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Declassified E.O. 12356 Section 3.3/NND No.

785016

ACC

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CASE OF LT. FAE
AUG., SEPT. 194

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Declassified E.O. 12356 Section 3.3/NND No.

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CASE OF LT. FABI MAULIO, DISTURBANCES AT MESSINA
AUG., SEPT. 1944

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FABI MANLIO

IN-SAFE

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Declassified E.O. 12356 Section 3.3/NND No.

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TARGA	MOTORE	TELAIO	MARCA	CARROZZERIA	PORTATA
N. BZ 582	N.	N. 30231	STEINFURT		T.

ALTRE CARATTERISTICHE: Benzina, Gasolio, Gasogeno, Metano:

STATO ATTUALE: EFFICIENTE

CONSEGNATARIO: FENNER Ivo

BOLZANO, Via Cl. Augusta 1

PROV.: BOLZANO

ENTE ASSEGNANTE:

VERBALE DI CONSEGNA:

ATTÒ DI NOTORIETÀ:

28.3.46

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4129/18

Legal 8620
4A

SUBJECT: Court of Inquiry -
MESSINA Shooting Incident.

HQ ALLIED ARMIES IN ITALY
Tel: FILPOT 221
5063/69/A(P3)
12 Sep 44

HQ ACC.

3A

Reference ACC/4129/18/L of 1 Sep 44.

1. I am directed to say that as a result of the points raised by the Chief Legal Officer HQ ACC, it is agreed that Lieut FABI should be dealt with by the ITALIAN Military Authorities.
2. The question will now be taken up with the Army Sub-Commission.

CMP/JD

P.H. I. [Signature]
Brigadier,
DAG.



LEGAL SUB-COMMISSION	
CIC	✓
DCIC	✓
Chief Counsel	
CIO	
Adm. Sec.	
CL. Sec.	

3A

ACG/4129/18/L

1 Sept 1944

SUBJECT : Messina Shooting Incident.

TO : HQ A.A.I. (Main) "A" Branch.

Ref conversation Brig Paton - Brig Upjohn yesterday. I enclose as requested copy of the opinion of the Chief Legal Officer HQ ACG on this matter together with the Proceedings of the Court of Inquiry.

For Acting Chief Commissioner.

Ext. 525
GHU/mt

G. R. UPJOHN, Brigadier
Vice President Adm Sec.

Seen by CLO - 1/9/44

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

ACC/4129/18/L

29 August 1944.

SUBJECT : Case of Lieut. FABI Maulio.

TO : V.P. Adm Sec.

1. A serious shooting incident occurred at MESSINA on 2 JULY 1944 between British and Italian troops in the course of which several persons were killed and others wounded. The main centre of the disturbance was the ACC Garage in Via S. Martino.

2. A Court of Enquiry was held and found (inter alia) the following facts:-

(a) The origin of the disturbance was an unprovoked assault by 5 British seamen under the influence of drink on an inoffensive Italian soldier.

(b) At about 2100 hours, Captain Williams, R.M. and Lieut. Hayward R.M. were walking towards Piazza Carlioli and hearing shooting took refuge in a garage in the Via Ugo Bassi (NOT the ACC garage) A group of Italians came to the garage and shot Lieut. Hayward (N.B. Lieut. Hayward was wounded, not killed) who jumped at one of the Italians.

These Italians had been brought from their barracks by a 2/Lt. FABI who declares that they were warned not to shoot unless attacked. 2/Lt. FABI appears to have had little control over his men.

3. There is also the combined and undisputed evidence of Lieut. ROSSO and Lieut. FABI to show that at about 2045 hours and prior to the episode in 2 (b) above, Lieut. ROSSO in the Piazza Carlioli ordered Lieut. FABI to take half his men to the ACC Garage. On his way to the garage Lieut. FABI's party entered Via Ugo Bassi, and saw some British soldiers in the garage there. The incident in 2 (b) above then occurred. After this incident Lieut. FABI states that he did not go to the ACC garage because "I was afraid to go any further and so returned to the Piazza Carlioli."

4. As a result of the Court of Enquiry the District Commander has directed or recommended disciplinary action against various British officers, ratings and O.Rs and has directed that the G.O.C., 12 Italian Corps take disciplinary action against Lieut. ROSSO.

5. The District Commander has however recommended, and the Commander-

at one of the Italians.

These Italians had been brought from their barracks by a 2/Lt. FABI who declares that they were warned not to shoot unless attacked. 2/Lt. FABI appears to have had little control over his men.

3. There is also the combined and undisputed evidence of Lieut. ROSSO and Lieut. FABI to show that at about 2045 hours and prior to the episode in 2 (b) above, Lieut. ROSSO in the Piazza Carioli "ordered Lieut. FABI to take half his men to the ACC Garage". On his way to the garage Lieut. FABI's party entered Via Ugo Bassi, and saw some British soldiers in the garage there. The incident in 2 (b) above then occurred. After this incident Lieut. FABI states that he did not go to the ACC Garage because "I was afraid to go any further and so returned to the Piazza Carioli."

4. As a result of the Court of Enquiry the District Commander has directed or recommended disciplinary action against various British officers, ratings and O.Rs and has directed that the G.O.C., 12 Italian Corps take disciplinary action against Lieut. ROSSO.

5. The District Commander has however recommended, and the Commander-in-Chief A.A.I. has directed that Lieut. FABI Maulio be brought to trial before an Allied Military Court.

6. The allegations made against Lieut. FABI are :-

(i) Neglect of duty in that as a result of his failure to take charge of the situation, Italian soldiers under his command opened fire on British personnel without due reason.

Had his movements been actuated by a desire to stop the shooting and to quell the disorder rather than aggravate it this entire incident could have been avoided. He admits that no fire had been forthcoming from the garage.

(ii) Whilst he knew that a British officer or soldier had been wounded he took no action whatsoever to help him.

(iii) His subsequent admission that he failed to carry out Lieut. Rosso's orders to proceed to the ACC garage because he was afraid indicates cowardice and further neglect of duty.

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7. In view of the Commander-in-Chief's order this Sub-Commission has been preparing the charges for the proposed Court. It is felt that your attention should be drawn to the following points :-

- (a) So far as the first ground of complaint is concerned, a general neglect of duty of this nature by an Italian officer can only be the subject of disciplinary proceedings for breach of "regolamento disciplinare". Such proceedings are heard by the C.O. of the person charged and are not cognizable before a court of record. There is in fact no charge which can be drawn which would give jurisdiction to any court and it is submitted therefore that an Allied Military Court could not be given jurisdiction to hear the case.

It should be mentioned that there are certain specific acts of neglect of duty which are triable by a court, but these are specified in Arts. 94 - 98 of C.P.M.G. and the omissions covered by those articles are all particular acts of neglect in special circumstances e.g. failure to take command in action, failure to attack the enemy, failure to prevent being surprised by the enemy.

- (b) The second ground of complaint can be made the subject of a charge under Art. 593 of C.P. which provides that a penalty up to 3 months imprisonment may be awarded to anyone who finds a person wounded and neglects to afford the necessary assistance or to give immediate notification to the authorities. There is, however, no doubt that on the facts of this case Lieut. FABI would have to be acquitted on this charge, as other persons, of his own nationality, were present who could, and did, look after Lieut. Hayward.

There is no other charge which can be brought on this head, and indeed it is doubtful whether in the circumstances Lieut. FABI's conduct even amounted to a breach of the regolamento disciplinare.

- (c) On the third head a charge can be laid under Art. 101 C.P.M.G. for failure to carry out an order. It is felt that any charge of cowardice is out of the question in the circumstances (apart from the difficulty of proof) and that the charge must be limited to the fact that Lieut. FABI entered the Via Ugo Bassi garage instead of going to the A.C.C. Garage. This charge might succeed but it is felt that Lieut. FABI would argue with considerable force

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- (i) that his orders were very general and really amounted to a direction to quell the disturbance
- (ii) that when he saw British soldiers enter the garage it was within the scope of his mission to prevent them causing any trouble.
- (iii) that his failure thereafter to proceed to the A.C.C. garage did not affect the course of the proceedings.

8. It is felt that the proposed trial of Lieut. FABI springs from the fact that through an unnecessary act on his part a British officer, Lieut. Hayward, was wounded although he had not taken any part whatsoever in the unfortunate events of the evening. It is thought, however, that any such trial would place the conduct of Lieut. FABI in an entirely false perspective in relation to the events of the evening; that if he is convicted any punishment which the Allied Court could award would be of a very light and entirely in-appropriate character; and that in fact he would probably be acquitted.

9. In these circumstances it is recommended that, if possible, the Commander-in-Chief be asked to reconsider his decision. If the decision is to be accepted as final it is recommended that the charges be framed as indicated in para. 7 (b) and (c) above.

10. The file, containing the proceedings and the Court of Enquiry is enclosed.

Richard H. Wilmer

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

WEB/wcw.

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 1st file
 under 1st
 letter

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

1A

Ref/264/CA.

24 August 44

SUBJECT : Court of Inquiry - MESSINA
 Incident.

TO : Admin. Section (For Legal Sub-Commission).

LEGAL

25 AUG 1944

There is forwarded for your attention and action letter from AAI 5063/69/A (PS) of 22 Aug 44 with original copy of the proceedings of the Court of Inquiry. HQ AAI state that the C in C directs that Lt. FABI Maulio, 2 Bn. 45 Inf. Regt., Italian Army be brought to trial before an Allied Military Court at an early date, in regard to his conduct on this occasion.

LEGAL SUB-COMMISSION

→ CIO

CCIO

Chief Counsel

CIO

Italian Section

CL. RKS

NORMAN E. FISKE
 Colonel,
 Deputy Executive
 Commissioner.

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SUBJECT: - Court of Inquiry - MESSINA Incident

C. A. Branch

CONFIDENTIAL

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HQ ALLIED ARMIES IN ITALY

Tel: - FILBOT 223

5063/69/A(13)

22 Aug 44

HQ ACC

Copy to: - HQ 3 District

1. Forwarded herewith is the original copy of the proceedings of the Court of Inquiry held to enquire into the circumstances of the disturbance which occurred at MESSINA on 2 Jul 44.
2. Action is being taken in regard to Naval and Military personnel.
3. I am to say that the C-in-C directs that Lieut FABI, Emilio 2 Bn 45 Inf Regt, Italian Army be brought to trial before an Allied Military Court at an early date, in regard to his conduct on this occasion.
4. Kindly inform this HQ of the date of trial, and in due course of the result.
The proceedings of the Court of Inquiry should be returned when no longer required.

JDP/IRM.



C. H. 1st Lt.

Brigadier,
D.A.G.

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