

THE LINDBERGH LAW

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According to reports from the chiefs of police of 501 cities, 279 kidnappings took place in 1931.¹ In all these 279 cases, only 69 convictions were secured, which, it should be noted, represent a much smaller number of cases solved since it is common to find several persons involved in a single kidnaping plot. It was also discovered that in 44 cases of the total number state lines had been crossed.

All the states had anti-kidnaping statutes, six of which provided in 1931 for the death penalty,² but in some instances state lines proved to be barriers to good police work and to securing necessary witnesses. By the time coöperation with local authorities had been secured the trail was cold. It was natural, accordingly, for thinking men to consider the desirability of federal legislation based on the commerce clause of the Federal Constitution, which would permit officers to disregard state boundaries in the pursuit of kidnapers. Prior to 1932 the only federal legislation concerned with kidnaping was a statute which was aimed only at kidnaping for slavery purposes and was not applicable to kidnaping for ransom.³

St. Louis, a large city just on the state border, had experienced numerous kidnappings in which the handicap of state lines had hindered or defeated her police officers. In 1931 the officers of the St. Louis Chamber of Commerce, the mayor, chief of police, and others of that city organized a committee for the purpose of trying to secure federal legislation on the subject.⁴ This committee selected a spokesman—former Congressman Cleveland Newton—to call the matter to the attention of Congress and drafted a bill which Senator Patterson and Congressman Cochran, both of Missouri, introduced in their respective houses of Congress.⁵

It is likely that these bills would have gone the way of most bills referred to committees and would never again have been heard of had it not been for the kid-

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¹ Statement of Hon. Cleveland Newton, Hearing before the Committee on the Judiciary (House of Rep.) on H. R. 5657, 71st Cong., 2nd Sess. (1932) (Ser. 4) p. 5. It seems not unlikely that this total included abductions where no ransom demands were made. The Uniform Crime Reports do not compile kidnappings.

² See compilation of state kidnaping statutes by E. A. Banks, 75 CONG. REC. 13285-13286 (1932). Alabama, Illinois, Kentucky, Missouri, Texas, and Virginia statutes made kidnaping a capital offense.

³ U. S. REV. STAT. §5525, 18 U. S. C. A. §443. ⁴ 75 CONG. REC. 13287 (1932).

⁵ The Senate bill was S. 1525; the House bill, H. R. 5657. 75 CONG. REC. 275, 491 (1931). The bills were introduced in December, 1931.

napping of the Lindbergh baby on March 2, 1932. Public sentiment having been aroused by this atrocious deed, there was an instant demand that Congress "do something" about it. Nevertheless, action on the proposed bill was temporarily deferred until the child was found; it was feared that a law increasing the likelihood of arrest and inflicting a heavy penalty would lessen the chances of finding him alive.⁶ The bill as introduced had provided for the punishment of any person guilty of transporting a kidnaped victim across state lines,⁷ the penalty being death or imprisonment at the discretion of the court.

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The bills as reported by the Judiciary Committees of the House and Senate varied considerably. Both houses, in committee and in debate on the floor, carefully considered the desirability of this further extension of federal power. Chairman Sumners of the House Judiciary Committee was opposed to it unless absolutely necessary.⁸ When the bills came up for debate this opposition to enlarged federal powers was again evident. States'-rights advocates cried "usurpation" while proponents of the bill insisted on the necessity for such legislation.⁹

A difference of opinion as to the proper punishment also furnished ground for contention, and the bills as reported by the two houses varied on this score. The House Judiciary Committee had retained the death penalty but had added a provision that if the jury recommended mercy, the defendant was to be imprisoned.¹⁰ The Senate Committee, on the other hand, had opposed the death penalty, and the maximum penalty under their bill was life imprisonment.¹¹

By far, however, the greatest variation in the bills as reported was in the machinery of enforcement. Those fearful of the extension of federal power seemed to prevail in the House Judiciary Committee, and these fears of federal domination were reflected in the proposed plan of administration. That plan¹² provided a set-up whereby state and local officers would be deputized as federal officials in dealing with kidnapers. Members of a state constabulary were to have extraterritorial powers to pursue beyond state lines in such cases, when designated by the governor of their state and appointed by the United States Department of Justice for such a purpose.

⁶ See 75 CONG. REC. 13291 (1932).

⁷ See bill reprinted in Hearings on H. R. 5657, *supra* note 1.

⁸ *Id.* at 7. See also 75 CONG. REC. 13291-19292 (1932). The report of the House Judiciary Committee stated: "It is declared to be the public policy that the enactment of this bill shall not shift from the states to the Federal Government any share of the original responsibility of the states, increase the official personnel of the Federal Government, or result in an increase of public expenditures except such as shall be necessary for the trial in the Federal courts of those charged with the violations of the provisions of this act." H. R. Rep. 1493, 73 Cong., 1st Sess. (1932).

⁹ For the House debate, see 75 CONG. REC. 13282-13304 (1932).

¹⁰ H. R. Rep. 1493, *supra* note 8; 75 CONG. REC. 11942 (1932).

¹¹ S. Rep. 765, 72nd Cong., 1st Sess. (1932); 75 CONG. REC. 11878 (1932). The length of imprisonment was at the discretion of the court.

¹² H. R. Rep. 1493, *supra* note 8. The bill advocated by Rep. Sumners may be found in entirety in 75 CONG. REC. 13294 (1932). His remarks in debate in support of the state plan are interesting. *Id.* at 13282-13304.

The expense incident to such service was to be borne by the state. The purpose of this Committee, it is evident, was to give a remedy to officers handicapped by state lines without shifting the responsibility from the state and without duplicating officials with an attendant increase in federal costs. Perhaps the attitude of Attorney General Mitchell had its effect on the House Committee. From the outset he had opposed the bill for two reasons: first, because of the increased expense which would be incident to enforcement, and second, because of the moral effect on the states. He pointed out that states have an inevitable tendency to relinquish all responsibility when the federal forces step in.¹³

Debate on the proposed measure in the House brought forth opposition to the "state deputy plan." Some Congressmen insisted that deputizing men would occasion delay;¹⁴ others objected to the conferring of greater authority on state officers than federal marshals then had.¹⁵ There was also opposition to state expenditures for running down violators of a federal statute, and reference was made more than once to possible state constitutional limitations.¹⁶

The state deputy plan was not without its advocates, but finally the Senate bill was passed when it appeared that to insist on the House amendments would occasion further delay and a possible defeat of the bill.¹⁷ Thus in June, 1932, with the signature of President Hoover, the bill providing for the extension of federal jurisdiction over interstate kidnaping became the law of the land.¹⁸ The maximum punishment under this bill was life imprisonment.

BILL PROHIBITING THE MAILING OF THREATENING COMMUNICATIONS

A companion bill to the Lindbergh Act was a bill introduced to prohibit and make punishable the sending of threatening communications through the mails. There was little question about the propriety of federal action since regulation of the mails was involved. Prior to 1926 the government had been successful in most jurisdictions in prosecuting the so-called blackmail cases where the use of the mails was concerned under the postal criminal fraud section of the Criminal Code.¹⁹ In that year one of these cases went to the Supreme Court of the United States, and that Court held that such schemes did not come within the scope of the statute.²⁰

¹³ See remarks of Rep. Sumners, *id.* at 13291. The Attorney General had written, "The enactment of such legislation had a bad effect on State authorities, as State authorities are inclined immediately to shift the burden onto the Federal authority where the Federal Government assumes jurisdiction."

¹⁴ See remarks of Rep. Montague, *id.* at 13288.

¹⁵ See remarks of Rep. Sparks, *id.* at 13289-13290.

¹⁶ *Id.* at 13288, 13292. Many state constitutions contain provisions forbidding one to hold state and federal office at the same time.

¹⁷ Rep. Cochran, author of the House bill, advocated passage of the Senate bill when this became apparent. *Id.* at 13299.

¹⁸ Act of June 22, 1932, 47 STAT. 326, 18 U. S. C. A. (Supp. 1933) §408a.

¹⁹ §215, 18 U. S. C. A. §338.

²⁰ *Fasulo v. U. S.*, 272 U. S. 620, 47 Sup. Ct. 200 (1926). The Court in this case distinguished between a scheme for obtaining money by means of intimidation through threats and a "scheme to defraud," which the statute prohibited.

The Post Office Department then recommended that a law be enacted that would at least give the authority officials thought they had before this decision.²¹

A bill was finally introduced in both houses of Congress in December of 1931 to remedy the situation.²² The original bill provided for the punishing of any person found guilty of sending a threat through the mails (1) to injure person or property or (2) to kidnap any person, or (3) to accuse one of a crime, or (4) to "expose any infirmities or failings or charge any person with infirmities or failings." The House Committee on Post Offices and Post Roads reported the bill unchanged except for an increase in the maximum punishment to a fine of \$5,000 or 20 years' imprisonment. The bill passed the House in this form.²³

After the addition of one procedural and two substantive amendments²⁴ by the Senate Committee on Post Offices and Post Roads, the bill passed the Senate without much ado, and later passed the House after conferees had recommended that the House adopt the Senate amendments.²⁵ With the signature of the President, this bill too was added to the federal statute books.²⁶

KIDNAPING ACTIVITIES AFTER THE PASSAGE OF THE LINDBERGH ACT

During the interim between the passage of the Lindbergh Act and its amendment in May, 1934, (which will subsequently be considered) some 26 cases involving interstate kidnaping were investigated.²⁷ Twenty-four of these cases resulted in prosecutions with an acquittal recorded only in the Touhy-Hamon Case. Thirteen defendants were still awaiting trial in the federal courts and 55 convictions had been secured. The terms of penal servitude meted out totaled 923 years. Eleven life sentences had been imposed and two death penalties exacted, while two offenders were lynched, and two others committed suicide. As Dr. Raymond Moley said in his report to the President on May 18, 1934, "The high ratio of results evidenced by the

²¹ H. R. Rep. 692, 72nd Cong., 1st Sess. (1932) pp. 1, 2.

²² The House bill was H. R. 96, 72nd Cong., 1st Sess. (1931), introduced by Rep. Cochran, Dec. 8, 1931. The Senate bill was S. 1329, introduced by Sen. Hull, Dec. 10, 1931. For its text, see S. Rep. 498, 72nd Cong., 1st Sess. (1932); 75 CONG. REC. 5581 (1932).

²³ 75 Cong. Rec. 5581 (1932).

²⁴ (1) The Senate bill provided that the accused be tried in the judicial district in which the threatening communication was alleged to have been mailed, whereas the House bill permitted prosecution in the place of receipt as well. The Senate Committee feared that the House bill would open the way to oppression by compelling an accused person to stand trial far from the place of mailing, the place where his witnesses would be most likely to be available. (But often the communication is mailed purposely in some out-of-the-way place.) The same amendment endeavored to guard against evasion by persons mailing such communications in foreign countries for delivery in the United States, by providing that, in such cases, the offender might be prosecuted in the place of receipt.

(2) The second amendment inserted the word "knowingly" so that the first clause would read, "whoever . . . shall knowingly deposit. . ." This was done to protect innocent people who might accommodate a kidnaper by mailing his letter.

(3) The final amendment made it a federal crime to demand ransom money as well as to threaten to kidnap.

²⁵ 75 Cong. Rec. 14599 (1932).

²⁶ Act of July 8, 1932, 47 STAT. 649, 18 U. S. C. A. (Supp. 1933) §§338a, 338b.

²⁷ Report of Dr. Raymond Moley to President Roosevelt on the Federal Enforcement of Criminal Law, May 18, 1934. For text of report, see *N. Y. Times*, May 24, 1934.

above figures has done much to restore the prestige of federal justice after the miserable failure registered by the prohibition division during the past 15 years."²⁸

Within a few months the number of federal cases had been increased to 29 with 27 cases in which the offenders had been captured or convicted.²⁹ The number of persons convicted had increased to 62, with the number serving life imprisonments at that time standing at 14. One more offender had been disposed of by suicide and one by murder. The records thus available startle one when compared with the 1931 figures stated in the opening paragraph of this paper.

These achievements are attributable to the coördinated efforts of state and federal officers. Local authorities have the advantage of better information concerning local people and local geography. They can more easily pick up probable suspects and will be of more aid in pursuing a kidnaper just after abduction. At the same time, the federal government has made available resources not otherwise at the command of state or county authorities. On file at Washington are over three million finger prints with photographs and data on the subjects. There are also much data on file showing the individual and characteristic methods of thousands of criminals. It is reported that since the federal government entered kidnaping work the Department of Justice has developed a special file of known or suspected kidnapers and extortionists containing 2000 subjects. Such work could hardly have been attempted by state governments had the "state deputy plan" proposed by the House been carried out. The federal government by its action seems to have justified the original Lindbergh Act. It has made interstate kidnaping a dangerous activity.

THE 1934 LEGISLATION

In 1934, supplementary and amendatory acts were passed in the field of extortion and kidnaping respectively. Again federal power was extended. The 1932 Extortion Act, we have noticed, applied merely to threats sent through the mails. In 1934 a bill³¹ was introduced in the Senate providing for punishment at the discretion of the court for those found guilty of sending threats in interstate commerce "by telephone, telegraph, radio, or oral means, or any means whatsoever." The bill as finally amended by the House and passed by both branches of Congress set the maximum punishment at \$5000 or imprisonment for 20 years, or both, and made criminal the sending of any of the threats enumerated in interstate commerce "by any means whatsoever."³² The 1932 Act depended for its efficacy upon the power of the federal government to regulate the mails.³³ To give the federal government juris-

²⁸ *Id.* (col. 6).

²⁹ See *The Marines Are Coming*, FORTUNE, Aug. 1934, at p. 63.

³⁰ For an interesting description of the rôle of the federal government in kidnaping since March, 1932, see Clapper, *Can the Kidnaper Elude Uncle Sam?* REVIEW OF REVIEWS AND WORLD'S WORK, Oct. 1933.

³¹ The bill was introduced by Senator Copeland with ten other anti-crime bills on January 11, 1934. 78 CONG. REC. 409 (1934).

³² 48 STAT. 781 (1934), 18 U. S. C. A. (Supp. 1934) §408d.

³³ U. S. CONST. art. i, §8, cl. 7. "The Congress shall have the power . . . To establish Post Offices and post Roads."

diction under that Act, it was not necessary that the communication cross a state line; the federal government had jurisdiction from the moment the threatening communication was deposited in an authorized mail box. The 1934 Act extended criminal punishment to the sending of an extortion note in other ways than by mail. But this latter Act, of necessity, was limited to the transmission of threats *in interstate commerce*. To obtain jurisdiction, resort to the commerce clause was requisite.

Additional kidnaping legislation was also introduced in the second session of the Seventy-third Congress. The Senate passed a bill adding to the Lindbergh Act a proviso that the failure to release a kidnaped person within three days should create a rebuttable presumption that such person had been transported in interstate or foreign commerce.³⁴ The House Committee on the Judiciary, to which this bill was referred, had had some definite ideas in 1932 about desirable provisions in federal kidnaping legislation. The House, as has been seen, had passed the Senate bill primarily to prevent delay and get a federal kidnaping statute on the books that session. The 1934 bill as reported by the House Judiciary Committee provided for three major amendments³⁵ to the 1932 legislation, the first two of which definitely reflected the ideas of the House on the original Act.

The first committee amendment excluded from the operation of the Act the technical case of a minor "kidnaped" by his parent. In the second, the House Committee provided for a death penalty if the verdict of the jury should so recommend, stipulating that the sentence of death was not to be imposed by the court if prior to its imposition the kidnaped person had been liberated unharmed. From the debates on the 1932 bill it is evident that the majority of the House had been in favor of capital punishment, but had yielded as a matter of legislative expediency. However, the purpose of the new punishment clause was more than a desire to add kidnaping to the list of capital crimes. It was an ingenious measure taken to protect the victim of a kidnaper, providing an inducement to kidnapers to return their victims instead of killing them to prevent their giving evidence.³⁶ If the victim is returned unharmed the maximum sentence is life imprisonment.

The final House amendment made the presumption that state lines had been crossed operative only after the passage of *seven* days instead of three. Available records do not reveal the reason for the change, but it seems logical to assume that the House Committee thought that the presumption would stand on firmer ground with the length of time extended. With these amendments to the old bill, the new legislation went on through the rest of the Congressional mill. The Senate accepted the House amendments after a conference,³⁷ and President Roosevelt made the bill law by his signature, May 18, 1934.³⁸

³⁴ 78 CONG. REC. 5850 (1934).

³⁵ H. R. Rep. 1457, 73rd Cong., 2nd Sess. (1934); 78 CONG. REC. 8266.

³⁶ See Keenan, *New Weapons for the War on Kidnapers*, *N. Y. Times*, May 20, 1934.

³⁷ 78 CONG. REC. 9159-9161 (1934).

³⁸ 48 STAT. 781 (1934), 18 U. S. C. A. (Supp. 1934) §408a.

To recapitulate, the amended Lindbergh Act provides for the trial and punishment in federal courts of any person guilty of transporting a kidnaped person in interstate commerce. The Act exempts from the operation of the statute the parent who has abducted his child and provides for the death penalty if the victim was not returned unharmed and the jury did not recommend mercy. Finally, the Act creates a presumption that state lines were crossed where the victim is not released within seven days after abduction.

THE VALIDITY OF THE PRESUMPTION OF INTERSTATE TRANSPORTATION

The terms of the provision creating this presumption of interstate transportation leave it uncertain whether the passage of seven days without the release of the victim creates a presumption which is "evidence in a proper sense" to be weighed by the jury or which operates simply as a regulation of the burden of proof.³⁹ "The legislature may go a good way in raising [a presumption] but there are limits."⁴⁰ To meet the requirement of "due process of law" with respect to a presumption having evidentiary value, it is essential that there be some rational connection between the fact proved and the ultimate fact presumed. Where a presumption affects the burden of proof, to quote Mr. Justice Cardozo,⁴¹ "experience must teach that the evidence held to be inculpatory has at least a sinister significance . . . or if this at times be lacking, there must be in any event a manifest disparity in convenience of proof and opportunity for knowledge."⁴²

In 1910 the United States Supreme Court first definitely announced the "rule of rationality" applicable to presumptions having evidentiary value. The Court said:

. . . That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law, or a denial of equal protection of the law, it is only essential that there should be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.⁴³

The rule has been subsequently applied in a number of cases and now seems accepted doctrine.

If in a kidnaping case brought under the Lindbergh Act the government were to

³⁹ This distinction is taken from *Casey v. U. S.*, 276 U. S. 413, 418, 48 Sup. Ct. 373, 374 (1928). Regulations of the burden of proof vary. The effect of the presumption in this respect may be (1) merely to prevent a directed verdict of acquittal if the prosecution rests after introducing sufficient evidence to prove only the facts on which the presumption is based; or (2) to place upon the defendant the burden either (a) of raising a reasonable doubt as to the fact presumed or (b) of disproving the fact presumed by a preponderance of the evidence. (It is, of course, true that a presumption having evidentiary value may also have any one of these procedural consequences.)

⁴⁰ Holmes, J., in *McFarland v. American Sugar Co.*, 241 U. S. 79, 86, 36 Sup. Ct. 498, 501 (1916).

⁴¹ *Morrison v. California*, 291 U. S. 82, 90, 54 Sup. Ct. 281, 285 (1934).

⁴² Where a statutory presumption is construed as a regulation of the burden of proof, it becomes important to know how the burden is affected. The less the burden cast on the defendant by the presumption, the less would be the disparity in convenience of proof and opportunity for knowledge which the courts would require to sustain the statute. The alternatives open to the court in construing such a statute are set forth in note 39, *supra*.

⁴³ *Mobile, J. & K. C. R. R. v. Turnipseed*, 219 U. S. 35, 43, 31 Sup. Ct. 136, 138 (1910).

rely on the presumption as evidential of interstate transportation, it would become pertinent to inquire whether it is rational to presume that state lines have been crossed from proof of a lapse of seven days in which the victim was not released. Only a small portion of kidnappings involve interstate transportation. In the 1931 investigation referred to above, it was found that only 44 cases out of a total of 279 reported, or slightly more than 15 per cent, involved such transportation. More recent figures representing cases reported by *The New York Times* from the Lindbergh kidnaping on March 2, 1932, to July, 1934, strengthen the presumption little. In this period there appeared 43 kidnapings in the files of that paper.⁴⁴ In nine of these cases, from the facts related, it was impossible to determine whether state boundaries had been crossed. Twenty-four cases showed that no state lines were crossed, while ten, or approximately 42 per cent of the definite cases, involved interstate activity. This sampling is significant even though it seems evident that many local and some interstate cases did not find their way into *The Times*. Certainly these figures lend little support to the presumption. Its "rationality" must be sustained, if at all, by virtue of the time limitation.

The House, in increasing the time which must elapse before the presumption becomes effective, evidently thought that an extension would strengthen it. Without a time limitation sufficient to allow the kidnaper to travel to and cross state lines, the presumption would be obviously invalid, but does the further extension of time add sufficiently to the likelihood of interstate travel? Extended time may allow a more thorough search, but it hardly follows that the victim is not within the state if he or she is not found. The Robles case is a striking illustration of this fact. After 19 days, little June was found chained in a lonely spot scarcely 10 miles from her home.

Moreover, where the victim is released or found captive outside the state of abduction, the prosecutor has sufficient evidence against the defendant without relying on the presumption. The presumption, then, has utility only in those cases where the victim is released within the state or is still missing at the time of trial. The latter case being very rare, the presumption, paradoxically enough, would be used only in those cases where it is least rational to believe that state lines were crossed. The Supreme Court in a case involving this presumption could well say, "We have here an effort to accomplish indirectly that which undoubtedly could not have been done directly, to conjure up through a process of legislative necromancy a semblance of evidence, and to require the courts to treat this counterfeit as real evidence. There is no rational connection. . . ."⁴⁵

If the presumption were construed not to have evidentiary value but to operate simply as a regulation of the burden of proof, does it meet the requirements laid

⁴⁴ Although *The New York Times Index* from Mar. 2, 1932 (date of Lindbergh kidnaping) to July 1, 1934, listed 79 cases as "kidnapings," 36 cases were eliminated which seemed to be situations involving simple abductions without any ransom demands. There were numerous other accounts of attempted kidnappings and threats to kidnap.

⁴⁵ *People v. Bruno*, 279 Pac. 175, 176 (Cal. App. 1929).

down by Mr. Justice Cardozo in the passage quoted above?⁴⁶ For the reasons advanced in discussing the application of the "rule of rationality" to kidnaping situations, the "sinister significance" which he poses as one alternative criterion seems lacking. The more usual justification advanced for the "rule of convenience"—extreme inconvenience to the prosecution in proving a fact alleged and the relative ease with which the defendant can explain it because of his peculiar knowledge of the circumstances—may be illustrated by an examination of some of the typical statutes sustained by the rule. The most common statutes have the effect of creating a presumption of criminal intent so as to cast on the defendant the burden of disproving that particular element of a crime. Intent is difficult for the prosecutor to prove and in most cases is within the knowledge of the defendant. Thus to the possession of burglar's tools,⁴⁷ counterfeiting dies,⁴⁸ or intoxicating liquor,⁴⁹ may be attached a presumption of intent to use unlawfully. Or a statute may provide that the act of leaving a hotel without paying for service raises a presumption that the guest intended to defraud.⁵⁰

Examining this rule from the standpoint of the prosecutor in a kidnaping case, it is evident that he may find it difficult to prove that state lines were crossed. But again it should be pointed out that the presumption will be necessary only when the victim is released within the state or is missing. The shifting of the burden is of little importance to the prosecution where the victim is released beyond state lines.

From the standpoint of the defendant, the shifting of the burden is likely to result in undue hardship. Unlike cases applying the ordinary statutory presumptions, in a kidnaping case the defendant's connection with the kidnaping will probably be one of the main issues. In a hotel case, the defendant's identity as the hotel's guest will seldom be disputed; so in a case concerning burglar's tools, it will ordinarily be well established that the accused had the tools in his possession. Where, in a kidnaping case, the defendant denies any connection with the abduction, the presumption renders his position difficult. Thus, if he is innocent, he certainly has no "peculiar knowledge." He must offer evidence tending to establish virtually a seven-day alibi, and such a burden seems very harsh. Proof of a negative proposition is always difficult. On the other hand, if the accused happens to be guilty of the kidnaping, to establish his innocence as to interstate transportation, it will in most cases be necessary for him to admit the kidnaping and thereby incriminate himself for a future state trial in order to reveal his whereabouts. In either event, the shifting of

⁴⁶ See p. 441, *supra*.

⁴⁷ *State v. Fitzpatrick*, 141 Wash. 638, 251 Pac. 875 (1927).

⁴⁸ *Baender v. U. S.*, 260 Fed. 832 (C. C. A. 9th, 1919).

⁴⁹ *Parsons v. State*, 61 Neb. 224, 85 N. W. 65 (1910); *State v. La Point*, 81 N. H. 227, 123 Atl. 692 (1924); *State v. Dowell*, 195 N. C. 523, 143 S. E. 133 (1928); *State v. Burns*, 133 S. C. 238, 130 S. E. 641 (1925).

⁵⁰ *State v. Yardley*, 95 Tenn. 546, 32 S. W. 481 (1895). *In re Milicke*, 52 Wash. 312, 100 Pac. 743 (1909).

the burden is likely to oppress the defendant. This fact seems decisive against a justification of the presumption on the rule of convenience.

A denial of the presumption's validity is not likely to free the guilty kidnaper. The federal crime is the transportation of kidnaped victims across state lines, and one should not be convicted of that offense unless his case is proved to fall within the Act. The state laws will, after all, take care of those kidnapers who have stayed within state bounds. There is no pressing need to sustain a harsh federal statute; federal jurisdiction is not exclusive.

The presumption, then, appears of little utility and of extremely doubtful validity. It may be that it was inserted in the Act to justify early action on the part of federal agents. In most of the important cases, however, after the enactment of the original Act and before the passage of the amendments of 1934, federal agents began active investigation immediately after the abduction. Surely such vigilance does not need statutory justification.

With the enactment of the bills herein discussed, Congress did much to supply missing defenses against kidnaping. Interstate kidnapers no longer elude justice because of state barriers. There is no longer any doubt about the criminality of sending threatening notes, whether by mail or in interstate commerce. In general, Congress has achieved about as much as is possible in this field in the way of legislative definition. The burden of the battle against crime now rests with law enforcement agencies. They must be strengthened and made more efficient.