. The purpose, in the McCarran bill, is stated “to confer Federal jurisdiction to prosecute certain common-law crimes of violence when such crimes are committed on an American airplane in flight over the high seas or over waters within the admiralty and maritime jurisdiction of the United States.”

Even if the rectifying legislation should be enacted before this article is published, the situation into which, for the past year and a

¹ H.R. 2739 on Feb. 19, 1951 (Mr. Celler); H.R. 2985 on Feb. 28, 1951 (Mr. Keating); and two identical bills S. 2149 on Sept. 20, 1951 (Senator McCarran) and H.R. 5547 on Oct. 1, 1951 (Mr. Celler). See also Note 13.

half, the *Cordova* case has cast our American idea of justice, is so unenviable, that it is felt desirable to submit that opinion to a minute critical examination. It is further desired to express the belief that (a) it should never have been decided as it was,² and (b) that since it was so decided, its effect should have been nullified, if possible, by an immediate appeal, which should have been, but was not, taken by the local district attorney. In all justice to the Court, it should be mentioned that the Court itself, in its opinion, recommended the quick form of appeal now available in such Federal cases where the U.S. is a party. The justice department not only failed to appeal, but apparently also delayed rather long in pressing the introduction of corrective legislation.

As will be pointed out later, in spite of the suggestion in the opinion, there is no jurisdiction other than in the Federal courts to punish crimes of the type of the *Cordova* case. However, before elaborating thereon, it might be well to consider a few of the basic factors underlying the general questions of jurisdiction in the airspace, in both International Law and Domestic Law.

STATUS OF AIRSPACE IN INTERNATIONAL LAW

While among scholars of International Law there have been very strong advocates, and a few still remain — of a right of unlimited freedom of navigation of the entire airspace — regardless of location, a contrary view, recognizing national sovereignty in definite areas, has now generally crystallized as International Law. The latter view has been made the basic concept in practically all aviation treaties and multiple agreements, and two general rules prevail, *i.e.*, First, the airspace follows the legal status — metropolitan, colonial, or territorial waters — of the land or water area of the sovereign state below it; SECOND, the airspace over the HIGH SEAS, or such "no-man's land" area — as exists in the Arctic and Antarctic, is free to all. Within the free air, all sovereign nations have equal RIGHTS and DUTIES.

Aircraft, both public and private, in the free airspace, are subject solely to the jurisdiction of its national sovereign. Whether this jurisdiction is governed by the flag it flies, the state of incorporation of the operating company, or the citizenship of its actual owners, is a matter for each sovereign to decide. The policy of the United States has been, in the case of merchant ships, to look behind the corporate identity, when its citizens clearly seek to evade U.S. laws and obligations, by incorporating abroad. The policy would be, in all probability the same in cases of aircraft engaged in International trade.

While the status of merchant ships and aircraft parallel each other in most respects in International Law, there are, however, a few points where they are treated differently. One important departure occurs within the purview of our subject, *i.e.*, their relative status while with-

² See for disagreement with this viewpoint, J. C. Cooper, 37 American Bar Association Journal (April 1951) p. 257.

in a territorial coastal belt. Their difference of treatment is primarily historical. Under International Law a foreign merchantman has a "right of innocent passage" through a coastal belt. Under this right it can pass through the belt at any time it pleases, so long as certain specific statutes which effect the peace, dignity, or tranquility of the adjacent state are not violated (smuggling, piracy, sanitation, blockade in time of war, etc.). But this "right of innocent passage" DOES NOT APPLY TO A FOREIGN AIRPLANE flying over the coastal belt. Prior approval, either by treaty or by individual special permission, is necessary before a foreign plane may enter the coastal belt, in the same manner as for an entry over the land area. Exceptions would appear to be made in case of distress or other urgent humanitarian reasons. By this new concept, the sovereignty of the adjacent nation is complete in the airspace over the coastal belt, while it is "limited" on the water surface area thereof. It would appear to follow that, in the absence of treaty, a crime committed on board a foreign aircraft, while it flies above the coastal belt, would be within the jurisdiction of the adjacent nation, regardless of whether the plane on that flight touches on an airfield of that nation, or whether the plane merely passes over the coastal belt on its way to a third nation. In the latter situation, on a merchant ship, the adjacent sovereign would not have jurisdiction of any crime which does not intimately affect it.

There are two other aspects of International Law which require extended comment in this connection. In both of these, it is most regrettable that we, in the United States, who from the time of our founding fathers, have prided ourselves on being leaders in the field of legal justice, and of freedom of the seas have now placed ourselves in a most unfortunate and reprehensible position. The first of these relates to the status of an aggrieved foreigner on a U.S plane in flight over the high seas. The other is the effect, on airspace rights, in areas over the entire continental shelf, far out to sea beyond the three mile belt, as a result of a series of recent claim "grabs," by many nations. In this movement, large newly defined areas, called "Territorial Seas" as distinguished from the hitherto known "Maritime Belt" or "Territorial Waters," have come into being. Even though a few such claims existed in the past, our government, by two proclamations,³ one claiming the ocean bed and subsoil of the entire continental shelf, and the other the fishing rights therein, was a leader in a mad scramble for claims, and has set a most unfortunate example.⁴ Both of the above mentioned matters will be further elaborated at appropriate points in connection with the analysis of the *Cordova* case.

³ Proclamations Nos. 2667 and 2668 and Executive Order No. 9633, all three on September 28, 1945, 10 Federal Register pp. 12303, 4, and 5.

⁴ "Recent Developments with respect to the Continental Shelf," by R. Young, Vol. 42 (1948) Am. Journ. I.L. p. 849, "The Legal Status of Submarine Areas Beneath the High Seas." Young, *ibid.* Vol. 45, p. 225. Other recent articles and notes and many references to comments, at home and abroad, all contained in Amer. Journ. I.L., Vol. 45 (1951), pp. 177, 240, 338; *ibid.* Vol. 48 (1950) pp. 553, 670, 780, 849; *ibid.* Vol. 40 (1946) pp. 53, 173.

SOURCES OF FEDERAL JURISDICTION

When the airplane became sufficiently economic in character to require governmental supervision in the United States, the States took the lead in regulation, starting with Massachusetts in 1911. The State regulatory movement was carried forward until in 1922 the "Uniform State Aeronautic Act" was promulgated. By 1926 most states had some form of Safety Regulations. Between July 23, 1920 and 1923 some twenty-four bills were introduced, without success, in Congress,⁵ to regulate air mail or air commerce or both.

During this period, spirited debate took place in Congress, within the American Bar Association, and amongst law review writers,⁶ regarding the proper source of constitutional power for federal air regulation. Some argued that a new constitutional amendment was necessary. Some proposed to use the indirect vehicle of the treaty making power of Article II Section 2 of the Constitution (*i.e.*, U.S. conclude air treaties, and Congress legislate to enforce them). A third group urged the use of the Interstate and Foreign commerce clause. The main argument used against that clause was that it appeared to leave intrastate air navigation in the hands of the states, whose multiplying and diversified laws were then causing confusion. To overcome this objection, a fourth group fought for the use of the Admiralty clause, and emphasized the close characteristic similarity between the airship and the surface vessel, in construction, management, navigation and economic problems. Still others claimed Congress had adequate power under the provisions for Public Safety, Common Defense, and General Welfare clauses of the Constitution. It is interesting to note that, of the 24 unsuccessful bills introduced between 1920 and 1923, it appears that only four early ones lack mention of Constitutional authority, seven emphasize the Admiralty clause, six the Commerce clause, five the Treaty Power, three General Welfare, three Public Safety, and one Common Defense. The basis of authority ultimately chosen takes on importance solely to indicate the general scope of control, by analogy to those regulations already existing in the selected field.

While Congress did not pass a general law until the Air Mail Act of 1925 and the Air Commerce Act of 1926, it must not be presumed that the Federal Government was inactive in the aeronautic field until this time. In 1898 an appropriation of \$50,000 was made to the War Department for aviation purposes. Starting in 1910 steps were taken to foster air mail. In 1915 a very important research and development board, "The National Committee for Aeronautics" was set up by Act of Congress. When, in 1917, the Post Office Bill set aside \$50,000 for air mail service, the Federal Government, through postal contracts, started exercising a material degree of control over the flight activities of those commercial planes which carried the mail. This indirect con-

⁵ Rhyne, "The Civil Aeronautic Act, Annotated."

⁶ Zollman, "Admiralty Jurisdiction in Air Law," 23 *Marquette Law Review* 112.

trol affected practically all the large air lines, since all needed the Government aid to exist.

With the first overall federal regulatory statute, the Air Commerce Act of 1926, jurisdictional emphasis was predominantly the Commerce Clause. This basis it now appears was well founded for several reasons. The major portion of the activities of the airlines is commercial in nature. Congress had as a guide a set of generally acceptable statutes in the prior Interstate Commerce Acts. The administrative management of the Interstate Commerce Commission had been very exemplary, and Congress appeared to feel that it could safely trust the management of the new aviation industry to the I.C.C. pattern. On the whole this faith of Congress was well placed, for the administration of our aviation matters has been carried on ably, when compared with many other governmental agencies. The intervening years must surely have driven away the tears and fears of those who cried that State laws would wreck the industry. The only area of control now left to the states is that in which Congress, as interpreted by the Courts, has been silent. And when one now looks at the philosophy underlying the line of decisions starting with the *Shreveport* case (234 U.S. 342), and down through that of *U.S. v. Sullivan* (332 U.S. 698 (1948)), one finds very little left, other than the bar of an awakened public opinion, to prevent full control, by federal bureaucracy, of the economic life within every hamlet and farm, and on every airplane and airfield. Practically the entire area of commercial activity which has heretofore been cherished as *Intrastate*, has now been pronounced *Interstate*.

In the field of *Federal Criminal Law* all crimes are statutory. When our thirteen colonies achieved their independence, all of the unwritten laws of England, including the so-called "common law" crimes, became a part of the laws of each state. However, when the Constitution was adopted, a broad power to enact criminal laws was given to the federal government, but jurisdiction to punish the common law crimes, as such, did not become a part of the federal system until, and in such form as, specific Acts of Congress made them so. Federal courts must therefore look strictly to Congressional authority for jurisdiction in criminal matters. The crime of assault, in the *Cordova* case, is in this common law category.

U.S. v. CORDOVA AND SANTANO

In this case, a plane belonging to American owned Flying Tigers, Inc. and chartered by a California corporation, was making a flight from San Juan, Puerto Rico, to New York, on August 2nd, 1948, with sixty persons on board, seventeen of whom were children. Most of the passengers were Puerto Ricans and had been sent off by well-meaning friends and relatives after a convivial toasting with rum. Many of them, including Cordova and Santano, the principals, had brought several bottles of rum aboard with them in shopping bags which they took to their seats. Further drinking took place on board. After about one

and a half hours from take-off time, and while the plane was over the high seas, Cordova and Santano started to argue with one another. The stewardess tried to stop them, but was unsuccessful. Cordova and Santano retired to the rear of the plane to fight, followed by a large number of the passengers desirous of watching the fray. This made the plane so tail-heavy that the automatic instruments could not control it, and the plane started a rapid uncontrolled climb. The pilot quickly took over the manual control of the plane at this point, and was notified by the stewardess of the trouble between Cordova and Santano. Turning over controls to the co-pilot, the pilot went back, and tried, in his turn, to stop the fight. Santano quieted down, but Cordova attacked the pilot, and before he could be subdued, he bit the pilot on the shoulder, drawing blood. Cordova also struck the stewardess.

Cordova was locked up for the remainder of the trip. New York authorities were notified, and on arrival in New York, Cordova and Santano were arrested. The indictment against Santano was later dropped.

At the trial, the court decided it had jurisdiction to *hear* the case, and found the defendant guilty of the acts charged, but granted a motion for arrest of judgment of conviction, on the ground that there was no federal jurisdiction to *punish* those acts. The judge concluded that he "felt very strongly that the government should have the opportunity to review this decision" and called the "attention of the United States Attorney to the procedure followed in *U S v Flores, supra*, and also to the criminal appeals statute in its present form (18 U.S. Code, sec. 3731) . . . For what it may be worth, I certify that my decision turns on no issue of fact but merely the determination of a question of law, namely the construction of 18 U.S. Code, sec. 451 and sec. 455."⁷

The opinion emphasizes the fact that an "aircraft" is not a "vessel" within the meaning of Federal crimes committed on vessels. With this conclusion there is no quarrel. But the entire case thereafter proceeds

⁷ The 1940 version of Title 18 and Title 28 were in effect on August 2, 1948, the time of commission of the crime, so were considered as the basis for the case. On September 1, 1948 the revised Codes were made effective, and former section 451 is now 18 U.S.C. sec. 7, while former section 455 is now 18 U.S.C. sec. 113. The former VENUE statute considered in the case was 28 U.S.C. sec. 102 and it is now 18 U.S.C. sec. 3238. The changes in the revision are minor in nature, and, where significant, will hereafter be subjects of comment.

The pertinent parts of the Code considered by the court are:

"Title 18 U.S.C.A. sec. 451, reads in part:

"Places and waters applicable; on board American vessel on high seas or Great Lakes; on land under exclusive control of United States; Guano Islands. The crimes and offenses defined in this chapter shall be punished as herein prescribed:

"First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof."

"Title 18 U.S.C.A. sec. 455 (part of the same chapter) is entitled:

"Felonious assaults; to murder or rape; other felony; with weapons; beat-

on the erroneous assumption that there can be no punishable crime on the high seas, under Federal law as it exists today, *unless it be committed on a "vessel."*

The opinion (p. 300) says the acts complained of must meet one of two tests under 18 U.S.C. 451 in order to make operative the statute condemning striking, wounding and beating, and simple assault within the admiralty and maritime jurisdiction of the U.S.—*i.e.*

(1) Were those acts committed on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the U.S. and out of the jurisdiction of any particular State?

(2) Were those acts committed on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the U.S. and out of the jurisdiction of any particular state on board any vessel belonging in whole or in part to the U.S. or any citizen thereof or any corporation created by or under the laws of the U.S., or of any State, Territory, or District thereof?

The second question was answered first by the Court, and the answer was in the negative, by making it turn on the question of whether an airplane is a vessel within the meaning of the statute. Numerous cases were cited and discussed in support of this contention.⁸ This negative answer to Question 2 is now generally accepted as correct.

The opinion then (p. 302) returns to the first question which is also answered in the negative. And from this point on, the substance of almost every remaining material paragraph of the decision and the conclusions drawn from every case cited must be controverted. This will be done in detail.

The problem may be approached by a consideration of statutory construction of 18 U.S.C. sec. 451 (1940 Code) and 18 U.S.C. sec. 7 (present code). In this code there appear six classifications of physical areas upon which the "territorial" requirement for criminal jurisdiction may be used. Two significant changes in wording of the heading and of paragraph one were also made in the revised Code. The *Cordova* case being based on former Sec. 451, its wording will govern this analysis. And since the first three of the area situations will appear frequently in this article, they will be referred to as "Ground One," "Ground Two," etc. The heading and first paragraph of Sec. 451 has

ing; simple assault," and reads in part: "Whoever shall unlawfully strike, beat, or wound another, shall be fined not more than \$500, or imprisoned not more than six months or both. Whoever shall unlawfully assault another, shall be fined not more than \$300, or imprisoned not more than three months, or both."

"Title 28 U.S.C.A. sec. 102 is entitled:

"Offenses on the high seas," and reads: "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."

⁸ Reinhardt v. Newport Flying Service (1921 N.Y. 128 U.S.av.R. 4, 113 N.E. 371) Crawford Bros. No. 2 (1914, D.C.Wash), 215 Fed 269, 1928 U.S.Av. R 1); U.S. v. Northwest Air Service (9CCA) (1935) 80F (2d) 804; 1936 U.S. AvR. 148; McBoyle v. U.S. (1931) (283 U.S. 25) 1931 U.S. Av Ro 27); Noakes v. Imperial Airways (S.D. N.M. 1939) (28 F Supp. 412), 1939 U.S.Av.R 1).

already been set forth in footnote 7. The heading mentions the six grounds briefly, while paragraph One goes more in detail for Grounds one, two, and three.

Ground One —

“Places and waters applicable; * * * upon the High Seas.”

Ground Two —

“Places and waters applicable * * * on any of the waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.”

Ground Three —

Heading — includes “* * * on board American vessels on High Seas” — Then in paragraph one thereunder appears in part — “or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, on board any vessel,” etc.

Ground Four (in second paragraph—

“Upon any U.S. vessel on the Great Lakes.”

Ground Five — (in third paragraph) —

“On land under the exclusive control of the United States.”

Ground Six — (in fourth paragraph) —

“On certain designated Guano islands.”

The first three grounds are included in the self-same paragraph since they originated in the same statute, *i.e.*, the Basic Crimes Act of 1790. The other three grounds were added by subsequent statutes.

Our immediate inquiry should be directed to the meaning of the first three grounds. We surely must assume under principles of legislative interpretation that the drafters of the laws intended each of them to have a distinct meaning, each standing alone. And, furthermore, if the normal procedure was used in the draftsmanship of the law, we may also assume that they (the grounds) have been set forth in the direct order of their importance.

Ground One covers the maximum physical expanse, *i.e.* the three dimensional space of our world, outside of the land areas and their three mile territorial waters' belt. The phrase used is unrestricted in any way. It doesn't say “on the surface of the water,” or “under the surface of the ocean” or “air-space over the surface of the water.” All these and even the soil beneath the ocean floor are within its scope, down to the center of the earth. *Neither does it use the word “vessel.”* While the horizontal or shoreward limits of the high seas have been disputed and misunderstood by various sovereign nations and are even today unsettled, there have never been any adverse claims by any nation concerning vertical limits. Our founding Fathers must have also understood it that way.

Ground Two is next in the order of territorial scope. It covers the great expanse of water area commonly understood in the U.S. by the phrase “Inland Waters.” For most nations it consists of the maritime

belt (three nautical miles wide) off its shores plus its navigable inland waterways. On the authority of "*The Hine*" (1866, 4 Wall (71 U.S.) 555) and "*The Eagle*" (1868, 8 Wall (75 U.S.) 15), it may be claimed that Ground Four (the Great Lakes area) is actually covered, part by Ground One and part by Ground Two, and that the statutory declaration is needed only for clarification.

The word "upon" is used in the 1940 version of the code but is missing in the present section 7. Disregarding this word, it should again be noted that in Ground Two — as in Ground One — there is no vertical limitation of the area. All parts are included by implication, *i.e.* the surface of the water, the sub-surface water, the floor of the bed beneath, the soil below that bed, and *also the Airspace Above*, up to the sky. Here again the word "vessel" is omitted.

Ground Three is next in order. It has by clear definition a very limited special scope. It is limited to the space in and on a U.S. vessel. Let us not be deceived by one paradox which appears at this point. While Ground Three is, in a "space-expanse" sense, infinitesimal as compared with either One or Two, it so happens that, until recent years, the major part of all human activity in admiralty waters areas took place in or on a vessel floating on the water. In recognition of this fact, and in order to place a jurisdictional limitation on what property found at sea was to have U.S. character, it would seem that the statement of Ground Three is a desirable amplification of the wording of the prior grounds. These two factors also furnish an additional reason why Grounds One, Two and Three should be contained in the same paragraph in the Code. As a further result of the aforementioned paradox, it follows that, to date, practically all adjudicated cases have fallen under Ground Three. But this is a far cry from proving that if the crime does not happen to fall in field Three, it is impossible to find a jurisdictional basis in the much larger fields One or Two.

It is now well recognized and accepted law that an aircraft in flight is not "vessel." At one time it was thought that a hydroplane could be classed as a vessel — (Treasury Decision No. 36, 156 of Feb. 10, 1916, 1628 U.S. AvR. 85, which held that for importation purposes under the Tariff Act a hydroplane was a "vessel," but a land plane was not). But Mr. Justice Cardozo, in *Reinhardt v. Newport Flying Service Corp.* (1921) (N.Y.) (133 N.E. 371) ably convinced the legal profession that, while a hydroplane on the water might have certain attributes which brought it under Admiralty law, when it, or any other aircraft, was off the water, it was not a "vessel" within the meaning of the Maritime laws.

Hence it would now satisfactorily appear that jurisdiction for crimes committed on aircraft in flight over water is lacking, if sought only under Ground Three — but that ground does not exhaust the field from which our jurisdiction may be sought.

Returning now to Ground One, it may be stated that under the Law

of Nations all of the High Seas are free. Like all laws of freedom, the rights accorded are not unlimited, but are circumscribed by a few exceptions, such as those pertaining to piracy, slave trade, navigation rules, fishing rights, rules against floating mines, and certain rights and liabilities of belligerents and neutrals in war. Our nation fought two wars to establish this freedom, an undeclared Naval war of many engagements with France at the turn of the 19th Century, and the War of 1812 with England. This freedom is not limited in locality or scope to the exact surface of the sea, or to one inch, or one foot or one mile above or below the surface. It is free, on the surface, below the surface to the center of the earth, above the surface without visible limitation, except for the momentary right to occupy that small space through which an object is at that instant passing. And this right of momentary occupation is equally available to the body of a man on or in the water, a submarine under water, an aircraft above, as well as a surface vessel. It will also be available to any other contrivance which may be invented by man in the future and which is accepted by the civilized international society.

Today jurisdictional questions regarding rights and liabilities in the air space over land are affected by the ancient Roman maxim — "Cujus est solum ejus est usque ad coelum et ad inferos" meaning "He who owns the soil owns everything above and below, from heaven to hell." This principle has been relied upon by the common law to determine rights in sub-surface minerals, oils, etc. With the advent of aviation, it has taken on new significance. There has been a four-way tug-of-war regarding the right to control the airspace over land, *i.e.* (1) the private owner of the land beneath claiming under the maxim, (2) the State, and (3) the Federal Government, both seeking control, and (4) a group of aviation-minded individuals plus many learned international scholars contending for complete freedom of the airspace wherever it is not actually and physically occupied. The fourth group has now lost out entirely, and by a progressive series of statutes and treaties, the Federal Government is gradually taking control. State and municipal governments come next, in order of power to regulate, while the land owners' claims are gradually being whittled to that part under physical occupation. But, while over land, the story is more and more limitation, over the high sea, the airspace is, like the ocean beneath, free to all.

In addition to the element of control of the airspace, the legal incidents of "ownership" of airspace has a direct bearing on our problem. The concept of property is as applicable to airspace over land, as it is to the soil which makes up that land, or the water which fills ponds, lakes, or streams. The "test" of "locality," necessary to establish jurisdiction, may be found just as surely inside a section of airspace above the land, as it may on a field on the surface, or in a pit, or down in an under-

ground mine, or on a pond. And the airspace — *be it over land or sea* — is not a material vacuum, it is a "locality" which can be physically occupied by man, where he is capable of making a contract, or committing a Tort. He may also *commit a crime* in that airspace just as surely as he can in a farmer's field, down in a coal mine, on an ocean liner, under water in a submarine, or on the floor of the sea in a diving suit, picking sponges. To apply the "locality" test and find it present in airspace above the oceans of the high seas is merely another modern adaptation of the broad principles of law so ably laid down in our Constitution. The liberal jurisdictional authority contained in that document, together with the Judiciary Act of 1789, and the Crimes Act of 1790 which puts its crimes provisions into effect, constitutes another example of the great wisdom, far-sightedness and learning of that illustrious band of patriots who drafted them. Luckily they have, on the whole, been followed by sufficient men of vision and ability on our judicial bench to have kept the Constitution a living, growing document; ever expanding to meet the judicial needs of the moment, and to provide for the requirements of the future.

On p. 302 of the *Cordova* case the following comment is made:

"Beyond any doubt, *Cordova's* misconduct took place over the high seas. Is it proper, then, in a criminal case, to extend federal criminal jurisdiction to a plane in flight OVER the high seas under a statute which speaks of crimes committed UPON the high seas or ON any other waters within the admiralty and maritime jurisdiction of the United States?" (Emphasis is the Court's.)

It would appear that undue stress has been placed in the opinion on the choice of words of the statute. The words emphasized by the court would seem to be merely prepositions or vehicles which make the really important words following them tie into a grammatical whole. As already pointed out, the vital words are "*high seas*" and the phrase "*on the high seas*" is believed to connote a three dimensional area synonymous with "*on, over and under the surface of the sea.*"

On this point another interesting factor is noted. Even though the trial was concluded only last year, the alleged acts took place on August 2, 1948. The revised edition of the Criminal Code was approved by Congress on June 25, 1948 but was not made effective until Sept. 1, 1948, *i.e.* about one month after the assault. The trial was therefore conducted on the basis of the older, or 1946 version of Title 18. The new code revision is a monumental and drastic one, having been conducted over an extended period of time by a very large body of men consisting of members of Congress, the judiciary, and a special staff of two large law publishing houses. The acts of the *Cordova* case took place after the work was finished and approved by Congress, and could therefore not have had the slightest consideration in the rewording of the revised code.

(To be continued)