

ACC

10000/142/372
(VOL. 1)

10000/142/372
(VOL. 1)

HANDLING OF ENEMY AGENTS
FEB.-NOV. 1944

FILE CLOSED 2 November 1944.

24
 HEADQUARTERS ALLIED COMMISSION
 APC 394
 CIVIL AFFAIRS SECTION

52A

AC/4040/L.

DMC/rfp.
 2 November 1944.

SUBJECT : Executions of convicted persons.

TO : AFHQ. G-5.

510

1. Reference your G-5, 383.4 dated 29 Oct 44.
2. It is presumed that when the above quoted letter was written, HQ ACC letter ACC/4040/L of 26 Oct 44 had not yet reached your office.
3. The existing practice is as follows;
 - a. If the Chief Commissioner decides to confirm a sentence of death, he signs the confirmation, and states therein the formation which will carry out the execution. This formation is determined in accordance with instructions contained in HQ AAI letter 5105/1/A (P.S.) of 9 June 1944 (see our letter above referred to).
 - b. A signal, notifying the confirmation, is then normally sent by this HQ to the Regional Legal Officer of the region in which the trial took place, with copy to HQ AAI.
 - c. The confirmation and a certified true copy of the authority to confirm death sentences are then sent with the record, to the Regional Legal Officer. The confirmation and copy authority are produced by him to the military formation concerned as its authority to carry out the execution.
4. The suggestion that the record be sent to the military formation is one that cannot be accepted. Records are at all times retained in the possession of AC-AAC and, when all action is completed, are stored at the appropriate Regional HQ.
5. ACC letter above referred to analyses why the existing system has broken down and makes proposals for the future. GS 1(b) HQ AAI and G-2 MAC have both informally expressed approval of these proposals.
6. It is hoped these proposals will also meet with approval at AFHQ. If so, any orders to bring them into effect please be issued as soon as possible.

For the Acting Chief Commissioner;

C. R. UPTON, Brigadier
 VP CA Sec
 DCS AC

4 NOV 1944

4043
 ALLIED FORCE HEADQUARTERS
 G-5 Section
 APO 512

Legal s/c
 200/
 (51A)

G-5: 383.4

29 October 1944

SUBJECT: Executions of Convicted Persons.

TO : Headquarters, Allied Commission, APO 394.
 (Attn: Legal SubCommission)

1. Information is requested concerning existing practice respecting the execution of convicted persons, with particular reference to the disposition of the record and confirmation of death sentence.

2. It is suggested that the record and signed original confirmation of the death sentence be forwarded to the commanding officer of the military unit wherein the condemned person is held in custody. It is thought that in this way the confusion which has recently arisen may be avoided, and the prompt execution of condemned persons accomplished.

Charles M. Spofford

CHARLES M. SPOFFORD,
 Brigadier General, G.S.C.,
 Assistant Chief of Staff, G-5:

Copy to: G-2
 G-1(B)
 JA thru G-1(A)



LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CID	
Information Section	
CLERKS	
1 NOV 1944	

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AC/4040/L.

/rlp.
28 October 1944.

SUBJECT : Carrying out of Death Sentences.

TO : RAAC.

1. As you well know, delays have occurred recently in carrying out the execution of persons convicted of espionage. These delays have been due to the present system of nominating formations to carry out the execution.

2. In the hope of avoiding such delays in the future, a revised procedure has been proposed to AFHQ and a copy of the letter setting out our proposal is enclosed for your information.

For the Acting Chief Commissioner,

G. R. UPJOHN, Brigadier
VP CA Sec
Dep COS

Incl: Letter to AFHQ of 25 Oct 44.

49A²³

HEADQUARTERS
ALLIED OFFICIAL COMMISSION
Civil Affairs Section
APO 394

Ref: ACC/ACIO/L

26 Oct '44.

SUBJECT: Carrying out of Death Sentences.

Ref: AFM 2-2

1. It has been found that undue delay has been taking place in the carrying out of death sentences after confirmation on behalf of the Military Governor. The question usually arises in espionage cases.

2. The procedure for deciding which formation is to carry out such executions was laid down in HQ AAI letter 5209/1/2 (P.M.) of 9 June 44 which provides that in the case of spies arrested by US or French troops HQ ACC is to ask C.I. Vth Army if he wishes to carry out the execution; if he does not so wish HQ ACC is to hand over the spies to C.I. VII who will carry out the execution; and that in the case of spies arrested by other Allied troops they are to be handed over to the nearest District.

3. This procedure is not working satisfactorily for the following reasons:-

- a) It does not take account of HQS which had only just come into existence at the date of the letter;
- b) Some formations which were then under command HQ AAI are now directly under command AFM, and
- c) The responsibility for carrying out the execution was laid on the formation responsible for the original arrest; in practice convicted persons and particularly convicted spies are often held between trial and confirmation of sentence in a prison in a district different to and distant from that in which they were arrested.

4. In the light of experience, the following procedure is suggested for the future:

- a) Immediately upon the passing of a death sentence, HQ ACC to notify AFM stating the date of the sentence and place where the accused is confined.
- b) AFM to nominate the formation to carry out the execution, in the event of the sentence being confirmed; and to notify such formation and HQ ACC of the nomination. This notification should be made as soon as possible and at latest so as to reach HQ ACC within 30 days of the date of sentence.
- c) Immediately upon confirmation of the sentence, HQ ACC to send to the formation nominated:
 - i) a signal announcing confirmation; a copy of this signal can be sent to AFM and AAI if so required; and

3071

- 2 -

- ii) The original confirmation of sentence and a certified copy of the delegation of power to confirm death sentences.
- a) When the execution has been carried out, the formation nominated:
- i) To inform HQ AGO of the fact by signal
 - ii) To return the documents mentioned in g (ii) above to HQ AGO for safe custody with the other papers in the case.

5. May this question please be given early attention. There are several espionage cases pending in which a death sentence may be imposed and the present procedure is not working to the satisfaction of the military formations concerned.

FOR THE ACTING CHIEF COMMISSIONER

32

G. R. D. Jones

C. R. D. JONES. Brig.
VP. G. S. S.
DCOS AGO.

Copy to: HQ AGO (G-S X(b))
HQ AGO (A Branch)

371

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
CIVIL AFFAIRS SECTION
APO 394

ACC/4043/L.

/pa.
20 Oct 44.

SUBJECT : Collection of evidence for trials of Enemy Agents.

TO : AFHQ Office of Asst. Chief of Staff, G-2.

1. In reply to your B-389.701/B of 10 Oct 44, you will of course appreciate that in any charge of espionage a conviction requires proof that the accused

- (a) was engaged in the clandestine collection of information
- (b) intended to communicate such information to the enemy.

2. In the absence of a confession by the accused, proof of these facts normally requires a more or less complete history of the activities of the accused from the time when he found himself in the Allied lines until the time of his final arrest, and also, if possible, some evidence of his previous history, e.g., that he attended a spy school. Such evidence involves the attendance of a large number of witnesses and in most cases it will not be practicable to produce it.

3. In practice, it is frequently found that the accused makes a confession which establishes that he was sent across the lines on a mission and when this is so (and providing that the confession is admissible, as to which see para. 4 below) the amount of evidence that need be called is substantially reduced.

However, almost invariably, the accused denies his intention of carrying his mission to completion. In the circumstances now prevailing in German occupied territory it is well within the bounds of possibility that an Italian might ostensibly undertake a mission with the bona fide object of escaping from that territory. The question to be decided by the Court in each case is one of difficulty and is inevitably one of inference. Even if there is a confession, it is still most important to adduce all evidence which may help the Court to form the correct inference. In particular all available evidence should be adduced which will negative any claim by the accused to have abandoned his mission or which corroborates in material particulars the confession of the accused.

4. It is of course also necessary that the confession itself should be admissible in evidence. For this purpose the confession must have been made voluntarily, without threat or promise, although not necessarily after caution.

Evidence must be available to show this. Where preliminary inquiries have been conducted by G.S.D.I.C. officers and evidence is only

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available from an officer who took over the interrogation at a later stage, that officer must as far as possible be able to state that no part of the preliminary inquiries amounted to duress. It is obviously not sufficient for him to say that the actual writing, dictating or signing of the statement was voluntary. This applies equally to any supplementary statement which the accused may make as a result of further C.S.D.I.C. interrogation.

5. As to paragraph 3 of your letter it is agreed that in some cases there has been some laxity in the listing and labelling of exhibits and in the proof of the chain of possession of exhibits from the time of finding until production in Court. This point might well be stressed in any directive you may issue. The original AAI letter was however fully comprehensive and it is difficult to give any more general advice than that given above. If you have any specific points in mind we shall be happy to try to answer them or to discuss the matter in conference.

FOR THE ACTING CHIEF COMMISSIONER

G. R. Lyster
 Brig.
 VP CA Sec,
 DOCS AGO.

S E C R E T

3040
 ALLIED FORCE HEADQUARTERS
 Office of the Assistant Chief of Staff, G-2.

B-369.701/B.

10 Oct 44.

SUBJECT : Collection of Evidence for Trials of Enemy Agents.

TO : Legal Sub-Commission, A.C.C.

See 37A

1. Arrangements have already been under review by AAI in consultation with your sub-commission to remove the necessity for OSDIC Officers to appear as witnesses at the trials of enemy agents whom they have interrogated. It is understood that the proposed procedure of a security representative taking a signed and witnessed confession from an agent immediately he has, under interrogation by OSDIC, indicated his willingness to confess, will achieve this object in most instances. Where remains however, the exceptional case, which it is desired if possible to eliminate. For this purpose, it is for consideration whether the existing procedure for the collection of evidence should not be reviewed.
2. AAI directive AAI/1450/5/GI(b) of 10 Apr 44, of which a copy was sent to you, embodying notes on the collection of evidence by an officer of the Security Intelligence Branch ACC, appears to cover the various points very fully. There is however one additional step which is not mentioned, but which perhaps may be of assistance. In the United Kingdom, as soon as a suspect is arrested who is known or strongly suspected of being an enemy agent, and before he is given any detailed counter-intelligence interrogation, a statement under caution is taken from him by an officer of the Security Service. This statement is so framed as to cover the points which are essential from the prosecution's point of view. Thereafter, the agent is given detailed intelligence interrogation, and if at any point it seems desirable, he is given the opportunity of making one or more additional statements to the original officer. In no case is use made of the detailed counter-intelligence interrogation in court, though leads revealed by it are followed up if they are likely to reveal significant evidence.
3. This procedure is understood to have certain legal advantages in the U.K. which will be obvious to you, and is submitted for your consideration in case it could be usefully applied in Italy. If it is considered worth adopting, it is requested that the points which should be covered are notified to this headquarters, together with any suggestions you may have to make as to the stage at which the statement should be taken. In order that the necessary instructions may be issued

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1987-1988

HEADQUARTERS
ALLIED COMBAT COMMISSION
CHIEF

Office of the Chief of Staff

CONFIDENTIAL

Ref: ACC/1010/L.

9 October 44.

SUBJECT: Trial of Enemy Agents.

TO : HQ Allied Armies in Italy.

1. In view of the fact that your letter 1460/5/GSI(b) dated 5 Sep 44 raised such fundamental points concerning the conduct of Allied Military Courts in the cases of enemy agents it was necessary to secure information regarding the three cases mentioned from officers familiar with these cases, now widely scattered; hence the delay in replying.
2. The basic criticism contained in your letter is that Military Courts are bound by their regulations to observe certain legal technicalities inconsistent with the military situation and have misinterpreted certain Proclamations.
3. This, I can assure you, is not so; Military Courts are by their regulations far less fettered by procedural rules than criminal courts either in the U.S. or Great Britain or, it should be added, than Military Courts-Martial of either country and this is particularly so in the admission of hearsay evidence and confessions.
4. Nevertheless Military Courts remain bound to observe fundamental principles of Anglo-Saxon justice of which the following may be given as examples:
 - (a) The accused are presumed innocent until, by evidence, proved beyond reasonable doubt to be guilty.
 - (b) The judgement of the Court must be based on evidence actually adduced before it and must not be coloured by suspicions aroused by extraneous circumstances.
 - (c) In no case can a man be convicted and punished unless he has committed or attempted to commit some crime known to the law. In parenthesis I would add that the ruling you refer to in para. 2 is correct. For members of the enemy Armed Forces to "conspire" while in their own country (or in country in their occupation) to commit sabotage against the Allies is not an offence known to the law. If the converse case is considered, the reasonableness of this view becomes apparent.
5. Allied Military courts must and will continue to observe these principles

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5. Allied Military courts must and will continue to observe these principles and a careful examination of the cases mentioned by you shows that they are all examples of the application of the above fundamental rules.

6. As to the case of the group of saboteurs (10) referred to in paragraph 2 of your letter some of the accused were acquitted; others were given sentences varying from 2 to 10 years. Two of these accused were acquitted because early after the Allied occupation they came forward voluntarily and disclosed all their information to the Allied authorities which, the Court concluded, showed an intention not to carry out any hostile activities. Three others among the accused were women, as to whom there was no evidence that they had buried explosives or even knew where any explosives were to be found. One of the accused was acquitted because the evidence against him was regarded by the Court as being insufficient, not going beyond the point of raising some suspicion.

7. The charges in any case are not prepared by the Court, but the President of this particular Court did remark that the accused were charged with the only possible charges the evidence would support.

8. This case is an example of the applicability of all three principles mentioned above.

2 Copies retained by C of S.

-2-

9. With reference to the cases referred to in paragraph 3 of your letter (BRUNO Bruno and SQUADRILLI Franco). In this case certain explosives were buried at MASIMONE; however, they were not buried by the accused, who were merely given a plan which would direct them to the hiding places in order that they could take possession of them. The accused tore up and threw away this plan in Rieti, where they were then living. This probably happened while the Germans were still in Rieti. CIC agents later accompanied the accused from Rome to Rieti and after a long search found the torn plan and were able to piece it together.

10. On the evidence before it the Court held, and rightly, that this destruction and throwing away of the plan put it out of the power of the defendants to use these explosives and that there was no continuing intention of using them.

11. This is an example of the applicability of the principles laid down in para.2 (c) above.

12. Certain other explosives were buried by the accused at Rieti. As to these explosives the position is different. The accused were in possession before the Allied arrival and remained in possession subsequently. They were therefore convicted of possession. The appropriate sentence naturally depended on the view taken by the Court as to the intention of the accused. The Court on the evidence advanced by the prosecution formed the view that the accused abandoned their intention to make use of these explosives for sabotage purposes. It is pertinent to remember that Rieti was occupied by the Allies on the 15th June whereas the accused were arrested in Rome on the 29th June - a period in which, if they had wished, they might have taken affirmative action with regard to the explosives. Much of the accused was nevertheless given a 7 year sentence, a very stiff one in the circumstances.

13. With regard to paragraph 4 of your letter, the case against FIANCHI Eugenio appears to have been badly given and was considered as highly unsatisfactory.

14. There were two C.I.C. agents involved, FRANCAZZI and FITZGERALD, both of whom were involved in the interrogation of the accused. They were two main witnesses for the prosecution. FRANCAZZI gave evidence that he had no personal knowledge of the case and that in the interrogation he had only acted as interpreter for Fitzgerald. Then followed the evidence of FITZGERALD, who testified that he explained the case to FRANCAZZI who did the interrogating. As a result the Court felt that it received no proper evidence from either of them.

15. FITZGERALD testified that he was in possession of a statement of facts and that "in order to avoid extraneous matter" he and FRANCAZZI did guide the contents of the statement. Obviously a court will give little or no weight

11. This is an example in para. 2 (c) above.

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13. With regard to paragraph 4 of your letter, the case against FIAMMO Eugenio appears to have been badly given and was considered as highly unsatisfactory.

14. There were two C.I.O. agents involved, FRANCAZZI and PITZERALLI, both of whom were involved in the interrogation of the accused. They were two main witnesses for the prosecution. PITZERALLI gave evidence that he had no personal knowledge of the case and that in the interrogation he had only noted as interpreter for PITZERALLI. Then followed the evidence of PITZERALLI, who testified that he explained the case to FRANCAZZI who did the interrogating. As a result the Court felt that it received no proper evidence from either of them.

15. PITZERALLI testified that he was in possession of a statement of facts and that "in order to avoid extraneous matter" he and FRANCAZZI did guide the contents of the statement. Obviously a court will give little or no weight to a confession obtained in that manner. The court was forced to the conclusion that the statement had been in a large measure dictated to FIAMMO by FRANCAZZI and that it was not a voluntary statement.

16. There was also a conflict between two other prosecution witnesses as to the statement made by the accused to the Royal Carabinieri at the time of his arrest.

17. The prosecution experienced the greatest difficulty in identifying its exhibits. The articles sought to be offered in evidence lacked identifying marks. The investigating agents had not even noted the number of the pistol and it was impossible strictly to prove that the pistol was the pistol in question. On the other hand it is understood that the accused, in testifying in his own defence, made an excellent impression on the Court and many of his denials and explanations were corroborated in varying degree by evidence given by prosecution witnesses.

18. The accused was found not guilty of the principal charges but he was found guilty of possession charges and was given a 10 years sentence which was regarded as a stiff one for possession alone.

19. This case is an example of the principle that the decision of the Court must be based on the evidence adduced before it and not on suspicion.

20. I should like to point out that the same Court on the following day in the somewhat similar case of PLANDRO Carmelo, where the facts were proved to the satisfaction of the Court beyond reasonable doubt, sentenced the accused to death.

21. As you know, in proper cases Allied Military Courts have without hesitation given death or heavy sentences when the cases have been proved beyond reasonable doubt in conformity with Anglo-Saxon principles of justice. In connection with these so called sabotage cases discussed above, it is well to bear in mind that none of the accused has ever committed any act of sabotage or made any attempt to commit any such act. - I should add the respective presidents of the Courts which tried these three cases were some of the most capable and experienced legal officers in AOC.

For the Chief Commissioner.

Brigadier,
Chief of Staff.

C-C-N-F-I-D-E-N-T-I-A-L

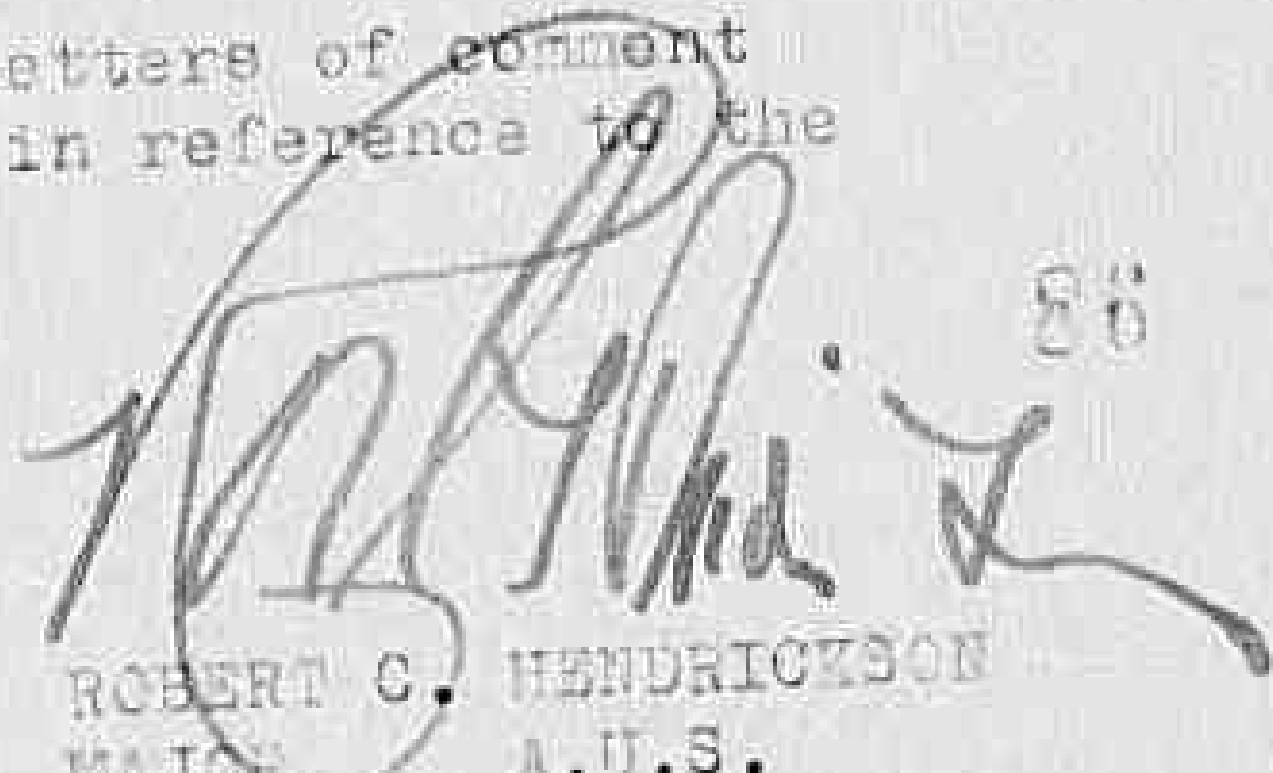
(45A)
AHEADQUARTERS
ALLIED MILITARY GOVERNMENT
LAZIO-UMBRIA REGION, LEGAL DIVISION
APO 394

4 OCTOBER 1944

SUBJECT : Trial of Certain Enemy Agents.

TO : Chief Legal Officer.
HDQS. A.C.C.

1. Enclosed herewith are letters of comment from Capt. More and Lt. Col. Ainslee in reference to the above.



ROBERT C. HENDRICKSON
MAJOR A.U.S.
REGIONAL LEGAL OFFICER

ROH/GG.

ENCLOSURE :
2 copies of letter from Capt. More and
Lt. Col. Ainslee.

C-C-N-F-I-D-E-N-T-I-A-L

LEGAL SUB-COMMISSION	
CLO	☒
DCLO	☐
Chief Counsel	☐
CJO	☐
Italian Section	☐
CL RKS	☐
	☐
	☐

H.Q. Ravenna Province
A.M.G.

CONFIDENTIAL
CONFIDENTIAL

45B

Subject: Trial of Certain Enemy Agents
To: R.L.O. Region IV

1. Reference your letter L/1007 of 14/9/44 and enclosure.
2. In the case in which I participated the charges were in my view properly laid and the case for the prosecution was properly conducted with the available material. The available material was not however sufficient to convince the Court that the case had been proved beyond the "reasonable doubt" which the A.C.C. Consolidated Instructions require.
3. Whether the Consolidated Instructions should be amended or ~~and~~ whether suspected enemy agents should be dealt with otherwise than by A.M. Courts are evidently questions of high policy on which no opinion is required from me.

Taspen More

P.L.O. Ravenna Prov.
Region IX

22/9/44

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NO action
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A.C.C. Region 12

(45C)

22 Sept. 1944

CONFIDENTIAL

LEG 14

Subject: Locals of certain Enemy Agents.
 To: R.H.O. Hq. A.C.C. Region 4

1. Reference is made to your letter No L/1007 dated 15 Sep. 44 and its enclosure.
2. Of the three case mentioned in the correspondence I defended in the first was a member of the case - in the second but know nothing of the third.
3. I have seen Col. Williams' reply to the letter you wrote him concerning the first case and agree with its contents.
4. It seems clear the first two cases have been inaccurately and inadequately reported. The court records are full and properly kept and one may be sure that if these are passed to the Chief of General Staff it will become apparent there is no ground for criticism, misinterpretation of legal regulations, or weakness in the phraseology of the proclamation in this regard.
5. Specifically, in the first case, the alleged "group" of accused never came into being and it is in the highest degree unlikely that, either before or after the occupation, the accused conspired to commit or intended to commit sabotage. As to the defendants in the second case it appeared that, before the Germans left Rieti where they then were, they disassociated themselves from the sabotage organization by destroying their means of finding explosives, that it is doubtful whether, even before then they really intended committing sabotage and that there was more than a reasonable doubt of their conspiring to do so; the balance of probability being that they did not so conspire.

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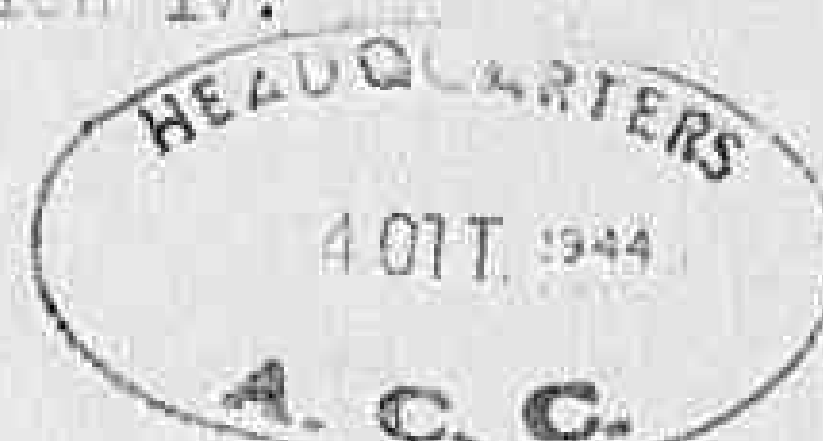
G. G. T. AINSIE
 LIEUT-COL. K.A.R.
 Lieut. Col. Ainsie
 No action

HEADQUARTERS REGION XII
Allied Control Commission
A.P.O. 394.

Legal 9859
CONFIDENTIAL (44A)

28 September 1944.

To: Regional Legal Officer, A.C.C., Region IV.
Subject: Trial of Enemy Agents.
Reference: RXII/LB/Reg/J/061.



1. Further to your L/1007 of 10 September 1944 and mine of 16 September 1944, reference as above.
2. Since I discussed this question with you in Rome I have had an interview with Major General Lemnitzer at H.Q., A.C.C. I discussed with him the details of the particular case with which I was concerned, and explained the reasons why the accused in that case could not have been charged with any other charges but what they were, and also why the Court came to the conclusion that on the evidence six of the accused had to be acquitted. I pointed out to him that so far from wishing to embarrass the fighting forces in any way we of A.C.C. regarded it as one of our principal duties to help the Armies in every possible way. I showed him the directive on Punishment contained in Article 26 of the Consolidated Instructions for Allied Military Courts. I think that as the result of the interview I gave him a better understanding of the functions of the Allied Military Courts, the difficulties with which they have to contend, and the limitations by which they are restricted.
3. I think that the principal source of the misunderstanding was the fact (which had not been fully appreciated) that Allied Military Courts have not jurisdiction to punish for acts committed before the occupation and before the posting of the Proclamations. This fact undoubtedly renders it difficult for an Allied Military Court to deal with a known saboteur, in the absence of proof of some overt act, or at least an "attempt", committed since the occupation. This led to a discussion on the practicability of enlarging the jurisdiction of Allied Military Courts, so as to be better able to deal with known enemy agents and saboteurs, by some amendment of, or addition to, the Proclamations. As to this, I of course pointed out (1) that any amendment of, or addition to, the Proclamations was a matter for the personal decision of the

Military Governor, acting on the advice of H.Q., A.C.C., and (2) that any amendment of, or addition to, the Proclamations designed to confer jurisdiction on Allied Military Courts in respect of acts committed before the occupation (e.g. burying explosives, attending courses of instruction, receiving pay from the Germans, etc.) would be impracticable and contrary to International Law. As to the latter, such acts might of course be triable in the Italian Courts as acts of treason committed against the duly constituted Italian Government. It was agreed, however, that this would not be a practicable or desirable way of dealing with enemy agents and saboteurs.

4. The only way in which I could suggest improving the jurisdiction of the Allied Military Courts was the insertion of a new clause in the Proclamations, making it an offence punishable by death for any person, who has during the German occupation been trained by the Germans as a saboteur or agent, or has made preparations for carrying out acts of sabotage or other acts hostile to the Allied Forces, not to declare to the Allied Military Police or to the Allied Military Government within 24 hours of occupation the full details of what he has done and his knowledge of any organization or arrangements made for the carrying out of acts of sabotage or other similar acts. Such a clause would have made it possible to try and punish all ten of the accused who were concerned in the case which was before me. Major General Lemnitzer appeared to think that the addition of such a clause in the Proclamations would go a long way to meet the difficulty, and I therefore promised him that I would pass the suggestion on to you, for you to consider and, if you think fit, take up with the Legal Sub-Commission, A.C.C.
5. My interview with Major General Lemnitzer took place in a most friendly atmosphere and was, I think, well worth while. I think I have at least done something to remove misunderstandings which might have embarrassed future relations between A.C.C. and the Armies. If there are any further developments in relation to the questions that have been discussed, I should be glad if you would keep me informed.

H.C. Linnar

Colonel,
Regional Legal Officer,
A.C.C., Region XII.

Copy to:-
C.L.O., Legal Sub-Commission, A.C.C. ✓

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CONFIDENTIAL

HEADQUARTERS
ALLIED CONTROL COMMISSION
CIVIL AFFAIRS SECTION
APO 394

ACC/1046/L.

3 October 1944.

SUBJECT: Trial of Enemy Agents.

TO: HQ AAC (CSI(b))

1. In view of the fact that your letter 1463/5/CSI(b) dated 5 Sep 44 raised such serious charges concerning the conduct of Allied Military Courts in the cases of enemy agents it was necessary to secure information regarding the three cases mentioned from officers familiar with these cases, now widely scattered.

2. As to the case of the group of saboteurs (10) referred to in paragraph 2 of your letter some of the accused were acquitted; others were given sentences varying from 2 to 10 years. Two of these accused were acquitted because early after the Allied occupation they came forward voluntarily and disclosed all their information to the Allied authorities which, the court concluded, showed an intention not to carry on any hostile activities. Three others among the accused were women, as to whom there was no evidence that they had buried explosives or even knew where any explosives were to be found. One of the accused was acquitted because the evidence against him was regarded by the court as being insufficient, not going beyond the point of raising some suspicion.

The charges in any case are not prepared by the Court, but the president of this particular court did remark that the accused were charged with the only possible charges the evidence would support.

3. With reference to the cases referred to in paragraph 3 of your letter (BIZZO Bruno and SQUARILLI Franco). In this case certain explosives were buried at FROSINONE; however, they were not buried by the accused, who were merely given a plan which would direct them to the hiding places in order that they could take possession of them. The accused tore up and threw away this plan in Rieti, where they were then living. This probably happened while the Germans were still in RIETI. O.I.C. agents later accompanied the accused from ROME to RIETI and after a long search found the torn plan and were able to piece it together.

On the evidence before it the Court felt, and seems to be justified in feeling, that this destruction and throwing away of the plan amounted to a complete abandonment of the possession of these explosives and of the intention of using them.

Certain of the explosives were buried by the accused at RIETI. As to these explosives the position is different. The accused were in possession before the Allied arrival and remained in possession subsequently. They were therefore convicted of possession. The appropriate sentence naturally depended on the view taken by the Court as to the intention of the accused. The Court

2.

on the evidence adduced by the prosecution formed the view that the accused abandoned their intention to make use of these explosives for sabotage purposes it being pertinent to remember that RIETI was occupied by the Allies on the 16th June whereas the accused were arrested in RIETI on the 29th June - a period in which, if they had wished, they might have taken affirmative action with regard to the explosives. Each of the accused was nevertheless given a 7 year sentence.

4. With regard to paragraph 4 of your letter, the case against FIANDRO Eugenio appears to have been badly prepared by the C.I.C. agents. The evidence on the most important charge was badly given and was considered as highly unsatisfactory.

There were two C.I.C. agents involved, FRANCHIZI and FITZGERALD, both of whom were involved in the interrogation of the accused. They were two main witnesses for the prosecution. FRANCHIZI gave evidence that he had no personal knowledge of the case and that in the interrogation he had only acted as interpreter for FITZGERALD. Then followed the evidence of FITZGERALD, who testified that he explained the case to FRANCHIZI who did the interrogating. As a result, the Court felt that it received no proper evidence from either of them.

FITZGERALD testified that he was in possession of a statement of facts and that "in order to avoid extraneous matter" he and FRANCHIZI "did guide the contents of the statement". Obviously a court will give little or no weight to a confession obtained in that manner. The Court was forced to the conclusion that the statement had been in a large measure dictated to FIANDRO by FRANCHIZI and that it was not a voluntary statement.

There was also a conflict between two other prosecution witnesses as to the statement made by the accused to the M.C.C. at the time of his arrest.

The prosecution experienced the greatest difficulty in identifying its exhibits. The articles sought to be offered in evidence lacked identifying marks. The investigating agents had not even noted the number of the pistol and it was impossible strictly to prove that the pistol in Court was the pistol in question. On the other hand it is understood that the accused, in testifying in his own defence, made an excellent impression on the Court and many of his denials and explanations were corroborated in varying degrees in evidence given by prosecution witnesses.

The accused was found not guilty of the principal charges but he was found guilty of possession charges and was given a 10 years sentence which was regarded as a stiff one for possession alone.

5. On the records of these cases it cannot be said that any one of these courts was not justified on the basis of the evidence presented in reaching its conclusion as to conviction, acquittal or sentence. In the above mentioned cases the prosecution did not satisfactorily prove many of the charges brought against the accused and the decisions of the courts appear to have been based on accepted legal grounds and not on "technical legal

3.

"difficulties" or "misinterpretation of legal regulations and procedure". The courts must always deal with cases on the evidence, and only on the evidence, adduced before them. In proper cases Allied Military Courts have without hesitation given death or heavy sentences when the cases have been proved beyond reasonable doubt in conformity with Anglo-Saxon principles of justice. I should add that the president of each of these courts was one of the most capable and experienced legal officers in A.C.C.

GERALD R. WRIGHT.
Brigadier,
V.P. Civil Affairs Section,
Deputy Chief of Staff.

RHW/now.

C-O-N-F-I-D-E-N-T-I-A-L

(42A)

4040

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LAZIO-UMBRIA REGION, LEGAL DIVISION
A.P.O. 394

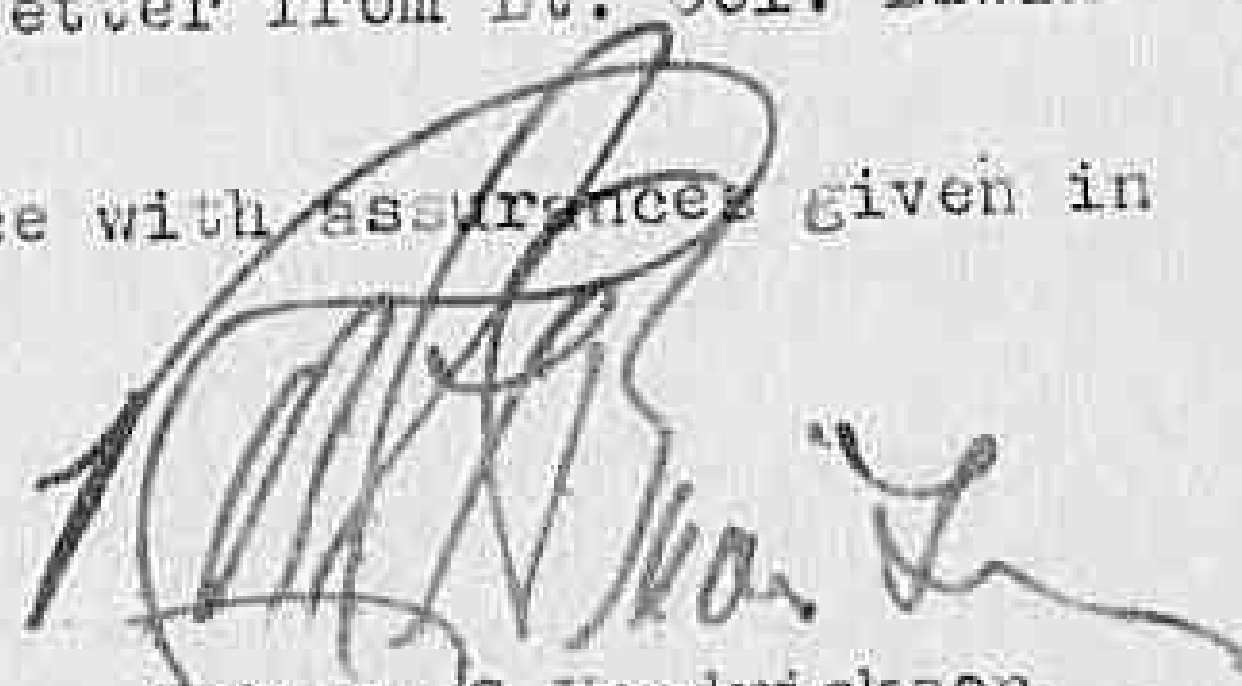
30 September 1944

SUBJECT : Communication of Chief of General Staff concerning trial
of Enemy Agents.

TO : Chief Legal Officer,
Legal Sub Commission
ALLIED COMMISSION.

1. Herewith please find copy of letter from Lt. Col. Edwin
J. Mercer with respect to the above.

2. This is forwarded in accordance with assurance given in
my last letter on this subject.



Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer,

RCH/PA.

ENCLOSURE :

2 copies of letter dated 21/9/44 from Lt. Col. Mercer to Hdqs.
Legal Division.

LEGAL SUB.COMMISIC

CLO

DCLO

Chief Counsel

CJD

Italian Section

CL RKS

C-O-N-F-I-D-E-N-T-I-A-L

(42B)
CONFIDENTIAL

HQ. A.M.G. Region XII
21 Sept. 1944.

SUBJECT : Trial of Enemy Agents.

HQ. AMG Region IV
Legal Division,
A.P.O. 394

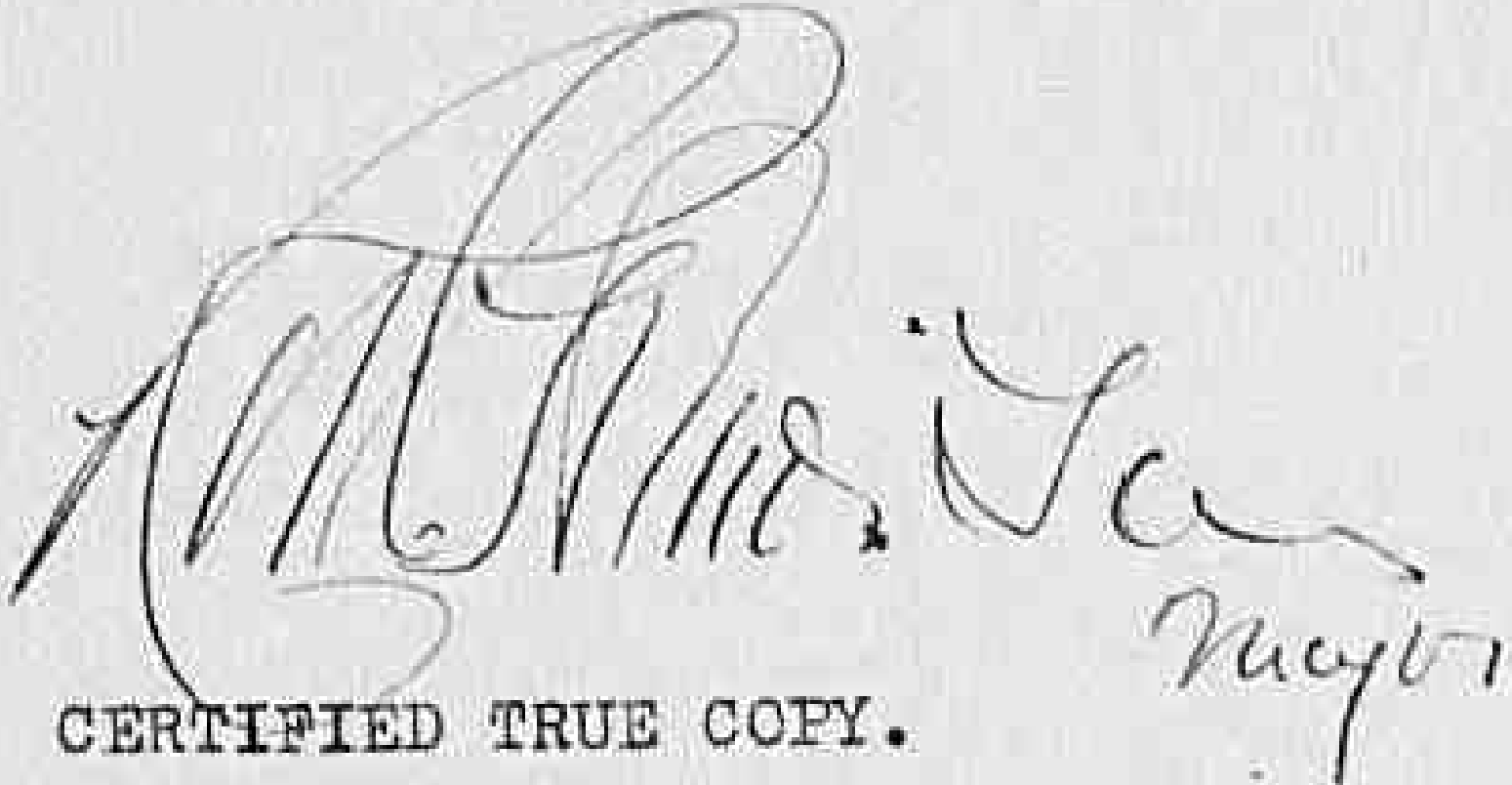
1. Answering your L/1007 of 10 Sept. 1944, enclosing communication from Chief of General Staff, AAI, dated 5 Sept. 1944, the following observations are offered in response to your request.
2. As to the first case, the facts as stated are not in accordance with my remembrance in the following particulars :
 - (a) Not all of accused attended the sabotage course referred to.
 - (b) None of acquitted accused buried explosives.
 - (c) No W/T set was involved in the evidence.
 - (d) Accused did not sign the engagement to undertake sabotage voluntarily, but rather under duress.
3. As to such first case the following additional observations are offered:
 - (a) Not only did the evidence fail to show conspiracy, but on the contrary it negatived such charge.
 - (b) So far as the evidence showed any intent whatever it tended to show lack of intent to commit sabotage. Accused can be presumed to intend the natural consequences of attending a sabotage course until such time as the evidence tends to show a contrary intent.
4. As to the second case, Brigido Bruno and Squadrilli Franco. This was a stronger case than the first one, but was complicated by the fact that the leader, Brigido, voluntarily destroyed and threw away the maps given him, showing the location of buried sabotage material, prior to his arrest, and after his arrest made full disclosure of all facts which might be helpful to C.I.C. He was apparently enthusiastic in developing the evidence.
5. It was the opinion of undersigned however that the evidence in the second case established the guilt of accused on some of the charges which were dismissed by the Court, and that the sentence was too light. This opinion was so strong that undersigned filed a dissenting opinion.
6. As to the question raised in the A.A.I. letter as to the suitability of existing ACC/AMG legal procedure to meet the requirements of

con't. 2.

Allied Military Security, I am in agreement that such question is properly raised at this time. It is, and was, the opinion of undersigned that the Courts, in the two cases in which he sat as a member, indulged in technicalities and niceties of procedure inconsistent with military justice. However, the Court in the second case was more inclined in that direction than the Court in the first, and inasmuch as the President of such Court was the Chief Judicial Officer, A.C.C., it would seem that any criticism on this score should be directed to policy of the Legal Division rather than to the individual Courts.

/s/ EDWIN J. MERCER

/T/ EDWIN J. MERCER
LT. COL. ORD.
AMG REGION XII.


CERTIFIED TRUE COPY.

C O N F I D E N T I A L.

HEADQUARTERS
ARMED SERVICES COMMISSION
LEGAL SUB-COMMISSION
APO 384

1 *file*
AGC/AGC/L.

(4/A)
HIV/pa.
23 Sept 44.

SUBJECT : Confirmation of AGC Court conviction by HQ, AGC.

MEMORANDUM TO : Acting Chief Commissioner .

1. I enclose suggested form of reply to Gen. Brown's letter of 24 Sept 1944 returned herewith.

2. This morning I called on Gen. Brown personally to explain in some detail how the process of reviewing of cases works and I think he now understands and is thoroughly satisfied.

3. The letter and enclosures from Gen. Brown are enclosed herewith.

RICHARD H. WILSON,
Colonel, GAC,
Chief Legal Officer.

A/CC 250-1.

September 1944.

SUBJECT : Confirmation of AM Court Convictions by HQ ACC.

TO : Commanding General, Rome Allied Area Command, APO 794, U.S. Army.

1. Reference your letter of 21 September 1944.
2. The thirty day period mentioned in paragraph 1 of your letter represents the time within which an appeal may be filed and not the time within which there must be confirmation or reversal. The records of all cases are held in the Headquarters of the Region in which they are decided until this 30 day period shall have elapsed and then if they involve a sentence of more than two years imprisonment or 50,000 lire fine they are sent to the Legal Sub-Commission for review. There they are reviewed generally in order of receipt from the various Regions except death cases or others of particular note which are given priority. Only an officer of the rank of Brigadier General or corresponding rank may confirm a death sentence. In cases involving the death sentence the Chief Legal officer or his deputy and generally both review the record and then make their recommendation to me. This process, however, does not start until the record is received in this Headquarters following the expiration of the 30 day appeal period. The record showing the action taken here by confirming authority is immediately transmitted to the Regional Legal Officer for further action. Every effort is made to expedite the review of cases particularly those involving the death sentence.
3. Referring to the schedule attached to your letter, cases Nos. 1 and 15 involving death sentences have been reviewed and are now awaiting final action. Nos. 2 to 19 inclusive except those already dismissed by the trial court are being reviewed in the office of the Chief Judicial Officer and final action is shortly expected; incidentally, the Chief Legal Officer tells me that according to the record, these cases were decided on the 17th August rather on the 9th August. Case No. 16 is under review now. Of the remaining cases the time for appeal has just elapsed in two of them (Nos. 17 and 18) and review has been commenced and the time of appeal has not yet elapsed in the other two (Nos. 19 and 20).

ELLERY W. STONE
 Captain, USNR
 Acting Chief Commissioner
 Allied Control Commission

Prepared by Col. R.H. WILMER, CLO, Legal Sub-Commission.

.....
Colonel, CAC.

ROME ALLIED AREA COMMAND
APO #794, US ARMY
Office of the Commanding General

IRB/JS
21 September 1944

Subject: Confirmation of AMG Court Convictions by Hq, ACC.

To : Commanding Officer, ACC, APO #394, US Army.

1. The attached sheet shows the results of security trials to and including 21 September 1944.

There is a thirty day period between the sentences by the court and the confirmation of the sentence by the reviewing authority, which in these cases is Hq, ACC.

2. In cases 1, 4, 5, 6, 7, 15, and 16, the thirty day period has elapsed, and no confirming order has emanated from Hq, ACC. This headquarters has kept in almost daily touch with Legal Section, Region IV, ACC, to find out when the confirming order would appear, but no information has been forthcoming.

3. It is therefore requested that action be expedited in these and future cases so that the dual purposes of expediting justice and clearing security jail may be served.

THEODORE K. BROWN,
Brigadier General, US Army,
Commanding

Incl - 1

Keep for file

C-O-N-F-I-D-E-N-T-I-A-L

40A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV - LEGAL DIVISION
A.P.O. 394

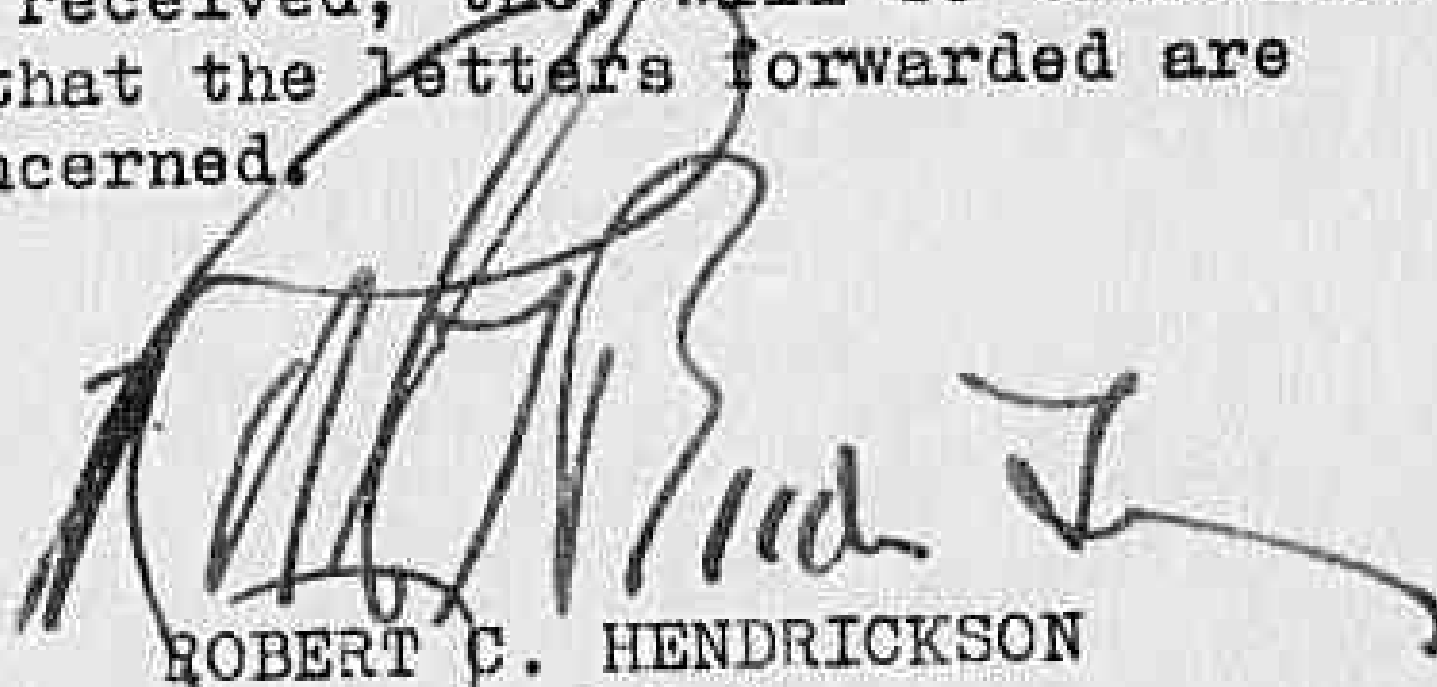
26 September 1944

SUBJECT : Letters from Members of General Court - Martial
on Enemy Agents.

TO : Chief Legal Officer, Legal Sub-Commission, A.C.C.
A.P.O. 394. (Attention : Lt. Colonel Campbell).

1. Forwarded pursuant to telephone conversation with Colonel Campbell today are the letters received from the Members of the Court in the Fiandro case and Sabotage case, (10 defendants).

2. Letters were sent to all members of the Court for their comment on letter dated 5 September 1944 from Lt. General, Chief of General Staff, A.A.I. As soon as the letters from the other Members of the Court are received, they will be transmitted forthwith. It is to be noted that the letters forwarded are by the Presidents of the Courts concerned.


ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

3 Inclosures.

- 40B — Incl. 1. Letter of Col. H.G. Willmer, Sabotage case (10 acc'd)
40C — Incl. 2. Letter of Major W.F. Waugh, President, (Fiandro case).
40D — Incl. 3. Letter of Capt. J.W. Levy, Member, (Fiandro case).

Confidential

40B

HEADQUARTERS REGION XII
Allied Control Commission
A.P.O. 394.

16 September 1944.

To: Regional Legal Officer, Region IV.
Subject: Trial of Enemy Agents.
Reference: RXII/LE/Reg/4/061.

1. Reference your L/1007 of 10 September 1944, forwarding copy of communication dated 5 September 1944 from Lt. General, Chief of General Staff, A.A.I.
2. As you are aware, I am only concerned at first hand with the first of the cases referred to. I therefore refrain from commenting on the other two cases.
3. You point out correctly that in the case with which I was concerned I had no part in determining the charges under which the accused were tried. I should like, however, to take the opportunity of supporting your view that the accused could not possibly have been tried for Conspiracy, since there was no evidence whatever that they had ever conspired. Further, I should like to add that the accused could not possibly have been tried for committing any act of sabotage, since no act had been committed. Nor could they have been tried for an attempt, since there was no evidence that any of them had taken any step which could possibly have been construed as an "attempt". For what my opinion is worth, I consider that the accused were charged with the only possible charges that the evidence would support.
4. So far as concerns this case, it appears to me that the comments and criticisms put forward are based in part on a misapprehension of the facts. It is not true that all the members of the so-called "group" attended a German Sabotage Course at the Hague: some did, some did not. To the best of my recollection it is not true that all voluntarily signed an undertaking: again some did, some did not. It is certainly not true that all of them buried sabotage explosives in and around Rome: there were only four of them against whom there was evidence that they did so. It is certainly not true that they were given a W/T set for communication with the Germans: there was not a shred of evidence that any of them were given such a set. It is certainly not true that the accused admitted the truth of all that is alleged in the letter of 5 September 1944, or that the eight who were arrested

confessed in writing to the facts alleged. The actual statements taken from the accused were before the Court and can be studied to see what the accused actually did confess. Actually only four of them confessed to having buried explosives.

5. I think it is further to be pointed out that the comments and criticisms made appear to be based also on a misapprehension as to the jurisdiction of an Allied Military Court. The Court has no jurisdiction to punish for acts done before the Allied occupation and the posting of the Proclamations. Attending a German course in sabotage, signing an undertaking to commit sabotage on behalf of the Germans, receiving money from the Germans, and burying explosives, are not offences cognizable by an Allied Military Court, if done before the Allied occupation. Such acts were not breaches of our Proclamations (which had not then been) posted in the territory in question), nor do they constitute any offence against the laws and usages of war. Such acts doubtless furnish good grounds for internment of the persons concerned on security grounds, but this is not a matter with which a Court of Law is concerned. An Allied Military Court can only punish for crimes committed or attempted during the Allied occupation.

6. Of the ten persons tried by the Court over which I presided, two were acquitted because early after the Allied occupation they came forward voluntarily and disclosed all their information to the Allied authorities. Having done so they had complied with every duty to which they were subject, and there was nothing left with which they could be charged. Three others were women, as to whom there was no evidence that they had buried explosives or even knew where any explosives were to be found. They were guilty of no offence against the Proclamations. One other was acquitted because the evidence against him was insufficient, and although there was some suspicion surrounding his movements the Court was not satisfied beyond reasonable doubt that he was guilty of any crime for which he could be punished. The other four were found guilty and sentenced. I would add that the decision of the Court (consisting of two legal members and one layman) was unanimous.

7. I do not gather whether any complaint is made as to the sentences actually given. I do not understand how it is possible for anyone who has not been present in Court, nor heard the explanations actually given by the accused themselves, nor seen their demeanour under cross-examination in the witness box and weighed up their characters and criminal tendencies, can qualify to judge whether the sentence passed is justified or not. For myself, having listened patiently to the evidence during six days of trial

I feel satisfied that the sentences given by the Court were just.

8. In conclusion, I have two observations to make. One is that much misunderstanding might be removed if the actual Record of Proceedings, complete with the Exhibits and the Reasons for Judgment, could be sent to the Chief of the General Staff, so that he may see for himself what the actual evidence was against the accused, and what were the reasons that led the Court to its conclusions. The second is to state what I conceive to be the fundamental principles of Anglo-Saxon justice, namely (1) that every person charged with an offence is entitled to a fair trial, and to be acquitted unless the Court is satisfied beyond reasonable doubt of his guilt, (2) that the judgment of the Court must be based on the evidence actually adduced before it, and must not be coloured by suspicions aroused by extraneous circumstances, and (3) that in no case can a man be convicted and punished unless he has actually committed or attempted or conspired to commit some crime known to the law. Any departure from these elementary principles of Anglo-Saxon jurisprudence would in my view be disastrous, would be most damaging to the prestige of the Allied Governments, and would be the negation of the high principles for which the Allied Forces are fighting.

H. G. Winkler

Colonel,
President, General Military Court.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV, LEGAL DIVISION
A.P.O. 394

14 September 1944.

SUBJECT: Case of FIANDRO, Eugenio.

TO: Regional Legal Officer, Region IV.

1. In the case of FIANDRO, Eugenio the court based its decision solely upon the evidence adduced at the trial and the record of that evidence, kept by a member of the court, speaks for itself.

2. The evidence presented by the prosecution in support of the charges was unsatisfactory in many particulars. Attention is invited to that portion of the evidence which relates to the signed statement, termed a "confession", which contains incriminating admissions alleged to have been made by the accused, and on which the charge of serving the enemy as a spy is largely based. The statement was obtained from Fiandro at Regina Coeli Prison by U.I.C. Agents Francuzzi and Fitzgerald. Francuzzi, who preceded Fitzgerald upon the witness stand, testified that he had no personal knowledge of the case against Fiandro, and that he had only acted as interpreter for Fitzgerald, who conducted the interrogation. He said that he commenced the interrogation by informing Fiandro that they wanted a statement from him, that it would be easier for him and for them if he made a statement, that the statement must be voluntary, that it would be used against him, and that it might lead to the death penalty. He said that the accused filled out the statement, signed it, and handed it to Fitzgerald. He denied that he kicked Fiandro, and denied that Fitzgerald or anyone else did so in his presence.

Fitzgerald testified that he explained the case to Francuzzi before visiting Fiandro, and said that Francuzzi did the interrogating. He said that Francuzzi talked to the accused as the accused wrote; that Francuzzi and the accused would talk and that the accused would then write for a while; that then they would talk some more and then the accused would write some more, and that that procedure was followed until the statement was finished.

Fitzgerald said that he was in possession of a statement of facts from a previous interrogation made by a British agency, and that "in order to avoid extraneous matter" he and Francuzzi "did guide the contents of the statement".

Fitzgerald denied that there had been any physical violence used toward the accused during the interrogation. When asked

2.

specifically whether anyone had kicked the accused, the witness hesitated and then said that Francuzzi had made a motion toward the accused with his foot, but he believed that he did not actually kick him.

Francuzzi testified out of the hearing of Fitzgerald. The latter gave his testimony in Francuzzi's presence, and when the questions put to him on cross-examination indicated to him that his testimony was at variance with that previously given by Francuzzi, Fitzgerald was hesitant and evasive and was visibly embarrassed.

The court was forced to the conclusion that the statement had been in large measure dictated to Fiandro by Francuzzi, and that it was not a voluntary statement. It was admitted in evidence for what it was worth.

A translation (Pros. Ex. 1-a) was admitted and subsequently was found to contain an error, which was corrected on the face of the document by changing the word "tanks" to read "troops".

3. Marshall Carozza of the Carabinieri testified that Fiandro, when interrogated at the Carabinieri Barracks on the day of his arrest, said that he had been entrusted by the Germans to carry out the work of espionage.

Captain Fiore, Carrozza's superior, testifying about the same interrogation said that the accused said that he had no intention of carrying out the work.

4. The witness Di Lorenzo, Salvatore, who was arrested with the accused but against whom no charges had been lodged, testified that Fiandro had said that he was a member of the German Secret Service; identified the radio transmitter and pistol as belonging to Fiandro; and said that the radio set was kept in a drawer by day and under the mattress for use as a pillow by night.

He identified the diary (Pros. Ex. 2) as being in the handwriting of Fiandro.

Called later as a witness for the defence he corroborated Fiandro's testimony as to the falsity of the entries in the diary relating to trips supposed to have been made by the accused to Capua and Nettuno, and said that Fiandro was in Rome on the dates in question.

Scaccia

5. The witness described himself as a journalist who was in the counter espionage service of the Communist Party. He said that Fiandro was sent to him as a wireless operator by the German embassy in November 1943; that he saw him almost every day thereafter; that Fiandro permitted him to make copies of the German codes; that at a luncheon on 7 June 1944 Fiandro had told him that he had been told to remain in Rome and to make contact with Berlin at 11 P.M. every day; that at a later date, when they were both in jail, Fiandro had told him that he had not made any contacts with Berlin because there

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was no electric current and because he had been arrested before he could do so. Scaccia also said that Fiandro had told him that he had counted 325 tanks on the Corso Umberto.

The witness Mazzotti, another Communist, testified that at the luncheon described by Scaccia they spoke of the Germans having departed from Rome without leaving instructions for the men whom they had left behind. He also said that Fiandro, Eugenio had stated that he had gone to the German embassy and found no one there. The witness further said that later on, in jail, Fiandro had said that he could not contact the Germans because of lack of electric current and because he had been apprehended.

6. The prosecution experienced the greatest difficulty in identifying its exhibits. The articles sought to be offered in evidence lacked identifying marks, no one had noted the number of the pistol, and the chain of evidence as to their custody between the date of their seizure and the date of the trial was incomplete. No one was in a position to testify that the articles, particularly the written documents, were in the same condition at the time they were produced in court and they had been at the time they were seized. Which of the articles produced at the trial, and which of those referred to in the testimony and not produced, belonged to Fiandro, Eugenio, which to Fiandro, Carmelo, and which to Di Lorenzo, Salvatore was largely a matter of conjecture.

The court, nevertheless, admitted the articles in evidence.

7. The motion made by the defence at the close of the prosecution's case to find the defendant not guilty on all charges for lack of evidence was denied as to each charge.

8. The defendant, Fiandro, Eugenio, testified as a witness in his own behalf and made an excellent impression upon the court. No effort will be made to summarize his evidence except to point out that he said that he was born in Cairo, Egypt on 12 November 1925, and came to Italy on 8 June 1940, a few days before Italy became involved in the war; that the war prevented his returning to Egypt; that he attended an Italian College at Anzio and having been trained as a radio telegrapher, he sought and obtained employment at the German embassy in Rome in October 1943, as the alternative to serving in the Italian Army; that the radio sets, which were found in his possession, had been given to him in Genoa by the Germans and that he brought them to Rome on 30 May 1944; that he never used the sets and never sent or received messages on them; and that he never intended to be a spy.

In connection with the written statement (Pros. Ex. 1) Fiandro denied the truth of the parts in Italian which were translated as reading as follows: "The aim of my work was supposed to be that of remaining in Rome, following the occupation of the latter city

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by the Allies, in order to transmit military information to Berlin by wireless"; "As is written in my diary, I crossed the American lines once, leaving Rome and arriving in Capua after passing through Piedemonte"; "Following the Allied Occupation of Rome, I tried to contact Berlin but I didn't succeed owing to lack of electric current and precise orders as to what I was supposed to do"; and "I told Dr. Scaccia that I was very sorry that I had not succeeded in contacting Berlin since I had seen a vast movement of troops on the Corso Umberto, Rome." Fiandro testified that the concluding paragraph reading, "What I have declared above corresponds as far as I know to the truth. I have written this statement voluntarily without any promise of liberty or money," was dictated by Francuzzi.

With further reference to the written statement the defendant said that after he was brought into the interrogation room at the prison Francuzzi kicked him, then told him to sit down at a table, gave him paper and told him to write; that what he wrote was dictated to him by Francuzzi in Fitzgerald's presence; that he protested on numerous occasions that what he had been told to write was not the truth; that on each such occasion Francuzzi stated that those matters were true and that he was to write; that he did write as directed; that he wrote the paragraph that the statement had been made voluntarily at Francuzzi's direction; and he said that Francuzzi told him that if he had any explanations to make that he would be given an opportunity to make them in court.

Fiandro denied that he told Scaccia that he had failed to contact Berlin and was sorry about it, and denied that he had told Scaccia that he had seen a large movement of troops or that he had seen 325 tanks on the Corso Umberto. He said he told Scaccia that he was in Rome without orders. He said that Scaccia asked him if it was possible to use a radio set and that he said "no" because there was no current.

Fiandro denied that anyone had given him any information to transmit to Berlin or to any other place.

He further said that on the night previous to his arrest he had discussed, with his cousin and others, the idea of returning to his home in Egypt, and had made plans to visit the Foreign Ministry the following day in connection with that matter.

On cross-examination he said that he had never admired the Germans, and that he never took an oath of allegiance to Hitler; that he knew that the Allies were expected in Rome on 4 June; that he did not hide during the days following the Allied Occupation; that he knew that it was risky to have radio transmitting sets and a pistol in his possession; and that he intended to abandon them all.

He testified that he was paid his regular monthly wage of 10,000 lire for the month of May, and said that the work that he did during that month was performed in Genoa; that he was told to

5.

report to the German embassy in Rome for instructions and said that he went there on 4 June; that he expected to receive both his instructions and his pay for the month of June at that time; that when he found no one at the embassy and received no orders he thought that he was free to go home.

He further testified that he was never assigned an identification number or letter by the Germans; that the codes found in his possession were given to him in December 1943; and that he once sent a message from Rome to Berlin for test purposes in January 1944.

He also said that the entries in his diary relating to the supposed trips to Capua and Nettuno were not true; that he had made them for the purpose of showing them to friends in order to impress them with the fact that he had crossed the lines; and that he was actually in Rome on the dates indicated in the diary.

9. It appears from the foregoing that the principal evidence against Fianbro is contained in his purported confession. The corroborating evidence, so-called, for the most part has to do not with what he did, but with what he said he did.

On the defendant's behalf we have his denials and explanations, corroborated in varying degrees by the witnesses produced by the prosecution.

10. The Court believed that the defendant may have been and probably was a potential spy. However it was also of the opinion that on the evidence in the record the prosecution had failed to prove beyond a reasonable doubt that Fianbro, acting clandestinely or on false pretenses, had obtained or endeavored to obtain information in the zone of operations with the intention of communicating it to the enemy, and accordingly he was found not guilty of the first charge.

The court was also of the opinion that the evidence failed to establish that the defendant had communicated with or attempted to communicate with the enemy.

On the charges of possession of firearms and possession of a wireless transmitting set the proof was clear and convincing.

11. The Court allowed the widest possible latitude to the prosecution in the presentation of its evidence. The purported confession of the accused was received in evidence, as were all the articles offered as exhibits. The prosecuting officer was given every opportunity to shake the testimony of the defendant on cross-examination and failed to do so.

~~As XXXXX was not prepared to say that XXX the testimony of C.M.C.XX~~

~~Agents X~~

6.

12. I am not prepared to say that had the testimony of Agents Francuzzi and Fitzgerald been satisfactory that the Court would ~~not~~ have found FIANDRO, Eugenio guilty of serving the enemy as a spy and condemned him to death as it did FIANDRO, Carmelo in another case, but such a result ~~was~~ well within the realm of probability.

would have been

William F. Waugh
William F. Waugh, Major, J.A.G.D.
President, General Military Court.

93

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

Recd. 21-9-1944

/rlp.

19 September 1944.

SUBJECT : Trial of Enemy Agent.

TO : Regional Legal Officer (Major Robert C. Hendrickson),
Region IV.

1. Letter dated 12 September 44 with enclosure by Major General Lennitzer received.

2. Major Vaughn has already conferred with me in the premises. The major has made a thoroughly clear statement in connection with the case of Fiandro Eugenio. There is nothing I can add to it.

3. My views coincide with those of Major Vaughn. I subscribe to them.

Joseph W. Levy
JCS. W. LEVY,
Captain.



~~CONFIDENTIAL~~
CONFIDENTIAL

Arch 3

C-O-N-F-I-D-E-N-T-I-A-L

*Always further action
Held in
file.
RCH*4040
File
HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV, LEGAL DIVISION
A.P.O. 394

(39A)

13 September 1944

I/1007

SUBJECT : Trial of Enemy Agents

TO : Chief Legal Officer,
Legal Sub Commission,
Allied Control Commission

38A

1. I am returning Major General Lemnitzer's letter, dated 5 September 1944, for your file and such further action as you may feel constrained to take in regard to this situation.

2. In accordance with your instructions, letters have been despatched to each of the Judges participating in the trials to which the General's criticism is addressed.

3. Copy of these letters are forwarded herewith for your information.

→

LEGAL SUB-COMMISSION	
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Robert C. Hendrickson
Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

RCH/PA.

ENCLOSURES:

2 copies of letters addressed to Judges, and letter from Major General L.L. Lemnitzer dated 5 September 1944.

C-O-N-F-I-D-E-N-T-I-A-L

C-O-N-F-I-D-E-N-T-I-A-L
 HEADQUARTERS
 ALLIED MILITARY GOVERNMENT
 REGION IV, LEGAL DIVISION
 A.P.O. 394

10 September 1944

L/1007

SUBJECT : Trial of certain Enemy Agents

TO : Lt. Col. Paul D. Carter, Lt. Sabatino,
 Colonel H.G. Willmer, Lt. Col. Edward Mercer.

1. Herewith please find communication from the Chief General Staff, which I am sure you will find quite self explanatory. CC

2. Since this communication has reference to a very important security trial, in which you participated recently as a member of the General Court, your observations at this time with respect to the specific criticism offered will be most helpful and indeed deeply appreciated.

3. As to the General's point that the accused should have been brought to trial on a charge of conspiracy to commit acts of sabotage against the Allied Forces, I am not concerned in the slightest, for clearly there was no proof to justify such a charge. Of course, if you have any views, which you feel would be enlightening on this phase of the matter, your comment will be most welcome.

4. Actually the only point raised in the accompanying letter, which disturbs me at all, is the general criticism that "vast quantities of explosives and sabotage devices" were buried by the group for subsequent use; that this was admitted by the accused, that they all confessed and despite the very serious consequences, which must be implied in any operation of this character, several of the accused were acquitted entirely and the remainder were sentenced to extremely light sentences. The point I desire to make is that the very nature of the undertakings, in which the accused were engaged, seem to challenge the age old principle of "reasonable doubt" and to cast a suspicion, which in the light of the importance of our military operations could well justify greater elasticity in the application of the time honoured Anglo American system of justice.

5. It should be understood that any comment which I have offered in the matter is not offered as criticism, but merely to suggest

The points of criticism upon which we should be prepared to make answer, and incidentally I feel that any answer made should be merely offered for the General's enlightenment and not in any sense as a defense of our position.

Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer,

RCH/21.

59

C-O-N-F-I-D-E-N-T-I-A-L

C-O-N-F-I-D-E-N-T-I-A-L

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV, LEGAL DIVISION
A.P.O. 394

12 September 1944

L/1007

SUBJECT : Trial of certain Enemy Agents.

TO : Captain J. W. Levy - Major Waugh

1. Herewith please find communication from the Chief General Staff, which I am sure you will find quite self explanatory.

2. Since this communication has reference to a very important security trial, in which you participated recently as a Member of the General Court, your observations at this time with respect to the specific criticism offered will be most helpful and indeed deeply appreciated.

3. As to the technical criticism made in the General's letter, I am not concerned in the slightest for clearly the proof in each case established the fact that proper charges were laid in each instance, and that in all likelihood the cases would have been filed completely had they been laid on other charges. Of course, if you have any views, which you feel would be enlightening on this phase of the matter, your comment will be most helpful.

4. Actually the only disturbing note in the General's letter, from my point of view, is the general criticism that the very nature of the undertakings in these cases seem to challenge the age old principles of "reasonable doubt" and to cast suspicion, which in the light of the importance of our Military operations could well justify greater elasticity and a more forceful application of the time honoured Anglo American system of Justice.

5. It should be clearly understood that any communication, which I have offered concerning these cases, is not offered as criticism of the Court, but merely to suggest the points of criticism upon which we of the Legal Division should be prepared to make answer and incidentally I feel that any answer made should be merely offered for the general information and enlightenment and not in any sense in defense of our position.

RCH/PA.

Robert C. Hendrickson,
Major A. U. S.
Regional Legal Office

C-O-N-F-I-D-E-N-T-I-A-L

C-O-N-F-I-D-E-N-T-I-A-L

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV, LEGAL DIVISION
A.P.O. 394

12 September 1944

L/1007

SUBJECT : Trial of certain Enemy Agents.

TO : Captain J. W. Levy - Major Waugh

1. Herewith please find communication from the Chief General Staff, which I am sure you will find quite self explanatory.

2. Since this communication has reference to a very important security trial, in which you participated recently as a Member of the General Court, your observations at this time with respect to the specific criticism offered will be most helpful and indeed deeply appreciated.

3. As to the technical criticism made in the General's letter, I am not concerned in the slightest for clearly the proof in each case established the fact that proper charges were laid in each instance, and that in all likelihood the cases would have been filed completely had they been laid on other charges. Of course, if you have any views, which you feel would be enlightening on this phase of the matter, your comment will be most helpful.

4. Actually the only disturbing note in the General's letter, from my point of view, is the general criticism that the very nature of the undertakings in these cases seem to challenge the age old principles of "reasonable doubt" and to cast suspicion, which in the light of the importance of our Military operations could well justify greater elasticity and a more forceful application of the time honoured Anglo American system of Justice.

5. It should be clearly understood that any communication, which I have offered concerning these cases, is not offered as criticism of the Court, but merely to suggest the points of criticism upon which we of the Legal Division should be prepared to make answer and incidentally I feel that any answer made should be merely offered for the general information and enlightenment and not in any sense in defense of our position.

RCH/PA.

Robert C. Hendrickson,
Major, U.S.
Regional Legal Office

C-O-N-F-I-D-E-N-T-I-A-L

C-O-N-F-I-D-E-N-T-I-A-L

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV, LEGAL DIVISION
A.P.O. 394

15 September 1944

L/1007

SUBJECT: Trial of certain Enemy Agents.

TO: Lt. Col. I.G. Campbell
Legal Sub Commission,
Allied Control Commission.

1. Herewith please find communication from the Chief General Staff, which I am sure you will find quite self explanatory.

2. Since this communication has reference to a very important security trial, in which you participated recently as President of the General Court, your observations at this time with respect to the specific criticism offered will be most helpful and indeed deeply appreciated.

3. As to the technical criticism made in the General's letter, I am not concerned in the slightest, for clearly the proofs in each case establishes the fact that proper charges were laid in each instance, and that in all likelihood the cases would have failed completely had they been laid on other grounds. Of course, if you have any views, which you feel would be enlightening on this phase of the matter, your comment will be most helpful.

4. Actually the only disturbing note in the General's letter, from my point of view, is the general criticism that the very nature of the undertakings in these cases seem to challenge the age old principles of "reasonable doubt" and to cast a suspicion, which in the light of the importance of our Military operations could well justify greater elasticity with and a more forceful application of the time honoured Anglo American system of justice.

5. It should be clearly understood that any criticism, which I have offered concerning these cases, is not offered as criticism of the Court, but merely to suggest the points of criticism upon which we of the Legal Division should be prepared to make answer, and incidentally, I feel that any answer made should be merely offered for the general information and enlightenment and not in any sense in defense of our position.

RCH/PA.

ENCLOSURE:

Copy of communication dated 5/2/44 from
Chief General Staff.

C-O-N-F-I-D-E-N-T-I-A-L

Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

(39)

(Copy to
38)

SUBJECT: Trial of Enemy Agents

SUBJ: M

CONFIDENTIAL

Legal

Cto

CLO

Chief Counsel

CJO

Action Section

CL RKs

HQ, A.S.C.

Copy to: C.G., B.A.A.C.

ATTN: ADV 73

2/20/51/331(3)

5 Sep 44

38^A

1. Several important cases which have recently been brought to trial in RQIB have raised certain important legal questions which are causing serious concern to this HQ.

2. The first case concerned a group of saboteurs, who were left behind in RQIB by the German BICHERHILFST. Their mission was to remain behind after the German withdrawal from RQIB and to commit acts of sabotage against the Allies.

The members of this group attended a German sabotage course at THE HAGUE at the beginning of the year; they voluntarily signed an undertaking to commit sabotage on behalf of the Germans; they received money from the Germans; they buried sabotage explosives in and around RQIB; they were given a M/T set for communication with the Germans.

All this they admitted when arrested by the Allied security authorities after the Allied occupation of RQIB. Vast quantities of explosives and sabotage devices buried by and designed for the use of the group were located and collected by the Allied security agencies.

The leader of the group gave himself up on 7 June and handed the Allied authorities a list given him by the Germans showing the names of the other members of the group; eight such members were arrested, and did not give themselves up.

Since these eight, when arrested and interrogated, confessed in writing to the facts shown above, it was considered that they should be brought to trial on the charge of conspiracy to commit acts of sabotage against the Allied Forces.

The Allied legal authorities in RQIB, however, stated that it was not possible to support such charges, since the accused had not conspired while in Allied territory. They were charged instead with failure to surrender explosives. Of the four who were convicted, three were sentenced to 2 years imprisonment, and one to 10 years.

This decision of the legal authorities with regard to the charges is not understood by this HQ. It is considered that the previous training and actions of the accused, combined with their actual presence in an Allied City along with sabotage explosives which they had buried there, could be regarded as reasonable grounds for charges of conspiracy to sabotage.

It would appear that, according to the opinion of the legal authorities in RQIB, our security agencies should wait until post-occupational events

The members of this group attended a German sabotage course at THE HAGUE at the beginning of the year; they voluntarily signed an undertaking to commit sabotage on behalf of the Germans; they received money from the Germans; they buried sabotage explosives in and around ROTTERDAM; they were given a W/T set for communication with the Germans.

All this they admitted when arrested by the Allied security authorities after the Allied occupation of ROTTERDAM. Test questions of explosives and sabotage devices buried by and designed for the use of the group were located and collected by the Allied security agencies.

The leader of the group gave himself up on 7 June and handed the Allied authorities a list given him by the Germans showing the names of the other members of the group; eight such members were arrested, and did NOT give themselves up.

Since these eight, when arrested and interrogated, confessed in writing to the facts shown above, it was considered that they should be brought to trial on the charge of conspiracy to commit acts of sabotage against the Allied forces.

The AIF legal authorities in ROTTERDAM, however, stated that it was not possible to support such charges, since the accused had not conspired while in Allied territory. They were charged instead with failure to surrender explosives. Of the four who were convicted, three were sentenced to 2 years imprisonment, and one to 10 years.

This decision of the legal authorities with regard to the charges is not understood by this HQ. It is considered that the previous training and actions of the accused, combined with their actual presence in an Allied City along with sabotage explosives which they had buried there, could be regarded as reasonable grounds for charges of conspiracy to sabotage.

It would appear that, according to the opinion of the legal authorities in ROTTERDAM, our security agencies should wait until post-occupational agents have actually committed sabotage or espionage before arresting them, if there are to be sufficient grounds to justify their trial on serious charges. It is needless to point out the inappropriateness of such a paradoxical situation existing in a theatre of active operations; it must always be the aim of our security agencies to prevent rather than to detect acts of espionage and sabotage, but it appears that the greater the success achieved by security in this direction, the less serious are the consequences for the individual agents.

3. A second and somewhat similar case concerned PHILIP DE BRUNO and SQUADRONELLI Franco, two enemy sabotage agents who were arrested on 29 June 1944.

These persons attended a German sabotage course; and were given a mission by the enemy to commit acts of sabotage against the Allies; they buried a large quantity of explosives in the ROTTERDAM area before the arrival of the Allies; they were given money and a radio receiving set by the enemy; on this set they were to receive instructions in code broadcast from the ROTTERDAM radio; they were to wait in ROTTERDAM until overrun by the Allied forces, and then to carry out sabotage in the ROTTERDAM and ROTTERDAM areas in accordance with the instructions received.

- 2 -

All this they admitted under interrogation, and further that they had actually listened for instructions on their radio at the arrival of the Allies in Rome; the radio set was discovered with them at the time of their arrest, and the explosives which they had buried were recovered by the Allied Security authorities.

In this case numerous charges were preferred against the accused, but they were only convicted on the charge of illegal possession of explosives, for which they were sentenced to seven years imprisonment; the court considered that there was no evidence of intent to commit sabotage.

4. A third case concerned FIANDRO Eugenio, an espionage agent who was left behind in Rome by the German Intelligence Service. His mission was to remain in Rome after its occupation by the Allies and to report Allied military information to the Germans by means of W/T.

On 9 June (i.e. four days after the Allied occupation of Rome), FIANDRO was arrested by the Allied Security Authorities. A search carried out at the time of his arrest revealed the presence of the W/T transmissions, a code book, a pistol and a false identity card.

When interrogated, FIANDRO admitted that he had accepted an espionage mission on behalf of the Germans; he admitted ownership of the W/T sets and code book, which had been given to him by the Germans; he admitted that he had tried, after the Allied occupation of Rome, to contact the enemy by means of W/T, and stated that he had failed owing to lack of electric current; he admitted that he was sorry that he had failed to make contact, since he had seen a large movement of Allied tanks down the Corso Umberto.

These admissions he wrote down in a signed confession, and two witnesses were available to testify to the truth of these statements.

It was with some degree of confidence, therefore, that this case was submitted by our security agency to the AMS legal authorities for trial.

Four charges were preferred against him, viz, being a spy, communicating or attempting to communicate with the enemy, possession of messages, and possession of W/T set.

He was convicted of the last two charges and sentenced to 10 years imprisonment, but he was acquitted of the first two charges, presumably for certain technical reasons, the exact nature of which is unknown to this HQ.

5. It is considered that the above cases give reasonable grounds for questioning the suitability of the existing legal regulations to meet the requirements of Allied Military Security. It is felt that certain legal technicalities have prevented enemy agents from being dealt with in a manner which would have been more in keeping with the military situation and the customs of war, and which would at the same time have been fully in accordance with our standards of justice.

6. It is not suggested that the apparently unsatisfactory nature of the charges, verdicts or sentences in these cases was due to any lack of care or consideration on the part of the legal officers concerned, or to any undue reluctance to act with proper severity; it seems possible, however,

mission on behalf of the Germans; he admitted ownership of the W/T sets and code book, which had been given to him by the Germans; he admitted that he had tried, after the Allied occupation of RHE, to contact the enemy by means of W/T, and stated that he had failed owing to lack of electric current; he admitted that he was sorry that he had failed to make contact, since he had seen a large movement of Allied tanks down the Corso Umberto. These admissions he wrote down in a signed confession, and two witnesses were available to testify to the truth of these statements.

It was with some degree of confidence, therefore, that this case was submitted by our security agency to the AMF legal authorities for trial.

Four charges were preferred against him, viz, being a spy, communicating or attempting to communicate with the enemy, possession of firearms, and possession of W/T set.

He was convicted of the last two charges and sentenced to 10 years imprisonment, but he was acquitted of the first two charges, presumably for certain technical reasons, the exact nature of which is unknown to this HQ.

5. It is considered that the above cases give reasonable grounds for questioning the suitability of the existing legal regulations to meet the requirements of Allied Military Security. It is felt that certain legal technicalities have prevented enemy agents from being dealt with in a manner which would have been more in keeping with the military situation and the customs of war, and which would at the same time have been fully in accordance with our standards of justice.

6. It is not suggested that the apparently unsatisfactory nature of the charges, verdicts or sentences in these cases was due to any lack of care or consideration on the part of the legal officers concerned, or to any undue reluctance to act with proper severity: it seems possible, however, that the technical legal difficulties, which appear to have precluded appropriate charges and verdicts, may perhaps have arisen through a misinterpretation of legal regulations and procedure, or, more likely, through the existence of some weakness or loop-hole in the phraseology of Proclamation No. 2. In which the various offences and penalties are set out. It certainly seems as if the interpretation of certain articles of this proclamation has been inconsistent with the intent of the persons who framed the Proclamation.

7. You are therefore requested to give this matter your careful and urgent consideration, and to take all possible steps to ensure that, from the legal point of view, enemy agents can be, and will be dealt with in a manner appropriate to the requirements of our operational security and with a severity customary in a theatre of war, as well as in accordance with the high standards of Allied justice.



L. L. Lemmiter
Major General, U.S. Army
for Lt-General
Chief of General Staff

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7688 Legal SC 37A
1127

RESTRICTED

HQ ALLIED ARMIES IN ITALY

Tel: BILTON ADV 78

1460/5/4311(h)

30 Aug 44

G-2 PERS. DIV.
GSI 31.00.00.00
GSI 1 Division
GSI 2 Division
GSI 3 Division
G-2 PERS.
G-2 PERS.

G-2 Allied Garrison MARDIA
Security Branch
Legal Sub-Committee, etc.

(12 copies received)

Copy to: GSI, etc.

1. It has been decided that, in future, officers of GSI should not be called upon to attend at witnesses to the trial of enemy agents when they have not been called.

2. This is to ensure that the justice is done when a case is being prepared for trial, and that officers should be made to good time to ensure that the officers of GSI are not involved in the case. If a case should arise where evidence is deemed inadmissible, and no decision is given in court, the case will be referred to this HQ for decision as to whether it shall be brought to trial or allowed to drop.

W D L. C. 11. 11

W D L. C. 11. 11

Source: [illegible]

Legal Sub-Commission, JSC.

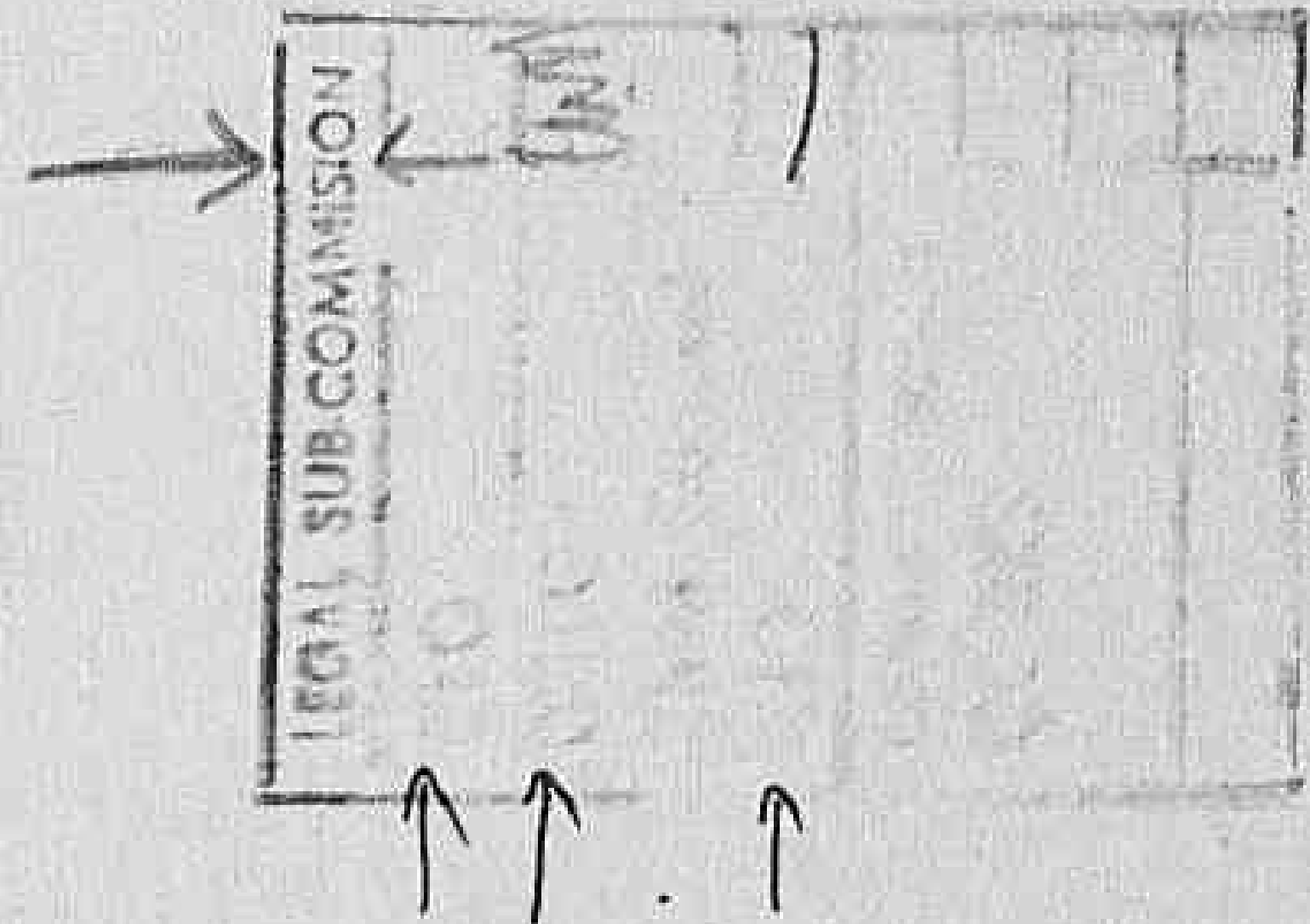
Copy to: CSMC, JSC

1. It is noted that, in future, officers of CSMC should not be called upon to attend as witnesses at the trial of enemy agents who, they have known, and.

2. When it is noted that in the past a case is being prepared for trial, and any effort should be made in good time to ensure that the evidence is CSMC officer is not available to the case. It is also noted that, when evidence is deemed inadmissible, and no alternative case is open, the case will be referred to this W. for decision as to whether it shall be brought to trial or allowed to drop.

W D C. L. M. H. C.

for [illegible] 1955(1)



2 copies received for and sent to Security [illegible]

(Hos)

Note 2 copies taken by Capt Gale to pass to [illegible] Whittingstall

15/10/44

Files destroyed 1/10/44

33A

/ R.M.

SECRET
HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

21 Aug. 44

ACC/ 4040/✓

Subject : List of Espionage and Sabotage cases.

To : Regional Legal Officer, Region IV.

1. Reference this H.Q.'s letter 4040/L dated 10 ave and acknowledged by your L/1007 of Aug. 44.

2. Since the above letter this office has ^{received} a revised list on the above subject:

3. Herewith is the latest list as submitted:

(a) Cases under investigation by Maj. Fernley Whittingstall, JAG Dept. Hb AAI

1. FERRETTI	Mario	espionage	
2. MANCA	Vladimiro	"	
3. RENACCHI	Lorenzo	"	
4. DE MICHELA	Giorgio	"	DISPOSED OF
5. PIZZI	Francesco	"	
6. GATTOLA	Francesco	"	

(b) Cases under investigation by CIC

7. BRIGIDO	Bruno	sabotage	
8. SQUADRILLI	Franco	"	
9. FIANDRO	Gennaro	espionage	
10. FIANDRO	Eugenio	"	
11. ROMANO	Fausto	"	DISPOSED OF
12. BASIN	Nino	"	
13. BANDINO	Carlo	"	

o/o

14. 10 person names not ^{known} sabotage.

Disposal of

(d) Cases under investigation by Cat. L.V.
Gale, Security Branch, H.Q. ACC

15. ANGHINELLI	Alfredo	espionage
16. GRAMER	Vittorio	"
17. CUBBEN	Raimondo	"

Released on
8 Aug. 44. En-
quiries in hand
as to circum-
stances.

18. GROSSI	Attilio	"
19. GUARNIERI	Mario	"
20. MATHIAS	Cecil Arthur	"
21. RIPEPI	Antonino	"
22. PERELLI	Franco	sabotage
23. SANSONE	Agostino	"
24. SANSONE	Alfonso	"

22

Notes in re previous list.....

GIACOMO	Francesco	Not now for trial information from G.2. RMQ
PASQUAZZI	Argo	No case against this man Decision of JAG Dept. H.Q. AAI.

RICHARD H. WILMER
Colonel, CAC
Acting Chief Legal Officer.

File

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

(36A)

/jpl

12 Aug. 44

ACC/ACAO

Subject: List of Espionage and Sabotage cases.

To : Regional Legal Officer, Region IV.

1. I have now procured, and forward herewith, a list of all espionage and sabotage cases which were or are outstanding in Rome.

2. No. 7 has been disposed of: No. 13 is now before the Court: and I understand from you that No.s 14 & 15 will be disposed of next week.

Enc: 1 list.

C
RICHARD H. WILMER
Colonel, CAC
Acting Chief Legal Officer.

THE LIST

368

I. Cases under investigation by Major Fearnley Whittingstall, JAG Dept. H.Q. sec. AAI

1. PERRETTI	Mario	Espionage
2. GIACOMO	Francesco	do.
3. MANCA	Vladimiro	do.
4. MENACCHI	Lorenzo	do.
5. MICHELE	Giorgio	do.
6. PASQUAZZI	Argo	do.
7. PIZZI	Francesco	Sentenced to death for espionage-Allied General Court held at Rome on 9 Aug. 44

II. Cases under investigation by G.I.C.

8. BRIGIDO	Bruno	Sabotage
9. SQUARILLI	Franco	Sabotage
10. FIANDRO	Carmelo	Espionage
11. FIANDRO	Eugenio	Espionage
12. ROMANO	Fausto	Espionage
13. 14 persons charged together with Sabotage,	appear before Allied General Court at Rome on trial commencing this date. Names available later.	
14. MASIN	Nino	Espionage..Papers already passed by CIC to Legal Branch, Region IV.
15. BONDINO	Carlo	Espionage..Papers already passed by CIC to Legal Branch, Region IV.

III. Cases under investigation by Captain L. V. Gale, Security Branch, HQ. ACC.

16. ANCHISELLI	Alfredo	Espionage
17. CRAMER	Vittorio	do.
18. CUBETDU	Raimondo	do.
19. GROSSI	Attilio	do.
20. GUARNIERI	Mario	do.
21. MATHEWS	Cecil Arthur	do.
22. RIPEPI	Antonino	do.

35A

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlp.
12 August 1944.

ACC/ 4040/L.

SUBJECT : Court Procedure in Espionage Cases.
TO : Major Fearnley Whittingstall, Judge Advocate General Dept.,
HQ AAI.

1. I am obliged to you for your letter JAG/EA/0001 of the 11th August and for calling my attention to the fact therein stated.

2. This point is clearly covered by instructions:

a. Rules of Procedure for Allied Military Courts, 9 c provides as follows;

"The accused may not be compelled to give evidence, but any evidence he gives must be on oath. He and other witnesses may be cross-examined upon all relevant facts concerning the case (including credibility) and may be re-examined."

b. Consolidated Instructions for Allied Military Courts, Article 20 1 at page 52 provides as follows;

"If the accused is to give evidence he should be called first. Before he gives evidence it must be explained to him that;

- (1) he need not give evidence unless he wishes;
- (2) if he wishes to give evidence it must be given on oath;
- (3) if he gives evidence he will be subject to cross-examination on all relevant facts concerning the case. His evidence cannot be confined to particular aspects of the case."

3. In view of this point having been raised by you, steps will be taken to see that the provisions above quoted are brought to the attention of officers concerned.

I. G. H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

HEADQUARTERS
ARMED CONTROL COMMISSION
SECURITY BRANCH

SECRET

REFERENCE: SE/149.

11th AUGUST 1944

Subject: List of Espionage and Sabotage cases in course of investigation for trial within Rome Area.

To : Lieut. Col., G. G. H. Campbell,
Chief Judicial Officer, H.Q., A.C.C.

1. Cases under investigation by Major Fearnley Whittingstall, JAG Dept., H.Q. ACC.

(i)	FERRETTI Mario	-	Espionage
(ii)	GIACOMO Francesco	-	do.
(iii)	MANCA Vladimiro	-	do.
(iv)	MENACCHI Lorenzo	-	do.
(v)	LICHELE Giorgio	-	do.
(vi)	PASQUAZZI Argo	-	do.
(vii)	PIZZI Francesco	-	Sentenced to death for espionage - Allied General Court held at Rome on 9 AUG 44

2. Cases under investigation by C.I.C.

(viii)	BRICIDO Bruno	-	Sabotage
(ix)	SQUADRILLI Franco	-	Sabotage
(x)	FIANDRO Carmelo	-	Espionage
(xi)	FIANDRO Eugenio	-	Espionage
(xii)	ROLANO Fausto	-	Espionage
(xiii)	14 Persons charged together with Sabotage, appear before Allied General Court at Rome on trial commencing this date. Names available later.		

MASIN Bruno - Espionage } Papers already passed by
BONDINO Carlo - Espionage } C.I.C. to Legation Branch
Rome Region

3. Cases under investigation by Captain L.V. Gale Security Branch, H.Q. ACC.

(xiv)	ANCHIRELLI Alfredo	-	Espionage
(xv)	CRAMER Vittorio	-	do.
(xvi)	CUREDDU Raimondo	-	do.
(xvii)	GROSSI Attilio	-	do.
(xviii)	GUARNIERI Mario	-	do.
(xix)	MATHEWS Cecil Arthur	-	do.
(xx)	RIFEPT Antonino	-	do.

68
Sentenced to death for espionage - Allied
General Court held at Rome on 9 AUG 44

2. Cases under investigation by C.I.C.

(ii) GIACOMO Francesco - do.
(iii) MANCA Vladimiro - do.
(iv) MENACCHI Lorenzo - do.
(v) MICHELE Giorgio - do.
(vi) PASQUAZZI Argo - do.
(vii) PIZZI Francesco - do.

(viii) BRIGIDO Bruno - Sabotage
(ix) SQUADRILLI Franco - Sabotage
(x) FIANDRO Carmelo - Espionage
(xi) FIANDRO Eugenio - Espionage
(xii) ROMANO Fausto - Espionage
(xiii)

14 Persons charged together with Sabotage, appear before Allied
General Court at Rome on trial commencing this date. Names
available later.

MASIN Nino - Espionage } Papers already passed by
BONDINO Carlo - Espionage } C.I.C. to Legal Branch
Security Branch

3. Cases under investigation by Captain L.V. Gale Security Branch. HQ. ACC.

(xiv) ANCHINELLI Alfredo - Espionage
(xv) CRALER Vittorio - do.
(xvi) CUREDDU Raimondo - do.
(xvii) GROSSI Attilio - do.
(xviii) GUARNIERI Mario - do.
(xix) MATHIEWS Cecil Arthur - do.
(xx) RIPEPI Antonino - do.

4. My enquiries show that the following persons, originally intended for trial, and forming part of the list of approximately 25 persons mentioned in letter from HQ., A.A.I., to Legal Division, HQ., A.C.C., are not now to be sent for trial:-

(xvi) BISOGNO Ernesto - Investigated by Maj. Fearnley Whitting
(xvii) CLARIZIO Francesco - Investigated by C I C. (-stall.
(xviii) SCACCIA Dr. Osvaldo - On decision of H.Q. A.I. is not for trial
(xix) CIPOLLA Ubaldo - do. -

5. This list seems to cover all the prisoners to whom HQ., A.A.I., letter to Legal Division A.C.C., was apparently intended to refer.

LOUIS V. GALE, CAPTAIN.
COLONEL A.S. YOUNG.
SECURITY BRANCH.

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4040/L.

/rlp.
12 August 1944.

SUBJECT : Case of PIZZI Lorenzo.

TO : Regional Legal Officer (THRU: Regional Commissioner), REGION IV.

1. Attention of this sub-commission has been drawn to the fact that in the recent trial of PIZZI Lorenzo for espionage, the defending officer, in speaking to the prosecutor, spoke of his intention (which he ultimately abandoned) that the accused should give evidence limited to a part only of the case against him.

2. Apparently, also, the president intimated that in that event, the prosecutor would only be entitled to cross examine on ~~the issue of~~ the subject matter of the accused's evidence. You will, of course, appreciate that this is wrong.

3. This point is clearly covered by instructions:

a. Rules of Procedure for Allied Military Courts, 9 c provides as follows:

"The accused may not be compelled to give evidence, but any evidence he gives must be on oath. He and other witnesses may be cross-examined upon all relevant facts concerning the case (including credibility) and may be re-examined."

b. Consolidated Instructions for Allied Military Courts, Article 20 1 at page 52 provides as follows:

"If the accused is to give evidence he should be called first. Before he gives evidence it must be explained to him that:

- (1) he need not give evidence unless he wishes;
- (2) if he wishes to give evidence it must be given on oath;
- (3) if he gives evidence he will be subject to cross-examination on all relevant facts concerning the case. His evidence cannot be confined to particular aspects of the case."

4. In view of the fact that there is pending a large number of espionage and sabotage trials, perhaps you will wish to ~~be acquainted with~~ ^{bring to the attention of} potential members of General Courts, calling their attention to the provisions I have above quoted.

I. G. H. CAMPBELL L.
Lt. Col.,
Chief Judicial Officer,

for Acting Chief Legal Officer.

4040

HEADQUARTERS,
ID CONTROL COMMISSION,
APO 394
R.C. & M.C. SECTION.

31A

Ref: 292/59/CA

SECRET

11th August 1944.

SUBJECT: Sentences Imposed on Enemy Agents.

TO : Admin Sec
(Attn. Legal Sub-Com).

29A

1. I refer to your ACC/4035/35/L dated 9. Aug. 44 and your confirmation of the sentences imposed on CARLO BARCHIGLIONI and OLGA SPERA is noted.

2. I am strongly of the opinion that in spy cases and all cases where the death sentence has been asked for, the Court should give a detailed reason for not imposing the maximum sentence.

→

M. S. L. W. L.
Brigadier,
Executive Commissioner.

15

521

file

HEADQUARTERS
ARMED CONTROL COMMISSION
Legal Sub-Commission
APO 994

/321

9 Aug. 44

AOC/4040/L

Subject: Arrangement for spy and sabotage cases in Region IV.

To : Regional Legal Officer, Region IV.

1. As you are aware there are some 25 espionage and sabotage cases for trial in RDMC.

2. The letter from HQ AAI notifying this HQ of the above suggested that these cases could be tried, one after the other, starting next week. In fact, it is doubtful how soon there will be any cases ready for trial: you will be notified as soon as possible when there are cases ready.

3. At a meeting held here this morning attended by General Staff I (b) RAAC and the Security Branch HQ AOC, the responsibilities of the various persons concerned in these cases were clarified: the decisions reached are set out in annexure to this letter.

4. You will notice that to procure the attendance, on the day fixed for trial, of the accused, the witnesses and the exhibits is the responsibility of RAAC.

5. You will also notice that all cases (regardless of who may be the preparing agency) are channelled to you through Capt. GALE. All arrangements for these trials will be made by you through, and only through, Capt. GALE.

6. The responsibility of your Region in respect of these cases is limited to the following:-

- (a) giving to the preparing agency legal advice on the framing of the charges;
- (b) agreeing with Capt. GALE the date and place of trial;
- (c) passing on copy of the "brief" to the prosecuting officer;
- (d) providing the Court, prosecuting and defending officers and the interpreter, and making general court arrangements;
- (e) keeping HQ AOC informed of the results of the cases. (see para 6 of the annexure)

7. Capt. GALE will act generally as Liaison Officer in relation to these cases. Any questions relating to these trials should be addressed to him unless they are questions which require the attention of the Legal Sub-Commission.

8. RAAC and Capt. GALE have agreed to use their best endeavours to have the charges served in as many cases as possible before the 15th Aug.

Copy to: Maj. Penrley WHITTINGTALL
(JAG Branch HQ AAI)
RAAC (Lt. Col. YOUNG)
Security Branch, H.Q. AOC (Capt. GALE)

1. R. G. H. H. H.
RICHARD H. HILSON
Colonel, GAO
Acting Chief Legal Officer

1. Responsibility for preparing and serving charge sheet.

Charge sheets to be prepared by preparing agency (Maj. Kearney WHITTAKER, security branch, ADJ, GRC, 5013 etc) in consultation with Legal Division AMG Region IV. *Forward to the same agency*

2. Responsibility for preparation of case.

The preparation of a proper "brief" for the use of the prosecuting officer is the responsibility of the preparing agency. (see above)

3. Arrangement for date and place of trial.

(a) When the above mentioned "brief" is prepared, 2 copies will be passed by the preparing agency to Capt. GALT, Security Branch HQ ACC (2nd floor, Norm. Bld. 23 telephone 489781 ext. 233), with statement showing

- (i) Name of prosecution witnesses
- (ii) List of prosecution exhibits
- (iii) Time required to arrange for attendance of witnesses
- (iv) Estimated duration of case.

(b) On receipt of above, Capt. GALT to

- (i) Arrange date and place of trial with Legal Division AMG Region IV.
- (ii) Inform RAS of above arrangements
- (iii) Forward 2 copies of the "brief" to Legal Division AMG Region IV (one copy for prosecuting officer, one for use of Regional Legal Officer).

4. Attendance of witnesses.

RAS, on notification from Capt. GALT of date of trial (see para 3 (b) (ii) above), will be responsible for attendance of accused and witnesses together with exhibits.

5. Preparation of Court and appointment of Prosecution and Defence Officers.

Legal Div. ADJ, Region IV to be responsible for

- (a) Providing a General Military Court
- (b) Detailing a Prosecuting and Defence Officer
- (c) Providing a Court Interpreter
- (d) Court arrangements generally (including security arrangements in consultation with Capt. GALT.)

6. Returns.

The following returns are required by Chief Judicial Officer-Legal Sub-Commission HQ ACC:

(b) On receipt of above, Capt. GALT to

- (i) Arrange date and place of trial with Legal Division AMO Region IV.
- (ii) Inform RAC of above arrangements
- (iii) Forward 2 copies of the "Brief" to Legal Division AMO Region IV (one copy for prosecuting officer, one for use of Regional Legal Officer).

4. Attendance of Witnesses.

RAC, on notification from Capt. GALT of date of trial (see para 3 (b) (ii) above), will be responsible for attendance of accused and witnesses together with exhibits.

5. Preparation of Court and appointment of Prosecuting and Defending Officers.

Legal Div. AMO, Region IV to be responsible for

- (a) Providing a General Military Court
- (b) Detailing a Prosecuting and Defending Officer
- (c) Providing a Court Interpreter
- (d) Court arrangements generally (including security arrangements in consultation with Capt. GALT.)

6. Returns

The following returns are required by Chief Judicial Officer-Legal Sub-Commission HQ AMO:

(a) From RAC

Date of Service of charge sheet in each case.

(b) From Court. GALT

Date fixed for trial of each case.

(c) From Legal Div. AMO, Region IV.

(i) Date of trial

(ii) Verdict

(iii) Sentence

.....To be forwarded immediately on conclusion of case.

0543

SECRET

29A

HEADQUARTERS
ALLIED CONTROL COMMISSION
LOCAL SUB-COMMISSION
APO 394

9 August 1944. /xap.

ACC/1063/32/L.

SUBJECT : Sentences imposed on enemy agents.
TO : The Executive Commissioner (THRU: Admin Sec).

1. I have just examined the case of HARMONIZING Carlo and SARA Olga convicted of espionage and sentenced to 20 and 15 years of imprisonment respectively. I am confirming the sentences. 26B
2. In view of the recent complaint from Hq AII, I have drafted and am enclosing a suggested form of letter for you to send to Hq AII.

RICHARD E. KIMMEL,
Colonel, GDC,
Acting Chief Legal Officer.

Copy to: ACC/1063/L.

SECRET

S E C R E T

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

SUBJECT : Sentences imposed on enemy agents.

TO : Hq Allied Armies in Italy.

1. Reference your letter AAI/U/60/5/GSI (b) dated 22 Jul 44 and 292/2/CA of 6 Aug 44.

2. Since writing to you on 6 August 1944, I am advised that the cases of RAVENHILLI Carlo and ZERA Olga have been received in the Legal Sub-Commission for review. The accused were both convicted of espionage and received sentences of 20 and 15 years respectively. These sentences are being confirmed.

3. While the court did not set forth its reasons for imposing sentences of imprisonment instead of death, the Acting Chief Legal Officer advised me that in his opinion the court acted quite properly inasmuch as each accused before confessing was definitely told by the investigating agent (the agent so stated himself) that if the truth were told attempts would be made to help the accused to get a light sentence.

4. In order to get valuable information it may be thought necessary for agents to make some such inducement, but when confessions are obtained without warning to the accused or by threat, force or other inducement, a court may most properly take such matters into consideration both in giving effect, if any, to the confession and in imposing the sentence.

M. S. HUBB,
Brigadier,
Executive Commissioner.

S E C R E T

SECRET.

28A

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

-8 AUG 1944

REF/292/58/CA.

6 August 1944

SUBJECT : Sentences imposed on Enemy Agents.

TO : HQ Allied Armies in Italy.

Reference AAI/1450/5/SSI(b) of 22 July 1944.

1. The facts set out in para 1 of your letter are appreciated.
2. I can assure you that the officers sitting on Allied Military Courts are well aware that the normal sentence on a person convicted of espionage is one of death; and a conference of legal officers held here on 1 August was made the occasion of re-stating this proposition.
3. However, the imposition of sentence in any particular case is a matter of judicial discretion for the Court, with which it is undesirable and indeed improper to interfere.
4. In this connection I would add that each of the cases to which you refer was carefully reviewed by the Chief Legal Officer at this Headquarters and he informs me that in his opinion in these particular cases (with one possible exception) the court properly exercised its judicial discretion in each case (for one reason or another) in imposing a sentence of imprisonment rather than one of death.

MS Lush
S. S. LUSH,
Brigadier,
Executive Commissioner.
for E/Chief Commissioner.

Copy to : Admin Sec. (Ref. your AOC/4040/L of 6 August 44).

P.S. I signed a death sentence yesterday.

Signed Copy of 27 B

356

HEADQUARTERS
ALLIED CONTROL COMMISSION
Administrative Section
APO 394.

270
SECRET

ACQ/4040/L.

6 August 1944.

SUBJECT : Sentences imposed on Enemy Agents.

TO : R.C. & M.O. Section.

1. Reference your letter Ref/292/45/GA dated 24 July 1944.

2. Herewith suggested form of reply to letter received from HQ.
AAI, in connection with the above, for approval and signature by the
Executive Commissioner.

268
/wov.

G. R. UPJOHN,
Colonel,
A/Head, Adm. Sec.

SECRET.

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Ref/ 292/ -/CA.

6 August 1944.

SUBJECT : Sentences imposed on Enemy Agents.

TO : HQ, Allied Armies in Italy.

Reference AAI/1460/5/GSI(b) of 22 July 1944.

1. The facts set out in para. 1 of your letter are appreciated.
2. I can assure you that the officers sitting on Allied Military Courts are well aware that the normal sentence on a person convicted of espionage is one of death; and a conference of Legal Officers held here on 1 August was made the occasion of restating this proposition.
3. However, the imposition of sentence in any particular case is a matter of judicial discretion for the Court, with which it is undesirable and indeed improper to interfere.
4. In this connection I would add that each of the cases to which you refer was carefully reviewed by the Chief Legal Officer at this Headquarters and he informs me that in his opinion in these particular cases (with one possible exception) the court properly exercised its judicial discretion in each case (for one reason or another) in imposing a sentence of imprisonment rather than one of death.

M. S. LUSH,
Brigadier,
Executive Commissioner.

40109 ✓

① Name of Ct panel.
② Charges given before 15 Aug.

270

Subject:- Trial of enemy agents
in ROME

HQ ALLIED ARMIES IN ITALY

CONFIDENTIAL

AAI/1460/5/GSI(b)

H.Q. A.C.C.

4 Aug 44

18 about 13 Aug.

1. There are in ROME approximately twenty-five arrested enemy agents whom it is desired to bring to trial in the near future. Preparation of the cases is now proceeding intensively, and it is expected that, from the end of next week, it will be possible to present to the legal authorities a more or less continuous series of cases for trial.

2. It appears likely, therefore, that this particular batch of cases will take approximately one month to try, starting about 10 August.

3. As ROME is to revert on 15 August to Italian administration, it is understood that, after that date, cases will normally be tried by Italian Courts.

4. It is considered, however, that this series of espionage and sabotage cases should be tried by an Allied General Military Court. Apart from other considerations, the time factor makes such an arrangement most desirable, as it is important that these cases should be disposed of quickly.

5. You are requested, therefore, to arrange for an Allied Court to be available in ROME for the trial of these cases, and it is suggested that a Special Standing Court might be set up to deal with this particular situation, in the same way as special arrangements were made at SANTA MARIA C.V. to meet the particular needs which arose last March and April. It is considered that the Intelligence authorities in ROME should be able to deal with the same prosecutor and same legal "manager" throughout the series of trials.

6. We do not, however, wish to insist on the need for a Special Standing Court, but it is considered essential that these

- to present to the legal authorities a more or less continuous series of cases for trial.
2. It appears likely, therefore, that this particular batch of cases will take approximately one month to try, starting about 10 August.
 3. As ROME is to revert on 15 August to Italian administration, it is understood that, after that date, cases will normally be tried by Italian Courts.
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 6. We do not, however, wish to insist on the need for a Special Standing Court, but it is considered essential that these cases should be tried by an Allied rather than an Italian Court, and it would be appreciated if you would afford your full co-operation in this matter.

LEGAL SUB COMMISSION	
CLO	
DCLO	
Chief Counselor	
CJ	
Italian section	
CL RKS	

Copy to:- ROME Allied Area Command

Carlucci
for BCS (1)
 Lt-General,
 Chief of General Staff.

SECRET

4040 27D
GCH-3/46ALLIED FORCE HEADQUARTERS
Office of the Assistant Chief of Staff, G-2

B-329.701-B

27 July, 1944

SUBJECT: Leaflets, Enemy Agents

TO : A.C. of S., G-2, AFHQ.
Copy to PWB, AFHQ

1. In order to discourage the recruitment of Italians by the enemy secret services for espionage and sabotage, leaflets have been printed and dropped over selected sites. These leaflets contained the photographs and personal details of enemy agents who have been arrested, condemned to death and executed, with a warning of a like fate to all who take part in such covert activities against us.
2. Since the Allied occupation of Rome, a number of statements have been made by captured enemy agents when under interrogation concerning these leaflets pointing to their having had some very considerable psychological and deterrent effect. A captured document also bears this out.

The following are examples of the above:-

a. Ugo D'ESPOSITO, a SD W/T "Stay-behind" agent arrested by Eighth Army at Fiumi confessed that he had watched his W/T set in a moment of panic when he read the leaflets and recognized the photographs of the executed persons as those of his colleagues who were engaged by the enemy secret service for espionage missions.

b. Giorgio ANTONUCCI, a SD agent, stated that he was informed by one Luciano PERUZZO, a Guardia di Finanza of Rome, that the latter had picked up a leaflet bearing the photographs of six young men who had been tried, convicted and shot as German spies. One of these six was Franco ASCIARI, a mutual friend of ANTONUCCI and PERUZZO. ANTONUCCI confessed that this had a deterrent effect on him as regards action on behalf of the Germans.

c. Luigi TORTI, an Abwehr W/T stay-behind agent wrote a statement, translation of which is as follows:-

" Your leaflet dropped by Allied aircraft on the
 " city of Florence made a great impression on me and
 " upon all my companions whom I knew to be agents. The
 " successful delivery of this leaflet made me understand
 " particularly that there was in Florence a German

SECRET

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" espionage school known to your service. I said to
 " myself: 'Why were these leaflets dropped particularly
 " in the city of Florence?' I understood from
 " henceforth that our connection with the Germans
 " was known, and the entire affair compromised, therefore,
 " from that day, I lost interest in the prospect of the
 " mission which was to be assigned to me. In reading
 " the leaflet, the effect was tremendous, especially
 " because the six photographs contained therein were
 " those of two people whom I knew, Enrico MENICOCCHI
 " and Marino CANTELLI. My idea from that day on was
 " not to fulfill my mission, and I acted accordingly."

d. A document was found in the vacated office of Colonel KAPPLER, head of SD in Rome, concerning the publicity accompanying the first set of leaflets. The document is an inter-office memorandum sent to KAPPLER, by Captain MEYER, one of his assistants, attaching two clippings concerning the execution of the six German spies and saboteurs contained in the first leaflet issued.

The memorandum translated from the German is as follows:-

" 1.5.44

" Memorandum for Obersturmbannführer K.

" Contents: A.K. S-Men MENICOCCHI and CANTELLI and V-Man ASCHIERI shot on order of ALEXANDER.

" The noon press today publishes the accompanying reports from which "IL MESSAGGERO" also reiterated the names of those condemned to death by the Allied Military Tribunal.

" Of the group attached to Einheit Keiser on 5.1. (FURLANI, CANTELLI, MENICOCCHI and ASCHIERI) only FURLANI went not appear on the list of those shot. This latter went as an I-Man, the first three with material as Z-Men. ASCHIERI's parents knew nothing of their son's mission. The mother, about 14 days ago, came to Sturmbannführer Dr. BASS, and received from us the reassuring information that her son had a special type of employment in Northern Italy, and that all was going well with him.

" ASCHIERI's parents learned the news of the misfortune of their son Franco definitely from the newspapers. Who undertakes official notification of the family?

" Conclusion: Unfavourable effects on the I- and Z-men who have not yet come to the point of undertaking missions may be expected psychologically and

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SECRET

- 3 -

" materially from publication of the names.
How is this new situation to be met? Should not a directive be necessary in the future to the Ministry of Popular Culture to publish names in such reports neither in this press nor on the radio?

3. The above shows the important deterrent effect that the execution of convicted spies has on others intending to commit espionage and sabotage missions against us. The necessity for the stern carrying-out of the death penalty after the conviction of such persons cannot be too strongly emphasised.

For the Assistant Chief of Staff, G-2

/s/ S.S. Hill-Dillon

S. S. HILL-DILLON.
Colonel, G.S.
G-2(CI)Section.

SECRET

4040
HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

SECRET

Ref/292/45/CA.

24 July 1944.

SUBJECT: Sentences on Spies.

25 JUL 1944

TO : Admin. Section.

1. I forward copy of a letter received today from General Lemnitzer at HQ. AAI.
2. Would you please comment on this letter, especially on the points raised in paras. 3 and 4, so that an early reply may be given as requested.

Ch.O.

1. Check up & see if the facts are right, I doubt it.

2. Perhaps you would

draft a suitable reply to put an end to this gross piece of impudence, if you like we can have a talk about it.

Incl
as above

6
NORMAN E. FISKE,
Colonel,
Deputy Executive
Commissioner.

23

G.M.

320

Subject:- Sentence imposed on
convicted enemy agents.

HQ ALLIED ARMIES IN ITALY

SECRET

H.Q. A.C.G.

AAI/1460/5/GSI (b)

22 Jul 44.

1. During the past month eight enemy agents have been brought to trial before an Allied General Military Court on espionage charges. All were convicted of such charges, but only two were sentenced to death, the remainder being awarded terms of imprisonment.

2. The military and security situation calls for the strongest possible measures to defeat the enemy's intense and widespread espionage activities, and it is feared that any leniency which may be shown in this direction may well have the most adverse effect on the security and success of our operations. Thus, although such leniency may spare the life of an Italian spy, it may lead to greater loss of life among Allied troops.

3. To illustrate this point it may be mentioned that we recently examined a letter written to his sister by MENICHELLI Giovanni, a convicted enemy agent now serving a term of twenty years imprisonment. In this letter he stated that he did NOT expect to remain in prison for long, as he would presumably be released at the end of the war. It seems probable that this presumption may well prove correct, and that this factor is a source of encouragement to enemy agents and others who may be considering whether to accept missions on behalf of the Germans.

4. Although it is appreciated that each case must be treated on its merits by the court, it is considered that the death sentence should be the normal penalty awarded in respect of persons convicted of espionage and sabotage offences, and that only in very exceptional cases should this be commuted to imprisonment.

5. Will you please give this matter your urgent consideration, and take such steps as you may deem possible, within the bounds of legal procedure and proper justice, to ensure that future cases of this nature are handled with due regard to their vital bearing on the military situation.

(Signed) L. L. Lemnitzer,
Major-General,
for Lt. General,
Chief of the General Staff.

O'Hanrahan without

4040
 23. LRAR V LRZO NR 2122 T QVR 1-2-3-5 **INFO - ACTION**
 FROM ADV AAI 3020 JB **LEGAL**
 5 - 8238

HQ ROME AREA 1 DISTRICT 2 DISTRICT
 ALLIED GARRISON SARDINIA

INFO

ACC

GR - BT

ICB 504

CONFIDENTIAL. NUMEROUS ARRESTED ENEMY AGENTS ARE DUE TO BE BROUGHT TO TRIAL. THESE CASES MUST BE PREPARED WITH UTMOST DESPATCH AND TRIALS HELD AT EARLIEST POSSIBLE MOMENT. DELAY HAS ALREADY BEEN CONSIDERABLE IN SOME CASES. WORK ON PREPARATION OF TRIAL CASES WILL BE GIVEN HIGH PRIORITY AND IF NECESSARY AT EXPENSE OF DETAILED INTERROGATION. EMPHASISED THAT EARLY TRIALS AND CONVICTIONS WILL MAKE GREAT CONTRIBUTION TO SECURITY OF FORTHCOMING OPERATIONS. PLEASE NOTIFY THIS HQ ESTIMATED DATES OF

TRIALS DUE IN YOUR COMMAND

RPTND 2122 1-2-3-5

302000B 1/2 ICB 504

INFO - ACTION

RJD AR



INFO - ACTION
 INFO: NEGAL SC 1/44
 A/C C.
 C. A. Bn.
 Admin SEC
 SECY GR
 FILE (2)
 FLAT

Rel 30/3055 Parker

30830

S E C R E T

SUBJECT : Cecil Matthews.

TO : ACLO

The a/m officer is a British subject and Rome Region contemplates his trial before an AMG Court for espionage.

Without doubting their legal power to do so other considerations arise as you will appreciate and I shall be grateful if you will let me see the papers in the case before any action against him, beyond mere service of charges, is taken.

If the case is serious H.M. Government may desire that he be tried at home.

Spoke Hendrickson & conveyed
above to him.

le

31 Jul 44

Mr. FARNLEY -
WHITTINGSTALL
also informed
of above

G.R. UPJOHN, Col
A/Head, Adm Sec.

file - 4040

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
AIR 39A

/jpl

23 B

ACC/1052/L/L

27 July 44

Subject: Reports of Spy Trials.

To : RLO's (thru RLO's) Regions III, VIII and Rome Region.

1. A communication has been received from H. G. & A. I alleging undue leniency in our espionage trials.

2. In order that our reply may be up to date, will you please bring with you to the 1st August meeting particulars of all espionage trials in your Region or area since 15 June 44.

Jasper More
Capt

for

H. E. SILVER
Colonel, GAC

Acting Chief Legal Officer.

Copy to 4040/L file.

29

Enter - front & file in 4040/L

U F 3
HQ REGION FIVE FOR RIO

HQ AGG LEGAL
1002

27

22A
RESTRICTED
ROUTINE

LEGAL SUB-COMMISSION

BRING TO TUESDAY MEETING PARER TO HQ REGION FIVE FOR RIO FROM
H. AGG FROM LEGAL PARER BRIEF PARTICULARS OF ANY SPY TRIALS IN
YOUR REGION SINCE FIFTEENTH JUNE

28

4040
1
ANG FIFTH ARMY

H. AGC LEGAL

ANG EIGHTH ARMY FOR SLOS

RESTRICTED

ROUTINE

LEGAL SUB-COMMISSION

BRING TO TWO DAY MEETING BRIEF PARTICULARS OF ANY SPY TRIALS
IN YOUR AREA SINCE FIFTEEN JUNE [PAREN TO ANG FIFTH ARMY AND
ANG EIGHTH ARMY FOR SLOS FROM H. AGC FOR LEGAL PAREN] IF YOU
RE VIRE BILLET RE ORT BILLETING OFFICER THIS H. BEFORE SEVENTEEN
THIRTY HOURS MONDAY

44040 file

20A

SUBJECT: Spies - Execution of Death Sentence HQ ALLIED MIES IN ITALY

AAI/5108/1/A(P5)

26 Jul 44

Lieut-Col CAMPBELL,
HQ Allied Control Commission,
Legal Sub-Commission

Herewith for your information copy of our directive on execution of spies.

ND/JLH

① Lien
② File where readily available

P. Hilly
20/44
- Brigadier,
DAC.

COPY

19A

SUBJECT: Spies - Execution of Death Sentence

HQ ALLIED ARMIES IN ITALY,

AAI/5108/1/A(PB)

9 JUNE 44

Executive Commissioner,
Allied Control Commission (2)

1. Spies who are sentenced to death by Allied Control Commission Military Courts will be handed over to the Allied Military Forces for execution according to the following rules.
2. In the case of spies originally arrested by US or French troops, Allied Control Commission will ask CG FIFTH Army if he wishes to carry out the execution. If he does not, Allied Control Commission will hand over the spies to CG Peninsular Base Section, who will carry out the execution.
3. Spies originally arrested by other Allied troops will be handed over to the nearest District for execution.

↑
nearest to what?

K

(Sgd) C.M. Paton,

Brigadier,
DAC.

JDP/RAF

Copies to: CG Fifth Army
Eighth Army
5 Corps
CG PEE
1 District
2 District
3 District
DCAO
AG(US)

26 July 44

SIR:

Ref. Para 3 of AAI/1460/5/GSI (B) dated 22 July 44.

1. The information which AAI possesses with reference to the sentence of MENICHEL I is incorrect. They state " a convicted enemy agent now serving a term of twenty years imprisonment."
2. Our records show and it is confirmed by a covering letter of the SLO 5th Army, (208/CA/76 dated 30 May 44) that MENICHELLI was sentence to life imprisonment. I quote from para one of SLO's 5th army letter. "Monechelli was found guilty and sentenced to life imprisonment."
3. The above information is brought to your attention.

Cpl. Latella.

CHART OF ESPIONAGE CASES REVIEWED BY LEGAL SUB-COM
DURING THE PERIOD INDICATED HEREU

	Jan	Feb	Mar	Apr	May	J
I. Death Sentences confirmed.	2			7	7	
II Death Sentences Comuted	2			7		
III Death Sentence quashed					1	
***** IV Prison Sentences affirmed.				2		1
V Acquitted by Court				2	3	
VI Cases Pending Review (a) Prison Sentence--2 (b) Death Sentence---1						
***** ***** Life Imprisonment.....2 20 yrs imp.....3 15 yrs imp.....1 15 yrs & 3 yrs (concurrent)1						

CASES REVIEWED BY LEGAL SUB-COMMISSION
DURING THE PERIOD INDICATED HEREUNDER

Jan	Feb	Mar	Apr	May	June	July
2			7	7		
2			7			1
				1		
			2		1	4
			2	3		

Break down of Espionage case chart.I. Death Sentence confirmed.(A) January 1944

1. Bertoli Mauro
2. Cancellieri Luigi.

(B) April 1944

1. Menicacci
2. Cantelli Marino
3. Palesse Italo
4. Tedesco Vincenzo
5. Aschieri Franco
6. Scarpellini Virgilio
7. Tapoli Giorgio

(C) May 1944

1. Viviani Mario
2. Guadagni Alfonso
3. Soro Giovanni
4. Sebastianelli Giulio
5. Donini Domenico
6. Caligaro Alfredo
7. Brambilla Pietro

(A) January 1944

1. Covella Federico
2. Monaldi Bruno

(B) April 1944

1. Calvegno Claudio
2. Pelligrini Carlo
3. Alberti Emilio
4. Acqua Gaetano
5. Catani Ernesto
6. Trifiro Mario
7. Ravero Valerio

(C) July 1944

1. Serra Evidio

II. Death Sentences commuted.

2. Centelli Marino
3. Palesse Italo
4. Tedesco Vincenzo
5. Aschieri Franco
6. Scarpellini Virgilio
7. Tapoli Giorgio

(C) May 1944

1. Viviani Enrico
2. Guadagni Alfonso
3. Suro Giovanni
4. Sebastianelli Giulio
5. Donini Domenico
6. Caligero Alfredo
7. Brambilla Pietro

II. Death Sentences commuted.

(A) January 1944

1. Covella Federico
2. Montaldi Bruno

(B) April 1944

1. Calvagno Claudio
2. Pelligrini Carlo
3. Alberti Emilio
4. Acque Gaetano
5. Catani Ernesto
6. Trifiro Mario
7. Ravero Valerio

(C) July 1944

1. Serra Evodio

(A) May 1944

1. Barne Mario

III. Death Sentence Quashed.



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'URBE

IL COMMISSARIO FEDERALE

2.

Break down of espionage case chart cont'd/

IV. Prison Sentences affirmed.(A) April 1944

1. Puccia Antonio
2. De Santis Vincenzo

(B) June 1944

1. Menechelli Giovanni

(C) July 1944

1. Gorge Aldo
2. Gorge Enrico
3. Eugardi Francesco
4. Celesti Letterio.

Please note that of this group

2.....are life imprisonment

(a) Menechelli Giovanni

(b) Celesti Letterio.

3..... are 20 yrs imprisonment

(a) Puccia

(b) DeSantis Vincenzo

(c) Gorge Aldo

1..... is for 15 years imprisonment

(a) Gorge Enrico

1..... is for 15 & 3 yrs imprisonment..concurrent.

V. Acquitted by Court.(A) April 1944

1. Poltronieri Mario
2. Ricci Renate.

(B) May 1944

1. Matteaci Teresa
2. Irrera Placido
3. Lemme Orsalo

VI. Cases Pending. ReviewName.....Sentence of Court

1. Barghiglioni Carlo
2. Spere Olga
3. Bertolini Silvio

20 yrs imprisonment
 18 yrs imprisonment
 Death penalty.

Prepared from records in this (Legal Sub-Commission office) H. Q. on 26 July 44

Cpl. Latella.

**CHART OF ESPIONAGE CASES REVIEWED BY LEGAL SUB-COM
DURING THE PERIOD INDICATED HEREIN**

	Jan	Feb	Mar	Apr	May	Jun
I. Death Sentences confirmed.	2			7	7	
II Death Sentences Commuted	2			7		
III Death Sentence quashed					1	
***** IV Prison Sentences affirmed.				2		1
V Acquitted by Court				2	3	
VI Cases Pending Review						
(a) Prison Sentence--2						
(b) Death Sentence---1						
***** Life Imprisonment.....2						
20 yrs imp.....3						
15 yrs imp.....1						
15 yrs & 3 yrs (concurrent)1						

8 CASES REVIEWED BY LEGAL SUB-COMMISSION
DURING THE PERIOD INDICATED HEREUNDER

Jan	Feb	Mar	Apr	May	June	July
2			7	7		
2			7			1
				1		
			2		1	4
			2	3		

Break down of Espionage case chart.

I. Death Sentence confirmed.

(A) January 1944

1. Bertoli Mauro
2. Cancellieri Luigi.

(B) April 1944

1. Menicacci
2. Cantelli Marino
3. Palesse Italo
4. Tedesco Vincenzo
5. Aschieri Franco
6. Scarpellini Virgilio
7. Tapoli Giorgio

(C) May 1944

1. Viviani Ennio
2. Guadagni Alfonso
3. Soro Giovanni
4. Sebastienelli Giulio
5. Donnini Domenico
6. Celligaro Alfredo
7. Brambilla Pietro.

(A) January 1944

1. Covella Federico
2. Montaldi Bruno

(B) April 1944

1. Celvagno Claudio
2. Pelligrini Carlo
3. Alberti Emilio
4. Acqua Gaetano
5. Catani Ernesto
6. Trifiro Mario
7. Ravero Venerio

(C) July 1944

1. Serra Evodio

II. Death Sentences Comuted

3. Pelesse Italo
4. Tedesco Vincenzo
5. Aschieri Franco
6. Scarpellini Virgilio
7. Tapoli Georgio

(C) May 1944

1. Viviani Ennio
2. Guadagni Alfonso
3. Soro Giovanni
4. Sebastienelli Giulio
5. Donnini Domenico
6. Calligaro Alfredo
7. Brambilla Pietro.

II. Death Sentences Comuted

(A) January 1944

1. Covelle Federico
2. Montaldi Bruno

(B) April 1944

1. Galvagno Claudio
2. Pelligrini Carlo
3. Alberti Emilio
4. Acqua Gaetano
5. Catani Ernesto
6. Trifiro Mario
7. Ravero Valerio

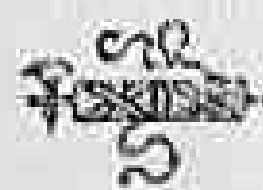
(C) July 1944

1. Serra Evodio

III. Death Sentence Quashed

(A) May 1944

1. Berne Mario



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'URBE

IL COMMISSARIO FEDERALE

(1) 1944

(2) 1945

(3) 1946

(4) 1947

(5) 1948

(6) 1949

(7) 1950

(8) 1951

(9) 1952

(10) 1953

(11) 1954

(12) 1955

(13) 1956

(14) 1957

(15) 1958

(16) 1959

(17) 1960

(18) 1961

(19) 1962

(20) 1963

(21) 1964

(22) 1965

(23) 1966

(24) 1967

(25) 1968

(26) 1969

(27) 1970

(28) 1971

(29) 1972

(30) 1973

(31) 1974

(32) 1975

2.

Break down of espionage case chart cont'd/

IV. Prison Sentences affirmed.

(A) April 1944

1. Puccia Antonio
2. De Santis Vincenzo

(B) June 1944

1. Manecchelli Giovanni

(C) July 1944

1. Gorga Aldo
2. Gorga Enrico
3. Fugardi Francesco
4. Celesti Letterio.

Please note that of this group

- 2.....are life imprisonment
(a) Manecchelli Giovanni
(b) Celesti Letterio.

- 3..... are 20 yrs imprisonment
(a) Puccia
(b) DeSantis Vincenzo
(c) Gorga Aldo

- 1..... is for 15 years imprisonment
(a) Gorga Enrico
- 1..... is for 15 & 3 yrs imprisonment..concur-
rent.

V. Acquitted by Court.

(A) April 1944

1. Poltronieri Mario
2. Ricci Renate.

(B) May 1944

1. Matteaci Teresa
2. Irrera Placido
3. Lemna Orsalo

VI. Cases Pending. Review

Name.....

1. Barghiglioni Carlo
2. Spersa Olga
3. Bartolini Silvio

Sentence of Court

- 20 yrs imprisonment
- 18 yrs imprisonment
- Death penalty.

Prepared from records in this (Legal Sub-Commission office) H. Q. on 26 July 44

Cpl. Latella.

4040

712

15A

HQ ALLIED ARMIES IN ITALY

RESTRICTED

AAI/1460/5/GSI(b)

26 May 1945

Dear Colonel

Now that the "Special Spy Court" has, as such, wound up, I should like to send you a line to thank you for taking appropriate steps to meet our special requirements during the two months concerned, and to let you know how much we appreciated the co-operation of SHIELDS, DICKIE, WILLIS and the others.

As far as we were concerned, it worked extremely smoothly, due mainly to their hard work and very helpful and considerate attitude.

Please do not bother to reply.

Yours Sincerely

W. D. Gibson

Colonel W. D. GIBSON,
Chief Legal Officer,
A.C.C.

1- file
REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

14A
18 May, 1944.

REFERENCE : ACC/4040/L.
SUBJECT : Espionage Cases.
TO : H.Q., A.A.I. (GSIB)

Reference this Sub-Commission's letter ACC/4040/L dated 16 May 1944 concerning the above, please amend name of R.L.O. Region 5, mentioned in para. 1 (c), to read Lt.Col. Behrens NOT Lt.Col. Cousins.

GERALD R. UPJOHN, C
Colonel.
Chief Legal Officer.

GRU/wow.

Copy to : RLO Regions 3,4,5.
SLO 5th & 8th Armies.
SLO C.A.S.

20/11

01/03/2017

14 May 1944

TO : HON. AAR. (10325) •

(c) That after the Benicelli case which commences on Friday next the present arrangement whereby all espionage cases are handled by HQ AF and dealt with by 5th Army AGC will cease.

(b) In future when espionage or other cases arise it is agreed that they will be handled by the Army concerned which will deal direct with the CIG of 5th or 8th Army AGO as the case may be and request him to convene a Court.

(c) If more convenient in any particular case having regard to the locality where the prisoner is in gaol or other circumstances such cases may be tried by Courts constituted by Regions 3 or 5 and the Army concerned will contact such Regions direct.

Region 3 HQ is situated at Naples - TLO Lt. Col. Chapman
Region 5 HQ " " " Campobasso - TLO Lt. Col. ~~Cassidy~~ *Behar*

Normally, however, all cases in many areas will be dealt with by AGC 5th or 6th Army.

(d) This arrangement will be reconsidered as soon as mutually convenient.

2. I should also like to place on record what I said yesterday in reply to your statement that difficulty might be experienced in procuring the attendance of witnesses who were not available by reason of military operations, namely: in cases where an accused was charged with commission of a serious crime, especially a crime carrying the death penalty, the prosecution should hesitate to ask the Court to exercise the power conferred by Art. 22 1(b) Consolidated Instructions for L.M. Courts at any rate in the case of important witnesses for the Court might easily find itself unable to convict or if a conviction was made it might be quashed. While it is impossible to lay down any principle and every case must be determined on its own merits you will, I am sure, appreciate that the presence of the witness in Court and the right of cross-examination is on basis a part of Anglo-American ideas of justice that the absence of an important witness in a serious case may well prove fatal to the prosecution.

C. R. THORNTON, Colonel
Chief Legal Officer.

Copy handed to P.S. Sub Com. 18/5/44 E.P.

SECRET

FMM/rj

HEADQUARTERS ALLIED CONTROL COMMISSION

Office of the Chief Commissioner

APO 394

Ref. CC/P/266.

5th. May, 1944.

4040
Dear Upjohn, *FILE - No action.*

I understand from C.G.S., A.A.I. that there has been one element of delay in the procedure of dealing with convicted spies which might be eliminated, or rather reduced as far as possible. This delay has occurred between the date of my confirming the sentence and the date on which A.A.I. have been notified.

2. The time lag between date of confirmation by me and date of notification thereof being received by A.M.G. 5th. Army and G.S.I.(b) A.A.I. has been respectively 4/5 days and up to 9 days.

3. Will you please ensure that these times are reduced in future to a minimum. I suggest that A.M.G. 5th. Army and G.S.I.(b) A.A.I. are notified by telegram at once by you whenever I confirm or commute a death sentence.

4. Although we have only had one case in which there has been much delay as a result of the 30 days period in which petitions may be submitted, this fact clearly worries A.A.I. and if in any way possible I would like to have this period reduced drastically to even as little as 48 hours. I would be glad if you would let me know early whether this is in fact possible.

Colonel G.R. Upjohn,
 Chief Legal Officer,
 Legal Sub-Commission, A.C.C..

Upjohn
Noel Mason MacFarlane
 NOEL MASON MACFARLANE,
 Lieutenant-General,
 Chief Commissioner.

Major Campbell
Spurge to me in this Mm early

Received
11 May

File ACC/4040/L ✓

TOP-SECRET letter to Chief Commissioner
dated 29th April in file Subject: Espionage Cases.

(No ref)

in file ACC/413/L (in safe)

11A

13

File AGC/104/L ✓

(No ref)

TOP-SECRET letter from Chief Commissioner
dated 28 Apr. 44 Subject: Espionage Cases

in file AGC/1134/L (in safe)

10R

12

2. The attached notes on the collection of evidence for presentation before a Court have been compiled by an officer of the Security Intelligence Branch, S.C., who has had not only many years experience of such work in the C.I.B., but who has also recently been preparing for trial a number of cases of cases caught in an army area.

3. These notes describe the ideal procedure to be followed, and it is fully realised that it will seldom be possible to follow exactly this "counsel of perfection" in a the tro of operations. It is felt, however, that they will be of considerable value as a guide to security/counter-intelligence agencies, since many useful hints are given, and it should be possible for such agencies to follow the principles outlined therein, even if some of the details may prove impracticable in particular circumstances.

CT.

DISTRIBUTION

G-2, Fifth Army.
G.S.I., British Army.
G.S.I., 5 Corps.
G.S.I., 1 District.
G.S.I., 2 District.
G.S.I., 3 District.
G-2, F.B.I.
G-2, I.J.S.
G-2, Allied Garrison, S. Rhine.
16 P.S. Section.

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For Information:

G-2, A.N.I.
G-2, H.M.I.
Security Intelligence, S.C.
Legal Sub-Commission, S.C.
1 S.C.I. Unit.
G.S.S. Spec. Det. G-2.

1
3
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1

W. J. Collins
F. Brigadier,
S.C.S. (S) 1

14.3 ON COLLECTION OF EVIDENCE.

1. In view of the number of enemy agents who are being caught after crossing the front necessitating the appearance of some of these agents before a General Allied Military Court, the following are suggestions on the collection of the necessary evidence for presentation before these courts.
 2. It must be remembered that Espionage is an offence under International law and the offence is set out in Hague Rule 29 which is as follows:-

"A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent with the intention of communicating it to the hostile party."
 3. It will be seen from this that there are three points to be proved, viz.,
 - A acting clandestinely or on false pretences.
 - B Obtaining or endeavouring to obtain information in the zone of operations of a belligerent.
 - C With the intention of communicating it to the hostile party.
 4. The necessary evidence to prove A and B is usually easily forthcoming, but the evidence to prove C can be very difficult to obtain. It will be appreciated that to prove C one has virtually to prove the state of the agent's mind. This is particularly the case when the agent has been caught and he makes a confession, but at the same time did not intend to take the information back to the Germans.
 5. In such cases, C can only be proved by circumstantial evidence. In most cases this circumstantial evidence consists of the circumstances under which he was originally arrested or discovered to be an enemy agent.
 6. It must be remembered that the General Allied Military Court dispenses justice on the American and British systems, with some modifications. Under these circumstances it will be appreciated that only the best evidence should be presented, although enemy evidence can be admitted with the permission of the Court.
 7. It is fully appreciated that agents first come to notice at many stages of refusal to surrender, and an effort is here made to show how to get them to be discovered that a person is an enemy agent.
 8. Once an enemy agent is detected, the officer in charge of the interrogation should take every possible step to trace back all the persons through whose hands the agent has passed since he first came into Allied lines.
 9. So far as possible should be taken from all these people, by or in the presence of the interrogated persons, the latter being the first officer to whom they are

- D. On the line or endeavors to obtain information in the name of operations of a ballplayer.
- C. With the intention of communicating it to the hostile party.
4. The necessary evidence to prove C and B is usually easily forthcoming, but the evidence to prove C can be very difficult to obtain. It will be appreciated that to prove C one has virtually to prove the state of the agent's mind. This is particularly the case when the agent has been caught and he makes a confession, but it has that he did not intend to take the information back to the Germans.
5. In such a case, C cannot be proved by circumstantial evidence. In most cases this circumstantial evidence consists of the circumstances under which he was originally arrested or discovered to be an enemy agent.
6. It must be remembered that the General Allied Military Court dispenses justice on the American and British systems, with some modifications. Under these circumstances it will be appreciated that only the best evidence should be presented, although a very evidence can be admitted with the permission of the Court.
7. It is fully appreciated that agents first come to notice at many places or locations in investigation. In an effort to make to show how to not come it is discovered that a person is an enemy agent.
8. Once an enemy agent is detected, the officer in charge of the investigation should take every possible step to trace back all the persons through whose hands the agent has passed since he first came into Allied lines.
9. Statements should be taken from all these people, by or in the presence of a person to be considered officer, the latter being the first officer to interview the agent in a given agent. These statements should be in the first person and etc., and all material statements made by the agent when approached.
10. The object of this procedure is to see if there is any direct material evidence persons for whom statements are taken will be required as witnesses. It is quite agreed that some of these people, especially those in the Armed Forces, cannot be brought back to the evidence. In these cases, the statement made by that person can be put in evidence by the officer who took down the witness statement.
11. When an enemy agent is first discovered it is usually after he has told a false story. This false story should be reduced to writing as soon as possible by the officer to whom it is told. It is not before any further steps are taken. The reason for this is because under the laws of evidence of the Court, any note of a statement made at the time can be referred to by the witness to refresh his memory when giving evidence.

- 2 -

12. It is suggested that when this stage has been reached the agent be invited to write his own story. He should then be asked questions on any points of ambiguity that may arise in the statement. These questions and answers should be written down and signed by the agent. His signature to both the original statement and the questions and answers should be witnessed by the officer in charge of the case. The interrogating officer, the agent, and witnesses should sign each page of the statement made by the agent.
13. It must be stressed, stressed that to be of the maximum value in court a statement should be voluntary. This means that the statement must not be made as a result of any promise of favour or any menace or undue pressure in order to induce the person to confess. The Court need not reject a statement which is not voluntary, but it will not carry so much probative value.
14. Another important item to be remembered is the searching of the agent. A statement must be made by the person during this, but if it is done in the presence of the officer in charge of the case, he can give evidence of what was found on the prisoner, should it be material to the case. Any remark material to the case that the prisoner makes when any particular item is found should be written down.
15. With further reference to searching, it is suggested that the agent be first of all invited to empty his pockets, clothing, etc., of everything, and then a thorough search of the person made in the presence of the officer in charge of the case. If, when the agent is searched, property material to a charge of espionage is found, it is quite all right that it will be much stronger evidence against the agent by virtue of his endeavour to conceal it, than if found by a person searching the agent before he has been invited to place everything on a table.
16. Whilst dealing with property found on the agent, it should be remembered that anything that it is desired to submit for expert examination should pass through as few hands as possible from the agent to the agent, and eventually to the Court. The reason for this is that every person who receives the property, whatever it may be, every part of its journey must be called as a witness to complete the chain of evidence.
17. The following procedure should be adopted when it is desired to submit that property such as suggested chemical substances found on an agent should be examined by an expert. The officer finding the article should not let it leave his possession direct control, and should hand it to the expert at once, noting the time, date, and place where handed over, and the name of the person to whom handed. The person to whom handed should be informed that he may be required to give evidence of the receipt of the evidence, and that on completion of the examination he should hand the article back to the officer from whom it was received, together with a copy of his findings. The officer should then take the substances until it is required to be produced in Court, noting the

15. A statement must be made by the person being searched, but if it is done in the presence of the officer in charge of the case, he can give evidence of what was found on the prisoner, should it be material to the case. Any remark material to the case that the prisoner makes when any particular item is found should be written down.
16. With further reference to searching, it is suggested that the agent be first of all invited to empty his pockets, clothing, etc., if everything, and then a thorough search of the person made in the presence of the officer in charge of the case. If, when the agent is searched, property material to a charge of espionage is found, he is quite clear that it will be much stronger evidence against the agent by virtue of his endeavour to conceal it, than if found by a person searching the agent before he has been invited to place everything on a table.
17. Whilst dealing with property found on the agent, it should be remembered that anything that it is desired to submit for expert examination should pass through as few hands as possible from the agent to the expert, and eventually to the Court. The reason for this is that every person who receives the property, whatever it may be, on any part of its journey must be called as a witness to complete the chain of evidence.
18. The following procedure should be adopted when it is desired advisable that property such as suspected chemical substances found on an agent should be examined by an expert. The officer finding the article should not let it leave his possession direct control, and should hand it to the agent personally, noting (1) time, date, and place where handed over, and the name of person to whom handed. The person to whom handed should be informed that he may be required to give evidence of the receipt of the article, that he should therefore not allow the article to leave his possession or direct control, and that on completion of the examination he should hand the article back to the officer from whom it was received, together with a copy of his findings. The officer should then retain the substance until it is required to be produced in Court, noting the time and date it was returned to him.
19. It will be appreciated that with this procedure there can be no suggestion that the substance produced in Court is not the substance found on the agent.
20. The final thing to be remembered is that the officer who obtains the substance from the agent that he is in fact an agent must make it first known of what he has done, in the manner in which he will give his evidence, so that the final document will be a statement of all witnesses including the officer in charge of the case.
21. It is impossible to cover all the contingencies that may arise in all cases but the above gives a general outline, and much is left to the initiative of the officer or officers dealing with particular cases.
22. For instance, any statement of an allegation or in any way material to the case, should where possible be made in the presence of the agent. It should always be pointed out in any statement or report whether or not such allegations were made in the presence of the agent.

- 3 -

21. It must also be borne in mind that the evidence of the agent on oath in his own defence bears as much weight as any other witness. Therefore it is desirable to have as much corroboration as possible. Further, every possible step must be taken to prevent a successful allegation being made by the agent that his confession was made under duress. That is the reason for the suggestion in No. 12.
22. One must be taken that agents are properly identified in at least two ways by witnesses, that is to say references should be made to them by name.
23. It must be remembered that the confusion made by the agent is usually the result of direct evidence that the person is an enemy agent. Under these circumstances one must be taken that no suggestion can be made to the court that such a statement was improperly obtained, such as under duress, etc. If the defence are able to prove to the satisfaction of the court that the statement was improperly taken it may become inadmissible in evidence and the case then depends on any other evidence the prosecution may have, which in a trial is very little.
24. These notes deal specifically with espionage, but the same principles apply in all serious cases, e.g., a spy, interference with communications, etc.

File
Subject:- Proclamations
regarding Enemy
Agents.

Legal S.C. (Recd. 12/2)
80
H.Q. ALLIED ARMIES IN ITALY.

SECRET

AAI/1460/4/G. Ib).

Chief Legal Officer
A.C.C.

2 APR 14.

X
Reference your letter ACC/4040/L dated 27 Mar 44.

1. It is agreed that in the letter from the Deputy-Chief P.W.B., Italian Theatre dated 21 Mar 44, the word "possibile" should read "passibile".
2. This was presumably a typing error, since the proclamation which was prepared contained the correct word. A copy is attached for your information.



naifong Major
Brigadier,
B.G.S. (I).

PENA DI M

IL PROCLAMA N.° 2 DEL GOVERNO
TARE ALLEATO, ART. 1.° PAR. 10, STABIL

« Qualsiasi persona che penetri o sia trovata
segnalata come zona proibita per mezzo di cartelli
e che non possa giustificare la sua presenza in quella
che ne l'autorizzi specificatamente, verrà deferita alla
passibile di condanna alla pena capitale o alla pena
ed all'altra pena congiuntamente ».

« Qualsiasi persona che svolga attività spionaggio
dei Tedeschi e che da essi venga inviata nella zona

DI MORTE

PROCLAMA N.° 2 DEL GOVERNO MILI-
TARE ALLEATO, ART. 1.° PAR. 10, STABILISCE:

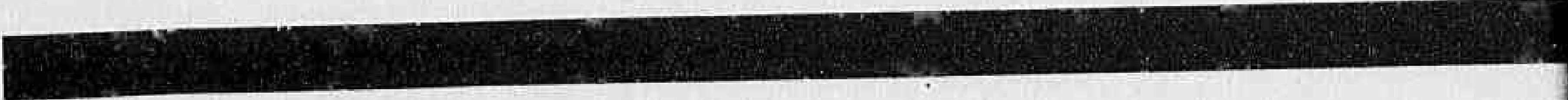
« Chi penetri o sia trovata entro un luogo od un' area
proibita per mezzo di cartelli o dalla presenza di sentinelle
o dalla sua presenza in quel luogo con un lasciapassare
non valido, verrà deferita ad un Tribunale Militare e sarà
punita con la pena capitale o alla prigione o alla multa o all'una
o all'altro ».

« Chi svolga attività spionistica o di sabotaggio per conto
dell'Inimico o venga inviata nella zona di combattimento o d'ope-

TARE ALLEATO, ART. 1: PAR. 10, STABILIS

« Qualsiasi persona che penetri o sia trovata segnalata come zona proibita per mezzo di cartelli e che non possa giustificare la sua presenza in quella che ne l'autorizzi specificatamente, verrà deferita ad una qualsiasi pena possibile di condanna alla pena capitale o alla pena di morte ed all'altra pena congiuntamente ».

« Qualsiasi persona che svolga attività spionistica per conto dei Tedeschi e che da essi venga inviata nella zona di combattimento delle forze degli eserciti alleati verrà incriminata per il reato di spionaggio e, se dichiarata colpevole, condannata a morte o a una pena di condanna sia costituita ed abbia confessato immediatamente di essere stata incaricata di tale missione ».



0 5 9 2
E ALLEATO, ART. 1: PAR. 10, STABILISCE:

penetri o sia trovata entro un luogo od un' area per mezzo di cartelli o dalla presenza di sentinelle la sua presenza in quel luogo con un lasciapassare, verrà deferita ad un Tribunale Militare e sarà punita con la pena capitale o alla prigione o alla multa o all'una delle altre pene ».

chi svolge attività spionistica o di sabotaggio per conto dell'alleato, o venga inviata nella zona di combattimento o d'operazione, o verrà incriminata per il reato sopra specificato o per essere colpevole, condannata a morte, a meno che non si dimostri che è stata catturata di sua spontanea volontà e di sua spontanea volontà ».

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ES/gmf

ACC/4040/L

27 March 1944

SUBJECT: Proclamations regarding enemy agents.

TO : Lt. Col. W.D. Gibson, GSIB, Allied Armies in Italy.

1. Ref letter of Deputy Chief, Italian Theatre, dated 21 March 44, on the above subject.

2. It appears that the word "possibile" in para 1, line 5 and in para 2, line 7 of the Proclamation, should be "passibile", as otherwise the text makes no sense.

3. If this is the case the English translation would read as follows:

"Proclamation No. 2 of the Allied Military Government Art. 1, Sec. 10 states: Whoever enters or is found within any place or area designated as a forbidden area either by the posting of a sign, or the presence of sentries, without a pass specifically authorizing him to be there shall, upon conviction by a Military Court, be liable to punishment by death; or by imprisonment or fine, or both, as the court may determine.

"Whoever agrees to perform acts of espionage or assumes a mission of sabotage on behalf of Germany or is sent by the Germans in the Allied fighting zone or zone of operations - unless he reports at the first opportunity to the authorities and confesses immediately and on his own spontaneous initiative that he has been sent on such missions - he may be indicted for sabotage and espionage and if found guilty, he may be liable to punishment by death."

G. R. UPJOHN, Colonel
Chief Legal Officer.

TRANSLATION OF PART OF LETTER FROM GEORGE EDMAN, DEPUTY
CHIEF, ITALIAN THEATRE. (Proclamation regarding enemy agents).

Translation by Sgt. Stein on 26/3/44

A " Proclamation No.2 of the Allied Military Government
Art. 1, Sec.10 states : Whoever enters or is found within
any place or area designated as a forbidden area either
by the posting of a sign, or the presence of senteries,
without a pass specifically authorizing him to be there
shall, upon conviction by a Military Court, be liable to
punishment by death, or by imprisonment or fine, or both,
as the court may determine.

B " Whoever agrees to perform acts of espionage or as-
sumes a mission of sabotage on behalf of Germany or is
sent by the Germans in the Allied fighting zone or zone
of operations ~~shall be indicted for sabotage and es-~~
~~pionage and if found guilty, sentenced to death, unless~~
he reports at the first opportunity to the Authorities
and confesses immediately and ~~spontaneously~~ *spontaneously* on his own
initiative that he has been sent on such missions - he
may be indicted for sabotage and
espionage and if found guilty, he
may be liable to punishment
by death. "

21 March 1944

TO: Lt. Col. W. D. Gibson
for Brigadier, B.G.S.(I)

SUBJECT: Proclamation regarding enemy agents

1. Your letter dated March 19th on the above subject is acknowledged.

2. Herewith Italian text of proclamation which you have requested:

"Il proclama n° 2 del Governo Militare Alleato all'articolo I, Sezione 10° statuisce: Chiunque entri o venga trovato in qualsiasi luogo o zona dichiarati vietati, sia da appositi cartelli indicatori, sia dalla presenza di sentinelle, e non abbia un lasciapassare che lo abiliti, sarà possibile, previo giudizio della Corte Marziale, della pena di morte o della reclusione o della multa o di queste ultime due pene cumulativamente, secondo che la Corte Marziale sentenzierà.

"Chiunque accetti di prestare opera di spionaggio o assuma un incarico di sabotaggio per conto della Germania, o sia dai tedeschi inviato nella zona alleata di combattimento o di operazioni - a meno che egli stesso, alla prima occasione, non si presenti alle Autorità e non confessi immediatamente e di sua spontanea iniziativa di essere stato mandato con tali incarichi - sarà possibile d'essere accusato di sabotaggio e di spionaggio, e se ritenuto reo, della pena di morte."

3. The above message was broadcast at the following dates and times:

March 15	-	1800 hrs and 2200 hrs
March 16	)	
17	)	12 noon, 1800 hrs and 2200 hrs
18	)	" " "
19	)	" " "
20	)	" " "
21	)	" " "

Please feel free to call upon us upon any similar occasion if we are in a position to assist you.

GEORGE EDMAN
Deputy Chief
Italian Theatre

cc: Chief Legal Officer, A.C.C. ✓
J. D. Ravotto

MOST SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Ref/292/4/CA.

12 March 1944.

SUBJECT: Trial of Enemy Agents.

TO : S.C.A.O. AMG 5th Army.

1. A letter has been sent by C.G.S. ACMF to the Executive Commissioner urging the necessity for setting up a Special Court to deal with spies, and requesting furthermore that the matter be treated as of great urgency.

2. It has been agreed that this Court shall be set up forthwith to work on the West of the Appenines consisting of the following members:

Major Campbell	- Region I
Major Elder	- Region IV.
Major Waugh	- Region IV
Lieut. Gaziano	- Region IV.

3. Colonel Young has nominated a Security Officer to act as Prosecutor before the Court, and has stated that Capt. Mare or Lieut. Gale are now in touch with Lt. Col. Gibson.

4. The Court should be convened as a standing Court and should have it's H.Q. at Caserta. It will act under the general orders of the Chief Legal Officer 5th Army AMG, who will be responsible for ensuring that all cases of espionage are brought before the Court with the minimum of delay.

5. It is understood that Major Elder and Major Waugh are at Caserta now. It is requested that the necessary instructions be issued by Region I and IV to ensure that Lieut. Gaziano and Major Campbell report to Caserta by Saturday, March 18th, to Chief Legal Officer, 5th Army AMG.

6. It is regretted that no transport is available from this H.Q. for these officers, but a request has been addressed to GSI (b) ACMF asking them to provide transport for the Court on demand.

Copy to: R.C. Region I
" " " IV
Col. Young Security Branch.

NORMAN E. FISKE
Colonel Cavalry,
Deputy Executive
Commissioner

File 4040
Copy
 SUBJECT : Trial of enemy agents

SECRET (3)

Headquarters

A.C.M.F.

ACMP/1460/5/G/1b

TO : Allied Control Commission.

10 March 44

1. The increasing flow of enemy agents into those parts of ITALY occupied by the Allies gives cause for anxiety and suggests that the time has come to review our machinery for dealing with the problem in the light of recent experience.
2. We know that the enemy is completing plans for a wide development of his espionage system in Italy, where the situation is indeed favourable to such a project. This, moreover, is taking place at a time when it is of particular importance to conceal the grouping of our forces.
3. During the last three months our military security organisation has been successful in arresting a large number of agents. Some of these have been kept for special intelligence work, five have been tried, one is now undergoing trial and eleven others are awaiting trial. Three will be ready within a few days, and a large number of cases are likely to follow. It is clearly of the utmost importance that these people are brought to trial as quickly as possible and, if found guilty and sentenced to death, shot with the minimum of delay and the maximum of publicity. While the knowledge that so large a quantity of their spies are caught must certainly embarrass the enemy's Intelligence Service, it is equally certain that the knowledge that they are promptly tried and executed will hinder the recruiting of agents, discourage those already here from passing on information, and increase the tendency, already noticeable among Italian agents, to surrender on arrival and give information leading to the arrest of their associates.
4. Everything has been done, within the limits of the existing machinery, to achieve this and, but in spite of the unfailing cooperation of the officers of the Allied Military Government, it has not yet been possible to obtain the quick results which the occasion so urgently demands.
5. It is probable that the delay is largely due to the difficulty of collecting in a short space of time the evidence which is necessary to secure conviction. This is further complicated by the tendency on the part of the agent to plead that he undertook the mission as a means of giving himself up to the Allies. Separate steps are being taken to

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4. Everything has been done, within the limits of the existing machinery, to achieve this and, but in spite of the unflinching cooperation of the officers of the Allied Military Government, it has not yet been possible to obtain the quick results which the occasion so urgently demands.

5. It is probable that the delay is largely due to the difficulty of collecting in a short space of time the evidence which is necessary to secure conviction. This is further complicated by the tendency on the part of the agent to plead that he undertook the mission as a means of giving himself up to the Allies. Separate steps are being taken to remedy this, but it is also certain that a considerable amount of time could be saved if special standing courts were set up in the forward areas, as a temporary measure, to deal with the present situation. This would have a further advantage in that the members of the court could concentrate on this specific situation and would be able to study the peculiar background of their work. A court on each side of the Appennines would probably be necessary.

6. May this matter please be given your most urgent consideration in view of the important relationship which it bears to the security of forthcoming operations?

Lieut-General,
Chief of General Staff.

EGM.

4040
MOST SECRET.

HEADQUARTERS,
ALLIED CONTROL COMMISSION,
APO 394

Regional Control and Military Government Section.
+++++

Ref : 232/3/CA

10th March 1944.

SUBJECT : Trial of enemy agents.

TO : Chief of General Staff,
Headquarters, A.C.M.F.

1. I discussed your A.C.M.F./1460/5/6(Ib) dated 10 March 44 with the B.G.S.

2. The Chief Commissioner entirely agrees that a special standing court is necessary to deal with the trial of alleged spies and such a court has been set up. In addition, a qualified prosecutor (British) will be appointed to the court which will normally sit at Caserta under the general direction of the Chief Legal Officer, AMG 5 Army, Lt. Col. Shields, to whom all cases should be referred.

2

Brigadier,
Executive Commissioner.

MSL/JG

COPY

Subject: Proceedings in Allied
Military Courts.

Headquarters
Allied Central Mediterranean Force

EX. CONFIDENTIAL - U.S. CONFIDENTIAL

ACME/1460/L/G(Ib).

23 Feb 44.

Executive Commissioner, A.C.C.

Reference your 283 /8/CA dated 18 Feb 44 enclosing Circular on "Closed Trials" issued by the Chief Legal Officer, A.C.C., No. ACC/4002/L dated 10 Feb 44.

1. The latter circular is acknowledged with thanks and a copy of it is being forwarded to I(b)/C.I. Staffs of Armies and Districts for their information.
2. It is considered essential for security reasons that the trial of alleged enemy agents should, as a general principle, be held in camera. By the term "enemy agent" is meant persons employed by the enemy Intelligence Services on espionage or sabotage missions.
3. It is considered that the Italian public should be excluded from such trials, for the following reasons:
 - (a) The evidence given will normally contain references to personalities, HQs and methods of the Enemy Intelligence Services, with which the prisoner has been connected. It is naturally important that we should keep secret the extent of our knowledge of such matters.
 - (b) It will frequently happen that Allied Officers engaged in counter-espionage (particularly S.I.(b) and O.S.S. officers) will be required to give evidence before the court. It is not desirable that their identity should be publicized.
 - (c) By describing the circumstances of the prisoner's detection and arrest, details of our Security/Counter-Intelligence organization and methods are likely to be revealed, and it is undesirable that such details should be made so readily available to the Italian public.
 - (d) If agents are acquitted through lack of evidence, the case should receive no publicity whatever, as such acquittals, if widely known, would tend to facilitate the German recruitment of Italian agents.

4. We are therefore instructing Army I(b)/C.I. Staffs, when forwarding to them a copy of your Chief Legal Officer's circular, normally to apply for trials of alleged enemy agents to be held in camera, unless exceptional circumstances render this unnecessary. In view of the reasons set out in para 3 above, it is strongly urged that such applications should normally

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Brigadier,
B.G.S.(I).

0602