

Declassified S.O. 12356 Section 3.3/NND No. 785016

ACC

10000/142/699

10000/142/699

TRIAL OF USTICA CRIMINALS
OCT. 1943 - APR. 1945

FILE CLOSED : 5 April 1945

86

216

SECRET

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

LEGAL: (80A)
HYA/WSW
4792

G-5: 000.5-1

5 April 1945

SUBJECT: USTICA Case.

TO : Headquarters, Allied Commission, APO 394.

JAG (MTCUSA) has returned the documents relating to the above case and requested that they be held by you for filing.

For Asst. Chief of Staff, G-5:



H. Y. Anderson Lt. Col.
H. Y. ANDERSON,
Lt. Col., R. A.

85

SECRET

8 APR 1945

USTICA COMMISSION

SCHEDULE OF ENCLOSURES TO AC/4096/L dated 28 MARCH 1945.

Record: "Ustica Commission - Original"

Record: "Ustica Case (Copy No. 1)"

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

Fazio Vincenzo (12/11/1943)

Di Mauro Gaetano

Pace Mario

Luigi Foresta

Pietro Rando (2 copies)

Branciamore Giuseppe, Gurrieri Giuseppe;

(Guerzoni Paolo); Faconti Alfiero; Roberti Matteo;

Stanzione Raffaele; Nava Antonino.

Pecoraino Lorenzo

Giordano Vincenzo

Fazio Vincenzo (20 Dicembre 1943)

Gragano (2 copies)

"Osservazioni alla Testimonianza N. 60" (2 copies)

"Osservazioni alla Testimonianza N. 59" (2 copies)

"Osservazioni alla Testimonianza N. 53" (2 copies)

"Al Ministero dell'Interno....." (Not Included)

"La Difesa di Giordano....."

"La Difesa di Pecoraino Lorenzo....."

"..... Per Fazio Vincenzo....."

"Rilievi in difesa di Castiglione Angelo"

"Difesa Gargano e Di Mauro".

Envelope: "Ustica Commission". Exhibits D 1 & D 5
and Exhibits D 14, 15 and 16" (D 1 & D 4 Exhibits
not included) 32, 33, 35

Envelope: "Ustica Commission. Exhibit D 11"
Envelope: "Ustica Commission. Morning Reports.
Exhibits 2 and 4".

Envelope: "Ustica Commission. Exhibit 3"

Envelope: "Ustica Commission. Exhibits 5, 6, 9 and 40".

Envelope: "Ustica Commission. Exhibits 38"

Envelope: "Ustica Commission. Exhibits 41, 42 and 43".

Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50"

Envelope: "Ustica Commission. Exhibits 53, 54, 55, 57, 59. 56, 60

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

Fazio Vincenzo (12/11/1943)

Di Mauro Gaetano

Pace Mario

Luigi Foresta

Pietro Rando (2 copies)

Branciamore Giuseppe, Gurrieri Giuseppe;

(Guerzoni Paolo); Faconti Alfiero; Roberti Matteo;

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not included) 22 33 35

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Envelope: "Ustica Commission. Exhibits 41, 42 and 43".

Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50"

Envelope: "Ustica Commission. Exhibits 53, 54, 55, 57, 59. 66. 60

Headquarters, Allied Commission, A.P.O. 394.

Received documents listed above

For Asst Chief of Staff, G-5.

31 March 1945.

H. Y. Anderson

H. Y. ANDERSON,
Major, R.A.,

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

78B

AC/4096/L

28 March 1945

SUBJECT : Vatica Case

TO : G-5 AFHQ

1. Reference your G-5 010.2 of 21 May 1944 there are enclosed herewith for onward transmission to JAG MATOUSA the documents mentioned in para 2 of your above quoted letter with the following exceptions :-

- (a) Document #1 Ministero dell Interno
- (b) Exhibits D1 and D4 (photographs).

These cannot be found despite exhaustive search and have probably been lost by the Italian Courts during the handling of the case.

2. Schedule of documents in triplicate is enclosed and I shall be glad to receive one copy receipted in due course.

For the Chief Commissioner :

W. E. BURNES,
Colonel,
Deputy Chief Legal Officer.

83

USTICA COMMISSION

SCHEDULE OF ENCLOSURES TO AG/4096/L dated 28 MARCH 1946.

Record: "Ustica Commission - Original"

Record: "Ustica Case (Copy No. 1)"

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

Fazio Vincenzo (12/11/1943)

Di Mauro Gaetano

Pace Mario

Luigi Foresta

Pietro Rando (2 copies)

Branciamore Giuseppe, Currieri Giuseppe;

(Queroni Paolo); Faconti Alfiero; Roberti Matteo;

Stanzione Raffaele; Nava Antonino.

Pecoraino Lorenzo

Giordano Vincenzo

Fazio Vincenzo (20 Dicembre 1943)

Gragano (2 copies)

"Osservazioni alla Testimonianza N. 60" (2 copies)

"Osservazioni alla Testimonianza N. 59" (2 copies)

"Osservazioni alla Testimonianza N. 53" (2 copies)

"Al Ministero dell'Interno....." (Not included)

"La Difesa di Giordano....."

"La Difesa di Pecoraino Lorenzo....."

"..... Per Fazio Vincenzo....."

"Rilievi in difesa di Castiglione Angelo"

"Difesa Gargano e Di Mauro".

Envelope: "Ustica Commission". Exhibits D 1 & D 5
and Exhibits D 14, 15 and 16" (D 1 & D 4 Exhibits
not included)

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Exhibits 2 and 4".

Envelope: "Ustica Commission. Exhibit 3"
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Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50"
Envelope: "Ustica Commission. Exhibits 53, 54, 55, 57, 59.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

77A
/pa.
26 Feb 45.

AC/4096/L.

SUBJECT : Ustica Trial.

TO : Regional Commissioner, SICILIA Region.
(Attn: Regional Legal Officer)

Reference your letter RJS 013.111/EXD of 24 Feb 45.

1. On a subsequent check, it was found that Ex 55 and 56 were enclosed. It is regretted that these were overlooked owing to their smallness.
2. Will you please treat this letter as a receipt for said exhibits.

By command of Rear Admiral STONE :

81
W. E. HERRICKS,
Colonel,
Deputy Chief Legal Advisor.

4096
file
ALLIED COMMISSION
SILIA REGION HEADQUARTERS
APO 394

76A

FILE: RLE 015.111/EMV

24 February 1945

SUBJECT: USTICA Trial.

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

1. Your letter AG/4096/I of 19.2.45 and enclosed receipted Schedule is hereby acknowledged.
2. Exhibits 55 & 56 were personally checked by me immediately prior to dispatch to you and I feel these exhibits must have been mislaid at your end.
3. It is regretted that Exhibit 60 was inadvertently omitted from the Schedule.

sf

E. K. Matthews Maj
E.K. MATTHEWS, Major,
Regional Legal Division.

80

file

NEW HARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

78A

AC/4096/L.

/mt.
19 February 1945.

SUBJECT : Ustica Trial.

TO : Regional Commissioner (Attn: Regional Legal Officer),
SICILIA Region.

1. Receipt is acknowledged of your RLE 013.III/ECM of 6 Feb 45 and enclosures. ~~and~~ Your schedule is receipted and returned herewith.

2. Your attention is drawn to the fact that Exhibits 55 and 56 were not enclosed and Exhibit 60 was enclosed additional to your schedule of enclosures. Your list has therefore been amended accordingly.

By command of Rear Admiral STONE

NR

W. E. BIRCHING
Colonel,
Deputy Chief Legal Advisor.

79

4096
 ALLIED COMMISSION
 SICILIA REGION HEADQUARTERS
 APO 394

748
 6 February 1945

FILE: RIE 613.111/EKM

SUBJECT: USTICA Trial.

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

1. Reference your letter AC/4096/L of 25.1.45 I now enclose the documents in this case as specified in your letter ACC/4096/L of 27.5.44 with the following exceptions.

a. Document "Al Ministero dell Interno"

b. Exhibits D1 & D4 (Photographs)
 These cannot be found despite exhaustive search and have probably been mislaid by the Italian Courts.

c. The two extra copies of the Record of the Commission.
 These are bulky and it is noted that AFHQ do not ask for them.

I also return the judgment which you may desire to forward with the paper to AFHQ.

2. Schedule of documents in duplicate is enclosed and I shall be glad to receive one copy receipted in due course. 78

3. As you are aware there are many other exhibits and a mass of documents which I am retaining at this HQ for the present.

LEGAL SUB.COM

CEO

DCLO

Chief Counsel

CJO

Italian Section

CLERKS

19 FEB 1945

E. K. Matthews Maj.
 E.K. MATTHEWS, Major,
 Regional Legal Officer.

Schedule not quite correct

Please see comments

Black

0322

573 copies 74B
 dated 28 March 1945
 dated 6 February 1945

USTICA COMMISSION

SCHEDULE OF CLOSURES TO FILE 643, 14-447

Record: "Ustica Commission - Original"

Record: "Ustica Case (Copy No. 1)"

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

Fazio Vincenzo (12/11/1943)

Di Mauro Gaetano

Pace Mario

Luigi Foresta

Pietro Rando (2 copies)

Franciamore Giuseppe, Currieri Giuseppe;

(Guarzonni Paolo); Peconti Alfiero; Roberti

Matteo; Stanzione Raffaele; Nava Antonino.

Pecoraino Lorenzo

Giordano Vincenzo

Fazio Vincenzo (20 Dicembre 1943)

Gargano (2 copies)

"Osservazioni alla Testimonianza N. 60" (2 copies)

"Osservazioni alla Testimonianza N. 59" (2 copies)

"Osservazioni alla Testimonianza N. 53" (2 copies)

"Al Ministero dell'Interno....." (Not Included)

"La Difesa di Giordano....."

"La Difesa di Pecoraino Lorenzo....."

".....Per Fazio Vincenzo....."

"Rilievi in difesa di Castiglione Agazio"

"Difesa Gargano e Di Mauro."

Envelope: "Ustica Commission. Exhibits D 1 & D 5 and Exhibits D 14, 15 and 16" (D1 & 14 Exhibits not included)

Envelope: "Ustica Commission. Exhibit D 11" Morning Reports.

Envelope: "Ustica Commission. Exhibits 2 and 4."

Envelope: "Ustica Commission. Exhibit 3"

Envelope: "Ustica Commission. Exhibits 5 and 6 and 9 and 40".

Envelope: "Ustica Commission. Exhibits 38"

Envelope: "Ustica Commission. Exhibits 41, 42 and 43"

Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50"

Envelope: "Ustica Commission. Exhibits 53, 54, 55, 56, 57, 59"

Record of Commission - (Not Included)

Pazio Vincenzo (12/11/1943)

Di Mauro Gaetano

Pace Mario

Luigi Foresta

Pietro Rario (2 copies)

Branciamore Giuseppe, Currieri Giuseppe;
(Guerzoni Paolo); Paconti Alfiero; Roberti
Matteo; Stanzione Raffaele; Nava Antonino.

Pecoraino Lorenzo

Giordano Vincenzo

Pazio Vincenzo (20 dicembre 1943)

Gargano (2 copies)

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"Osservazioni alla Testimonianza N. 59" (2 copies)

"Osservazioni alla Testimonianza N. 53" (2 copies)

"Al Ministero dell'Interno....." (Not Included)

"La Difesa di Giordano....."

"La Difesa di Pecoraino Lorenzo....."

".....Per Pazio Vincenzo....."

"Pillievi in difesa di Castiglione Angelo"

"Difesa Gargano e Di Mauro."

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and Exhibits D 14, 15 and 16" (D1 & D4 Exhibits Not
included)

Envelope: "Ustica Commission. Exhibit D 11"

Envelope: "Ustica Commission. Morning Reports.
Exhibits 2 and 4."

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Envelope: "Ustica Commission. Exhibits 32"

Envelope: "Ustica Commission. Exhibits 41, 42 and 43"

Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50"

Envelope: "Ustica Commission. Exhibits 53, 54, 55, 56, 57, 59"

Envelope: "Ustica Commission. Exhibits 53, 54, 55, 56, 57, 59"

Record of Commission - (Not Included)

Record - 2nd Copy - (Not Included)

File of Legal Sub-Commission ACC/4096/L

Italian Judgment dated 3.11.45.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

73A
/mt.
25 January 1945.

AC/4096/L.

SUBJECT : Ustica Trial.

TO : Regional Commissioner (Attn: Regional Legal Officer),
SICILIA Region.

Ref. HLE 013.111/EKM of 3 Jan 45.

1. The judgment is returned herewith as asked.

2. Please recover and return to this HQ the documents specified in the schedule to this HQ letter ACC/4096/L of 27 May: these papers have to be forwarded to AF HQ.

By command of Rear Admiral STONE:

W. E. BRENNAN,
Colonel,
Deputy Chief Legal Advisor.

4096
✓

72A

ALLIED COMMISSION
SICILIA REGION HEADQUARTERS
APO 394

FILE: RLE 013.111/EKM

3 January 1945

SUBJECT: USTICA Case.TO : Headquarters, Allied Commission - APO 394
(Attn: Legal Sub-Commission)

1. With further reference to this matter, the charges against all the accused have now been dismissed at the Instructory stage.

2. For your information a copy of the judgment is enclosed. May this please be returned in due course.

For the Regional Commissioner:

sf

Encl: Copy of Judgment.

E. K. Matthews Major
E.K. MATTHEWS, Major,
Regional Legal Officer.

LEGAL SUB COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	le
Italian Section	
CL RKS	
5 JAN 1945	

To see on return
75 R

V.P. C.A. Sec.

To see above, for information
The judgment is attached to the folder on left.

1 Campbell
for D.C.L.A.

6 Jan 45

4096.
✓ALLIED CONTROL COMMISSION
CILIA REGION HEADQUARTERS
APO 39471A
y
CM

File : RLE 013.11/EKM

18 October 1944

SUBJECT : Ustica Case.

TO : Legal-SUB-Commission, A.C.C. HQ.

12A

dated 11 Oct. 44

In reply to your letter ACC/4096/L, the 'istruttoria' in this case has been completed and the 'requisitoria' is now being carried out. The Court cannot yet forecast the date when the matter will be finally disposed of. I had previously and have again since receipt of your letter expressed my dissatisfaction with the progress made.

The reason given for the delay is as usual the great shortage of judicial personnel. I think however that the matter is beginning to gather a little momentum.

For Brigadier M. CARR :

E. K. Matthews Capt.

E. K. MATTHEWS, Capt.
Regional Legal Officer.

cls.

76

LEG. SUB COMMISSION	
CLO	
SECY	✓
Ch of Counsel	
CJ	
Legal Section	
CL RKS	✓
20 OCT 1944	

for interest only

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

(708)
/rlp
11 October 1944.

ACC/4096/L.

SUBJECT : Ustica Case.

TO : Regional Legal Officer (THRU: Regional Commissioner),
SIC ILIA Region.

1. Reference your RLE 013.111/FLV of 14 July 44 and your RLE 013.11/FLV of 25 July 1944.
2. Will you please give me the latest report on the status and progress being made in the trial by the Italian court of the defendants in the so-called Ustica case.

RICHARD H. WILMER,
Colonel, CAC,
Chief Legal Advisor.

HEADQUARTERS
A.C.C.

ALLIED CONTROL COMMISSION
SICILY REGION HEADQUARTERS
APO 394

File : RLE 013.11/FLV

25th July 1944

SUBJECT : Ustica Case

TO : Legal Sub-Commission, A.C.C. Headquarters APO 394

Reference your ACC/4096/I dated 4th July and 21st July 1944.

A reply to the former letter was sent on the 14th July 1944 under reference RLE 013.111/FLV, a copy of which is attached.

For Colonel A.N. HANCOCK:

Frank L. Vecchiolla
FRANK L. VECCHIOLLA
Major, JAGD.
Regional Legal Officer.

js.

C O P Y.

File : RLE 013.111/FLV

14th July 1944

SUBJECT : Ustica Case

TO : Legal Sub-Commission - A.C.C. Headquarters APO 394

1. Reference your ACC/4096/L dated 4th July 1944.
2. This case has now been turned over to the Italian Court Authorities for framing of the charges and bringing the same to trial.
3. Some delay has been caused by the necessity of translating the whole record of the Ustica Commission Proceedings (some 400 typewritten pages) and other relevant documents into Italian.
4. As soon as this office receives further information on this case, it will be immediately forwarded.

(Signed) FRANK L. VECCHIOLLA
Major, JAGD.
Regional Legal Officer.

js.

HEADQUARTERS
ARMED CONTROL COMMISSION
Legal Subcommittee
APO 394

SM/gaf

Tel. No. 563

21 Jul 44

AGC/LOG/L

SUBJECT: Unitor Case.

TO : W/O (thru HQ) Region 1.

1. On 4 July 44 I wrote to you enquiring as to the position of the above case but I have not yet heard from you.
2. Will you please advise me of the present status of the case.

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

4096

Legal
V-6162 67A

ALLIED CONTROL COMMISSION
SICILY REGION HEADQUARTERS
APO 394

File : RLE 013.111/FLV

14th July 1944

SUBJECT : Ustica Case

TO : Legal Sub-Commission, A.C.C. Headquarters APO 394

1. Reference your ACC/4096/L dated 4th July 1944.
2. This case has now been turned over to the Italian Court Authorities for framing of the charges and bringing the same to trial.
3. Some delay has been caused by the necessity of translating the whole record of the Ustica Commission Proceedings (some 400 typewritten pages) and other relevant documents into Italian.
4. As soon as this office receives further information on this case, it will be immediately forwarded.

For Colonel A.N. HANCOCK:



Frank L. Vecchiolla
FRANK L. VECCHIOLLA
Major, JAGD.
Regional Legal Officer.

-70

js.

LEGAL SUB-COMMISSION	
CLO	1
DCLO	
Chief Counsel	
CLO	
Action Section	
CLERKS	

file
1
2

REAR HEADQUARTERS
ALLIED CORRAL COMMISSION
Legal Subcommission
AO 396

681
WJG/gne

RC/1096/1

4 Jul 44

SUBJECT: Ustica Case.

TO : SAC (thru RC) Region 1.

Please let us have the present status of the above case. The file was sent to you on 27 May 1944 with instructions.

69
RICHARD E. GIBER
Colonel, CAC
Acting Chief Legal Officer.

SECRET

Legal S.C.
65A
S-3847

SCHEDULE OF ENCLOSURES TO ACC/4096/L dated 27 May 44

Record: "Ustica Commission - Original" ✓

Record: "Ustica Case (Copy No. 1)" ✓

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

Fazio Vincenzo (12/11/1943) ✓
 Di Mauro Gaetano ✓
 Pace Mario ✓
 Luigi Foresta ✓
 Pietro Rando (2 copies) ✓
 (Brucianore Giuseppe), Currisi Giuseppe;
 (Guerzoni Paolo); Sacconi Alfiero; Roberti
 Matteo; Stanzone Raffaele; Nava Antonino ✓
 Pecoraino Lorenzo ✓
 Giordano Vincenzo ✓
 Fazio Vincenzo (20 Dicembre 1943) ✓
 Gargano (2 copies) ✓
 "Osservazioni alla Testimonianza N. 60" (2 copies) ✓
 "Osservazioni alla Testimonianza N. 59" (2 copies) ✓
 "Osservazioni alla Testimonianza N. 53" (2 copies) ✓
 "Al Ministero dell'Interno....." ✓
 "La difesa di Giordano....." ✓
 "La difesa di Pecoraino Lorenzo....." ✓
 ".....Per Fazio Vincenzo....." ✓
 "Rilievi in difesa di Castiglione Angelo" ✓
 "Difesa Gargano e Di Mauro." ✓

Envelope: "Ustica Commission. Exhibits B 1 to D 5 and Exhibits D 14, 15 and 16" ✓

Envelope: "Ustica Commission. Exhibit D 11" ✓

Envelope: "Ustica Commission. Morning Reports. Exhibits 2 and 4." ✓

Envelope: "Ustica Commission. Exhibit 3" ✓

Envelope: "Ustica Commission. Exhibits 5 and 6 and 9 and 40." ✓

Envelope: "Ustica Commission. Exhibit 38" ✓

Envelope: "Ustica Commission. Exhibits 41, 42 and 43" ✓

Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50" ✓

Envelope: "Ustica Commission. Exhibits 53, 54, 55, 56, 57, 59 and 60" ✓

Additions: Record of Commission ✓

Record - 2nd copy ✓

File of Legal Sub-Commission ACC/4096/L ✓

HEADQUARTERS

8 JUN 1944

A. C. C.

RECEIVED Legal Sub-Commission letter reference ACC/4096/L of 27 May 1944 together with enclosures thereto as set out above.

Dated: June 5 1944.

Frank A. Vesichella Major
 ..R.L.O. Regt.
 Acc.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LOCAL SUB-COMMISSION
APO 394

64A

ACC/14096/L.

/rlp.
30 May 1944.

SUBJECT : Application for Provisional Liberty by Italian Detained in
Unica Case.

TO : AFHQ, MSG, G-5.

1. Reference your letter G-5 GIO.2 of 27 May 44.
2. The Regional Legal Officer of Region I will be instructed to
deal with the application of Gargano in accordance with para. 2 of your
letter.

RICHARD H. WILSON,
Colonel, SAC,
Deputy Chief Legal Officer 66

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

76
ACG/4096/L.

638
/rlp.
30 May 1944.

SUBJECT : Application for Provisional Liberty by Italian Detained in
Latina Case.

TO : Regional Legal Officer (THQ: Regional Commissioner), Region I.

1. Enclosed is a letter from Assistant Chief of Staff, G-5, AFHQ
dated 27 May 1944, and enclosures mentioned therein.

2. It is my understanding that applications for provisional liberty
are made direct to the court in which the particular case is pending. As
soon as the proper court takes jurisdiction of the case you should see that
the application is filed, or at least that the attorney for Cargano does so,
in accordance with the enclosed letter.

67
RICHARD H. WILMER,
Colonel, SAC,
Deputy Chief Legal Officer.

Encl. Letter fr Asst GS, G-5, AFHQ.

C O P YALLIED FORCES HEADQUARTERS
G-5 Section
APO 512

CMS/CE/thh.

62A

27 May 1944

G-5 010.2

SUBJECT : Application for provisional liberty by Italian
detained in Ustica case.TO : Headquarters, Allied Control Commission, APO 394.
(att.: Chief Legal Officer)

1. By note of 5 March 1944, ACC/4083/I/L, the Chief Judicial officer transmitted a file dealing with the application of Gargano Ercole, one of the persons detained in the Ustica case, for provisional liberty. Those papers were referred to the Assistant Chief of Staff, G-1, who had been charged with handling that case. It was directed that the matter be held in abeyance until a decision had been reached as to the trial of the Ustica defendants.

2. It has now been decided that that case is to be referred to the Italian Government with a view to prosecution in the Italian Courts (Letter G-5 010.2 of 22 May 1944, Subject: Ustica case.). Accordingly this Section has been directed to return the Gargano file to the Allied Control Commission, in order that the application for provisional liberty may be transmitted to the appropriate Italian authority.

(signed) CHARLES M. SPOTFORD,
Colonel, G.S.C.
Ass. Chief of Staff, G-5.

65

SECRET

HEAD HEADQUARTERS
ALLIED CENTRAL COMMISSION
LEGAL SUB-COMMISSION
APO 324

/rlp.
27 May 1944.

ACC/4096/11.

SUBJECT : Ustia Case and Record.

TO : AFHQ (G-5).

1. Your two letters reference G-5 .CIC.2 of 21 May 1944 and record as stated therein have been received.

2. The record, together with instructions as to the transfer of the case to the Military Court and the return of the record, are being transmitted to the WSO (through the DC), Region I for the necessary action in compliance with your directive.

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

*Will be taken
by Col Wilson & Col upjohn
Meanwhile all records in
all.*
28/5/44

SECRET

SECRET

REAR HEADQUARTERS
ARMED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 324

ABC/1096/L.

/rlp.
27 May 1944.

SUBJECT : Ustica Case.

TO : Regional Legal Officer (TRM: Regional Commissioner), Region I.

1. Enclosed are the files in the above case together with the file of the Legal Sub-Commission dealing with this case.
2. Briefly, as you will see, this case is now to be tried in an Italian Court in your region. The recent correspondence in our file will show you what has been agreed to in this respect. Likewise you will observe the instructions from AMIC with respect to the trial and disposition of the enclosed record.
3. It will be appreciated if you will keep this sub-commission advised of the progress of the case. The file must be returned here when it has served its purpose, together with the record of the case in the Italian Courts as directed by the instructions from AMIC.
4. Please acknowledge receipt on schedule of enclosures attached.

RWU
GERALD E. UNJOHN,
Colonel,
Chief Legal Officer.

SECRET

0338

S E C R E T

60B

SCHEDULE OF ENCLOSURES TO ACC/4096/L dated 27 May 44

Record: "Justice Commission - Original"

Record: "Justice Case (Copy No. 1)"

"Justice Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

Fazio Vincenzo (12/11/1943)

Di Mauro Gastone

Pace Mario

Luigi Foresta

Pietro Rando (2 copies)

(Branciamore Giuseppe), Guerrieri Giuseppe;

(Giarzoni Paolo); Macenti Alfiero; Roberti

Matteo; Sturione Raffaele; Nava Antonino.

Pecorino Lorenzo

Cicciaro Vincenzo

Fazio Vincenzo (20 dicembre 1943)

Gargano (2 copies)

"Osservazioni alla Testimonianza N. 60" (2 copies)

"Osservazioni alla Testimonianza N. 59" (2 copies)

"Osservazioni alla Testimonianza N. 57" (2 copies)

"Al Ministero dell'Interno....."

"La difesa di Giordano....."

"La difesa di Pecorino Lorenzo....."

".....Per Fazio Vincenzo....."

"Tilievi in difesa di Castiglione Angelo"

"Difesa Gargano e Di Mauro."

Envelope: "Justice Commission. Exhibits D 1 to D 5 and Exhibits D 14, 15 and 16"

Envelope: "Justice Commission. Exhibit D 11"

Envelope: "Justice Commission. Morning Reports. Exhibits 2 and 4."

Envelope: "Justice Commission. Exhibit 3"

Envelope: "Justice Commission. Exhibits 5 and 6 and 9 and 40."

Envelope: "Justice Commission. Exhibit 38"

Envelope: "Justice Commission. Exhibits 41, 42 and 43"

Envelope: "Justice Commission. Exhibits 47, 48, 49 and 50"

Envelope: "Justice Commission. Exhibits 53, 54, 55, 56, 57, 59 and 60"

Additions: Record of Commission

Record - 2nd copy

File of Legal Sub-Commission ACC/4096/L

RECEIVED Legal Sub-Commission letter reference ACC/4096/L of 27 May 1944 together with enclosures thereto as set out above.

Dated: 1944.

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(60c)

IN THE NAME OF HIS MAJESTY
VITTORIO EMANUELE III

The court of appeal of Palermo - Investigations Section, composed of the following members: -

1) Comm. Giovanni Sinistra - President- 2) Cav. Uff. Massimo Dispensa - 3) Cav. Uff. Giuseppe Pagliaro - Councillors on 7th September 1944 met in Council Chamber to decide on the final proposal of the Procurator General regarding the trial

AGAINST

- 1) Gargano Ercole fu Salvatore born in 1902 in Palermo, imprisoned from 7.9.1943; released on 24.7.1944 on temporary freedom.
- 2) Di Mauro Gaetano di Pio born in S. Francisco Cal., residing in Palermo, imprisoned from 7.8.1943 and released on temporary freedom on 24.7.1944.
- 3) Foresta Luigi fu Vincenzo born in 1903 in Palermo, imprisoned from 10.9.1943; released on temporary freedom on 30.8.1944.
- 4) Faconti Alfiero fu Giovanni born in 1907 in Sarzana; imprisoned from 10.9.1943 and released on temporary freedom on 30th. 8 1944.
- 5) Kama Antonino fu Antonino born in 1912 at Villa S. Giovanni; imprisoned from 10/9. 1943, released on 30th. 8. 1944 on temporary freedom.
- 6) Pecoraino Lorenzo di Nicolo' born in 1899 in Palermo; imprisoned from 10.9.1943; released on 30.8.1944 on temporary freedom.
- 7) Roberti Matteo fu Michele, born in 1911 in S. SEVERO; imprisoned from 10.9.1943; released on 30.8.1944 on temporary freedom.
- 8) Castiglione Angelo fu Filippo born in 1909 in Comitini; imprisoned from 10.9.1943 and released on 22nd. 12. 1943 on temporary freedom.
- 9) Stanzione Raffaele fu Francesco born in 1896 in Nocera Inferiore; imprisoned from 16.10.1944; released on 29.8.1944 on temporary freedom.
- 10) Rando Pietro di Francesco born in 1898 in Ustica; imprisoned from 27. 9. 43; released on 22.12.1943 on temporary freedom.
- 11) Pace Mario fu Mario born in 1887 in S. Cataldo; imprisoned from 16.10.1943; released on 22.12.1943 on temporary freedom.
- 12) Giordano Vincenzo fu Alberto born in 1896 in Montelepre, residing in Ustica; imprisoned from 14.10.1943, released on 22. 12. 1943 on temporary freedom.
- 13) Fazio Vincenzo fu Francesco born in 1880 in Ventimiglia Sicula; imprisoned from 14.10.1943; released on 22.12.1943 on temporary freedom.
- 14) Sapienti Giuseppe, born in ~~Barri~~ Bari on 17.10.1911; imprisoned from ~~22.12.1943~~ 2.4.1944.
- 15) Silvestri Michele di Giuseppe born in Peschici (Foggia) in 1917, released.

CHARGED

the 3rd., 4th., 5th., and 7th, with wilful manslaughter for having, by abusing the disciplinary powers pertaining to their respective functions the 3rd as Director of the Colony of confinees of Ustica and the others as P.S. agents and N.C.O.S., by acts intended to bring about physical suffering (blows and cruel actions), caused the death of an unidentified confinee. The crime is the more serious because committed without motive (art. 584, 61 N.1.9.4.585, 577 N. 4. P.C.).

Giuseppe Pagliaro - Councillors on 7th September 1944 met in Council Chamber to decide on the final proposal of the Procurator General regarding the trial

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- 15) Silvestri Michele di Giuseppe born in Peschici (Foggia) in 1917; released.

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- a) The 1st) with the crime referred to in art. 321 P.C. in connection with art. 319 for having corrupted public officials in Rome by giving Lire 500,000 for the purpose of preventing the Colony of confinees at Ustica, which he had the duty by contract of supplying with food and barrack equipment, from being dissolved during the state of war as had been ordered by the government authorities, which he succeeded in doing.
- b) with not having fulfilled the obligations deriving from a supply contract made with the State, with responsibility for missing barracks equipment and medicinals assigned to the above colony (art. 355 p.p. No. 1 P.C.).

The 2nd. 3rd. 4th. 5th. 6th. 7th. 8th. 9th. 10th and 11th:

- a) with continual malversation for having, concurrently, on various occasions since 1941, in Ustica, in their respective capacities of administrator of supplies for the confinees, of officials, P.S. agents or civil employees working in the colony kitchen and Foresta as director, removed from the colony food store, for their own use,

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unspecified quantities of pasta, 30 quintals of grain, and other food stuffs assigned to the confinees (art. 81, 315 P.C. in connection with art. 314.112 No. 1 P.C.).

b) with continued manslaughter without criminal intent, for having as a result of the food shortage due to the continual removal of food from the colony supplies, caused the death of several unidentified confinees (art. 81, 589, 586 P.C.).

c) with continual abuse of power, for having on various occasions, by acts carrying out the same criminal design, and by abusing the disciplinary powers pertaining to their functions, subjected a large number of confinees to cruelty and torture (art. 81, 608 P.C.).

the 12th, with abuse of his office for having, by abusing the powers pertaining to his office of P.S. secretary in the colony, (words missing) the fixed labour payment rate (art. 323 P.C.) not having occurred.

the 13th of continual extortion for having, by abusing his position as doctor of the colony, induced various confinees to pay him undue compensations for his services (art. 81, 317 P.C.).

These offences were committed in Ustica between 1941 and early September 1943.

The 14th) (a) with fraudulent insolvency of 7,000 lire owing to Pastorello Giuseppe, art. 641 P.C.

b) With defrauding Pupillo Mauro of Lire 13,000 (art. 640 P.P. P.C.).

c) with wanted credit toward the officials of the Palermo police headquarters upon the arrest of Turrisi Liborio for illegally possessing a tank of petrol (art. 346 P.C.).

d) With continual assumption of public offices, for having posed as secretary to Capt. Maud, Civil Affairs Officer in the Allied Military Government (art. 81, 347. pp P.C.).

e) attempted swindle of 15000 lire from Silvestri Mauro, by requesting the sum with the pretext of obtaining him an authorization for coal.

at Palermo

These offences were committed during the last months of 1943 until February 1944.

The 15th with complicity in the crimes stated in letters d and e ascribed to the 14th.

After reading the final proposal of the Procurator General of 22.11.1944, in which it is requested that Sapiente be referred to the Tribunale of Palermo for all the offences and it is declared that no proceedings will be taken against all the other accused, for all the charges, because the facts do not exist.

After hearing the report of the Councillor Cav. Uff. Pagliaro.

IN FACT AND BY RIGHT

As soon as the Allied troops landed at Ustica on 5th August 1943, charges were made

the same criminal design, and by abusing the disciplinary powers pertaining to functions, subjected a large number of confinees to cruelty and torture (art. 81.608 P.C.).

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the 13th of continual extortion for having, by abusing his position as doctor of the colony, induced various confinees to pay him undue compensations for his services (art. 81.317 P.C.).

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d) With continual assumption of public offices, for having posed as secretary to Capt. Maud, Civil Affairs Officer in the Allied Military Government (art. 81.347. pp P.C.).

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These offences were committed ^{at Palermo} during the last months of 1943 until February 1944.

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After hearing the report of the Councillor Cav. Uff. Pagliaro.

IN FACT AND BY RIGHT

As soon as the Allied troops landed at Ustica on 5th August 1943, charges were made by a few confinees from the colony against Gargano Ercole, in charge of the colony's food supplies, against his local representative Pecoraine Lorenzo, against his employee Prando Pietro and against his partner's representative Longe, against Mauro Gaetano, as well as against the Director of the Colony P.S. Commissioner Foresta Luigi and against the P.S. N.C.O.S. Stanzieme Raffaele and Roberti Matteo and against the P.S. agents Faconti Alfiero, Nava Antonio, Castiglione Angelo, and Pace Mario, and against the P.S. Secretary Giordano Vincenzo and the colony's doctor, Fazio Vincenzo.

The principal accusers were the confinees Sapiente Giuseppe, Piredda Francesco, and the P.S. agents Silvestri Michele and Rappene Giuseppe.

The Allies arrested the persons accused toward the end of August and early in September 1943 and made enquiries. The documents were then sent on 15th July 1944 to the Italian Judicial Authorities to deal with the case.

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The Procurator General of the Kingdom by order of 1.8.1944 assigned the work of investigation to this investigations section. Of the persons arrested, Castiglione, Ramo, Girolamo and Ezie were granted temporary liberty by the Allied Authorities and the others by this Investigations section.

Proceedings were taken against all of the above-mentioned for the crimes respectively ascribed them in the list.

The Police Head Quarters (Questura) of Palermo, with a report of 3.6.1944, denounced Sapiante Giuseppe and the P.S. Guard Silvestri Michele, i.e. the two principal accusers, the first for fraudulent insolvency, swindle, wanted credit, continued assumption of public offices and attempted swindle, and the second for complicity with the first in the last two offences. This trial was also referred by the Procurator General to this Instructions office to be presented in conjunction with that of Gargano Ercole and others.

Subsequent to the completion of investigations, the following observations are made as regards each charge.

Wilful manslaughter: the confinee Piredda related that in August 1943 a confinee, unknown to him, about 30 years of age, had protested to the Director of the Colony, Feresta, that he had not cashed a money order; that, on the former insisting, Feresta replied in an ill manner and ended by handing him over to the agents Facenti and Nava who presumably took him to the punishment cells known as the "Fosse" (ditch) from where he is supposed to have come out only to die.

For the above crime, proceedings were taken against V. Brig. Roberti as well as the three above-mentioned.

It has been ascertained that only one confinee died in Ustica during the month of August 1943, Pintore Giorgio, aged 71, as a result of sealle miasmus. And since his age does not correspond in the least with that of the person indicated by Piredda, and as it happens came from the same town as the latter, it cannot be said that Piredda was referring to this person when he spoke of a 30 years old man unknown to him.

Hence it results that the fact must be assigned only to the imagination of the witness and the accused are acquitted of the above crime because the fact did not occur.

Bribing of a public official: the P.S. agent Silvestri Michele related that one day, in the Colony offices, he had overheard the Director Feresta saying to some persons that as the Colony of confinees had been dissolved, the supply agent Ercole Gargano had gone to Rome and by paying Lire 500,000 had persuaded the authorities to allow the colony to remain. Gargano was believed to have acted thus in order to continue his profit-making on the supplies and proceedings were taken against him for bribing.

The very size of the sum which was supposed to have been paid (half a million) led one to disbelieve the report, while the fact that Silvestri had already been punished for his bad conduct led one to doubt his statements. Then after investigating the matter, Silvestri's statement was proved to be completely false, for it was ascertained that the Ministry had never intended to dissolve the Colony of Ustica and that only in April and May of 1943 did it order the Colony to be evacuated in consequence of the difficulties due to the war, although about 200 of the confinees remained there. It must therefore be affirmed that the fact in question did not occur.

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Hence it results that the fact must be assigned only to the imagination of the witness and the accused are acquitted of the above crime because the fact did not occur.

Bribing of a public official: the P.S. agent Silvestri Michele related that one day, in the Celomy offices, he had overheard the Director Foresta saying to some persons that as the Colony of confinees has been dissolved, the supply agent Ercole Gargane had gone to Rome and by paying Lire 500,000 had persuaded the authorities to allow the colony to remain. Gargane was believed to have acted thus in order to continue his profit-making on the supplies and proceedings were taken against him for bribing.

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Failure to comply with the obligations of the supply contract. For this crime proceedings were taken against the food supply agent Gargano. The charge is based on the statements of the confinee Sapiente made in the first phase. But when one considers that Sapiente took advantage of the position of ~~the office of~~ ^{an} ~~executive~~ clerk given him by Capt. Maud of the Allied Forces ~~in order~~ ^{by swindling people,} ~~to~~ ^{he} vaunted credit toward the said authorities, and posing as an agent of the American secret service, endeavored to intimidate the witnesses in the trial of the accused, one cannot but doubt the likelihood of his testimonies. And this opinion was later confirmed by the fact that when the matter was being investigated Sapiente ~~withdrew~~ ^{nevertheless} what he had said, and by the results of the investigations, which proved the charges against Gargano to be unfounded. It was ascertained in fact, that Gargano had such a plentiful deposit in Ustices that he could have supplied

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as a loan, in case of need, even the Allied Forces; that when there were transport difficulties he hired schemers for himself; that, on being requested by the Procurator of the King for Palermo, he, even supplied food rations at a very difficult moment, as a loan, to the Ustica jail, thus improving the conditions of the prisoners and personnel who had been left without food because the supply agent for the jail, who was a very different person, could find no transport from Palermo to the island. No lack of medicals was found and the barracks equipment was quite sufficient as the Director of the Palermo judicial jails ascertained during a subsequent visit.

Malversation Di Mauro and the Commissioner Foresta are accused of this crime, as are also the P.S. agents and N.C.O.s Faconti, Nava, Roberti, Castiglione, Stanzione and Pace and the employees of the Gargano firm, Recoraino and Ruvoletto. According to the charge these persons removed from the colony food stores, packets of pasta, 30 quintals of wheat, oil, cheese and other food stuffs assigned to the confinees. In the first place no wheat could have been removed from the Colony stores for the simple fact that the wheat or flour, as was ascertained, was not brought from the port to the Colony kitchen but was deposited in the communal stores, from where it was taken to the bakers' shops to be converted into bread according to assignment orders given by the Town Hall (Municipio). As regards the other food-stuffs, the manner in which they were transported and distributed must be specified.

Food stuffs

As soon as ~~they~~ arrived at Ustica they were consigned to the representative of the Gargano firm, Recoraino, and transported to a building belonging to the firm.

The firm was required to hand over the cooked food and for this purpose, every morning, the P.S. issued a coupon to every confinee, which he was to use for withdrawing his food from the kitchen. Coupons were issued instead of the money assigned because the confinees gambled their money and went hungry. At no time then did the food, while in the kitchen, belong either to the confinees or to the State. It became the property of the confinees only when withdrawn and paid for with the coupons. Thus, even if food was removed, this could not have constituted the offence of malversation. But the investigations revealed no indications of a removal of food, which must therefore be excluded, for it was impossible to give credit to the statement of persons who, besides proving themselves to be deceitful, being in a very base environment, full of suspicion, envy, mistrust and rancour such as that in which gather bunches of persons subjected by force to the authority of others, cannot be relied on for accuracy. If indeed the ration was insufficient, it was due to the quantity assigned and not to any removal.

Manslaughter without criminal intent: The same persons mentioned above are also charged with manslaughter without criminal intent for it is deemed that the death of several unidentified confinees was brought about as a result of insufficient nourishment due to the continual removal of food. The very fact that the victim of the crime is unidentified is sufficient for one to believe that the crime did not take place and to exclude the possibility of the facts ever existing. Actually, at a certain time, there was a very high mortality in Ustica, approximately 20% of the confinees. But the doctor for the Palermo judicial jails, where the sick were taken, certifies that most of them were afflicted with precedent diseases (suppilis, tubercolosis, pelagra) and since the ration assigned by the Ministry was insufficient, not only for the confinees but also for the civil population, to meet normal food requirements, lacking approximately 1000 calories daily, as the Regional Director of Public Health affirmed, the constitution of many individuals was weakened by gradual starvation until no longer able to resist the attacks of other illnesses which found such conditions favourable for development.

Malversation Di Mauro and the Commissioner Foresta are accused of this crime, as are also the P.S. agents and N.C.O.s Faconti, Nava, Roberti, Castiglione, Stanzione and Pace and the employees of the Gargano firm, Pecoraino and Ruvoletto. According to the charge these persons removed from the colony food stores, packets of pasta, 30 quintals of wheat, oil, cheese and other food stuffs assigned to the confinees. In the first place no wheat could have been removed from the Colony stores for the simple fact that the wheat or flour, as was ascertained, was not brought from the port to the Colony kitchen but was deposited in the communal stores, from where it was taken to the bakers' shops to be converted into bread according to assignment orders given by the Town Hall (Municipio). As regards the other food-stuffs, the manner in which they were transported and distributed must be specified.

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The civil population certainly, could find other ways to meet their needs, such as the black market, but confinees had no such possibility because they lacked the means.

Hence, as there is no connection of causality between the fatal events and the acts or the accused, the fact ascribed to them is out of the question.

The same accused persons are called to answer for abuse of authority for having, by abusing the disciplinary powers pertaining to their functions, subjected the confinees to torture and cruelty.

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First of all it is not known what authority with disciplinary powers the supply agents Di Mauro, Pecoraine and Rendo, could have had. As regards the others the charge concerns Faconti and Nava more than the others who it can only be supposed were connivants. One has only to consider the various ways in which the facts have been related to be convinced that such circumstances are purely imaginative. All spoke of a "pump" used for the prisoners in the punishment cell, but their descriptions did not agree. Some spoke of tubes attached to the tap, others of water poured into the mouth with a funnel, others of water poured from a cup, others of water thrown violently, - none have ever seen it personally, but have heard of it. It is easy to believe that the facts were invented by some confinee in consequence of his resentment and, passed around, grew and altered as usual in passing from one mouth to another with the personal additions of each individual. Then, considering that the principal accusers are the P.S. agents Rabboni and Silvestri, the former arrested for extortion and being tried and the latter for attempted swindle, these persons cannot be trusted, and this fact must likewise be deemed non-existent.

Abuse of Office: The P.S. secretary, Giordano, is accused of abuse of office because he is supposed to have made a confinee work on his property, paying him 4 lire daily.

But, apart from the fact ^{that} ~~which~~ Giordano also gave ^{food} to the confinee, he cannot have abused his authority considering that the Town Hall of Ustica paid the same confinee two lire daily for work; thus the fact does not constitute a crime.

Dr. Fazio Vincenzo, the Colony's doctor, is called to answer for continual extortion, because he is supposed to have demanded undue compensation from the confinees.

It has been ascertained that Fazio demanded such compensation when certain confinees, rather than ask to be visited at the dispensary, went to his private visiting room to request special attention. As Fazio had no obligation to give his services to the confinees in his private visiting room where he exercised a free profession, he had a right to demand compensation for his services from anyone who requested them there rather than undergo a visit and cure at the dispensary. The fact therefore does not constitute a crime.

As regards the trial in question, Sapianti, who is the accuser, as was said before, and who ~~was~~ ^{was} his words during the principal trial, is called to answer for fraudulent insolvency because, as he knew he could not pay, he pawned the automobile of Pastorello Giuseppe remaining with a debt of 7000 lire, for swindling Paspillo Mauro of 13,000 lire by promising to release a certain Turrissi from jail, for assuming public functions by posing as the secretary of Capt. Maud in charge of civil affairs, and for attempted swindle of 15,000 lire from Silvestri Mauro by promising to obtain a permit for him to transport coal. But for all these crimes, committed in late December 1943, in January and early in February 1944, is prescribed the amnesty in art. 3 of the R.D. No. 96 of 5-4-1944 and art. 1 of the D.L. No. 263 of 5.10.1944. Since it is not evident that the facts do not exist, the charges against Silvestri Michele, accused of complicity with Sapianti in the crimes of assuming public offices and attempting to swindle Silvestri Mauro, are also nullified by the same amnesty.

There remains only the crime of vaunted credit of which Sapianti is accused, which is explicitly excluded from amnesty (art. 3, chapter 1, No. 2). Therefore, as there are sufficient indications to condemn Sapianti in as much as he used his presumed influence with public authorities to persuade persons to give or promise him money as in the case

none have ever seen it personally, but have heard of it. It is easy to believe that the facts were invented by some confinee in consequence of his resentment and, passed around, grew and altered as usual in passing from one mouth to another with the personal additions of each individual. Then, considering that the principal accusers are the P.S. agents Rabboni and Silvestri, the former arrested for extortion and being tried and the latter for attempted swindle, these persons cannot be trusted, and this fact must likewise be deemed non-existent.

Abuse of Office: The P.S. secretary, Giordano, is accused of abuse of office because he is supposed to have made a confinee work on his property, paying him 4 lire daily.

But, apart from the fact ^{that} ~~which~~ ^{food} Giordano also gave to the confinee, he cannot have abused his authority considering that the Town Hall of Ustica payed the same confinee two lire daily for work; thus the fact does not constitute a crime.

Dr. Fazio Vincenzo, the Colony's doctor, is called to answer for continual extortion, because he is supposed to have demanded undue compensation from the confinees.

It has been ascertained that Fazio demanded such compensation when certain confinees, rather than ask to be visited at the dispensary, went to his private visiting room to request special attention. As Fazio had no obligation to give his services to the confinees in his private visiting room where he exercised a free profession, he had a right to demand compensation for his services from anyone who requested them rather than undergo a visit and cure at the dispensary. The fact therefore does not constitute a crime.

As regards the trial in question, Sapianti, who is the accuser, as was said before, and who ~~was~~ ^{is} his words during the principal trial, is called to answer for fraudulent insolvency because, as he knew he could not pay, he pawned the automobile of Pastorello Giuseppe remaining with a debt of 7000 lire, for swindling Papillo Mauro of 13,000 lire by promising to release a certain Turrisi from jail, for assuming public functions by posing as the secretary of Capt. Maud in charge of civil affairs, and for attempted swindle of 15,000 lire from Silvestri Mauro by promising to obtain a permit for him to transport coal. But for all these crimes, committed in late December 1943, in January and early in February 1944, is prescribed the amnesty in art 3 of the R.D. No. 96 of 5-4-1944 and art 1 of the D.L. No. 263 of 5.10.1944. Since it is not evident that the facts do not exist, the charges against Silvestri Michele, accused of complicity with Sapianti in the crimes of assuming public offices and attempting to swindle Silvestri Mauro, are also nullified by the same amnesty.

There remains only the crime of vaunted credit of which Sapianti is accused, which is explicitly excluded from amnesty (art 3, chapter 1, No. 2). Therefore, as there are sufficient indications to condemn Sapianti in as much as he used his presumed influence ~~over~~ ^{with} public authorities to persuade persons to give or promise him money as in the case of Papillo Mauro and Turrisi Liborio, he is deferred to the Tribunale of Palermo for trial and is kept in the same state of custody.

The accused who have been acquitted and allowed temporary liberty, must be freed from the restrictions imposed on them and orders must be given for the bail to be paid back to those who have lent it and their fidejussors freed from obligation.

FOR THESE REASONS THE

COURT

Whereas articles 374, 378 C.P.P. 3 R.D. 5.4/1944 No. 96, 1. D.L. 5.10.1944 No. 263 in partial disagreement with the requests of the P.M.

Declares that no proceedings will be taken against Gargano Ercole, Di Mauro Gaetano, Foresta Luigi, Faconti Alfiero, Nava Antonino, Pecoraine Lorenzo, Roberti Matteo, Castiglione Angelo, Stanziene Raffaele, Rando Pietro and Pace Marie for the crimes of which they are respectively accused as in the list, because the facts did not exist; declares that no proceedings will be taken against Giordano Vincenzo and Fazio Vincenzo for the crimes charged to them because the facts do not constitute crimes, and declares that no proceedings will be taken against Sapienti Giuseppe for the charges of fraudulent extortion, swindle, assumption of public offices and attempted swindle or Silvestri Michele for the charges against him because the crimes are annulled by the amnesty granted by R.D. No. 96 of 5.4.1944 and No. 263 of 5.10.1944.

Whereas art. 294 C.P.P. releases all the confinees from the obligations imposed on them through the temporary liberty granted them and releases the fidejussors from the obligation assumed by them.

Orders the bail of 100,000 lire to be paid back to Gargano Ercole, according to the receipt No. 107.172 dated 20th July 1944 for the sum placed in the Bank of Sicily on the ordinary current account of the Procurator of the Kingdom for Palermo, and according to the bail order of 2/4.1944 from the Office of the Procurator of the Kingdom and orders the bail of 100,000 lire to be paid back to Di Mauro Gaetano according to the receipt No. 107.172 of 20th July 1944 for the sum placed in the Bank of Sicily on the same current account indicated above and according to the order of 25.7.1944, reg. no. 229, of the Procurator of the Kingdom for Palermo.

Orders Sapienti Giuseppe to be referred to the Tribunale of Palermo, kept in the same custody, and tried for the crime of vaunted credit referred to in letter c of the list.

PALERMO, 7 December 1944

/s/ Sinistra, Dispensa, Pagliaro, Gambillo

Lodged to-day, 11 December 1944
The Councillor - Gambillo

True copy

PALERMO, 3 January 1944

Whereas articles 374, 378 C.P.P. 3 R.D. 5.4/1944 No. 96, 1. D.L. 5.10.1944 No. 263 in partial disagreement with the requests of the P.M.

Declares that no proceedings will be taken against Gargano Ercole, Di Mauro Gaetano, Foresta Luigi, Faconti Alfiero, Nava Antonino, Pecorello Lorenzo, Roberti Matteo, Castiglione Angelo, Stamizone Raffaele, Rando Pietro and Pace Marie for the crimes of which they are respectively accused as in the list, because the facts did not exist; declares that no proceedings will be taken against Giordano Vincenzo and Fazio Vincenzo for the crimes charged to them because the facts do not constitute crimes, and declares that no proceedings will be taken against Sapienti Giuseppe for the charges of fraudulent extortion, swindle, assumption of public offices and attempted swindle or Silvestri Michele for the charges against him because the crimes are annulled by the amnesty granted by R.D. No. 96 of 5.4.1944 and No. 263 of 5.10.1944.

Whereas art. 294 C.P.P. releases all the confinees from the obligations imposed on them through the temporary liberty granted them and releases the fidejussors from the obligation assumed by them.

Orders the bail of 100,000 lire to be paid back to Gargano Ercole, according to the receipt No. 107,172 dated 20th July 1944 for the sum placed in the Bank of Sicily on the ordinary current account of the Procurator of the Kingdom for Palermo, and according to the bail order of 27.4.1944 from the Office of the Procurator of the Kingdom and orders the bail of 100,000 lire to be paid back to Di Mauro Gaetano according to the receipt No. 107,172 of 20th July 1944 for the sum placed in the Bank of Sicily on the same current account indicated above and according to the order of 25.7.1944, reg. no. 229, of the Procurator of the Kingdom for Palermo.

Orders Sapienti Giuseppe to be referred to the Tribunale of Palermo, kept in the same custody, and tried for the crime of vaunted credit referred to in letter 5 of the list.

PALERMO, 7 December 1944

/s/ Sinatra, Dispensa, Pagliaro, Gambillo

Lodged to-day, 11 December 1944
The Councillor - Gambillo

True copy

PALERMO, 3 January 1944

THE COUNCILLOR
/s/

4096
SECRET

ALLIED FORCE HEADQUARTERS
 G-5 Section
 APO 512

CMS/CF/thh

G-5 010.2

21 May 1944

SUBJECT: Transmittal of Record in Ustica Case

TO : Headquarters, Allied Control Commission, APO 394
 (Attention: Chief Legal Officer)

1. By letter of even date with this, subject "Ustica Case", you were requested to present to the proper Italian authorities, with a view to prosecution in the local courts, the various offences reflected in the record of the so-called Ustica Case. Accordingly, there is herewith transmitted the record and other papers in that case.

2. The record and papers referred to are those transmitted (without being itemized) by Colonel Pollock's letter ACC/4083/1/L of 5 March 1944, - less record of the "Ustica War Crimes Commission" marked "Colonel Pollock 2 copy", which was returned to you under cover of our letter MGS 010.2 of 30 April 1944. The itemized list is as follows:

Record: "Ustica Commission - Original" ✓

Record: "Ustica Case (Copy No. 1)" ✓

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

□ Fazio Vincenzo (12/11/1943) ✓

Di Mauro Gastano ✓

Pace Mario ✓

Luigi Foresta ✓

Pietro Rando (2 copies) ✓

(Branciamore Giuseppe); Gurrieri Giuseppe; ✓

(Guerzoni Paolo); Faconti Alfiero; Roberti ✓

Matteo; Stanzione Raffaele; Nava Antonino ✓

Pecoraino Lorenzo ✓

Giordano Vincenzo ✓

Fazio Vincenzo (20 Dicembre 1943) ✓

Gargano (2 copies) ✓

"Osservazioni alla Testimonianza N. 60" (2 copies) ✓

"Osservazioni alla Testimonianza N. 59" (2 copies) ✓

"Osservazioni alla Testimonianza N. 53" (2 copies) ✓

LEGAL SUBCOMMISSION	
TO	
FROM	
Chief Counsel	
Section	
RKS	

SECRET

SECRET

"Al Ministero dell'Interno....." ✓
 "La difesa di Giordano" ✓
 "La difesa di Pecoraino Lorenzo....." ✓
 ".....Per Fazio Vincenzo....." ✓
 "Rilievi in difesa di Castiglione Angelo" ✓
 "Difesa Gargano e Di Mauro". ✓

Envelope: "Ustica Commission. Exhibits D 1 to D 5 ✓
 and Exhibits D 14, 15 and 16" ✓
 Envelope: "Ustica Commission. Exhibit D 11" ✓
 Envelope: "Ustica Commission. Morning Reports.
 Exhibits 2 and 4." ✓
 Envelope: "Ustica Commission. Exhibit 3" ✓
 Envelope: "Ustica Commission. Exhibits 5 and 6 and ✓
 9 and 40".
 Envelope: "Ustica Commission. Exhibit 38" ✓
 Envelope: "Ustica Commission. Exhibits 41, 42 and 43" ✓
 Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50" ✓
 Envelope: "Ustica Commission. Exhibits 53, 54, 55, 56, 57, ✓
 59 and 60"

3. It is requested that receipt of the above be acknowledged.

4. After they have been made available to the Italian authorities for use in the prosecution of the cases, the record and related papers should eventually be returned to the Judge Advocate, as requested in his indorsement on the routing slip transmitted to the Allied Control Commission under cover of letter MGS 010.2 of 30 April 1944.

Charles M. Spofford
 54

CHARLES M. SPOFFORD,
 Colonel, G.S.C.,
 Asst. Chief of Staff, G-5.

Incls:
 as listed above

ALLIED CONTROL COMMISSION	
CLO	5/12/44
DOJO	
Chief Counsel	
CLO	
Italian Section	
CL RKS	

- 2 -
 SECRET

SECRET

ALLIED FORCE HEADQUARTERS
G-5 Section
AFO 512

S. 3056

CMS/CF/as

21 May 1944

G-5: 010.2

SUBJECT: Ustica Case

TO : Headquarters,
Allied Control Commission, AFO 394.
(Attention: Chief Judicial Officer)

1. Receipt is acknowledged of the letters of 7 May and 16 May on the above subject - file ACC/4096/L. It appears that the Chief Legal Officer finds it practicable to carry out the recommendation of the Acting Theater Judge Advocate, transmitted under cover of our letter MGS: 010.2 of 30 April 1944. You are now requested to proceed accordingly, and to that end there is being transmitted, under separate cover, the record of testimony taken on commission by the Allied Control Commission, and related papers.

2. Attention is drawn to the Judge Advocate's request that the record be returned to his office after it has been made available to the Italian authorities in connection with their prosecution of the Ustica defendants.

3. The Chief Legal Officer's observations in paragraph 3 of the letter of 7 May, responding to paragraph 4c of the Judge Advocate's indorsement, have been brought to the attention of the Judge Advocate. He waives his request for complete transcripts, but does ask that he be furnished either a summary of each case or a copy of the Italian court's proces verbal of its proceedings.

CHARLES M. SPOFFORD
Colonel, G.S.C.
Asst. Chief of Staff, G-5

LEGAL SUB COMMISSION	HEADQUARTERS
LO	24 MAY 1944
LO	A. C. C.
Chief Counsel	
CJO	
Italian Section	
CL RKS	

SECRET

15
REAR HEADQUARTERS
ARMED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

57
16 MAY 1944

ACC/4696/L.

SUBJECT : Notice Case.

TO : A.C., Hq. (M.G.S.).

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1. In further reference to my ACC/4696/L dated 7 May 1944 in reply to your ACC 010.2 dated 30 April 1944 I have asked Major Palmieri to examine the question of the appropriate Italian penalties and procedure, as he had the advantage of sitting on the Commission which took the evidence.

2. I enclose his report. — 56

3. I await your further instructions.

GERALD R. UPJOHN,
Colonel,
Chief Legal Officer.

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HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

Subject: Ustica Case

To : C. L. O., ACC

Naples, 14 May 1944.

1. In reference to the communication under the above subject matter MGS: 101.2 dated 30 April 1944 a study has been made of the Italian Penal Code and Procedure.

2. The Italian penal statutes are sufficiently broad to cover the facts alleged; and ample punishment is provided in the event of a finding of guilt.

3. There is appended hereto, for convenience, a list of the pertinent provisions of the Italian Penal Code, translated into English.

4. The various acts of assault and torture charged against the accused who were state employees working at the Penal Colony of USTICA, are covered by Articles 608 and 582 as further defined by Articles 583 and 585 (with aggravated penalty as defined by Article 61, Sec. 9 and by Article 64).

5. Acts which constituted an abuse of authority by any of the public officials against the persons detained at the Penal Colony are covered by Article 606.

6. The diversion of food intended for the prisoners and internees, to various members of the prison administration and to the black-market and the alleged trafficking in prison commodities by the colony officials are covered by Articles 314, 317 and perhaps, by Article 315 of the Italian Penal Code.

7. The accused GARGANO and DI MAURO come within the purview of Articles 251 and 252 which provide criminal penalties for the violation of supply contracts with the government in time of war. Article 252 provides for a heavier penalty where fraud is committed.

It should be noted that Article 251 is so broad as to include the case of non-fulfilment of a contract, total or partial, due to culpable negligence.

8. If a causal connection can be established between a specific act of any of the accused and the death of any prisoner, a charge of murder, as it is defined by Article 375, might be sustained. The evidence already adduced, however, offers little hope of successful prosecution under this provision.

9. Article 112, Sec. I (as implemented by Article 64), increases the penalty by one third, where more than 5 persons participate in any offence. The definitions contained in these provisions are extremely broad, and presumably these articles will be applied if any five or more of the accused are convicted before an Italian Court.

10. The facts alleged against the accused FORESTA, the director of the Penal Colony of Ustica, are covered by the definition of aggravating circumstances, set forth in Sections II and III of Article 112, and would provide for heavier punishment in the event of his conviction.

EDMUND L. PALMIERI
Maj. A.U.S.

LEGAL SUB-COMMISSION ACC.

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A P P E N D I X

LIST OF APPLICABLE PROVISIONS OF THE ITALIAN PENAL CODE.
(In the order in which they are referred to in the accompanying memorandum)

ARTICLE 608.

(Abuse of Authority towards persons Arrested or Detained)
A public official who subjects to rigorous measures not allowed by the law a person arrested or detained, of whom he has the custody, even temporarily, or who is entrusted to him in execution of an order of the competent authorities, shall be punished with penal servitude up to 30 months.
The same punishment shall apply if the act is committed by another public official vested, by reason of his office, with any authority over the person in custody.

ARTICLE 582.

(Personal Injury)

Whoever caused a personal injury to another from which results a malady of body or mind shall be punished with penal servitude from 3 months to 3 years.

If the malady has a duration not exceeding 10 days, and there is no concurrence of any of the aggravating circumstances contemplated in Articles 583 and 585, the crime shall be punishable on action being initiated by the injured party.

ARTICLE 583.

(Aggravating Circumstances)

The personal injury is grave, and penal servitude from 3 to 7 years shall be inflicted -

- (1) If the act results in an illness which places in danger the life of the injured person, or an illness or incapacity to attend to ordinary occupations for a period exceeding 40 days.
- (2) If the act produces the permanent weakening of a sense or an organ.

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(3) If the injured party is a pregnant woman and the act results in acceleration of the birth.

The injury is very grave, and penal servitude from 6 to 12 years shall be inflicted, if the act results in-

- (1) An illness certainly or probably incurable.
- (2) The loss of a sense.
- (3) The loss of a limb, or a mutilation which renders the limb useless, or the loss of the use of an organ or of the capacity to procreate, or a permanent and serious difficulty in speech.
- (4) Deformation, or the permanent disfigurement of the face.
- (5) The miscarriage of the injured person.

ARTICLE 585.

(Aggravating Circumstances)

In the cases contemplated in Articles 582, 583 and 584, the penalty shall be increased by one-third to one-half if there is a concurrence of any of the aggravating circumstances contemplated in Article 576; and it shall be increased up to one-third if there is a concurrence of any of the aggravating circumstances contemplated in Article 577, or if the act is committed with weapons or with corrosive substances.

For the purposes of the penal law the following are understood by ARMS:-

- (1) Those which discharge and all others the natural use of which is to inflict personal injury.
- (2) All instruments capable of injuring, the carrying of which is forbidden by law absolutely, or without a justified motive.

Explosive materials and asphyxiating or blinding gas are assimilated to arms.

ARTICLE 584. +

(Preterintentional Homicide)

Whoever, by acts directed to commit one of the crimes contemplated in Articles 581 and 582, causes the death of a human being, shall be punished with penal servitude from 10 to 15 years.

+ Quoted because of reference in Article 585.

ARTICLE 581 +

(Blows)

Whoever strikes another person, if a salady of body or mind does not result from the act, shall be punished, on action being initiated by the injured party, with penal servitude up to 6 months or with a fine up to 3,000 lire.

The above provision shall not apply when the law deems the violence to be a constitutive element or an aggravating circumstance of another offence.

ARTICLE 576 + +

(Aggravating Circumstances: Death Penalty)

The penalty of death shall apply if the act contemplated in the preceding Article is committed -

- (1) With the concurrence of any of the circumstances specified in No. (2) of Article 61.
- (2) Upon an ascendant or descendant, when there is a concurrence of any of the circumstances specified in Nos. (1) and (4) of Article 61, or when a method of poisoning or other insidious means is used or when there is premeditation.
- (3) By a person hiding from justice, in order to evade arrest, capture or imprisonment, or to procure means of subsistence during concealment.
- (4) By an associate in delinquency, in order to evade arrest, capture or imprisonment.
- (5) In the act of committing any of the crimes contemplated in Articles 519, 520 and 521.

For the purposes of the penal law an individual is considered to be hiding from justice when he fulfils the conditions specified in No. (5) of Article 61.

ARTICLE 577. + +

(Other Aggravating Circumstances: Penal Servitude for Life)

Penal Servitude for life shall be inflicted when the act contemplated in Article 575 is committed -

+ Quoted because of reference in Article 584.

+ + " " " " " " 585

- (1) Upon an ascendant or descendant.
- (2) By means of poisonous substances, or by other insidious means.
- (3) With premeditation.
- (4) With a concurrence of any of the circumstances specified in Nos. (1) and (4) of Article 61.

The punishment shall be penal servitude from 24 to 30 years if the act is committed upon a spouse, brother or sister, adoptive father, mother or child, or a relative by marriage in the direct line.

ARTICLE 575.
(Homicide)

Whoever causes the death of a human being shall be punished with penal servitude for not less than 21 years.

ARTICLE 519. +
(Carnal Violence)

Whoever, with violence or threats, compels anyone to have carnal intercourse shall be punished with penal servitude from 3 to 10 years.

A person is liable to the same penalty if he has carnal relations with anyone who, at the time of the act -

- (1) Had not attained the age of 14 years.
- (2) Had not attained the age of 16 years, when the guilty person is the ascendant or the guardian, or another person to whom the minor is entrusted for the purpose of treatment, education, instruction, supervision or custody.
- (3) Was mentally deranged, or was not able to resist by reason of conditions of mental or physical inferiority, even though the latter is independent of the act of the guilty party.
- (4) Had been deceived, owing to the guilty party impersonating another individual.

+ Quoted because of reference in Art. 576, Sec. 5.

ARTICLE 520. +

(Carnal Intercourse committed with Abuse of the Capacity of Public Official)

A public official who, apart from the cases contemplated in the preceding Article, has carnal relations with an arrested or detained person of whom he has the custody by reason of his office, or with a person who is entrusted to him in execution of an order of the competent authority, shall be punished with penal servitude from 1 to 5 years.

The same penalty shall apply if the act is committed by another public official vested, by reason of his office, with any kind of authority over any of the aforesaid persons.

ARTICLE 521. +

(Violent Acts of Lust)

Whoever, employing the means or availing himself of the conditions specified in the two preceding Articles, commits upon anyone acts of lust ^{prescribed} other than carnal connexion, shall be liable to the punishments in the said articles, reduced by one-third.

Any person who, employing the means or availing himself of the conditions specified in the two preceding Articles, compels or induces anyone to commit the acts of lust on himself, on the body of the guilty person or on others, shall be liable to the same penalties.

ARTICLE 61.

(Ordinary Aggravating Circumstances)

The following circumstances aggravate the offence, when they are not constitutive elements thereof or special aggravating circumstances:-

+ Quoted because of reference in Article 576, Sec. 5.

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- + (1) Having acted for base or futile motives.
 - + (2) Having committed the offence in order to commit or conceal another offence, or to obtain or secure for one's self or others the product or the benefit or the price of or impunity from another offence.

+ + +

- + (4) Having used inhuman means or having acted cruelly towards persons.

+ + +

- + (6) When the guilty person has committed the offence during the time when he was wilfully evading the execution of a warrant or order of arrest or capture or imprisonment issued for a previous offence.

+ + +

- (9) Having committed the act with abuse of the powers or with violation of the duties inherent in a public office or a public service, or in the capacity of minister of religion.

+ + +

ARTICLE 64.

(Increase of Punishment in the Case of a Single Aggravating Circumstance)

When there occurs an aggravating circumstance, ~~and~~ if the increase of punishment is not fixed by the law, the punishment which should be inflicted for the offence committed shall be increased up to one-third.

Nevertheless, the punishment of penal servitude to be applied by reason of the increase may not exceed 30 years.

+ Quoted because of reference in Article 576.

ARTICLE 314.

(Pecculation)

A public official or a person entrusted with a public service who, having by reason of his office or duty the possession of money or other movable article belonging to the public administration, appropriates it or diverts it to his own or to some other's profit, shall be punished with penal servitude from 3 to 10 years and with a fine of not less than 1,000 lire.

The conviction entails perpetual interdiction from public offices. Nevertheless if, by reason of extenuating circumstances, penal servitude for a period of less than 5 years is inflicted, the sentence shall entail temporary interdiction.

ARTICLE 315.

(Malversation to the Prejudice of Private Individuals)

A public official or a person entrusted with a public service who appropriates, or in any manner diverts to his own profit, or to the profit of a third party, money or any movable article not belonging to the public administration, of which he has possession by reason of his office or duty, shall be punished with penal servitude from 3 to 8 years and with a fine of not less than 1,000 lire.

The provisions of the second paragraph of the preceding Article shall apply.

ARTICLE 317.

(Extortion)

A public official who, abusing his capacity or his duties, compels or induces anyone to give or to promise wrongfully, to himself or to a third person, money or

other benefit, shall be punished with imprisonment from 4 to 12 years and with a fine of not less than 3,000 lire. (9)

The provisions of the second paragraph of Article 314 shall apply.

ARTICLE 251.

(Failure to Execute Contracts for Supplies in Time of War)

Whoever, in time of war, does not carry out, wholly or in part, the obligations arising from a contract for the supply of commodities or work concluded with the State or other public body or with an undertaking carrying on public services or services of public necessity, for the requirements of the armed forces of the State or of the population, shall be punished with penal servitude from 3 to 10 years and with a fine equal to three times the value of the article or the work which should have been supplied and, in any case, not less than 10,000 lire.

If the non-fulfilment, total or partial, of the contract is due to culpable negligence, the penalties shall be reduced to one-half.

The same provisions shall apply to sub-contractors, brokers and representatives of suppliers, whenever in breach of their contractual obligations, they have caused the failure of a supply contract. 42

ARTICLE 252.

(Fraud in Purchasing Supplies in Time of War)

Whoever, in time of war, commits a fraud in the execution of supply contracts or in the performance of

the other contractual obligations indicated in the preceding article, shall be punished with penal servitude for not less than 10 years and with a fine equal to five times the value of the article or the work which ought to have been supplied and, in any case, not less than 20,000 lire.

ARTICLE 112.

(Aggravating Circumstances)

The punishment to be inflicted for the offence committed shall be increased -

- (1) If the number of the persons co-operating in the offence is 5 or more, unless the law directs otherwise.
- (2) In the case of individuals who, even apart from the cases contemplated in the two following numbers, have promoted or organised co-operation in the offence, or have directed the action of the persons who co-operated in that offence.
- (3) In the case of individuals who, in the exercise of their authority, direction or supervision, have caused persons subject to them to commit the offence.
- * (4) In the case of individuals who, apart from the case contemplated in the preceding article, have caused a person under 18 years of age, or one in a state of mental infirmity or deficiency, to commit the offence.

The increases of punishment prescribed in Nos. (1) to (3) of the present Article shall apply even if any one of the persons participating in the act is not chargeable or punishable.

* Quoted because of reference in Article 112, Sec. 2.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4096/1.

/rlp.
7 May 1944.

SUBJECT : Ostica Case.

TO : AFHQ, MSG. (44)

1. Your communication under the above subject matter MSG: 101.2 dated 30 April 1944 is acknowledged.

2. While it is not doubted that Italian Penal Code and Procedure provides for punishment of the accused if found guilty of the facts alleged a detailed study is being made and I shall write you further hereon in due course.

3. With regard to para 4 (c) of the Judge Advocate's endorsement you will no doubt appreciate that it may be some time before the case is ready for trial under the Italian procedure and it is doubted whether the taking of a complete transcript of the case will be of much assistance to you as the case will, of course, be tried entirely in accordance with Italian procedure. Furthermore, it will be necessary to employ and pay an Italian civilian shorthand writer as no Allied personnel would have the qualifications necessary for taking a shorthand note of a case conducted entirely in Italian. It is suggested, therefore, that no useful purpose would be served by carrying out the recommendation in the above mentioned sub-paragraph.

4. It is further pointed out that there cannot fail to be some loss of Allied prestige by handing this case over to the Italian Courts as the local populace at the time of the hearings before the Commission were extremely anxious that the case should be tried by Allied Courts. However, it is appreciated that Allied Military Courts now have no jurisdiction to try the matter and in justice to the accused the only course seems to be to hand them over to the Italian authorities for trial.

GERALD R. WYCHIN,
Colonel,
Chief Legal Officer.

SECRET*Legal Sub Comm
(Near HQ)*

ALLIED FORCE HEADQUARTERS

CMS/CF/thh

5-2128

5-2747

Military Government Section

MGS: 010.2

30 April 1944

SUBJECT: Ustica Case

TO : Headquarters, Allied Control Commission
(Attention: Chief Legal Officer)

1. Attached is a copy of the routing slip containing the opinion of the Acting Theater Judge Advocate as to the appropriate disposition to be made of the Ustica Case. The record (with exhibits) taken by the commission in that case was transmitted to this section by the Chief Judicial Officer, A.C.C., under date of 5 March 1944 (ACC/4083/1/L), and in turn delivered to the Assistant Chief of Staff G-1, who on 17 November 1943 had been charged with all cases of alleged war criminals. G-1 referred the record to the Theater Judge Advocate, who recommends that the case be turned over to the Italian courts.

2. Reference is made to the directive of the Combined Chiefs of Staff on the procedure to be followed in cases of alleged war crimes, which was transmitted to the Allied Military Government by Message 3983 of 29 October 1943. To provide the means of carrying out that directive, this Headquarters on 27 November 1943 issued a circular on "war criminals", a copy of which is attached. Attention is invited to paragraph 3 c of that circular.

3. Before carrying out the Judge Advocate's indorsement, this Section desires to be informed whether the course recommended in his paragraph 4, particularly sub-para b, would result in appropriate action by the Italian authorities. Accordingly carbon copy No. 2 of the record in the Ustica Case is transmitted herewith, in order that the A.C.C. may advise whether the record discloses prima facie cases of serious offences under Italian penal law, and whether it is believed practicable to bring them to trial in the Italian courts.

*Charles M. Spofford*CHARLES M. SPOFFORD,
Colonel, G.S.C.,
Chief of Section.

Incls. attached:

Routing slip, Ustica Case (copy)
AFHQ Circular, "war criminals".
Record of the "Ustica War Crimes
Commission", marked "Col. Pollock 2 copy"

**SECRET**

(COPY)

SECRET

INTERNAL ROUTING SLIP

HEADQUARTERS
NORTH AFRICAN THEATER OF OPERATIONS
UNITED STATES ARMY

DATE: 24 March 1944

FILE:

SUBJECT: Ustica Case

Fill in each column, initial action, and draw a line across the sheet just below initials. Number each memo consecutively in first column. Use entire width of sheet for long memoranda.

No.	From	To	Date
1	JA	AMB MIS	24 March 1944

1. There are attached hereto the files relating to the so-called Ustica case.

2. The evidence in the case is quite voluminous but withal none too specific. That which is set forth in the files may be briefly summarized as follows: After Italy declared war on Yugoslavia in March 1941 and later occupied that country, many citizens considered dangerous to the interests of Italy were sent to the Island of Ustica. Italians were also imprisoned on the island. The internment camp was directed by Luigi Foreste; the firm of Longo-Gargano operated the camp under a contract to supply the food and equipment necessary to those confined; the medical necessities were supplied by Dr. Fazzio, and Pecoraino was in charge of the Economic Kitchen. Many other defendants are named in the proceedings. The evidence centers about the lack of food which was barely sufficient to sustain life; the unhealthy, unsanitary condition of the living quarters; and the maltreatment and torture which those confined upon the island were forced to endure. Many witnesses spoke of prisoners starving and the removal of food from the communal kitchen which later appeared on the black market. It has been alleged that this situation was caused by Gargano and Di Mauro, who owned the firm of Longo-Gargano and who diverted supplies meant for the prisoners. Evidence on this point is very scanty indeed. No clear evidence is presented to connect deaths with beatings or the water torture (Pompa) applied to prisoners who complained of food shortage. A few death certificates indicate death from starvation but for the most part they indicate death from disease. Witnesses attribute the disease to weakened physical conditions caused by lack of proper nourishment. Both Italians and Yugoslavs are among the dead from these causes.

The evidence against each of the accused is quite accurately summarized in the report. The testimony of each witness likewise is set forth in summary form. Reference is made to such summaries for a more detailed recital of the evidence.

3. From the facts set forth it is difficult to segregate the conduct of the Italian officials of the camp so as to say that any specific conduct resulted in the death of Yugoslavs and any specific conduct resulted in the death of Italians. The same conduct was apparently the cause of the death of both Italians and Yugoslavs. As such it would seem that the offenses should be considered as one transaction and disposed of by the Italians. To attempt to separate any specific acts so as to consider them as war crimes would be

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INFORMAL ROUTING SLIP

HEADQUARTERS
NORTH AFRICAN THEATER OF OPERATIONS
UNITED STATES ARMY

FILE:

DATE: 24 March 1944

SUBJECT: Ustica Case

Fill in each column, initial action, and draw a line across the sheet just below initials. Number each memo consecutively in first column. Use entire width of sheet for long memoranda.

No.	From	To	Date
1	JA	AMG MGS	(Cont.)

difficult if not impossible. It is understood that the present government desires to institute a civil suit against the firm of Longo-Gargano for failing to carry out the terms of the contract for supplying the Island; but that the Allied Control Commission has given instructions not to proceed with such action without approval of this headquarters.

4. In view of the evidence it is recommended:

a. That the Italian authorities be permitted to proceed in the civil court against the contractor for any violation of contract they may desire to assert.

b. That the Italian authorities be authorized to prosecute in Italian courts any persons who may be appropriately charged with any offense arising from the operation of the internment camp that resulted in the death of the internees.

c. That when tried this headquarters be furnished complete transcripts of the records in such cases.

d. That the exhibits contained in these cases be loaned to the Italian courts with the understanding they be returned at the conclusion of any trials.

1 Incl: File re Ustica case.

/s/ C. B. Mickelwait
/t/ C. B. MICKELWAIT
Colonel, J.A.G.D.
Acting Theater Judge Advocate

SECRET

U. S. SECRET EQUALS BRITISH MOST SECRET (41)

53

ALLIED FORCE HEADQUARTERS
APO 512

: : : : : : : :
: SECRET :
: Auth: CINC. AF :
: Initials: J. W. :
: 27 November 43 :
: : : : : : : :

27 November 1943

CIRCULAR:

WAR CRIMINALS

1. The ultimate disposition of persons charged with the commission of war crimes is a matter for consideration by the governments of the Allied Nations.

2. Trials by military courts of persons suspected of war crimes will not be held unless directed by this headquarters. Such persons will be held in custody pending decision as to their disposal. While suspects are under detention all available information about them and about war crimes of which they are suspect will be collected and forwarded to this headquarters.

3. The following procedure will govern:

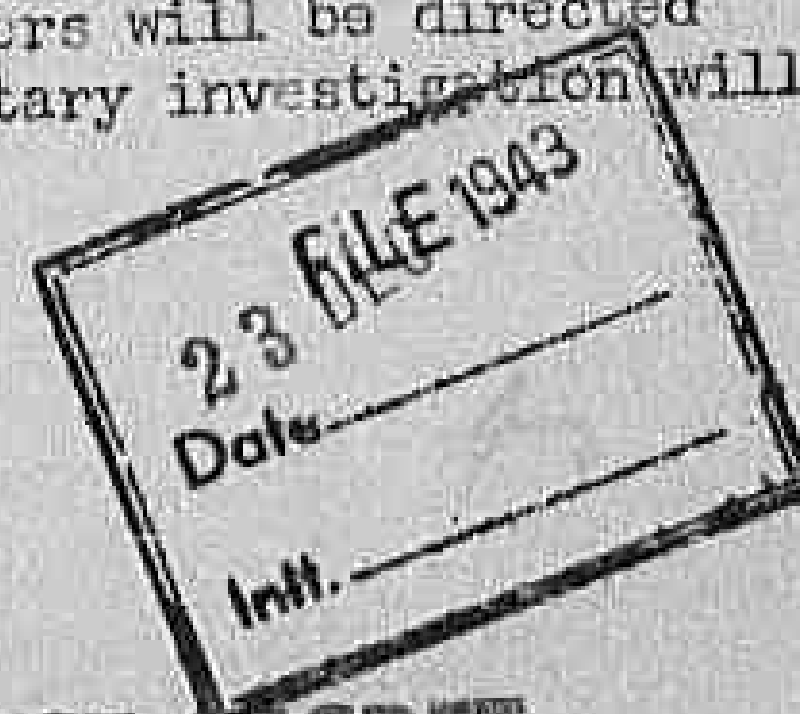
a. Secret reports, through command channels, will be made to this headquarters containing all possible information concerning the specific individual held under detention as a war criminal suspect and concerning the time, place, character and details of the alleged war crime. It is imperative that each report include not only the names and addresses of witnesses but also the gist of the evidence which each may reasonably be expected to give in any proceedings which may later be resorted to to perpetuate such testimony for trial purposes. In order that these investigations may be kept strictly within command channels, they will be made by persons subject to the direct orders of the Commanding Officer making the report.

b. Reports submitted to this headquarters shall pertain only to persons then being held in detention.

c. For the purpose of this directive, war crimes are acts committed by persons in violation of the laws and customs of war. Should any doubt exist as to whether reported acts constitute war crimes, the case will be reported as above directed for consideration by this headquarters.

d. When reports are received at this headquarters and further investigation is considered advisable, either unit commanders will be directed to make the supplementary investigation or the supplementary investigation will be carried on directly from this headquarters.

-1-



U. S. SECRET EQUALS BRITISH MOST SECRET

U. S. SECRET EQUALS BRITISH MOST SECRET

AFHQ Circular, dtd 27 Nov '43

3. (Cont'd)

e. When any change in the place of detention of a person upon whom a report has been made is directed by any authority other than this headquarters, an immediate report of such change will be made to this headquarters, in order that any supplementary investigation may be expeditiously carried on.

4. Situations may come to the attention of Commanding Officers in which the alleged war criminal is not in detention or may even be performing duties not incompatible with the Allied cause. In order that orderly procedure with respect to such situations may be followed, Commanding Officers will report such cases to this headquarters with all available information.

5. Italians who commit crimes against Italian Nationals are not to be considered as war criminals and such persons will be handed over to Italian Government representatives for trial.

6. Persons who commit crimes against members of the Allied Command during the period of occupation of Italian territory may be charged and tried before military tribunals in accordance with established practice.

7. It is enjoined upon all persons of this command to refrain from giving any publicity whatever to war crimes or war criminals or to any act taken by the military forces with respect thereto.

The release of any information concerning war crimes or war criminals is specifically reserved to this headquarters. (AG 000.5-1 GAF-ACM)

By command of General EISENHOWER:

W. B. SMITH
Major General, G.S.C., Chief of Staff

OFFICIAL:

T. J. Davis
T. J. DAVIS, *Adj*
Brigadier General, United States Army,
Adjutant General.

DISTRIBUTION:
See attached
page.

U. S. SECRET EQUALS BRITISH MOST SECRET

AFHQ Circular: War Criminals, dtd 27 Nov '43

DISTRIBUTION:

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- 1 - DTC
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- 4 - Eighth Army
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- 1 - Allied Control Commission
- 1 - G-1 (US)
- 1 - G-1 (Br)
- 1 - G-2 AFHQ
- 1 - G-2 NATOUSA
- 1 - G-3 AFHQ
- 1 - G-4 AFHQ
- 1 - JAG
- 1 - Mr. Murphy
- 1 - British Resident Minister
- 1 - IBS) THRU: CG
- 1 - PBS) NATOUSA
- 1 - FMG
- 1 - ICS
- 1 - INC
- 1 - FWB
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- 4 - AFHQ Adv Admin Ech
- 1 - NORTH AFRICA Dist
- 1 - No. 1 Dist
- 1 - No. 2 Dist

35

SECRET

39

ALLIED FORCE HEADQUARTERS
Military Government Section

CMS/CF/thh

MCS: CIO.2

30 April 1944

SUBJECT: Ustica Case

TO : Headquarters, Allied Control Commission
(Attention: Chief Legal Officer)

1. Attached is a copy of the routing slip containing the opinion of the Acting Theater Judge Advocate as to the appropriate disposition to be made of the Ustica Case. The record (with exhibits) taken by the commission in that case was transmitted to this section by the Chief Judicial Officer, A.C.C., under date of 5 March 1944 (ACC/4083/1/L), and in turn delivered to the Assistant Chief of Staff G-1, who on 17 November 1943 had been charged with all cases of alleged war criminals. G-1 referred the record to the Theater Judge Advocate, who recommends that the case be turned over to the Italian courts.

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3. Before carrying out the Judge Advocate's indorsement, this section desires to be informed whether the course recommended in his paragraph 4, particularly sub-para b, would result in appropriate action by the Italian authorities. Accordingly carbon copy No. 2 of the record in the Ustica Case is transmitted herewith, in order that the A.C.C. may advise whether the record discloses prima facie cases of serious offences under Italian penal law, and whether it is believed practicable to bring them to trial in the Italian courts.

CHARLES W. SPOFFORD,
Colonel, G.S.C.,
Chief of Section.

Incls. attached:
Routing slip, Ustica Case (copy)
AFHQ Circular, "war criminals".
Record of the "Ustica War Crimes
Commission", marked "Col. Pollock 2 copy"

SECRET

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 994

ACC/493/1/L

GP/IDL

Subject : USTICA Commission

5 March 44

TO : M.G.S., A.F.H.Q.

The attached papers are forwarded herewith.

GEORGE POLLOCK
Colonel
Chief Judicial Officer.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
(Rear Detachment)
LEGAL SUB-COMMISSION
APO 512

4096
37

GP/ml
7 January 1949

SUBJECT : Ustica Commission
TO : RCLO Region I
FROM : CJO

Please acknowledge receipt of the following original exhibits
by signing and returning this form:

EXHIBIT NUMBER	DESCRIPTION
D 7 - - - - -	Cup
D 8 - - - - -	Plate
D 13 - - - - -	Metal Tablespoon
10 to 33 - - - - -	Official Record Concerning Confinati
34 - - - - -	Roster of incoming and out-going confinati.
35 - - - - -	Roster of incoming and out-going confinati.
36 - - - - -	Service Record of Ustica Colony
37 - - - - -	File on confinee, Smardjic Jevan
39 - - - - -	List of items of expenditures
53 - - - - -	Copies (3) of abstract of Charge Records

RECEIVED BY Wesl Hennenderger 2821 for RLO
DATE 6 January 1949

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
(Rear Detachment)
LEGAL SUB-COMMISSION
APO 512

GP/ml
7 January 1944

SUBJECT : Ustica Commission
TO : AMG Hq Algiers
FROM : CJO

Please acknowledge receipt of the following by signing and
returning this form:

BUNDLE 1 CONTAINING

- (1) Commissioners report with summary of evidence attached.
- (2) Depositions.
- (3) Shorthand note and list of exhibits.
- (4) Original exhibits according to list.

BUNDLE 2 CONTAINING

Duplicates of (1) - (2) and (3) above.

BUNDLE 3 CONTAINING

Duplicates of (1) - (2) and (3) above

RECEIVED BY

DATE

W. McElroy
for Brig Gen Adam Richmond

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
(Rear Detachment)
LEGAL SUB-COMMISSION
APO 532

62/11
7 January 1944

SUBJECT : Ethics Commission
TO : AMG HQ Algiers
FROM : GTO

Please acknowledge receipt of the following by signing and
returning this form:

ENVELOPE 1 CONTAINING

- (1) Commission's report with summary of evidence attached.
- (2) Depositions.
- (3) Shorthand notes and list of exhibits.
- (4) Original exhibits according to list.

ENVELOPE 2 CONTAINING

Duplicates of (1) - (2) and (3) above.

ENVELOPE 3 CONTAINING

Duplicates of (1) - (2) and (3) above

RECEIVED BY

F. H. McChesney
Col. J. A. B. D. for
Brig. Gen. Adam Richmond

DATE _____

0378

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
(Post Detachment)
LEGAL SUB-COMMISSION
APO 532

34

GR/ml
7 January 1944

SUBJECT : Union Commission
TO : AEG HQ Algiers
FROM : GTO

Please acknowledge receipt of the following by signing and returning this form:

FIGURE 1 CONTAINS:

- (1) Commission's report with summary of evidence attached.
- (2) Depositions.
- (3) Shortened note and list of exhibits.
- (4) Original exhibits according to list.

FIGURE 2 CONTAINS:

Duplicates of (1) - (2) and (3) above.

29

FIGURE 3 CONTAINS:

Duplicates of (1) - (2) and (3) above

RECEIVED BY

*T. J. MacGhee
Capt. J. A. G. for
Brig. Gen. Adam Richmond*

DATE

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
(Post Detachment)
LOCAL SUPPLY COMMISSION
APO 512

GP/ml
7 January 1944

SUBJECT : Vatica Commission
TO : AGO Bg Algiers
FROM : CVO

Please acknowledge receipt of the following by signing and returning this form:

ENCLOSURE 1 CONTAINS

- (1) Commission's report with summary of evidence attached.
- (2) Depositions.
- (3) Shorthand notes and list of exhibits.
- (4) Original exhibits according to list.

ENCLOSURE 2 CONTAINS

Duplicates of (1) - (2) and (3) above.

ENCLOSURE 3 CONTAINS

Duplicates of (1) - (2) and (3) above.

RECEIVED BY

DATE

L. J. McElroy 28
Tr. L. J. McElroy for
Brig. Gen. Adam Richmond

8 January 1944

JUSTICE COMMISSION

APPLICATION BY GARGANO

1. On the 8 January 1944 Avvocato Napoli on behalf of Gargano Escule applied that his client should be released from prison on the ground that he is suffering from a long-standing duodenal ulcer.
2. Avv. Napoli asked that either:
 - (a) Gargano should be granted provisional liberty or that
 - (b) he should be permitted to enter a hospital under guard, the cost of the guard to be defrayed by him (Italian law makes provision for this).
3. As is pointed out in the Commissioner's report, the case against Gargano is not strong, but if proved would constitute a very grave offence.
4. Gargano is wealthy with powerful friends of Fascist days and the CMO Palermo (Capt. Maude) is of the opinion that Gargano would avail himself of every opportunity to escape that might present itself rather than face his trial. He is therefore being detained in custody pending instructions.
5. His medical report is attached.

GEORGE POLLOCK,
Colonel,
President of Commission.

rlp

Loofa

27

8 January 1944

JUSTICE COMMISSION

APPLICATION BY GARGANO

1. On the 8 January 1944, Avvocato Napoli on behalf of Gargano Brocile applied that his client should be released from prison on the ground that he is suffering from a long-standing duodenal ulcer.

2. Avv. Napoli asked that either:

(a) Gargano should be granted provisional liberty or that

(b) he should be permitted to enter a hospital under guard, the cost of the guard to be defrayed by him (Italian law makes provision for this).

3. As is pointed out in the Commissioner's report, the case against Gargano is not strong, but if proved would constitute a very grave offence.

4. Gargano is wealthy with powerful friends of Fascist days and the CAO Palermo (Capt. Maude) is of the opinion that Gargano would avail himself of every opportunity to escape what might present itself rather than face his trial. He is therefore being detained in custody pending instructions.

5. His medical report is attached.

GEORGE POLLOCK,
Colonel,
President of Commission.

rlp

26

Copy

8 January 1944

JUSTICE COMMISSION

APPLICATION BY GARGANO

1. On the 8 January 1944 Avvocato Napoli on behalf of Gargano Bruno applied that his client should be released from prison on the ground that he is suffering from a long-standing duodenal ulcer.

2. Avv. Napoli asked that either:

(a) Gargano should be granted provisional liberty or that

(b) he should be permitted to enter a hospital under guard, the cost of the guard to be defrayed by him (Italian Law makes provision for this).

3. As it pointed out in the Commissioner's report, the case against Gargano is not strong, but if proved would constitute a very grave offence.

4. Gargano is wealthy with powerful friends of Fascist days and the CMO Palermo (Capt. Maude) is of the opinion that Gargano would avail himself of every opportunity to escape that might present itself rather than face his trial. He is therefore being detained in custody pending instructions.

5. His medical report is attached.

CHARLES POLLOCK,
Colonel,
President of Commission. 25

rlp

20/4

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO 512
LEGAL SUB-COMMISSION

AMG/4096/L

6 DECEMBER 1943

RE: PENAL COLONY of USTICA

PROCEEDINGS OF COMMISSION, appointed to hear evidence against certain persons accused of offenses in connection with administration of the PENAL COLONY of USTICA.

COMMISSIONERS

Colonel George Pellock, Royal Corps of Signals.
Major Edmund L. Palmieri, A.U.S.

PLACE OF HEARING

Sala Delle Lapide, Municipio Palermo, Sicily.

DATES OF HEARING

NOVEMBER 15, 16, 18, 19, 20, 24, 29, 30;
DECEMBER 1, 2, 3, 4.

NAMES OF ACCUSED

BRANCIAMORE Giuseppe
CASTIGLIONE Angelo
DI MAURO Gaetano
FACONTI Alfiero
FAZIO VINCENZO
FORESTA Luigi
GIORDANO Vincenzo
GUERZONI Paolo

GURRIERI Giuseppe
NAVA Antonio
PACE Mario
PECORAINO Lorenzo
RANDO Pietro
ROBERTI Matteo
STANZIONE Raffaele
GARGANO Ercole

24

NAMES OF INTERPRETERS

American: CORPORAL Robert L Principiano.

Yugoslav: Mr. Reynold Macun, Mr Kaus Franc, and Mr Leontich
Berives.

CHARGES

The formal charges served upon the accused and submitted to the Commissioners at the outset of the hearings are as follows:

(a) FIRST CHARGE

War Crimes. Violations of the laws and usages of war by the ill-treatment of civilian internees at Ustica, Province of Palermo.

(1) PARTICULARS

That between the 15 June 1942 and 29 June 1943 the accused conspired to ill-treat civilians internees at Ustica by:

- (i) Torture.
- (ii) Confining them other than was required by safety or health.
- (iii) Cruel and unusual forms of punishment.
- (iv) Failing to take sufficient steps to provide hygienic lodgings.
- (v) Failing to take sufficient steps to provide adequate food, clothing, bedding, and footwear.
- (vi) Failing to provide adequate treatment of the sick or to take sufficient steps for the prevention of disease.
- (vii) Appropriation to their own use or benefit monies, food, property, and other goods belonging to or intended for the use of civilian internees.

(b) SECOND CHARGE:

War Crimes. Violations of the laws and usages of war by homicide of civilian internees at Ustica.

(1) PARTICULARS:

That between the 15 June 1942 and the 29 June 1943 the accused caused the death by torture and starvation of Iovanovic Obrad, Kapel Rodolfo, Purzuik Stance, Lezar Francesco, Tercian Giovanni, Gasic Tebla, Benigar Francesco, Catzack Faustine, Udevic Antonio, Hramar Fran, Iksimevic Milan,

HEADQUARTERS
ALLED MILITARY GOVERNMENT
A.P.O. 512
LEGAL SUB-COMMISSION

file

22

AMG/4096/1

Subject:- Ustica Criminals

To :- Lt. Col. Cripps,
Administrative Director.

4th December 1943

Please despatch the following to A.P.H.Q. Routine precedence.

" Evidence for prosecution against 15 defendants in Ustica case completed subject to production of certain documents. Defence have announced they will not call oral testimony. Transcript and report should be completed in about 14 days.

Prosecution agree *in* *prima facie* case against three defendants GERRIET BRANGLAMORE and GUERRESE. Are they to be released?

Application for bail pending trial made by advocates for ⁴ defendants ~~BRANGLAMORE~~ Dr. FANTO CASTIGLIONE BARDO and GIORDANO. Evidence against them is weak and they have been in jail more than three months. Can Commissioners be given authority to grant bail if they think fit? "

GORDON FORBICK

Colonel,
Chief Judicial Officer.

22

496
 (21)
 MOST SECRET

HEADQUARTERS
 ALLIED MILITARY GOVERNMENT
 15 ARMY GROUP

ATG/207/18.

26 November, 1943.

SUBJECT : War Criminals.

TO : Senior Legal Officers
 AG 5 ARMY,
 AG 8 ARMY.
 Regional Chief Legal Officers
 Region III,
 Region IV.

1. Imperative orders have been received in this Headquarters from the ARMG. regarding trials of War Criminals and directing that the Allied Military Courts will not try cases of the type specified in paragraph 2 below.

2. It is essential that no War Criminals be tried in your Area/Region by Allied Military Courts. All reports of Italians or others accused of committing war crimes, e.g. of maltreating in any way, prisoners of war or internees, or committing other offences of this general nature, will be immediately investigated and full and complete reports, including nature and places of alleged crimes, names and addresses of the alleged offenders, of the victims and of the witnesses, will be forwarded to this Headquarters.

3. Such investigations will not include the holding of any formal hearings but will be limited to the gathering of the necessary facts for the preparation of a proper report for submission by this to higher authority. The utmost secrecy will be observed in making these investigations.

4. The foregoing does not apply to current crimes such as those committed against Allied Forces (wire cutting, sniping, stealing etc., or black market activities, curfew violations etc) which will be tried as now by Allied Military Courts.

[Signature]

W.E. ROSE,
 Lt. Colonel,
 Chief Legal Officer.

DISTRIBUTION.

MC3. ARMG.

MC. Legal Sub-Commission, Allied Military Government, A.M.G. 0.212.

SUBJECT : War Criminals.

To : Senior Legal Officers
 AFM 5 Army,
 AG 3 Army.
 Regional Chief Legal Officers
 Region III,
 Region IV.

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3. Such investigations will not include the holding of any formal ²¹ hearings but will be limited to the gathering of the necessary facts for the preparation of a proper report for submission by this HQ to higher authority. The utmost secrecy will be observed in making these investigations.

4. The foregoing does not apply to current crimes such as those committed against Allied forces (wire cutting, sniping, stealing etc., or black market activities, curfew violations etc) which will be tried as now by Allied Military Courts.

H. E. R. R. T.
 H. E. R. R. T.,
 Lt. Colonel,
 Chief Legal Officer.

DISTRIBUTION.

AFM 5 Army.
 AFHQ Legal Sub-Commission, Allied Military Government, AFHQ, O. 512.

Seen by DCC on 28/11/43.



MSG NR 4546
 MSG GEN NR _____
 TO FARGO

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 RECEIVED IN CODE

RECEIVED AT
 ISLAND BASE SECTION

Action Copy

CLASSIFICATION TOP SECRET
 TIME OF ORIGIN 231438
 TIME OF RECEIPT 231730
 TIME DECODED 240403

951

4096
 20

COLONEL POLLOCK DELAY BY WEATHER (PAREN TO FARGO RPT FARGO SIGNED
 EISENHOWER CITE FHMGS RPT FHMGS PAREN) ETD RPT EASY TARE DOG WED-
 NESDAY MORNING TWO FOUR NOVEMBER

SECRET
 RECEIVED IN CODE

23

U.S. SECRET EQUALS BRITISH MOST SECRET

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO 512
LEGAL SUB-COMMISSION

AMG/4096/L.

22nd November, 1943.

SUBJECT: War Criminals.

TO : Regional Chief Legal Officers
(through RCACs).

1. Imperative orders have been received in this Headquarters from the AFHQ, regarding trials of War Criminals and directing that the Allied Military Courts will not try cases of the type specified in paragraph 2 below.

2. It is essential that no War Criminals be tried in your Region by Allied Military Courts. All joints of Italians or others accused of committing war crimes, or of participating in any way, prisoners of war or internees, or committing other offences of this general nature, will be immediately investigated and full and complete reports, including nature and places of alleged crimes, names and addresses of the alleged offenders, of the victims and of the witnesses, will be forwarded to the Chief Legal Officer, AMG. HQ.

3. Such investigations will not include the holding of any formal hearings but will include the gathering of the necessary facts for the preparation of a proper report for submission by this HQ to higher authority. The utmost secrecy will be observed in making these investigations.

4. The foregoing does not apply to current crimes such as those committed against Allied Forces (wire cutting, sniping, stealing etc., or black market activities, curfew violations etc.) which will be tried as now by Allied Military Courts.

G R Haydon
Colonel,
Deputy Chief Legal Officer.

DISTRIBUTION :

RCAC Region I (For action)	25	18
RCAC Region II (For action)	25	
AMG HQ 15 Army Group (For information)	6	
MGs. AFHQ. (For information)	2	(Your cable 3405 dated 20th Nov. refiled).
RCAC. Region III (For information and action when these regions are transferred)	15	
RCAC. Region IV (For information and action when these regions are transferred)	20	
MGs. AFHQ for distribution to (to jurisdiction of)		
Barlona V. VIII (A.M.C. H.Q.)		

TO : Regional Chief Legal Officers
(through HCAOs).

1. Imperative orders have been received in this Headquarters from the AFHQ, regarding trials of War Criminals and directing that the Allied Military Courts will not try cases of the type specified below.

2. It is essential that no War Criminals be tried in your Region by Allied Military Courts. All reports of Italians or others accused of committing war crimes, or of maltreating in any way, prisoners of war or internees, or committing other offenses of this general nature, will be immediately investigated and full and complete reports, including nature and places of alleged crimes, names and addresses of the alleged offenders, of the victims and of the witnesses, will be forwarded to the Chief Legal Officer, AMG, HQ.

3. Such investigations will not include the holding of any formal hearings but will include the gathering of the necessary facts for the preparation of a proper report for submission by this HQ to higher authority. The utmost secrecy will be observed in making these investigations.

4. The foregoing does not apply to current crimes such as those committed against Allied Forces (wire cutting, sniping, stealing etc., or black market activities, carflow violations etc.) which will be tried as now by Allied Military Courts.

G. R. Hayden
Colonel,
Deputy Chief Legal Officer.

DISTRIBUTION :

RCLO Region I (For action)	25	
RCLO Region II (For action)	25	18
AMC HQ 15 Army Group (For information)	6	
MCS. AFHQ. (For information)	2	(Four cable 3405 dated 20th Nov. refers).
RCLO Region III (For information and action when these regions are transferred to jurisdiction of A.M.G. H.Q.)	15	
RCLO Region IV	20	
MCS. AFHQ for distribution to Region V, VIII and IX.	13	
File AMG/4096/L	1	
File	1	
Spares	20	

U.S. SECRET EQUALS BRITISH MOST SECRET

Morg No 3405M.C. No. 840Date 20/1/43 18

From: C.W.C.

Matters mentioned in BS message S/2655 will no longer be handled by Military Government Section and HCC after the Motion Case. The Motion hearing will be continued but the public will be excluded. One case will be continued also in accordance with instructions issued. The latter case will be handled by 5th Army and not HGS - HCC. Continued activity, such as indicated in S/2655, will serve only to provide basis for report by Germany & Japan, upon United Nations personnel now captive in their hands. It also brings in violation of Arts 60 & 61 of the Geneva Convention. Military Court, Agencies and Control Commission representatives will NOT exercise jurisdiction in further cases which will be handled by agencies & personnel designated for AFHQ. Ref. on AD/2471 of 18 Nov. No publicity will be given these proceedings and no PRB line will be taken reference case. All activity will be limited to that required by investigation of circumstances and the taking of evidence necessary to prepare a proper report for forwarding to HQ. This will be brought immediately to the attention of all appropriate Military Court, Control Commission & PRB reps. Also Comoplate shows dealing with war crimes will be submitted for examination to Military Authorities and no publicity will be given to the name of any individual alleged to be a War Criminal. This HQ will determine whether or not names will be released and date. Para paraphrase (sic) of reference cable for information all addressees follows: "Hearings (USTICA case) are continuing publicly without PRB publicity. Publicity regrettable because star Yugoslav witness testifying this morning. Pollock dispatching second cable to AFHQ for C.C.S. for Allied Control Commission which also urges recommending maintenance of public hearings with full press publicity"

DRAFT/

Request following be sent immediately to C.C.S. repeated to United

Nations War Crimes Commission.

TO: ATRQ FOR MRS FOR HOLMES.

FROM: HQ. AMG FROM CHAIR.

17

STRONGLY URGE THAT SPECIAL AUTHORITY BE GIVEN IMMEDIATELY FOR CONVERTING PRESENT HEARINGS OF HISTORICAL COMMISSION INTO PUBLIC TRIAL FOR FOLLOWING REASONS X

CASE IS NOT OF NATIONAL SIGNIFICANCE AND DOES NOT INVOLVE ANY NATIONAL OR POLITICAL LEADER BUT IS OF GREAT LOCAL IMPORTANCE X TRIAL OF THE CASE ON DEPOSITIONS WOULD BE INEFFECTIVE AND PRESENCE OF MAJORITY OF MATERIAL WITNESSES IS NOT LIKELY TO BE POSSIBLE AT LATER DATE AS JUGOSLAVS AND OTHERS WILL HAVE DISPERSED X PRESENCE OF UNITED NATIONS WILL BE ADVERSELY AFFECTED BY FAILURE TO HOLD PROMPTLY UNBIASED PUBLIC TRIAL OF CASE WHICH HAS AROUSED GREAT LOCAL FEELING X PROMINENT LOCAL ADVOCATES HAVE ALREADY ASKED WHY COMMISSION AND NOT PUBLIC TRIAL IS BEING HELD X SUSPICION AROUSED BY RESORT TO WHAT SEEMS TO THEM UNUSUAL PROCEDURE UNLIKELY TO PRODUCE ANY CONCRETE RESULT X

FURTHERMORE LOCAL POPULATION AND OUR PRESS HAVE LONG BEEN DEMANDING ACTION BY US X COMMISSION HEARINGS WERE COMMENCED IN PUBLIC AS NO CONTRARY INSTRUCTIONS WERE RECEIVED AND AS IT WAS ASSUMED THAT SECRET HEARINGS WERE ENTIRELY CONTRARY TO FREQUENTLY RE-ITERATED ALLIED POLICY X ATTEMPT NOW TO ENFORCE SECRECY IN ACCORDANCE WITH YOUR TELEGRAM WOULD BE ENTIRELY FUTILE AS ONE HUNDRED AND FIFTY WITNESSES MAY BE CALLED AND ABOUT SEVENTY ADVOCATES ARE ENGAGED X FURTHER SECRET HEARING OR POSTPONEMENT WOULD HAVE MOST HARMFUL EFFECT AND DESTROY GOOD DEPRESSION HERETOFORE CREATED BY OUR PUBLIC AND SPEEDY TRIALS X ACCORDINGLY AS ACTUAL SECRECY IMPOSSIBLE WE ARE CONTINUING COMMISSION IN PUBLIC BUT WITHOUT PRESENCE OF PWB X IF TRIAL APPROVED STRONG COURT IS AVAILABLE HERE

Not Sent

PRESENT HEARINGS OF JUSTICE COMMISSION INFO PUBLIC TRIAL FOR FOLLOWING REASONS X
CASE IS NOT OF NATIONAL SIGNIFICANCE AND DOES NOT INVOLVE ANY NATIONAL OR POLITICAL
LEADER BUT IS OF GREAT LOCAL IMPORTANCE X TRIAL OF THE CASE ON DEPOSITIONS WOULD BE
INEFFECTIVE AND PROSTATE OF MAJORITY OF MATERIAL WITNESSES IS NOT LIKELY TO BE POSSIBLE
AT LATER DATE AS JUGOSLAVS AND OTHERS WILL HAVE DISPERSED X PRESTIGE OF UNITED NATIONS
WILL BE ADVERSELY AFFECTED BY FAILURE TO HOLD PROMPTLY UNBIASED PUBLIC TRIAL OF CASE
WHICH HAS AROUSED GREAT LOCAL FEELING X PROMINENT LOCAL ADVOCATES HAVE ALREADY ASKED
WHY COMMISSION AND NOT PUBLIC TRIAL IS BEING HELD X SUSPICION AROUSED BY RESORT TO
WHAT SEEMS TO THEM UNUSUAL PROCEDURE UNLIKELY TO PRODUCE ANY CONCRETE RESULT X
FURTHERMORE LOCAL POPULATION AND OUR PRESS HAVE LONG BEEN DEMANDING ACTION BY US X
COMMISSION HEARINGS WERE COMMENCED IN PUBLIC AS NO CONTRARY INSTRUCTIONS WERE RECEIVED
AND AS IT WAS ASSUMED THAT SECRET HEARINGS WERE ENTIRELY CONTRARY TO FREQUENTLY
RE-ITERATED ALLIED POLICY X ATTEMPT NOW TO ENFORCE SECRECY IN ACCORDANCE WITH YOUR
TELEGRAM WOULD BE ENTIRELY FUTILE AS ONE HUNDRED AND FIFTY WITNESSES MAY BE CALLED
AND ABOUT SEVENTY ADVOCATES ARE ENGAGED X FURTHER SECRET HEARING OR POSTPONEMENT
WOULD HAVE MOST DAMNABLE EFFECT AND DESTROY GOOD IMPRESSION HERETOFORE CREATED BY OUR
PUBLIC AND SPEEDY TRIALS X ACCORDINGLY AS ACTUAL SECRECY IMPOSSIBLE WE ARE CONTINUING
COMMISSION IN PUBLIC BUT WITHOUT PRESENCE OF PWS X IF TRIAL APPROVED STRONG COURT
IS AVAILABLE HERE

Not Sent

HEADQUARTERS
ARMED MILITARY GOVERNMENT
A.F.O. 512
LEGAL SUB-COMMISSION

AMG/4096/L

20th November 1943

Subject:- Priority of Cable

To:- I.B.S. (for Col. Sears or Executive Officer)

May attached telegram please be given the highest possible priority
as it is a matter in which Chief of Staff AFHQ is personally concerned.

E. GUSTEROCK

Brigadier,
Acting Chief of Staff.

16

0395

15

155 FOR INFO - 760

20th November 1963

URGENT

URGENT FOR INFO

CANCEL OUR AIR MAIL FROM THE 15th NOVEMBER & HAVE TO REARRANGE
FOR NEW FROM THE AIR MAIL WITH AND OTHER WITH REARRANGE WITH
COMMISSION APPROVED & CANCEL. FOLLOWING ON THE WAY TO AIR

15

Originator: Col. G. Spahn.
Copy Chief Legal Officer
Legal Administration.

Confirmation Copy ²⁸



H. 114

101822A BR 2721

PRIORITY

IRB 3783

FROM: EISENHOWER

190802A

TO : PABCO

Pollock, Colonel will report to this Headquarters forthwith.

(TO PABCO SIGNED EISENHOWER CITE PABCO)

DIST:

ACC (ACTION)

CC

ACTION

11

0387

790

SECRET

HEADQUARTERS
1/10/43
[Signature]

(13)

181337A NR-2471 SECRET PRIORITY INF-3791
FROM: CINC 100628A
TO : FILPOT, FIAMBO AND FARCO. INFO IBS

Present hearing being conducted of UNPICA matter may continue, but limited to basis of combined Chiefs of Staff directive outlined in message 396 of October 29th. Imperative that no publicity be given these proceedings under any circumstances and that no recordings be made. Destroy any having already been made. Take no action pending further instructions in Calarco case or similar incidents beyond segregating and holding prisoners of war implicated either as principals or witnesses from fellow prisoners and each other. Our 1781 of November 16th should be disregarded. Reference FARCO message C-34 of November 16th current year.

(CONTINUED FROM PARAPHRASE ACTIVE FILPOT, FIAMBO AND FARCO INFORMATION 130, DISTONE, DISTON ASS BY/STH ARMY SIGNED CINC DURING ENGAB AND HAGER.)

DISTRIBUTION:

- ACC
- PWB (ACTION)
- GD
- INTREI

Informative only
copy sent to P.R.A. & Legal Information

SECRET
EQUALS PUBLISHED SECRET AND SECRET

Legal 735
SECRET

EQUALS BRITISH MOST SECRET AND SECRET

HEADQUARTERS**17 NOV 1943****AMGOT**

161908A KR 1781

URGENT PRIORITY

185 3656

FROM: CINC

176800A

TO : CO INS. FARGO

In accordance with directive of Deputy Chief of Staff no publicity or any action other than procedures indicated by paraphrase of combined Chiefs of Staff Directive in message 3953 of 29 October will be conducted by agencies under your control. Utmost secrecy will be maintained and all matters reference to persons being classified and held as War Criminals will be referred to this Headquarters for appropriate instruction. Hence, no publicity under any circumstances is to be given to these matters. No PNB recordings will be permitted and any made will be destroyed. Particular reference is made to case. All matters pertaining thereto will be forwarded here for necessary onward processing.

(SIGNED CINC CISE HADAR FARGO TO CO FILMOR AND CO INS FOR ACTION, PLANS O, FARGO, FIVE ARMY AND SEVEN ARMY FOR INFORMATION)

DISTRIBUTION:

INTELL(ACTION)

ACC(ACTION)

CO

FM

PNS

OPS & S HQ

7TH ARMY

Copy to Pro, Infor.
SECRET

EQUALS BRITISH MOST SECRET AND SECRET

12



MSG NR 1781
 MSG GEN NR
 TO IBS-FARGO

RECEIVED AT
 ISLAND BASE SECTION

PRO 735
 10
 SECRET

CLASSIFICATION PRIORITY
 TIME OF ORIGIN 161908
 TIME OF RECEIPT 162255
 TIME DECODED 162318

IN ACCORDANCE WITH DIRECTIVE OF DEPUTY CHIEF OF STAFF NO REPEAT NO
 PUBLICITY OR ANY ACTION OTHER THAN PROCEDURES INDICATED BY PARAPHRASE
 OF COMBINED CHIEFS OF STAFF DIRECTIVE IN MESSAGE THREE NINE EIGHT THREE
 OF TWO NINE OCTOBER WILL BE CONDUCTED BY AGENCIES UNDER YOUR CONTROL
 (PD SIGNED CINC CITE NAGAP FHGAB TO COFILPOT AND CO IBS FOR ACTION
 CMA TO FLAMBO CMA FARGO CMA FIVE ARMY AND SEVEN ARMY FOR INFORMATION
 PD) UTMOST SECRECY WILL BE MAINTAINED AND ALL MATTERS REFERENCE TO
 PERSONS BEING CLASSIFIED AND HELD AS WAR CRIMINALS WILL BE REFERRED TO
 THIS HEADQUARTERS FOR APPROPRIATE INSTRUCTION PD REPEAT NO PUBLICITY
 UNDER ANY CIRCUMSTANCES IS TO BE GIVEN TO THESE MATTERS PD NO PWB REC-
 ORDINGS WILL BE PERMITTED AND ANY MADE WILL BE DESTROYED PD PARTICULAR
 REFERENCE IS MADE TO CASE PD ALL MATTERS PERTAINING THERETO WILL BE
 FORWARDED HERE FOR NECESSARY ONWARD PROCESSING.

Rec'd by PRO
 17 NOV 43

1125 hrs

Referred to

Luf. Sub. Com.
 after notice
 PD 11/17/43

CEP
 17/XI/43

pare copies in "Spares" file.

9

IRB FOR FARGO) 690

15th NOVEMBER 1943.

SECRET

PRIORITY

FREEDOM FOR MGS FOR FAIRMAN.

PWB MISUNDERSTOOD POSITION x NO TRIAL IS BEING HELD x PAREN FROM IRS
FOR FARGO FROM FOLLOX TO FREEDOM FOR MGS FOR FAIRMAN NEW NUMBER NOUGHT
FIVE DATED THIRTEENTH NOVEMBER CITE ANG SIX NINE NOUGHT PAREN x COMMISSION
IS SITTING IN ACCORDANCE WITH CCS DIRECTIVE TO TAKE EVIDENCE ONLY x PWB
WILL HAVE REPRESENTATIVE AT TRIAL WHO WILL PREPARE REPORT AND TAKE
RECORDINGS FOR SUBMISSION TO PWB AT AFHQ x NO RELEASE UNTIL MATTER APPROVED
BY THEM x STRONGLY URGES THAT PUBLICITY BE GIVEN TO THIS MATTER AS APPARENT
FAILURE OF ALLIES TO TAKE ACTION AGAINST CRIMINALS OF USTICA TYPE IS
CAUSING MUCH ADVERSE COMMENT.

9

14 Nov.43

Colonel Pollock:

May I see you out this
proposed release for the
Allied press? My phone number
is 13933 (an outside line).

Charles Poore,
Captain, PRO

Room 58

650

RECEIVED AT
ISLAND BASE SECTIONMSG NR 405
MSG CEN NR
TO FARGO FOR CHANLERCLASSIFICATION PRIORITY
TIME OF ORIGIN 131752A
TIME OF RECEIPT 140140A
TIME DECODED 140146A

MESSAGE BAKER DASH NINE ONE ONE CABLED FROM IBS RPT ITEM
 BAKER SUGAR TO PWB RPT PETER WILLIAM BAKER HERE STATES WAR
 CRIMINALS TRIAL BEFORE AMG RPT AMG COURT BEGINS MONDAY FIFTEEN NO
 VEMBER AND THAT PRESS CMA RADIO AND NEWSREEL COVERAGE IS PLANNED
 X PAREN TO FARGO FOR CHANLER SIGNED EISENHOWER CITE FHNGS RPT
 FHNGS PAREN X PWB RPT PETER WILLIAM BAKER HERE UNDERTAKES TO
 KILL MESSAGE AND INVESTIGATE X PLEASE FIND WHAT HAPPENED AND
 PREVENT ANY HARMFUL ACTION X TRIAL NOW RPT NOW WOULD VIOLATE
 CCS RPT CHARLIE CHARLIE SUGAR DIRECTIVE IN THREE NINE EIGHT
 THREE OF TWO NINE OCTOBER CMA AND PUBLICITY BUILD UP RIGHT
 HAVE ^{SERIOUS} REPERCUSSIONS X REPORT

SECRET

8

RECEIVED IN CODE

Recd
0845
14/11

MC AGC-AMG
Public Relations Office

14 Nov 43

FOR IMMEDIATE RELEASE AT AENO PRO THROUGH MOS PRO

investigation
CRIMINAL HEARING OF EXCEPTIONAL INTERNATIONAL INTEREST BEING HELD BY AGC-AMG IN SICILY BEGINNING TOMORROW FIFTEEN NOVEMBER. SIXTEEN FORMER PRISON OFFICIALS OF FASCIST REGIME ARE CHARGED WITH VIOLATIONS OF LAWS AND USAGES OF WAR BY ILL-TREATMENT OF CIVILIANS INTERNED ON USTICA ISLAND AND HOMICIDE OF AT LEAST THIRTEEN JUGOSLAV CIVILIANS INTERED THERE IN COURSE OF YEAR BEFORE ALLIED INVASION OF SICILY.

FACT THAT CASE INVOLVES CHARGES OF WAR CRIMES ON PART OF AXIS ADMIRALTY GIVES IT INTERNATIONAL IMPORTANCE. CHARGES MIGHT LEAD TO ONE OF FIRST WAR GUILT TRIALS PROVIDED FOR IN MOSCOW AGREEMENTS BETWEEN BRITAIN, UNITED STATES, AND RUSSIA.

DEFENDANTS BEING CHARGED WITH TORTURE, CRUEL AND UNUSUAL FORMS OF PUNISHMENT INCLUDING "POMPA", WHICH CONSISTED IN TYING MAN DOWN ON TABLE AND FORCING WATER INTO HIM TILL HE COLLAPSED OR DIED.

HEARINGS TO BE HELD IN HISTORIC BUILDING ONCE OCCUPIED BY GARIBALDI, GREAT EXPONENT OF ITALIAN LIBERTY.

495

RECEIVED AT
ISLAND BASE SECTION*filed* 6MSG NR 8048
MSG CEN NR
TO FARGO FOR CHANLERSECRET
RECEIVED IN CODECLASSIFICATION PRI
TIME OF ORIGIN 081346
TIME OF RECEIPT 081719
TIME DECODED 081725

BEHRENS COMES TO PALERMO TUESDAY (PD PAREN TO FARGO FOR CHANLER SIGNED
EISENHOWER CITE FHMGS PAREN PD IN COMPLIANCE WITH BAKER DASH TWO SEVEN
TWO CITE HEADQUARTERS AC RPT AC FIVE TWO SEVEN CMA TWO STENOGRAPHERS
TESTED BY HIM COME PROBABLY WEDNESDAY ON TEMPORARY DUTY

F4

RECEIVED IN CODE



SECRET

6

4035/L.

4096

(3)

EDARD FOR AMG - 551

5 November 1943

CONFIDENTIAL

ROUTINE

FILINT FOR AMG FOR RONE

WE ARE TAKING NECESSARY ACTION FROM FILM GRAB FOR AMG FROM
ORDER TO FILINT FOR AMG FOR RONE FOR NUMBER PA GRAB FOR ONE PAUSE
NINE DATED SECOND NOVEMBER SIX AND FIVE FIVE ONE DATED UNDER OPERATING
PAYMENT OF AMT. DATES THIRTY NINE FROM THREE OF TWENTY NINE QUARTER
REGARDING ACTION CASES

5

SEARS FOR AMCO - 527

30th October, 1943.

CONFIDENTIAL

PRIORITY

AMCO FOR MRS FOR FAIRMAN

WE WILL TAKE TESTIMONY OF PROPOSED WITNESSES FOR PROMOTION IN JUSTICE CASE & FROM FROM SEARS FOR AND FROM SEARS TO AMCO FOR MRS FOR FAIRMAN CITY IN AG FIVE TWO SEARS SEARS & WE WILL ALSO INFORM AGUEED THAT THEY ARE NOT REQUIRED TO GIVE EVIDENCE BUT IF THEY WISH TO DO SO OR TO CALL WITNESSES THEIR TESTIMONY WILL ALSO BE RECORDED & PLEASE SEND INQUIRE TO ACT AS COMMISSIONER AND TWO COMMISSION COURT SYNOGRAMERS AS NONE ARE AVAILABLE HERE AND HEARING MAY LAST UP TO THREE WEEKS

*For reply from M.G.S. see 5494 dated
2-11-43. (Message Centre No 289) kept in
message centre. 18W.*

SECRET - CABLE

M/Centre No. 495

From: MAS AFHQ

Date 8-11-43

Ref. 8048

4096

JUSTICE file

822

3

TELETYPE XXXXXXXXXXXX TELETYPE XXXXXXXXXXXX TELETYPE XXXXXXXXXXXX

301630A ORIG NR FA/109 ROUTINE IBS 2867
FROM: FILPOT FROM AMG FROM ROWE 021630A
TO : SEARS FOR AMG FOR CHANIER

Referency AFHQ signal 3903 cite FHMUS of 29 October. Please
confirm you will take all necessary action under concluding paragraph.

DISTRIBUTION:

AMG(ACTION)

CO

Action taken by
C. L. O. on 3/11/63
Brd

Seen by C. L. O.
3/11

3

SECRET

P
IMPORTANT
US CIPHER MESSAGE
INFOLIO 110:09946
DATE 29 OCT '43

304

FROM: AFHQ SIGNED EISENHOWER
TO: IBS FOR SEARS FOR AMG FOR CHANTER
15 ARMY GROUP FOR AMG FOR ROWE
ORIG NO: 3903 CITE FHMG5TOO 099467
THI NIL
TOR 0245A/30

PROCEDURE UNDER PARA 7, POLITICAL, OF POLICY DIRECTIVE OF JUNE 1ST
HAS NOW BEEN ELABORATED BY CCS, AT SAME TIME ANSWERING NAF
478 ON USTICA CASE.
CCS DIRECTIVE AS PARAPHRASED? FOLLOWS.

TRIAL BY MILITARY TRIBUNAL WILL NOT BE HELD IN CASE OF PERSONS
SUSPECTED OF WAR CRIMES.

THEY WILL BE HELD IN CUSTODY AWAITING
UNITED NATIONS DECISION REGARDING THEIR DISPOSAL.
YOU WILL COLLECT ALL AVAILABLE INFORMATION
ABOUT SUSPECTS DETAINED AND ABOUT WAR CRIMES FOR WHICH THEY ARE
HELD, AND WILL FORWARD ALL SUCH INFORMATION TO THIS HEADQUARTERS,
WHICH WILL TRANSMIT TO CCS.

ALLIED GOVERNMENTS IN LONDON ON OCTOBER 20TH
DECIDED UPON SETTING UP UNITED NATIONS WAR CRIMES COMMISSION.
PLAN IS THAT THIS COMMISSION WILL REVIEW
AND RECORD ALL INFORMATION SUBMITTED BY GOVERNMENTS AS TO WAR
CRIMES COMMITTED BY ENEMIES AGAINST UNITED NATIONS NATIONALS, AND
WILL REPORT TO GOVERNMENT CONCERNED WHAT CASES APPEAR SUPPORTED
BY SUFFICIENT EVIDENCE.

COMMISSION ALSO TO CONSIDER MEANS TO REACH
COMMON BASIS AS TO TYPE OF TRIAL COURT, APPLICABLE LAW, PROCEDURE
FOR CUSTODY AND SURRENDER.

WHERE ITALIAN COMMITS CRIME AGAINST ITALIAN
NATIONAL IT WOULD NOT PROPERLY BE REGARDED AS WAR CRIME AND SO
WOULD NOT COME WITHIN SCOPE OF THE COMMISSION.
PERSON SO ACCUSED SHOULD BE GIVEN TO ITALIAN
COURTS TO BE TRIED.

CRIMES AGAINST MILITARY FORCES DURING PERIOD
OF OCCUPATION REMAIN, AS USUAL, TRIAL BY MILITARY TRIBUNAL.
WILL ESTABLISH PROCEDURE FOR TAKING TESTIMONY AS ON COMMISSION,
WITH APPROPRIATE PROVISION FOR PRESENCE OF ACCUSED, OPPORTUNITY TO
HAVE COUNSEL AND TO CROSS EXAMINE, PREPARATION AND AUTHENTICATION
OF RECORD.

AMGOT

SMC 0400A/30
ATT 0500A/30
KW

0412