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PROF. AV. VASSALLI, CONFIDENTIAL REPORTS SEPT. 1945

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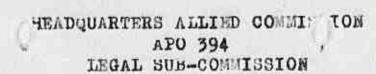
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PARTITO FASCISTA REPUBBLICANO

PEDSKAZIONE DEGLE ORBE

II. COMMISSABIO PEDERALS



GGH/lo.

26 September 1945.

## MEMORANDUM

SUBJECT : Prof. VASSALLI.

10 : Office of the Chief Commissioner.

1. Before leaving CLA informed Lt. Col. Hannaford that in all probability admiral Stone would wish to write to the Prime Minister about Prof. Vassalli's case. Col. Behrens sked Lt. Col. Hannaford to remind the Chief Commissioner of this, if he did not hear from him in the course of the next few days.

2. Could this Sub-Commission be informed whether admiral Stone wishes to write to Prof. Parri and whether a draft letter should be prepared for his signature.

G. G. HANNAFORD, Lt. Col., Officer i/c Italian Branch, for Chief Legal Advisor. what is happening in this matter in order that, if they think it desirable, they can take such notice as may or appropriate in bringing the facts to the knowledge of their respective governments.

b. Personal. Prof. Vascalli believes that he is too wellknown to be actually struck off the rolls. On the other hand he considers it quite possible that he may be put in prison and he would like this to be avoided, if necessary by an approach through the embassies.

- 2. Since speaking to you I have read the argument prepared by Prof. Vassalli for the Court of Cassation. I find that the senators concerned are not, as I thought when I spoke to you this morning, from the recent group of 70 Senators whose cases have not yet been heard, but are a number of those whose cases were heard and who were dismissed from the Senato in January of this year. The principal, however, is of course entirely the same.
- 3. The position is that, when the Senators were dismissed in the early part of this year, a small group of them approached Vassalli on the question of an appeal. They did not wish to appeal at that time because they thought that with the war still in progress an attack on the constitutional validity of the High Court of Justice might afford scope for German propagands. This situation having changed, they requested Vassalli to take the necessary action. He thereupon filed an appeal in the case of two Senators and had prepared an appeal in the case of three or four others.
- 4. Upon hearing that these appeals had been filed Marone, President of the High Court of Justice, wrote to the High Countainer for Banctions requesting that Vassalli be struck off the rolls "because the appeal is obviously groundless since the law prevents an appeal, and therefore the appeal is a political act directed against the government."

5. In point of fact the appeal is based upon the following purely legal grounds:-

a. It is argued that insofar as DLL 159 provides that there is no appeal from the High Court of Justice, this is unconsitutional under general law. It is specifically unconstitutional under DLL 151 which preserves the existing constitution until the formation of the Costituents. DLL 159 attacks the Sanate and therefore

breaks the spirit of DLL 151.

b. Upon the assumption, as argued in a. that an appeal lies, the decision of the High Court of Justice was wrong. It was based upon two grounds — first, that the Senators in question were elected by an improper procedure; secondly, that they had not opposed the Fescist legislation of the Senate. The appeal contends that the first ground is entirely outside the scope of DIL 159 and no concern of the High Court of Justice. The second ground is a misapplication of HIL 159 which required active support of the Fascist regime.

6. It is not for me to express an opinion on whether or not these arguments are sound law, but as you will see they are purely legal arguments. It cannot be said to be a political act directed against the government to argue that a court set up by a decree of that government is unconstitutional because the decree is contrary to existing law. I therefore think that to suggest that a lawyer who puts forward an appeal of this kind on behalf of his client deserves to be struck off the rolls or imprisoned is behavior of a most dictatorial and undemocratic kind.

W. E. HEMRENS Colonel Chief Legal Advisor