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

ACC

10000/142/925

1236

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

10000/142/925

COGENA CASE, NAPLES
SEPT. 1945 – JULY 1946

6.

Chief Commissioner,

Letter at folio 19A submitted herewith for your signature if approved.

Legal. D/Com.
8. Jan 46.

Col. Inf.
C. L. O.

JAN 8 1946

426

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

To: Col. Weber (1)

From: Mr. Lopez.

The enclosed letter is submitted to you for approval for forwarding to the Chief Commissioner.

Nicolas F. Lopez

2.

Chief Commissioner:

Reply to folio 11A submitted herewith for your signature if approved.

JOHN K. WEBER,
Col. Inf.,
Chief Legal Advisor.

1 Nov 45

Col. Weber
Signed, but must request be sent to 9th Fortress Gds
CC

1/11 Chief Commissioner: 425

9H was answered by 10H on 31st October; 11-H seems to be seperate therefrom.

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

if approved.

JOHN K. WEBER,
Col. Inf.
Chief Legal Advisor.

1 Nov 45

Col. Weber
signed, but must report be sent
to 9A forthwith
Yes
CC

Chief Commissioner:

9A was
answered by 10A on 31st October;
11-A seems to be seperate therefrom.
Do you want a copy of 11A to go
to Navy Sub-Commission? They do
not seem to be related.

Lt Col Inf.

In Re 15-A

G.I (B) has informed AFHQ that Capt Smith will be given due and timely notice (14 days) thereof as his appearance in events concerned. Date 15-11-45.

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

COGENA CASE

Copy of COURT RECORD

Original filed in Southern Region

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

COGENHACASE

Copy of COURT RECORD

Original filed in Southern Region

CHIEF CLERK

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

FORM N. 8

ALLIED MILITARY GOVERNMENT

PROCEEDINGS OF AN ALLIED MILITARY COURT

Held at Castelcapuano - NAPLES - GENERAL MILITARY COURT

On the 12th day of February 1946

Before JOHN K. WEBER (A), Col.Inf., President, F.D.STOTT (B), Major,
A.J.C. BLOCK (B), Lt.Col., Members constituting the Court.
(Name and rank of President and/ or Magistrate

REFERENCE No.

ACCUSED

Name: Dr.Eugenio SARNELLA, Attilio SARNELLA, Santo LO PORTO

Address:

Description:

Occupation:

Age:

INTERPRETER

Name: Dr.E.Belleni is duly sworn

PROSECUTING OFFICER

Name: Mr.Nicholas ICPES (Assisted by Major F.L.VECCHIOLLA).

ADVOCATE FOR ACCUSED

Name and Address See Court Record, page 1.

CHARGE (S)

(This space need not be completed if a copy of the Summons or charge sheet is attached).

See the attached Charge Sheets against the accused

1. Dr. Eugenio SARNELLA
2. Signor Attilio SARNELLA

424

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

Held at Castelcapuano - NAPLES - GENERAL MILITARY COURT

on the 12th day of February 1946

Before JOHN K. WEBER (A), Col.Inf., President, F.D.STOTT (B), Major,
A.J.C. BLOCK (B),Lt.Col.,Members constituting the Court).
(Name and rank of President and/or Magistrate

REFERENCE No.

ACCUSED

Name: Dr.Eugenio SARNELLA, Attilio SARNELLA, Santo LO PORTO

Address:

Description:

Occupation:

Age:

INTERPRETER

Name: Dr.E.Bolleni is duly sworn

PROSECUTING OFFICER

424

Name: Mr.Nicholas LOMES (assisted by Major F.L.VECCHICLLA).

ADVOCATE FOR ACCUSED

Name and Address See Court Record, page 1.

CHARGE(S)

(This space need not be completed if a copy of the Summons or charge sheet is attached).

See the attached Charge Sheets against the accused

1. Dr. Eugenio SARNELLA
2. Signor Attilio SARNELLA
3. Capitano Santo LO PORTO

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

1. The evidence, any statements by the prosecution and defence before sentence, and any opinion the Court wishes to record as to its findings will be written or typed on this and the following page. When the length of the evidence requires, further sheets of paper serially numbered will be inserted in this file.

2. This record will be signed by the President and members of the Court.

1294

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

PLEAS OF THE ACCUSED

The accused Eugenio SANELLA pleads Not Guilty to the first charge; to all the charges to the second charge; pleads to the third charge.

The accused Attilio SANELLA pleads Not Guilty to the first charge; to all the charges to the second charge; pleads to the third charge.

The accused Dante LO PORTO pleads Not Guilty to the first charge; to all the charges to the second charge; pleads to the third charge.

(See attached Charges Sheets)

FINDINGS OF THE COURT

See Court Record page 389

The accused is found guilty / not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge.

The accused is found guilty / not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge.

The accused is found guilty / not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge.

SENTENCE OF THE COURT

See Court Record page 391

The Court sentences the accused

to

in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

The Court sentences the accused

to

in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

The Court sentences the accused

to

in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

REVIEW

JOHN K. WEBER, Col.Inf. A.J.C. BLOCK, Lt.Col. E.D.STOTT, Major
Member

Declassified E.O. 12356 Section 3.3/NND No. 785046

First charge: Adds to all the charges in the second charge sheets

Third charge

(See attached Charges Sheets)

FINDINGS OF THE COURT

See Court Record page 389

The accused is found guilty / not guilty of the first charge: guilty / not guilty of the second charge: guilty / not guilty of the third charge.

The accused is found guilty / not guilty of the first charge: guilty / not guilty of the second charge: guilty / not guilty of the third charge.

The accused is found guilty / not guilty of the first charge: guilty / not guilty of the second charge: guilty / not guilty of the third charge.

SENTENCE OF THE COURT

See Court Record page 391

The Court sentences the accused

to

in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

The Court sentences the accused

to

in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

The Court sentences the accused

to

in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

REVIEW

JOHN K. WEBER, Col.Inf. President of Court

A.J.C. BLOCK, Lt.Col. Member

F.D.STOTT, Major Member

Dated 2nd March 194 6 Signature

CONFIRMATION OF DEATH SENTENCE

Dated 194 Signature

Tip. A. DE VITO - Napoli - Largo Bianchi (Sp. Santo) 2-3 - Tel. 27-558

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

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

FILE

HEADQUARTERS
NAPLES LIAISON GROUP
ALLIED COMMISSION
LEGAL DIVISION
APO 794

4196

L - 3020/A

31 July 1946

SUBJECT: Cogens Records.

TO : Chief Legal Adviser,
Headquarters, Allied Commission,
Legal Subcommission,
APO 794.

1. Forwarded herewith in triplicate is Italian record of case of Allied Military Government against Dott.Eugenio BARNELLA, Attilio BARNELLA and Capt.Santo LO PORTO, known as COGENA case, tried by General Military Court at Naples, 12 February to 2 March 1946.

2. Herewith forwarded are also: an English copy of the above case and the stenographic notes taken by Court stenographer.

For the Chief Liaison Officer.

O.C.VII
Liaison Officer

Incls.

1

223

AUG 7 1946

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

- COGENA CASE -

ALLIED

MILITARY

GOVERNMENT

Vs.

Dr. EUGENIO SARNELLA,

Signor ATTILIO SARNELLA, and

Captain SANTO LO PORTO.

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

- C O G E N A C A S E -

P R O S E C U T I O N C A S E

(From page 1 to page 148)

1300

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

GENERAL MILITARY COURT

Naples, 12 February 1946, 09:30 hrs.

ACCUSED

1) Eugenio Carnella

2) Attilio Carnella

3) Dante LO FORTO

COUNSEL

Avv. Giovanni FORZIO
Avv. John SERRAO

Avv. Vittorio GRANUCCI
Avv. Alfonso DE LAURENTIS

Avv. Franz SACCARIA
Avv. Mario BENVENUTANO.

Avv. SERRAO begs the Court to excuse Avv. FORZIO who is absent owing to a previous engagement which has protracted longer than scheduled.

The Court announces that it has been instructed not to allow any photographs to be taken in the Courtroom during the trial. The Court issues instructions that this order must be strictly complied with. Furthermore Court Officials must strictly abstain from granting any interviews to the Press relative to this case. The trial is a public one and the Press is not forbidden from taking the necessary notes.

The stenographer is sworn. The interpreter has already been sworn during the previous hearing.

The PROSECUTION checks its own witnesses and the same does the Defense.

The Prosecution informs the Court that the car of one of the Prosecution witnesses has broken down on its way from Rome to Naples and is therefore overdue.

The Court warns both the Prosecution and the Defense witnesses that they are severely forbidden from attending the trial before the completion of their testimony.

All Prosecution witnesses are collectively sworn.

The Court wants Prosecution witness to listen attentively to the instructions the Court is about to issue:

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

Before their testimony is given Prosecution witnesses must not talk about their testimony among themselves nor must they talk with any other people about it, except with the Prosecution and the Defense Counsel. They must not stay in the Courtroom but can stay after their testimony has been taken. The Court's instructions are that they must consider through themselves with their testimony only when the Prosecution and the Defense state they no longer need that witness. The Court adds that they must not absent themselves from the Courthouse during the trial otherwise, by violating the above instructions, they will be brought under arrest before the Court and, after their testimony has been taken down, they will be tried for contempt of the Court.

All the witnesses state that they have understood the instructions issued by the Court.

The Prosecution offers the Court copies of the charges and in view of the fact that the above charges have been more or less changed, Prosecution begs the Court to grant it the permission to file them again to the accused.

All the Defense Counsel and the members of the Court receive copies of the charges. The accused are called before the Court and the charges are read relative to each accused.

PLEAS OF THE ACCUSED.

Accused Eugenio SARNELLA pleads NOT GUILTY to the First charge
NOT GUILTY to the second charge
NOT GUILTY to the third charge

Copies of the charges in possession of the Court are amended because they are erroneously charged under Sec. 39 instead of 45.

NOT GUILTY to the fourth charge
NOT GUILTY to the fifth charge.

The charges under Italian Law are drawn up under para A.B.C. of the charge sheets.

Accused Eugenio SARNELLA pleads NOT GUILTY to charge under Para A.
NOT GUILTY to charge under Para C.

Accused Attilio SARNELLA pleads NOT GUILTY to the first charge
NOT GUILTY to the second charge
NOT GUILTY to charge under Para C.

Accused Santo LO PORTO pleads NOT GUILTY to First charge
Not GUILTY to second charge
Not GUILTY to third charge

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

Accused Santo LO PORTO pleads NOT GUILTY to Fourth charge
NOT GUILTY to Fifth charge
NOT GUILTY to charges under Para B. 8C

The COURT adjourns for 10 minutes recess.

The Court addresses Counsel for Dr. Eugenio SARNELLA the following remarks:

Your client is on provisional liberty following bail. Bail will continue during the trial but I want you and your client to know that the provisions of the bail are still in force.

OPENING STATEMENT BY THE PROSECUTION.

May it please the Court., the case against SARNELLA Eugenio, SARNELLA Attilio and LO PORTO Santo has at last come to trial. The Prosecution will prove beyond reasonable doubt and by reasonable doubt I mean that the scales of the evidence are not equally balanced but are without any doubt weigh on the heavier side and cannot cause any serious doubt in mind of the Court, that the accused are guilty as charged. Prosecution wants to be very brief in its opening statement and will leave the evidence to be judged by the Court only on its merits.

The Prosecution will introduce its First Witness, Dr. AILOCCA.

BY THE COURT.

The opening statement by the Prosecution has not been very helpful to the Court. The Court has not had a clear picture of the facts on which the charges were drawn up.

BY THE PROSECUTION.

Having already read the charges against the accused I didn't want to make the Court waste more time by my pointing out facts.

BY THE COURT.

We have heard the applications, would you give us briefly the theory of these charges. This might help us. 718

1303

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

BY THE PROSECUTION.

I would like to leave it to the evidence adduced.

PROSECUTION CASE.

1 WITNESS: Dottor Giuseppe AILOCCA.

THE COURT: Were you sworn in?

WITNESS : Yes, I was.

DIRECT EXAMINATION.
~~BY THE PROSECUTION.~~

Q. Where do you live?
A. At Via Giuseppe Antonio Pasquale No. 59.

Q. In what town?
A. Naples.

Q. What is your occupation?
A. Commissario of P.S.

Q. How long have you followed your present occupation?
A. For 13 years.

Q. Are you specialized in a particular branch of Police work?
A. We carry out investigations in general, any kind of investigation that may be needed.

Q. Then your particular branch is Police Investigation Work?
A. Yes.

Q. To what office are you now attached?
A. To Public Safety Office, Provincia Building.

Q. When you say Public Safety Office, do you mean Public Safety Office of Allied Commission?
A. Yes, Sir.

Q. How long have you been attached to Public Safety Division?
A. For more than two years.

Q. In the course of your work with Public Safety Division have you had the occasion of investigating in a case called COCENA case?
A. Yes, I have.

Q. With whom did you make the investigations?

1304

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

A. At first with Major Richardson, later on, after some time, with Col. Heddon of S.I.B. Caserta, he was a British Colonel.

Q. When you say Caserta do you mean AFHQ?
A. He was at Caserta, had his office there and I think he was of AFHQ.

Q. In the course of your investigation did you take some statements?
A. Yes, many.

Q. Will you please turn round and tell me whether you identify any of those from whom you took statements?
A. Yes. Capt. LO PORTO Dante, Dr. Eugenio SARNELLA and Mr. Attilio SARNELLA. (Witness points out the three accused).

Q. So that you took a statement from Dr. Eugenio Sarnella?
A. Yes, I did.

Q. I show you this paper and wish you to tell the Court what it is.
A. It is the statement of Eugenio Sarnella, a statement which I took down on 25 June 1945.

Q. Before you took down that statement did you warn Dr. Eugenio Sarnella as to his rights?
A. What rights?

Q. That he was not obliged to make a statement unless he wished to do so.
A. Certainly I did so.

Q. Did you use any threats, duress or make any promises?
A. The statement was spontaneous.

Q. Was his statement spontaneous?
A. Quite spontaneous.

Q. Was it made in your presence?
A. Yes, in my presence and in the presence of Col. Heddon and another witness who is at present absent because in the United States; his name is CPL. Barone of the U.S. Army.

Q. After he had made his statement, did Dr. Sarnella read it?
A. Yes he did.

Q. And did he sign it in your presence?
A. Yes, he did.

Q. I ask you to look at the signature and tell me whether it is his.
A. Certainly it is his signature.

1305

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

The statement is shown to Defense Counsel. Prosecution introduces statement as evidence. No objection from the Defense. Statement of Dr. Sarnella dated 27 June 1945 is received in evidence and identified as Ex. A. The Italian original is read aloud by the Court interpreter. Prosecution offers and English translation of the statement to be read aloud by the Court interpreter. Copies of the English translation will be offered to the Court as soon as possible, none being available at the present time.

DIRECT EXAMINATION (continued).

Q. I show you this paper and I ask you to tell the Court what it is.
A. It is the statement of Attilio Sarnella, statement which I took down on 27 June 1945.

Q. Was it taken in your presence?
A. I myself took it down in writing.

Q. Before making the statement did you warn Attilio Sarnella as to his rights?
A. Certainly I did.

Q. Did you make him any promises?
A. Of what kind?

Q. Of any kind.
A. No I didn't.

Q. Did you use any threats against him?
A. None at all.

Q. Was the statement given of his own free will?
A. Voluntarily and spontaneously.

Q. After making his statement did the accused read it?
A. Certainly, before signing it.

Q. Was it signed in your presence?
A. Certainly, in my presence and in the presence of Col. Heddon, Cpl. Barone, and I believe Capt. Hobbs, but I am not sure about the presence of the latter.

PROSECUTION introduces statement as evidence. No objection from Defense. Statement of Attilio Sarnella, dated 27 June 1945, is received in evidence and identified as Ex. B. The Italian original is read aloud bythe Court interpreter. Prosecution offers an English translation of the statement to be read aloud by the Court interpreter. Copies of the English translation will be offered to

1306

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

the Court as soon as possible, none being available at the present time.

Recess till 14:00 hrs

DIRECT EXAMINATION (Continued).

Q. Doctor, did you take a statement from the accused Lo Porto?
A. Yes, I took a statement from Lo Porto Dante.

Q. Look at this paper and tell me what it represents.
A. This is the statement of Lo Porto Dante made on 9 June 1945. The statement was taken down by me in the presence of Col. Hallon, Major Saunders of S.I.B., the interpreter was always Cpl. Barone.

Q. Is this the statement made by Capt. Lo Porto?
A. Yes, it is.

Q. Was it taken in your presence?
A. Yes, I said that I myself typed it.

Q. Before this statement was taken did you warn the accused as to his right to make or not to make a statement?
A. Certainly I did.

Q. Was there any force or duress used in order to get that statement?
A. No, it was spontaneously made.

Q. Was it voluntarily made?
A. Yes, voluntarily.

Q. I ask you to look at the signature and tell whether or not Lo Porto signed it.
A. Lo Porto certainly signed it after reading it.

Q. Did this happen in your presence?
A. Yes, in my presence and in the presence of Cpl. Barone, Colonel Hedon and Major Saunders.

PROSECUTION introduces statement in evidence. No objection from the DEFENCE. Statement of Lo Porto Dante, dated 9 June 1945 is received in evidence and identified as Ex. C. The statement is read aloud by the Court Interpreter both in Italian and in English. 41

DIRECT EXAMINATION (Continued)

Q. During your investigation did the question arise as to whether

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

Comm. Sacnella knew who Lo Porto was?
A. Yes, but it arose later on.

Q. Will you explain to the Court how this question arose?
A. Yes, because it seems that at first Lo Porto had stated he had been introduced to Carnella as Captain of the Schooner "Invidiato".

Q. Then Lo Porto is said to have been introduced to Carnella as the Captain of the "Invidiato"?
A. Yes.

BY THE COURT.

Since in the charges we have two accused Carnella I wish Carnella Eugenio to be mentioned as Dr. Carnella and the other only as Carnella.

DIRECT EXAMINATION (Continued).

Q. During your interrogatory of Dr. Carnella were you informed that Lo Porto had never gone to Dr. Carnella's house?
A. Dr. Carnella said he did not know Capt. Lo Porto.

Q. And did also Dr. Carnella in his statement say these words: "I never had any contacts with masters of schooners in my house"?
A. Certainly he said so.

Q. As a consequence did you accompany Lo Porto to Dr. Carnella's house?
A. I did not accompany him but I know he was accompanied there by Col. Haddon and Cpl. Barone.

Q. Can you tell us any details as to this phase of the investigation?
A. I recall quite distinctly that I was told by Cpl. Barone that Lo Porto showed a perfect knowledge of the location of Dr. Carnella's house; not only that but he also showed he had a perfect knowledge of the various rooms of that same house. I even remember that before going there he made us an approximate description of Dr. Carnella's house.

Q. Did he make a drawing of it?
A. No, he made a verbal description.

Q. Can you recall whether or not he said anything respecting the furniture and the position of the various pieces of furniture in the house?
A. I remember that he told us the position of a little drawing room and I seem to recall that he said it was to the right when you enter the house. He told us also that, on entering the house a maid servant opened the door. We asked him how it was that he understood her to be a maid servant. He answered: " Because she came from the direction where the kitchen was ".

1308

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

Q. Can you tell us whether the description of the house and of the furniture of the rooms was a precise description?
A. Yes, it was rather precise. He showed a good knowledge of the different rooms of the Barnolle house.

Q. As a result of this investigation was another statement taken from Lo Porto?
A. Yes.

Q. I show you this paper and I ask you whether it is the statement in question.
A. Yes it is just that one.

Q. Did you warn Capt. Lo Porto before taking down this statement just as you did for the previous statement?
A. It is always our custom to warn people before questioning them.

Q. And in this particular instance did you issue that warning?
A. Certainly I did.

Q. Was the statement made in your presence?
A. Yes, it was.

Q. Was it read and signed by Capt. Lo Porto?
A. Yes, it was read and then signed.

Q. Please will you look at the signature and tell us whose signature it is?
A. Yes, it is Capt. Lo Porto's signature.

PROSECUTION offers statement in evidence. No objection on the part of the DEFENCE. Statement of Lo Porto Dante, dated 27 June 1945 is received in evidence and identified as Ex. D. Statement is read aloud in English and in Italian. Prosecution will supply the Court with copies of the English translation as soon as possible.

DIRECT EXAMINATION (Continued).

Q. Upon my request did you again question Capt. Lo Porto?
A. Yes, I did.

Q. Do you recall when this took place?
A. Yes, I believe one month ago, but I cannot specify the date. 413

Q. I show you this paper and ask you whether or not this is the statement you took on that occasion.
A. Yes, that is the statement.

Q. Can you tell us when it was taken, I mean as to the date?
A. Yes, on 8 December 1945.

1309

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

Q. Was it spontaneously made by Capt. Lo Porto?
A. Yes, spontaneously and voluntarily.

Q. Without any threats or menaces?
A. No, none.

Q. Was it taken in your presence?
A. Yes, and in the presence of Vice Brigadier of P.S. Capuozzo Vincenzo and Brigadiere of CC.RR. Sestri Giorgio, who is here present.

BY PROSECUTION

Brigadiere Sestri Giorgio is here in the Courtroom because the PROSECUTION is not going to use him as a witness.

Q. Did Capt. Lo Porto read the whole statement before signing it?
A. Yes, certainly; he read it over many times and read it very carefully.

Q. Did he put his signature on each page?
A. Yes on each page.

Q. Will you please look at the signature on each page and tell the Court whether or not that is Capt. Lo Porto's signature?
A. Yes, it is Capt. Lo Porto's signature.

Q. Do you remember whether Lo Porto after making his statement said anything else to you?
A. Yes. He showed himself quite satisfied for having made it because the statement fully answered to the truth and therefore his conscience was at ease.

Q. Do you remember whether he said anything else?
A. No, I don't remember.

Statement is introduced in evidence. No objection on the part of the Defense. Statement is received in evidence and identified as Ex. "L". Statement is read in Court both in English and in Italian.

10 minutes recess.

CROSS EXAMINATION (for Sarnella Eugenio). 411

Q. Since various statements have been taken, may I ask whether their chronological order is as follows? The first man to be questioned was Lo Porto on 3 June 1945.
A. Do you mean the first of the accused?

Q. Yes, Was Lo Porto the first person questioned?

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

A. No, Lo Porto was one of the last.

Q. When did the investigation start?
A. I believe during summer 1945 or Spring 1945. The investigation was then interrupted because Col. Hedden was often compelled to leave on other services.

Q. When was Lo Porto arrested?
A. I believe on the same day he made his statement or the day before. Lo Porto was apprehended in Sicily and was then taken to Naples, therefore on the same day he was arrested or the day before.

Q. Was Lo Porto questioned on 3 June?
A. That is the date of the statement, Ex. C. I cannot state the date he was arrested. I asked the Carabinieri at the place where LO PORTO had his residence to apprehend him and therefore several days had to pass before he arrived at Naples.

Q. Therefore when Lo Porto was first questioned on 3 June he was under arrest?
A. No, he was not under arrest. He had been apprehended in Sicily and had been accompanied to Naples to our office.

Q. Did you say the questioning was made in the presence of Col. Hedden, another officer and the interpreter Barone?
A. Yes.

Q. I have the impression, which I am confirmed, that those were interrogatories, but it seems on the contrary, from the way they are taken, that they were voluntary statements.
A. Certainly. The statements were voluntary. The statement represents what Lo Porto answered after he had been informed of the matters upon which Col. Hedden wanted to question him, that is about what questions Lo Porte was to inform him and make a statement.

Q. All right. Lo Porto then was in Sicily on his own business, he was taken to Naples and brought where?
A. To the Provincie Building, where the Public Safety Office is situated.

Q. How was Lo Porto informed of what Col. Hedden wanted to know from him?
A. Lo Porto certainly did not know English nor Col. Hedden understand Italian, therefore we had recourse to the help of Cpl. Barone.

Q. Then Cpl. Barone asked some questions, those questions which Col. Hedden was not in a position to do?
A. Yes.

Q. We are therefore in the presence of one who asks questions and another who answers them?

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

A. It is not the case of questions and answers as you can notice in the last interrogatory. Instead Col. Hedden through Barone stated what he wanted to know from De Porto and this latter answered.

Q. In any case it is right to say that De Porto knew he had not come to Naples on a tour. He was, shall I say, in a preliminary state of arrest, therefore I ask myself the value of that qualification of "spontaneous" given to the statement.
A. I repeat that De Porto was not under arrest. He had been accompanied to our office.

Q. Where did he sleep, where did he lodge during those days he spent in Naples?
A. After the interrogatory I believe he went to the Questura.

Q. Did he remain there?
A. I believe so. Upon the results of his interrogatory he remained at the Questura.

Q. Upon his arrival at Naples where was taken to?
A. He went directly to our office.

Q. Alone?
A. No, he was accompanied.

Q. By whom?
A. I have already stated that the Carabinieri apprehended him in Sicily.

Q. The C.C.?
A. Yes.

Q. Let us proceed. When was Attilio Carnella arrested?
A. I cannot specify the date. It is a matter of a notation.

Q. But I want to have the question of the dates very clearly and exactly before the Court.
A. Certainly. As soon as De Porto and Carnella arrived at Naples they were immediately questioned.

Q. Did they come together?
A. No, they didn't.

Q. When was Mr. Carnella arrested? 403

By the Court.
This is to be found in the records of the Court

CROSS EXAMINATION (Continued).

Q. Attilio Carnella was questioned on 27 June and I am of the opinion

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

that he was arrested on 27 June. Do you remember it?
A. Does the Avvocato know where Attilio Carnella was arrested?

Q. Even if I knew it I wouldn't tell you it.
A. Therefore he did not come by plane but by the usual means of transports

Q. But was the office which had issued instructions about Carnella Attilio's apprehension informed about it?
A. I cannot answer because the instructions about Carnella Attilio's apprehension were issued through the Questura and the Questura was informed when it was effected.

Q. In any case, when Attilio Carnella was questioned he was in the condition as Le Porta, that is, he had been apprehended and therefore in a condition of reduced liberty.
A. I don't believe so.

Q. Was he free?
A. But his will was not being imposed upon, therefore he had the faculty of freely stating whatever he liked.

Q. I didn't say that he was not free to say anything he liked but I said that he was almost under arrest.

A. He had been apprehended, which is different.

Q. Also as regards Attilio Carnella, the answers given by him to Col. Seddon's question, through the interpreter Cpl. Parone, are stated to be spontaneous. Now let's go on to 27 June 45. When did you question on that date?
A. If I am not mistaken, I believe Le Porta was questioned a second time.

Q. No, on 25 June we have a very important interrogatory and it can be but Dr. Carnella's. Have you been a Commissario of P.S. in Naples for many years?
A. I have not been in Naples during all my career, but I have been in Naples several years.

Q. Was Dr. Carnella completely unknown to you?
A. He was completely unknown to me. I never had any acquaintances in maritime circles nor had at any time the occasion to interest myself about him.

BY THE COURT.

403

Avvocato, you said: Did you know Dr. Carnella ?" Will you please specify the date and time you mean. The difficulty is that you are following the chronological order of facts but the Court cannot follow you. Do as the PROSECUTION does: if you wish to refer

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

to the exhibits in the case, please, quote the identification letter otherwise I will not be able to understand your point.

CROSS EXAMINATION (Continued).

Q. Was Dr. Sarnella questioned on 25 June?
A. Yes, if that is the date on his statement.

Q. Where was he questioned?
A. At Public Safety Office, Allied Commission, Provincia Building.

Q. Was at that time Dr. Sarnella either apprehended or arrested?
A. He had been accompanied directly to Col. Haddon, at Public Safety Office.

Q. On that same 25 June was a search made at Dr. Sarnella's house?
A. I don't remember the date but a search was made at Dr. Sarnella's house.

Q. Before or after his interrogatory?
A. I don't remember.

Q. The search at Dr. Sarnella's house was made on that same day. Who made it?
A. Col. Haddon and Capt. Hobbs.

Q. Weren't you present?
A. I accompanied them but didn't personally make the search.

Q. Did you accompany them to apartment?
A. Yes, I did.

Q. Now, let's proceed to 27 June. On 27 June was Sarnella Attilio questioned?

BY THE PROSECUTION.

Are you making a statement or putting a question?

Q. It is a question. Did Mr. Attilio Sarnella ~~[illegible]~~ make a statement on 27 June?

BY THE PROSECUTION.

The statements have been offered to the Court by the Prosecution. The advocate has only to refer to them.

401

CROSS EXAMINATION (Continued).

Q. Referring to Ex. D, that is Lo,Porto's statement, was that statement made in your presence?
A. Yes it was.

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

Q. Was it taken before or after the visit you made with Lo Porto to Dr. Sarnella's house?
A. I stated just now that I don't remember the date.
Q. Did you take Lo Porto to Dr. Sarnella's house before or afterthe statement was made?
A. I stated just now that I didn't go to Dr. Sarnella's house to accompany Lo Porto there, therefore I cannot answer this question. Col. Haddon and Cpl. Barone went there.
Q. But you had been there before because the search in Sarnella's house had taken place on 27 June .
A. I don't remember the date of the search; however, it the avvocato says it took place on the 25th and the statement is dated 27th the consequence may be deduced. I don't know who informed the Avvocato that the search took place on the 25th.
Q. A search is an act of a certain importance. Has a report been made about it?
A. I don't know.
Q. When the search was made by Col. Haddon.

BY THE PROSECUTION .

May it please the Court, the Prosecution wants to make it known that it never mentioned a search made at Dr. Sarnella's house. The Prosecution mentioned only a visit and only in order to ascertain whether Capt. Lo Porto was familiar with Dr. Sarnella's house.

BY DEFENSE

I recall the Court's attention to the fact that the witness has admitted that a search took place.

BY PROSECUTION

We want to point out to the Court that the Prosecution never asked in its direct examination whether the witness either alone or in company ever went to make any search. The avvocato must know that it is forbidden to cross examine upon an argument which has not been brought forward by the Prosecution.

406

BY DEFENSE

I asked a question and received an answer.

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

BY THE COURT.

The Court has listened with the greatest attention to the testimony given by the present witness in Direct examination and heard his deposition just like anybody else in the Court. The Court does not want to limit the Defense but if he asks questionsup points which have not been raised by the Prosecution, that does not help, it is not necessary.

BY DEFENSE

The argument I insist on tends to clarify this circumstance: when the witness was present or was writing down under Lo Porto's dictation the statement dated 27 June, Ex. D, which makes a description of Dr. Parnella's apartment, Col. Haddon and the Commissario who is the present witness, had already been to the above apartment and knew that, on ringing a bell the entrance door was opened and was opened by a maid servant and that then there is a drawing room a kitchen etc. I wanted to know whether, when Lo Porto made that kind of police report about Dr. Parnella's apartment, he had already been taken to that place by them or whether he made it afterwards.

BY PROSECUTION

I don't know whether the Avvocato is Parnella's Counsel or a witness in the case. He makes conclusions before the Court on facts upon which the witness did not testify.

BY THE COURT

The Court takes the testimony of the witness without caring about the eventual testimony given by the Counsel because the Court has 25 years of experience of Courts.

BY DEFENSE

I asked some questions and to some of them I received answers. The Court will make whatever use of them it likes. And now two more questions.

A. After the interrogatory and the statement made by Dr. Parnella on 25 June (Ex. A) some facts were affirmed inasmuch as Dr. Parnella specified what time he left and what time he returned home. Did you verify, did you investigate to establish whether it was true or not?

403

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

A. More or less those were Dr. Carnella's office hours.

Q. But did you verify the other facts, such as the information as to the Registry and the details of his spontaneous statement? Did you verify everything you said?

A. Later on we had the occasion to ascertain that in fact everything Mr. Carnella said corresponded to the truth inasmuch as mail is received by the Registry Office.

Q. The matter about the mail is very interesting but there are other things he stated, for instance, that he never had any personal contacts with captains of schooners and that he had never known Captains Cieli, Palumbo and all the rest of them.

A. What do you then wish to know?

Q. Whether you made any enquiries to ascertain whether what Carnella had stated did or didn't correspond to the truth.

A. I don't know whether Dr. Carnella prior to these investigations knew Cieli and Palumbo. May be he knew them as Director of "COGEMA". I don't know.

Q. I don't understand the difference you are drawing, but let's proceed. Were you attached to Public Safety Office?

A. Yes, I am Liaison Officer between Showgeatura and Public Safety Office, Allied Commission.

Q. Do you know whether that Office made a statement on newspapers trying to collect denouncements?

A. I remember that Col. Hedden had a notice printed on some of the town papers- I don't remember on what papers - inviting people to report eventual complaints.

Q. Do you remember how the notice was worded?

A. No I don't.

Q. Was the notice issued both in English and in Italian?

A. I believe so.

Q. May I show the witness one of the notices I was speaking about a moment ago?

BY THE COURT: Yes you can.

Q. Were you surprised about this kind of publicity?

BY THE COURT: It does not make the slightest difference whether he was surprised or not.

Q. Is this the notice printed on newspapers?

A. Yes, it is.

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

Q. Did people crowd into your office?
A. People were invited to go straight to Col. Hedden's office which was separated from mine .

Q. Following the publication of the notice on the newspapers and the eventual coming of visitors to your office did you receive instructions to question people about declarations they had made?

BY THE PROSECUTION.

That instructi ns do you mean?

Q. I am alluding to the instructions he was to receive from Col. Hedden because the witness stated he depended from the latter officer.
A. I was an investigator at the disposition of Col. Hedden. Col. Hedden used to investigate on his own account.

Q. But did you receive any?
A. Yes.

QUESTION (for Attilio Taruffi)

Q. Do you remember on what date Lo Forte was accompanied by Col. Hedden and Cpl. Barone to Eugenio Taruffi's house at Corso Vittorio Emanuele?
A. I said I couldn't remember the date.

Q. But you remember that on that occasion you didn't go along with them?
A. Yes, I didn't go.

Q. Therefore you weren't present?
A. No, I wasn't.

Q. Therefore, not having been an eye-witness, you cannot state whether Lo Forte identified the house, rang the doorbell or any other circumstances connected with that identification?
A. No, personally I cannot.

Q. You said that Lo Forte had made a description of the house. When did he make it?
A. It may surely be ascertained from the date of interrogatory.

Q. So that he made a description of the house in his statement?
A. He made a description of the house both to us and in his statement.

Q. On 27 June, when he made a description of the house, were you in

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

a position to ascertain the exactness or not of the description of the house made by Lo Forte?
A. I cannot remember these circumstances.

Q. How is it you cannot remember?
A. I cannot remember whether we went to Hamelin before or after the statement.

Q. When did you go personally to r. Hamelin's house?
A. I have already stated it: I accompanied Col. Hadden and Capt. Johns.

Q. Was the description made by Lo Forte a true indication of the places which you saw?
A. I believe it was, a rather true description.

Q. Explain to the Court what you mean by the word "rather".
A. Lo Forte couldn't describe us with mathematical exactness the position of the furniture but he told us the position of the drawing room, he told us where he thought the kitchen was and, if I am not mistaken, he also mentioned some pieces of furniture.

Q. During the month of July were you attached to the same office you are at present?
A. Yes, Sir.

Q. Do you remember, upon your conscience, whether a request was forwarded personally to you from the prison, in which request Lo Forte asked to be reinterrogated by Col. Hadden?
A. I remember it perfectly well.

Q. Following that request was Lo Forte again brought to your office?
A. Lo Forte was brought into our office.

Q. Do you know whether on that occasion Lo Forte was questioned by Col. Hadden and Cpl. Barone?
A. I remember telling the Colonel that Lo Forte wished to speak to him; then I don't know what happened. I seem to remember that Lo Forte was not questioned.

Q. The witness must please answer what is within his knowledge, therefore I ask him: " Can you affirm that a letter was sent from the prison by Lo Forte and addressed to Col. Hadden requesting to be reinterrogated?
A. Yes, I can.

Q. Do you affirm also that Lo Forte was brought from the prison to the Provincia Building?
A. Yes, I do.

404

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

Q. And that you handed him over to Col. Heddon to be interrogated?
A. I reported the matter to Cpl. Barone who, on his turn, spoke with Col. Heddon. I don't know what answers Lo Porto gave to Col. Heddon.

Q. Did all this happen during the month of July 1945.
A. I don't remember the date but I remember these details quite distinctly.

Q. Is the letter addressed from the prison to your office still in your office records?
A. I don't know.

Q. Could you try to find it?
A. I can try.

A. The DEFENCE then begs the Court to give instructions to the witness about this letter and, in case it is found, to put it at the disposition of the Court.

BY THE COURT

The Court orders you to find the letter and to put it at the disposal of the Court and the Court then will see what to do with it and will listen to what the Avvocato has to say about it.

NO CROSS EXAMINATION FOR LO PORTO.
The witness, upon request of the Prosecution, may be temporarily excused but he must keep himself always at the disposition of the Court because he might be recalled.

Trial adjourned to 13 February 1946, at 09:30 hrs.

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13 February '46 (09:30 hrs

The President opens session.

Witness Doctor G. ALIOCCA is recalled by the Court upon request of the Counsel for Lo Porto.
The President reminds witness he is still under oath. 401

CROSS EXAMINATION.

Q. Lo Porto made his last statement on 3 December 1945. Do you remember that statement?

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

A. Yes, I do.

Q. Can you tell us whether, prior to making this statement Lo Porto was transferred from Poggioreale Jail and kept in a room at the Questura for a period of 2] days?
A. I have no personal knowledge. I know however that Lo Porto was questioned also at the Questura. I don't know for how many days he was kept there, at the Questura.

Q. I didn't ask you whether he was also questioned or not at the Questura. I asked you whether prior to the statement given at the Legal Office you knew that Lo Porto was transferred from Poggioreale Jail to the Guard-room of the Questura and kept there for 2] days.
A. I have no personal knowledge of it.

Q. Did you hear anybody say so? Did Lo Porto tell you so?
A. Yes, Lo Porto mentioned me that circumstance without specifying the number of days or the dates.

CROSS EXAMINATION (for Ornella Attilio).

Q. When Lo Porto was questioned on 8 December, did you send anybody to fetch him from the Questura?
A. No, I found him at the Legal Office.

Q. How did you know he had come from the Questura?
A. A little while I stated to Avv. Benevantano that Lo Porto mentioned to me the fact that he had been transferred to the Questura.

Q. But you knew that Lo Porto was at Poggioreale?
A. Yes, I knew he was at Poggioreale, it was known.

Q. Did Lo Porto tell you he had been brought over from the Questura or from Palazzo Pepe, at Piazza Municipio?
A. The circumstance about Palazzo Pepe is new to me, I hear it now for the first time. I know the existence of Palazzo Pepe at Piazza Municipio because of the fact that in the building there is a very well-known firm dealing in textiles.

Q. So that you know Palazzo Pepe only because of the fact that a textile firm is situated in those premises?
A. Yes and I believe that recently an American or British office, is any case an Allied office, has moved there.

Q. But you repeat to the Court that you have been for 7 years attached to Public Safety Office, Provincia Building, as liaison

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

Officer?
A. Yes, I am liaison officer between the Italian and the Allied Civil Police, not to be mistaken for Military Police.

Q. So that you don't know whether a Guard-room of the Allied Police is situated in those premises?
A. I don't know about that.

Q. When you met Lo Porto at the Provincia Building did you ask him: Who brought you here?
A. I didn't ask him specifically so but in the course of our talk he made me understand that he had come over from the Questura. I didn't however interest myself about the place he was coming from.

Q. In short, was he accompanied by Italian Carabinieri or by Allied Police?
A. By Carabinieri.

BY DEFENCE for Carnella Eugenio.

May it please the Court, may I try to clarify the point in question because the answers of the witness have not been precise. Counsel for Lo Porto said that Lo Porto from Poggioreale was transferred elsewhere; Counsel for Attilio Carnella says that the place Lo Porto had been transferred to was more or less a prison. Under Italian Prison Regulations a man cannot be moved from a prison without first his transfer being recorded in a special Register. The Register not only shows when the detainee left the prison but also the place he was moved to; it also shows something which is even more important, that is the qualification of the authority who ordered the transfer. Might I ask the Court to have an enquiry made with the Director of Poggioreale Prison in order to know who was the authority that ordered Lo Porto's transfer.

BY PROSECUTION.

May it please the Court, I don't know what is the trend of the Counsel's questions, but I greatly doubt they are material to the issues in this case. I can't understand what Lo Porto's transfer from one place to another may have a bearing with the accusations against him, even assuming he was moved from one place to another.

BY DEFENCE for Carnella Eugenio.

I didn't put the question to the witness myself. I listened as it

13221

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

is my duty to do so, since the answers given by the witness have not been very clear, moved by a sincere wish of helping the Court in the search of the truth, I tried to suggest to the Court a way to clear up this matter once for all.

BY THE COURT.

The Court has listened to the testimony with the greatest care but, frankly, up to this moment, the Court has not succeeded in discovering what bearings the questions addressed by the defense may have on the charges under which the accused is here tried. The Advocate may be is not thoroughly acquainted with the fact that what the Court wishes to determine is whether or not the present accused are guilty of the charges raised against them. The Court wishes to give the defense every opportunity of introducing any possible defense, but it is certainly not the wish of the Court to tell them how they must present their case. Let us assume that the accused in Porto was first detained at Portoferaio Jail and then from there was moved to Palazzo Pepe and then to Marciana. What bearings has this on the charge of accepting bribes? Now, Counsel, under the Anglo-American system of Law, because of the fact that 12 witnesses say that a thing is so and so and only one witness says it is not so, we are not compelled to believe the 12 witnesses if we believe the other one told the truth. When a witness makes his testimony, the Court not only hears what he has to say but also notices the way he says it and, in consequence of the human experience as a Judge and of having tried thousands of cases, applies a rule of measurement to his testimony and to all the evidence given. In order to determine whether the defendant are guilty of the charges we must of necessity deal with the matter of which they stand accused, that is the charges drawn up in the charge sheet. The Court is not interested in collateral or secondary issues, for instance whether a man has flat feet or halitosis, this cannot help the Court in determining whether the accused is guilty of the charges ascribed to him. We allow an ample range in cross examination in order to establish and verify whether the witness is telling the truth, but we cannot proceed to explore all that is collateral because every event that happens here in Court has a chain of connection and by this we might go back to Adam and Eve. Let me put this question to the Advocate's : What are we going to gain if we obtain that information?'

336

BY COUNSEL for Attilio Bergalla.

I ask the following question of the witness : Whether he knew that

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

Le Forte, when he came to the Provincia Office had been brought from Palazzo Pepe instead of from Regina Coeli Jail. Then I asked him whether he knew that Le Forte, prior to the statement he made, had been detained 13 days at Palazzo Pepe. This circumstance is clearly connected with my case because Le Forte, prior to the statement he made on 2 December, and prior to being informed 13 days in Palazzo Pepe Guard-room, spontaneously made a written statement to Legal Office, through his Counsel.

Counsel for Defence of Le Forte state that the letter did not arrive through his Counsel.

BY THE COURT.

Counsel, you have asked the present witness whether he knew that fact and he said he didn't know. You, avvocato, it is quite impossible that he can know all the things you asked him. Your client can testify as to that. These circumstances may exist but he may also not know them, because he says he has no knowledge of them. Nothing prevents you from producing witnesses who may know them.

BY COUNSEL for Attilio Ramella.

I only wished to explain to the Court why I had addressed the two questions, not in order to waste the time of the Court with useless questions. They had a specific purpose. The witness says he doesn't know. That satisfies me.

BY THE COURT.

The other avvocato said that the witness's answers has not been satisfactorily, apparently owing to the fact that he did not prove what the avvocato wished him to prove and he asked us to do something which they must do and has asked the Court to produce evidence for them, while this is the duty of the Defence. When the case for Prosecution is over, you have the right to produce all your witnesses and have them testify to all they know. The Court does not draw any conclusions from the evidence of the Prosecution but its conclusions are drawn when both the case for the Prosecution and that for the Defence are over. As to the question where he had been detained, whether in prison or elsewhere, I don't think the Prosecution is going to take any decisive step on the matter. You simply asked the witness and the latter said he didn't know whether the accused had been detained at Poggioreale, at the

394

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

Questura, at Salvago Raggi or at the Provincia Building. Maybe your best witness as to that will be the accused himself. The Court has not the slightest wish to limit the defense. If the defense has an affirmative defense, i.e., evidence that can be proved by its own witnesses, produce this evidence without consideration what the evidence produced by the prosecution may be. The duty of the Court is that of weighing the evidence. The witness is excused [illegible] the reference as he is going to look for the letter requested by the defense.

[illegible], Carabiniere of I.G.

BY THE COURT:

Q. Were you sworn in yesterday?
A. Yes Your Honour.

Q. Do you realize that you are still under oath?
A. Yes, I do.

DIRECT EXAMINATION.

Q. What is your address?
A. My last address is c/o the Allied Commission, Rome.

Q. Will you tell the Court what your occupation is?
A. I am Carabiniere of I.G.

Q. How many years have you been a Carabiniere of I.G. or have you been following a police career?
A. 2 years.

Q. What is your actual appointment?
A. I belong to the Questura of Rome and am attached to Allied Commission.

Q. Will you tell us to what Allied Division you are attached?
A. Public Safety Division, Allied Commission.

Q. Will you tell us what your duties are?
A. I investigate cases which are entrusted to me.

Q. Are you specialized in investigative work?
A. I have performed it for many years because in the Italian Police we do everything; we have special services of first division, administrative services etc. I have handled almost everything, but most of all special and investigative work.

Q. Have you been connected with COGNA case?
A. Yes, I have.

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

Q. In what capacity?
A. Since the constitution of CODEVA, at the beginning of 1944, I made an investigation about it and sent a report to Major Richardson, at Palermo. Later on in Autumn, I made and delivered a report to Col. H. Enoch who was then Regional Public Safety Officer, Palermo. Later on, during the present winter, while I was with Public Safety Division, I was called by Legal Division to proceed to some interrogatories.

Q. At my request did you question one Attilio Sarnella?
A. Yes, I did.

Q. Will you tell the Court whether he is in now in Court and if so, will you point him out?

The witness points out accused Attilio Sarnella.

Q. Was the interrogatory of Attilio Sarnella then put down in writing?
A. Yes it was.

Q. I show you this paper and ask you whether you recognize it.
A. Yes, I do.

Q. Will you tell us what it is?
A. It is the written version of what Attilio Sarnella said.

Q. Before taking his statement down in writing did you warn Attilio Sarnella as to his rights to make or not to make that statement?
A. Yes, I did.

Q. Did you use violence, threats, promises in order to induce him to make that statement?
A. No, Sir.

Q. Was the statement spontaneous and voluntary?
A. Yes, it was.

Q. After writing the statement did you tell Attilio Sarnella to read it?
A. Yes, he read and signed it.

Q. Was that statement made in your presence?
A. Yes it was.

Q. I ask you to look at the signatures on that paper and tell us whose they are.
A. One is Attilio Sarnella's and the other is mine.

Q. Was the signature put in your presence?
A. Yes, it was.

1326

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

Prosecution offers statement in evidence. No objection from the defense. Statement received in evidence and identified for the records as Ex. F.

The Italian original statement is read aloud by the Court interpreter who then makes a verbal translation of it into English. Prosecution tells the Court that a written English translation will be supplied to the Court as soon as possible.

NO CROSS EXAMINATION for the moment.

15 minutes Recess.

1 WITNESS; PROVENZANO Giovanni, Maritime Captain.

BY THE COURT:
Q. Were you sworn in yesterday?
A. Yes, I was.
Q. Do you realize that you are still under oath and that you must tell the truth?
A. Yes, I do.

DIRECT EXAMINATION.

Q. Will you please state your address?
A. Via Torre Pali, 33 Trapani.
Q. In Sicily?
A. Yes, Sir.
Q. Will you state your occupation?
A. Maritime Captain.
Q. Are you Captain of a Schooner?
A. Yes, I am.
Q. Will you state the name of the schooner whose Captain you are?
A. San Giuseppe I.
Q. What is the tonnage of your schooner?
A. 72 tons.
Q. Will you please look at the three accused and tell the Court whether or not you recognize any of them?
A. Sarcella, the Director's brother and Lo Porto. Witness points out Attilio Sarcella and Lo Porto Sante.
Q. Is the Court satisfied that the witness has pointed out two of the accused?
BY THE COURT: Yes.

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

DIRECT EXAMINATION (Continued).

Q. Will you tell the Court on what occasion and how you met Attilio Sarnella?
A. While we were at Portici after a trip from Torre Annunziata to Gaeta with a cargo of flour.

Q. What do you mean when you say "we were"?
A. Because there was Strazzera and myself.

Q. What is Strazzera's Christian name?
A. Strazzera Enzo.

BY THE COURT.

Q. Who was on that trip?
A. Strazzera and myself. I had just come back from a trip Torre Annunziata-Gaeta and Strazzera had come from another trip. We met at Portici in the afternoon.

DIRECT EXAMINATION (Continued).

Q. Captain, where did you meet Strazzera?
A. At Portici.

Q. Who is Strazzera?
A. A colleague of mine, another Captain who is the master of another schooner.

Q. What schooner?
A. Nuova Fortuna.

Q. Did you meet Captain Strazzera at Portici?
A. Yes, both of us had just come from our trips.

Q. What did you both do in respect to Attilio Sarnella?
A. In the morning we went from Portici to Naples in order to report our schooners and be ready for another travel.

THE COURT: The Court would like to have the situation be explained.

BY THE PROSECUTION. The witness has added some details which have nothing to do with the case in question. Please answer my questions briefly and directly.

Q. Will you tell the Court when was it that you met Sarnella Attilio the first time?
A. In the first ten days of September.

Q. Of what year?
A. 1944.

Q. Was there anyone else with you at the time?
A. Capt. Strazzera.

1328

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

Q. Who is Captain Straszere?
A. A colleague of mine.

Q. Is he the Captain of a schooner?
A. Yes.

Q. What schooner?
A. Nuova Fortuna.

Q. Will you tell the Court step by step and briefly what took place between you, Capt. Straszera and Attilio Sarnella?
A. While Straszera and myself were walking together we were stopped by an unknown person who asked us whether we were Captains of Schooners. We answered we were; he asked us whether we knew Lo Porto, we answered that we did not know him. Then he told us he was Sarnella, brother of the Director of COGNA. Then, since we were going to COGNA at Piazza Garibaldi and he had an appointment with Lo Porto at Piazza Garibaldi, he told us to come with him.

BY THE COURT.

Q. What do you mean by "he told us"?
A. Sarnella Attilio.

DIRECT EXAMINATION (Continued).

Q. Who is Sarnella?
A. The brother of the Director, that's the one I know. While on our way to Piazza Garibaldi he told us that, in case we needed any help at COGNA, say, if we made him a present, he would recommend us at COGNA.

Q. Where did that conversion take place?
A. At Naples. Then we asked him what the present would be for and he answered by asking us what the voyage we desired. We then said " A voyage with a load of pozzolana for Trapani where we have our families" Then he asked us what kind of ships we had and we asked that mine was about 90 tons and Straszera about 50 tons. Then he said : " Since Provenzano has a schooner of 90 tons he is going to give me 30000 lire, and Straszera who has a schooner of 50 tons is going to give me 20000 lire. While we were discussing about this matter, Lo Porto showed up and Mr. Sarnella introduced him to us saying "This is Lo Porto". We shook hands with him and the presentation was thus made.

BY THE COURT:

Q. Which of the Sarnella brothers are you speaking of?
A. Attilio Sarnella, the brother of Dr. Sarnella. We then continued our discussion and they told us to go buy the paper and write down our applications.

394

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

DIRECT EXAMINATION (Continued).

Q. When you say "They told us" what do you mean? That Capt. Lo Forte and Attilio Carnelia, both at the same time, said the same words?

A. No, they were really said by Attilio Carnelia to us and Strausers at the same time.

Q. Tell the actual words used by Attilio Carnelia.

A. He said: " Go buy the paper and write down your applications". I then left the others and went to buy two sheets of paper for myself and Strausers at the Stationer's at Piazza Carita. As soon as we bought the paper, we sat down at the cafe at the corner of Piazza Carita.

BY THE COURT.

Q. First you said " I bought the paper", now you say "we bought the paper".

A. I bought the paper and as soon as I had bought the paper we sat down at the corner of the cafe at Piazza Carita.

Q. Now you said " As soon as I had brought the paper, we sat down" Who sat down?

A. Myself, Strausers and Lo Forte.

DIRECT EXAMINATION (Continued).

Q. What had become of Attilio Carnelia?

A. He stood at some steps' distance from us.

Q. Was he writing?

A. No, standing. We began writing down our applications while Lo Forte suggested us the best way to word them.

BY THE COURT.

Q. You say "We began". Who is "we"?

A. Myself and Strausers. I was writing mine and Strausers his: We finished writing our applications and, having completed them, we went to QUESTURA office in order to file them with the competent office.

BY THE COURT.

Q. Who is "we"?

A. Myself and Strausers. When we had filed our applications we were told to come back in the afternoon of that same day in order to hear about the result of our requests.

391

DIRECT EXAMINATION (Continued).

Q. Who told you to come in the afternoon?

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

A. Capt. Forestieri, who was in charge of the office where the petitions were filed. I believe it was Capt. Forestieri but I don't remember exactly who was there in the office because so much time has elapsed and I have not a very precise remembrance of this detail.

Q. I ask you to look at this paper and tell the Court what it represents.
A. It is the application I filed with COMINA.

Q. Is this the request you made out in the presence of Staussera, Lo Porto and Attilio Iarnalla?
A. Yes, Sir.

Q. What is that stamp on the paper?
A. It is the stamp put by COMINA when an application is granted. Maybe it is a Registry number, I don't know.

Q. Do you recognize that signature as yours?
A. Yes, I do.

Witness points out his own signature on the paper.

M. I ask the document to be introduced in evidence.

Statement is introduced in evidence. No objection on the part of the Defense. Statement is received in evidence and identified as Ex. G.

BY PROSECUTION.

May we suggest to the Court to identify the document numerically so that statements may be easily distinguished from documents?

BY THE COURT.

Q. To what purpose?
A. In order to have the statements in a file and the documents in another.

Q. How many documents have you?
A. I can't state their exact number, but more than 24.

Q. In the revision of a case it is better to have all the exhibits identified according to the letters of the alphabet since the revision is thus easier. We shall sign them A, B, C, etc. and, if necessary, we shall continue with A1, A2, B1, B2, C1, Yes.

Exhibit G is read aloud in English and in Italian by the Court Interpreter.

DIRECT EXAMINATION (continued).

Q. If I remember well, the last thing said by the witness was that

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

at the office he was told to come back during the afternoon in order to know whether or not the application had been granted.

A. Yes, Sir.

Q. Go ahead.

A. We left COGENA and found Sarnella Attilio and Lo Porto waiting for us.

BY THE COURT.

Q. You said "we left". Who left?

A. I said "we" because from first to last we were always together, Straszera and myself.

Q. Then, please, when you speak say: myself and Straszera did so and so."

BY THE COURT.

Q. Had Lo Porto and Sarnella disappeared?

A. No, they were waiting downstairs.

DIRECT EXAMINATION (Continued).

Q. When you and Straszera made up your applications did Lo Porto and Sarnella Attilio accompany you to COGENA office?

A. I cannot give a definite answer after such a long time but I believe they didn't.

Q. When you and Straszera left Attilio Sarnella and Lo Porto, did you make an appointment with them?

A. Yes, for the afternoon.

Q. Where were you to meet them?

A. At Piazza Carità.

Q. When you say Piazza Carità do you mean a particular spot in the Piazza?

A. Yes, at the cafe.

BY THE COURT.

Q. Do you mean the cafe at the corner which you have mentioned before?

A. Yes, where we wrote down our applications.

DIRECT EXAMINATION (Continued).

Q. Did you and Straszera go in the afternoon to COGENA office? 3867

A. Yes, we did.

Q. What did you and Straszera do at COGENA office?

A. Do you mean in the afternoon?

Q. Yes.

1332

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

Q. Yes.
A. We were told that our applications had been granted.

Q. Can you tell us who said so?
A. The Schooners Office.

Q. What did you and Strazzera then do?
A. The Schooners Office sent us to the Commercial Department, to Dr. Accardi, I believe, but I don't remember exactly his name. He made us draw up our contracts of sub-hiring.

Q. Then what did you and Strazzera do?
A. As soon as our contracts of sub-hiring were made, Dr. Accardi told us to go to the cashier and dimbourse 30000 lire as advance payment on the sub-hiring.

Q. Did you pay it?
A. No, on the following day.

Q. Did you and Strazzera leave Cogema office?
A. Yes, we were told to come on the following morning.

Q. But did you and Strazzera receive formal assurance that your petitions had been received by Cogema office?
A. Yes, we did.

Q. And that they had been approved by Schooners Control Board?
A. We don't know about it. The employee in charge told us that our petitions had been accepted, therefore we could go to the Commercial Department and draw up the contracts of sub-hiring?

Q. What happened when you and Strazzera left Cogema office?
A. As soon as we left Cogema office we went downstairs and found Attilio Sarnella and Lo Porto.

Q. Now tell us step by step, and in detail, what happened between you, Attilio Sarnella, Strazzera and Lo Porto.
A. As soon as we left Cogema we were told to come on the following day because Sarnella and Lo Porto would wait for us for the money.

Q. What money?
A. The money relative to the promise we made them at the time Attilio Sarnella said to us :" If you make us a present I can help out with the petitions". 384

BY THE COURT.
Q. Who are you speaking of?
A. Sarnella

Q. Which Sarnella ?
A. Attilio

1333

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

Cease to 14:30 hrs.,

DIRECT EXAMINATION (Continued).

Q. Tell what happened when you and Strazzera met Attilio Jarnella and Lo Porto in fron of Cogena?
A. At Cogena we were told to come on the following morning. Then Strazzera and myself we made an appointment with those two to meet all four of us on the following morning. On the following morning we went up to Cogena.

Q. Who went up?
A. Strazzera and myself.

BY THE COURT.
Q. On the following morning?
A. Yes, Sir.

DIRECT EXAMINATION (Continued).

Q. Where did you go?
A. To Commercial Department in order to collect the contract of sub-hiring. As soon as we got it, we went to the Cashier of the Commercial Department and disboursed 50,000 lire an advance money on the contract of sub-hiring.

Q. We must now go back. What time was it when you and Strazzera met Attilio Sarnella the first day?
A. It must have been nine o'clock, a qunrter to nine.

Q. What time was it when on that same day you and Strazzera went to Cogena office?
A. The offices opened at 10 o'clock. We went at about 10 or 10:30.

Q. This was when you and Strazzera brought your applications there?
A. Yes, Sir.

Q. What time did you and Strazzera go back on that afternoon to Cogena offices?
A. At about 3,30 in the afternoon.

Q. What time on that afternoon did you leave Cogena offices?
A. Soon after, half an hour, one hour later; I cannot specify the exact time after such a long time.

Q. I believe you have reached the point when you said that you and Strazzera made an appointment with Sarnella Attilio and Lo Porto to for the following day.
A. Yes, Sir.

Q. What happened then?

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

A. As soon as we had disboursed the money, we collected our contracts of sub-hiring and went to the Schooners office where the permits were released.

Q. All this then happened on the following morning?
A. Yes, and as soon as we got our permits we went downstairs.

Q. You mean that you and Strazzera went downstairs?
A. Yes, myself and Strazzera.

Q. And then what happened?
A. We went downstairs and walked towards Mr. Attilio Sarnella.

Q. Where was he?
A. He was waiting for us at the cafe of Piazza Caritè.

Q. What time was it approximately?
A. Offices open at 10. It might have been 11 o'clock in the morning. Myself and Strazzera went towards Sarnella, put our hands in our pockets and said to him: "Here is our present as agreed".

Q. Whom did you say so?
A. First I said is to Attilio Sarnella and he answered : " Give it to Lo Porto because it is the same thing".

Q. And then?
A. Sarnella remained at some steps' distance.

Q. Who?
A. Sarnella Attilio.

Q. Where was Capt. Lo Porto?
A. He handed him the money.

Q. In your previous statement you said that Attilio Sarnella was waiting for you at the cafe.
A. No. Lo Porto and Sarnella were together at the cafe waiting for us. When we said to Mr. Sarnella "Here is the money, as agreed", Sarnella said: "Give it to Lo Porto because it is the same thing" and he went a few steps distance. When we had delivered the money to Lo Porto we greeted each other and went away.

Q. On that occasion how much money did you give to Capt. Lo Porto?
A. For my part I gave 30,000 lire.

Q. How much did Capt. Strazzera give?
A. I believe he gave 20,000 lire.

Q. After that day did you see Capt. Strazzera again?
A. No, I only saw him in Rome.

385

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

Q. Will you tell us why you were willing to give 30,000 lire for this matter?
A. Because it was impossible to go home and I had urgent need to go home on family matters.

Q. Why do you say it was impossible to go home?
A. Because with the requests we filed at Cogena we were never allotted the ships for the owner's exclusive use.

Q. Will you explain what you mean when you say that it was impossible to get the schooners for the owner's exclusive use?
A. Because when we filed applications in order to be repatriated to Sicily or to our own native place these applications were never granted and we were not allotted the schooners.

Q. Who had never been allotted the schooners?
A. I never had it allotted.

Q. Who refused the applications?
A. I don't know. The application went through regular channels to the Director and was rejected.

Q. Are you speaking about your applications?
A. Yes, about my application.

Q. How many times did you file such applications?
A. I filed it only once, when I had my ship in need of repairs and I was granted it, but so many other people were refused their applications.

Q. When you say "The Director," who do you mean?
A. I mean Eugenio Sarnella.

Q. Do you know, have you any personal knowledge, that applications for ships for the owner's exclusive use had been made and had been refused?
A. I don't have any personal knowledge, but I know that all over Cogens there was a feeling of discontent.

Q. When you met Attilio Sarnella the first time did you explain him about your wishes to have a permit for the owner's exclusive use?
A. Yes, when he told us that he could help out our petitions.

Q. Did he tell you how he could help out your applications? 321
A. He simply said to us: "I can help out yours applications at Cogena". He didn't tell us when and how he would do it.

Q. Will you tell us whether Attilio Sarnella mentioned his brother's name?
A. With me he didn't.

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

Q. Didn't he tell you who he was?
A. He told us he was the brother of Sarnella, the Director of Cogena.

Q. When you and Strazzera made out your applications did Lo Porto dictate you the form to be used?
A. Yes, he did.

Q. And the permits you had requested, were they granted to you?
A. Yes, of course.

Q. And as a result, did you make a voyage on your own account?
A. Yes, I did.

Q. What kind of cargo did you transport on that voyage?
A. Pozzolana (sandstone).

Q. How many tons sandstone did you transport?
A. About 90 tons.

Q. And from where to where did you go?
A. From Monte di Procida to Trapani.

Q. The question I am asking now does not seem pertinent to the records but its importance will be shown later on: How much did you pay that pozzolana per ton?
A. 100 lire per ton.

Q. How much did you sell it at Trapani?
A. 1500 to 1700 lire per ton at the warehouse.

Q. Now let's go back. When you gave the money to Lo Porto did the latter say anything?
A. He only told me that he was lodging at Torre del Greco in the house of a relative of his.

Q. Did he say anything about accepting the 50,000 lire?
A. No, he knew about them.

Q. What do you mean by "he knew about them"?
A. Because he too had been present at the close of pur talk with Attilio Sarnella.

Q. Do you mean that he had been present when the agreement was made?
A. Yes, at the close of the talk.

Q. With the Court's permission I would like to explain that this is the end of the first deal, now we have another completely different one and Prosecution has no objection whatever to the Defense crossexamining the present witness as to this first deal. Prosecution will then proceed on to the second deal. If the Court, however, so wishes, I shall proceed on this second deal.

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

BY THE COURT.
The Court leaves it to the Defense to decide whether they wish to cross-examine the witness now or when Direct Examination is ended. The Court wishes to explain that, according to the regulations in these Courts, Prosecution must first end the Direct Examination and then leave the witness at the disposition of the Defense for cross examination. Prosecution has just now finished its presentation and is ready to begin another.

Defense Counsel state that they prefer to cross examine at the end of Direct Examination.

BY PROSECUTOR.
The reason why I had made the suggestion is because Achille Zarcalla is not involved in the second deal.

BY THE COURT.
It makes no difference.

DIRECT EXAMINATION (Continued).

Q. After this first deal did you make any other deal with anybody else?
A. With Lo Forte.

Q. Do you remember approximately the date of this second deal?
A. The first half of November 1944.

Q. Will you tell us step by step what transpired between you and Lo Forte relative to this deal?

A. I happened to be in Castellammare in the first fortnight of November and since my father was ill at Trapani and I needed go home, I remembered that Lo Forte was staying at Torre del Greco with the family of his cousin Emanuele Ferraro near the Circumvesuviana railway. I went to Torre del Greco to the address of that family and, as soon as I arrived there, I asked after Lo Forte. His relatives told me that he no longer lived at Torre del Greco but had moved to Hotel San Gottardo, Naples, but that his mail, however, was still addressed to Torre del Greco, to the care of that family, and that from time to time he went to collect it at Torre del Greco. In the hope that he might show up during that day at Torre del Greco I left there a note for him, to the effect that I wished to talk with him.

383

Q. Try to be brief and leave out details.
A. On the following day I went to Hotel San Gottardo.

Q. Why were you trying to contact Capt. Lo Forte?
A. In order to be helped out with a second application.

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

Q/ Had he told you that he was in a position to help you out on other deals in the future?
A. He hadn't said it in so many words but during our talk, he had told me that he lived at Torre del Greco and that he was in a position to be able to do something else for me. As soon as I saw him I told him that I wished to go to Trapani; he said at once: "Make out your application."

Q. Are you now speaking of the second occasion?
A. Yes, He told me, however, that the present was to be raised from 30,000 to 60,000 lire.

Q. Did he tell you the reason why?
A. He told me that he had to share with Carnella Attilio, and Carnella Eugenio. Having made out my application, I filed it with Cogena and within 24 hours it was approved.

Q. Did Captain Lo Porto on this occasion assist you in making out your application?
A. No, I wrote it down because I had the draft of my first application.

Q. I show you this paper. Will you tell us what it is?
A. It is the application I filed with Cogena.

Q. Is that the application of which you are now speaking?
A. Yes, that is it.

Q. Look at the signature and tell us whose is it.
A. The signature is mine.

Q. Is this the application you filed with Cogena office and for helping which our Capt. Lo Porto asked 60,000 lire?
A. Yes, Sir.

Document introduced in evidence. No objection on the part of the Defense. Statement is received in evidence and identified as Ex. H.

DIRECT EXAMINATION (Continued).

Q. Did you consent to pay Capt. Lo Porto 60,000 lire for his help in that matter?
A. Yes I did.

Q. Will you tell us the manner in which you paid the money?
A. When I went to Cogena to collect my permit, I was informed that there was another permit, prior to the one in question, and that I had to transport a cargo of flour from Castellammare to Gaeta. After that trip I was allowed to proceed on the voyage for Trapani.

Q. Did Capt. Lo Porto state to you in what manner he could help you out in speeding up your application?

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

A. No, he helped us out in our applications because he knew Sarnella's brother.

Q. What Sarnella?
A. Attilio.

Q. Did you pay him the money?
A. Yes, I did, on leaving Cogens office where I had been informed that my application had been granted and the permit made. He was waiting for me downstairs.

Q. Who do you mean when you say "he was waiting for me downstairs"?
A. Lo Porto.

Q. Where was Lo Porto waiting for you?
A. At the cafe in Piazza Caritè.

Q. Did you meet him there because you had an appointment with him or did you meet him casually?
A. We had made an appointment since the morning we were together at Hotel San Gotthardo.

Q. Did you pay Capt. Lo Porto the money?
A. We left Piazza Caritè and, having put my hand in my pocket I gave him 50,000 lire.

Q. Wasn't the agreement for 60,000 lire?
A. Yes, I come to that. I gave him 50,000 lire because at the time I happened to have only that sum on me.

Q. And then what happened?
A. He looked dissatisfied, therefore I said to him:" If you come to Castellammare before I leave, I am going to give you 5000 lire more but not 10,000." In fact, some two or three days later, I cannot specify how many, he came to see me at Castellammare and I gave him 5000 lire. We then said goodbye to each other and from that time on I never saw him again except in Rome.

Q. After the deal did Capt. Lo Porto volunteer to help you also in future deals?
A. No, he didn't.

Q. Did you make that voyage to Trapani, Sicily, on your own account?
A. Yes, after the transport of flour.

Q. What was your cargo?
A. The same as the first time, pozzolana.

Q. How many tons?
A. About 90 tons.

Q. How much did you pay per ton?

1340

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

A. 100 lire per ton.

Q. How much did you sell it at Trapani?
A. More or less the same as on the first trip.

Q. That is how many?
A. 1500 to 1700 lire per ton.

10 minutes recess.

CROSS EXAMINATION for SARTELLA Attilio.

Q. This morning you stated that you are a maritime captain.
A. Yes, I am.

Q. How long have you been a sea captain?
A. Since 1938.

Q. And how long have you been master of the schooner S. Giuseppe E.?
A. Since 21 April 1944.
Q. Who is the owner of that schooner?
A. My father. I am his general representative.

Q. Who is the shipper?
A. My father.

Q. Do you know who is your father's agent?
A. Agent for what?

Q. A shipowner has agents who represent him.
A. We weare our own representatives.

Q. Have you ~~my~~ agents anywhere?
A. We represented ourselves before Cogena was set up.

Q. Do you know when Cogena was set up?
A. July 1944.

Q. Not even after such date did you have agents anywhere?
A. None.

Q. From July 1944 on, how many times did you personally go to Cogena offices?
A. I can't state how many times I went there, both in my capacity of a sea captain and as a shipowner because I had a power of attorney.

Q. But how many times did you go there to file applications for permits of transport?
A. At no time.

Q. Remeber that you are under oath and that you must tell the truth. You then insist in saying that you never went to Cogena before September 1944 in order to file applications for permits for

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

voyages?
A. I didn't go.

Q. During your previous examination a short time ago you have stated the contrary. What is the truth?
A. None.

Q. It's useless to put up "muflisso" airs....

Disorder arises in the Courtroom. The witness rises from his chair and looks at Defense Counsel with a threatening air.

BY THE COURT.
All remarks must be addressed to the Court. The Defense has the right to ask you questions and it is up to the Court to decide whether you must answer or not. If the Court permits the question it means that the Court approves it. If the Court does not approve the question, it will tell you not to answer. Only the Court will lead this trial, nobody else. You must relax and answer questions in the best way you can, as you did in your direct examination. We wish to know the truth as you know it.

BY THE WITNESS.
I wish to know from the Court whether it results from the records of this case that the Avvocato, forgetting he was in open Court, has permitted himself to call the present witness "mafioso", which word has a very bad meaning.

BY THE COURT.
Q. Did you, Avvocato, use that word?
A. Yes, I did.

Q. You must at once withdraw that word otherwise you will be tried for contempt of Court.
A. I withdraw that word out of respect for the Court. The Court must allow me an explanation. I was led to use that word simply and solely because, while I was performing my duties, as Defense Counsel, the witness took an attitude which the Court certainly noticed and stood up looking at me in a threatening way. That was the only reason why I dared behave in the way I did.

BY THE COURT.
This Court has tried many cases both in Italy and in civilian life and understands that the Counsel are subjected to a nervous strain during the trial. What we would like to impress upon the Italians is our firm belief in the supremacy of the law which is shown through our system of Courts of Justice. The Court here is to hear the facts and the truth and it is interested both in the facts which may be

1307

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

favourable to the accused and in those that may be contrary to him. If the Defence remembers it, the Court itself asked that same question, not the Defense, and if the Court is not satisfied with the answers the Court will put a series of questions. The last wish of this Court, as all the Allied Courts, is that of convicting an accused who is not guilty, and we give the Avvocati all the opportunity to develop their thesis. This, however, must be done according to the dignity of the law. I am glad this incident has now arisen, so that we have had the opportunity of understanding each other because we are all in the same profession, a profession which has been existing as long as there has been a religion. Its ultimate aim is that of dealing justice not injustice, therefore the Court is not angry with anybody but wants to be well understood that this is the Court and that the Court will take care to perform its duties and its functions.

The Court orders all the incident to be struck out from the records.

BY THE COURT.
The court has followed with great attention the testimony produced and does not remember the present witness having stated in direct Examination to have been to Genoa offices. As the Court remembers, the witness stated that he had gone there in order to have repairs made to his ship and that the request was granted.

BY THE PROSECUTION.
The Prosecution does not remember the witness stating he had gone to Genoa. He said he had gone to Genoa office in order to file the request for permission to repair his ship and also states he was granted it.

CROSS EXAMINATION (Continued).

Q. I then ask you: "where did you go file your request?"
A. I filed this application after the application which is in the records and with the documents attached.

The records are read and the point is clarified.

Q. Did you therefore file an application?
A. Yes.
Q. When was it?
A. I believe it must have been about the month of February; I cannot specify the exact date.

378

Q. Did you write it?
A. Yes, I did.
Q. Did you bring it to Genoa office?
A. Yes, I did.

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

Q. Was your application granted?
A. Yes, it was.

Q. Where did you take your ship for repairs?
A. At Trapani.

Q. That is, to your native town?
A. Yes, sir.

Q. To that same town to which you were bound when you filed your application in September 1944?
A. Yes.

Q. On that occasion were you accompanied by anybody?
A. By nobody.

Q. Did you therefore go alone to Cosena offices?
A. Yes.

Q. You stated in your direct examination that there was a rumour about the difficulty of getting those permits.
A. Yes, I did.

Q. Can you tell the Court the name of one person only of those who had spoken to you about those difficulties?
A. No, it was a rumour.

Q. But did you know of your own personal knowledge that it was difficult to obtain permits from Cosena for the owner's exclusive use?
A. When it was a case of repairs for the ship, the permit was granted, but when such was not the case, they didn't grant permits.

Q. How do you know it? You have not answered my question.
A. It is a fact that so many merchants had filed applications in order to have permits for transport of goods on schooners, and they had been refused them, maybe because they were not inscribed with the Camera di Commercio.

Q. But you still are not sure about it.
A. I am not sure of it, but it is a fact that it was difficult.

Q. You stated, during your direct examination, that on the day of September in question you came to Naples from Portici, together with Strassera.
A. Yes.

Q. What time did you arrive at Naples?
A. At about 8,30 or 8,45.

Q. In the morning or in the afternoon?
A. In the morning.

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

Q. Did you come by A ,in or by tram?
A. We came by means of a truck which used to run between Naples and Portici.
Q. Where did you step down from the truck? In what square or what street?
A. Near the Circumvesuviana station.
Q. Did you proceed from there on foot?
A. I don't remember whether we proceeded on foot or by tram.
Q. Where did that unknown man approach you?
A. Near the corner of this building.
Q. Were you alone? Was there a crowd round you?
A. There were few people going on their business along Via Roma.
Q. How come that he approached just you two?
A. Do you ask me that?
Q. For the present I am asking you that.

BY THE COURT.
The witness cannot say what is in another person's mind. He can only testify as to the actions he has seen, not the thoughts.

Q. Were you not astonished at being thus stopped on the street by an unknown person?
A. Yes, we were astonished at seeing an unknown person stop us and ask us whether we were Anglo-Americans.
Q. And when Sarnelli Achille promised you, as you state this morning, his help with Cogeno, did you mention him the permits for the owner's exclusive use?
A. Yes, but he asked us what would be a voyage of our liking and we answered : " A voyage for Trapani with a cargo of porcelains on our own account".
Q. Now try to remember this circumstance: You went in the morning to Cogeno office and filed your application. You were told to come back in the afternoon. Can you tell us what time you went back to Cogeno in the afternoon?
A. At about 3, 3.30 in the afternoon.
Q. What time did you go to the cashier's office, on that same afternoon, to pay that advance money, the 50,000 lire?
A. At about 4,30 or 5,00 in the afternoon.
Q. Were Cogeno offices at that time open?
A. They were open but they were about to close.
Q. Don't you know that Cogeno cashier's office closes at 6 in the afternoon?

375

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

A. No, I don't.

Q. Have you ever made some written statement, signed by you?
A. No, I haven't.

Q. At the Provincia building, to an Allied official?
A. Yes, I made the first time a statement at the Provincia when I was apprehended in order to state the fact.

Q. Can you tell the Court when you made your statement?
A. I cannot specify; I believe it must have been about October 1945, but I am not sure.

Q. Do you remember to whom you made your statement?
A. To Dr. Allocca and to a Colonel of the British Police whose name I don't remember.

Q. Will you explain to the Court why you said just now "apprehended"?
A. Because one day while I was leaving Cozzone to go to Portici and was on my way to the Circumvesuviana Station, I was grabbed by the arm by an American who asked me " Are you Provenzano?" I answered: "Yes, I am ". He then said: Please, will you come with me to the Provincia Building?". He and Dr. Allocca took me by car to the Provincia Building. The American was Cpl. Barone. They questioned me and inforced me about my base and I made my statement.

CROSS EXAMINATION for LO PORTO DARIO.

Q. Did you serve in the Army together with one Ferrara Emanuel ?
A. Yes, I did.

Q. You knew then Ferrara's house at Torre del Greco?
A. I knew he had married at Torre del Greco, but I didn't know where he lived.

Q. Who gave you the address of Torre del Greco?
A. I made enquiries about it and found it because Torre del Greco is not a big town.

Q. You made a written statement and said in it that the address at Torre del Greco had not been given by Lo Porto but that the latter had given you the address at the S. Gottardo Hotel.
A. No, he told me only that he slept at Torre del Greco with that family.

Q. Is it true that in Rome you were confronted with Lo Porto concerning that statement?
A. Yes, I was.

Q. Did Lo Porto insist in saying that he had given you the address at the S. Gottardo Hotel?

1346

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

A. No, he didn't. He only reminded me about the famous note I had left for him with that family at Torre del Greco. I had forgotten all about that note.

Q. So that you admit Lo Porto never spoke to you about the S. Gottardo Hotel?

A. The family at Torre del Greco told me about it.

Q. Since you have made a statement a short while ago saying that Lo Porto had told you he was to share the money between himself and the two Buonellabs and that he had also told you that he didn't know.....

BY THE COURT.

Q. Avvocato, you must ask one question at a time. What do you wish to know from him?

A. The witness has made two statements; in the first he has said what I stated just now, in the second he said, and I don't know whether what I have noted corresponds to what he said: "He did not tell me how I was to present the application, but he told me who, helped it out and how and whom".

BY THE COURT.

When all the evidence is here before the Court, it is not only your right but also your duty to point out the discrepancies there may be in it. What you are doing now is arguing the case. You are now only cross-examining the witness and this argument has no relation with the cross-examining of the witness. Our procedure is not difficult, when you understand its mechanism. Prosecution examines the witness, then you cross-examine him not in order to dig out again what he has stated but in order to verify his memory as to what he stated during the Direct Examination and in order to pave the way for what you are going to say when the case for the Defense comes up. From the fact that he states black is white you must not feel that your case is precluded. This is done in all the trials. When all the evidence is before this Court you then take all the facts and make your discussion from the standpoint of your theory. You should take note of all discrepancies in order to call the Court's attention on them, but not at the present moment. You must now address questions to the witness tending to prove whether he is reliable or not. You must remember that the Court has not only its own notes but also the whole records of the case taken in

37

1347

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

shortened. Now if you wish to address some questions to the witness, do so, but don't argue.

BY [illegible]:

Q. It was my intention to proceed from that question to the following: what was the reason for giving 50,000 lire instead of 60,000 lire?

BY [illegible]:

I think it is better, on asking questions, to specify whether they refer to the lires or the second incisura, otherwise some confusion might arise.

[illegible] for La Motta (continued).

Q. I am now speaking about the second deal: what was the reason you wished to pay 50,000 lire instead of 60,000 lire?

A. Because at that time I happened to have only 50,000 lire in my pocket.

Q. Is it true that you promised a present instead of the 10,000 lire you were to give?

A. Yes. I said: Come to Belgium once and I shall give you 5000-lire more. I shall not give you, however, 10,000 lire.

Q. What did La Motta answer?

A. He said: all right".

Q. Did you file a third application to obtain which was wanted without La Motta's intervention?

A. Yes, because it was about repairs to be made to the hull of my schooner.

Q. Was the application granted?

A. Yes, it was.

The witness is excused but must always be at the disposition of the Court.

The Prosecutor points out to the Court that yesterday was the anniversary of Lincoln's birthday and that it is necessary to call the U.S. Courts of Justice to have this commented by the presidents. Prosecution therefore respectfully requests the Court to celebrate the event.

PRESIDENT commemorates Abraham Lincoln.

1348

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

avv. Granucci speaking in the name of all the Defense Counsel, expresses the feeling of admiration ~~[illegible]~~ by all the Italian people for the great American Statesman.

Recess to 14 February 1946.

14 February 1946, 09:30 hrs.

Witness Provenzano (recalled by defense Counsel for Achille Lauro).

Q. You stated yesterday that "S.Giuseppe S. of which you are the master, was a 90 tons schooner?
A. Yes, that's correct.
Q. Can you then tell the Court what is the engine ~~[illegible]~~ H.P.?
A. 95 H.P.
Q. For how many days was the contract of Sub-Hiring made relative to voyage Portici-Ponte di Brenta-Trapani?
A. The first or the second voyage?
Q. The first voyage in September.
A. It depended on the weather during the navigation, from what kind of weather one met with.

BY THE COURT

Q. Has the witness answered your question?
A. No, I asked how many days was the voyage supposed to ~~[illegible]~~ take.

CROSS EXAMINATION (Continued).

Q. I don't remember now. I only remember they gave me Lit.50,000 like an sub-hiring?
Q. An advance money, you said, but did you then complete the payment?
A. I gave 50,000 lire as advance money. Later on they calculated the duration of the voyage and they returned me the balance on what I had paid me an account.
Q. Therefore you paid 50,000 lire as advance money and then you completed the payment?
A. What do you mean by "completed the payment?"
Q. Did you pay other sums beside the 50,000 lire?
A. I didn't pay other sums to Cogeme. I was given back the balance from Cogeme. I think the voyage lasted some 12 or 13 days so that I was refunded the difference.

BY THE COURT.

Q. The Court wishes to ask a question: did you originally pay 50,000 lire as a deposit?

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

A. Yes I did.

Q. Did the voyage take 12 or 13 days?
A. Yes, it did.

Q. Did the Cogena refund you all the sum or part of it?
A. Yes, because as a rule they made us deposit a bigger sum since voyages were uncertain. They might take 12 days or even longer.

CROSS EXAMINATION (Continued).

Q. So that you were not refunded the whole sum?
A. I couldn't be refunded the whole sum.

Q. Do you remember approximately the sum refunded to you?
A. I believe it was approximately 10,000 or 12,000 lire. The amount may be verified from the receipts.

Q. When you received the permit to go to Trapani, did you at the same time receive an order relative to your return trip?
A. Yes, I did. Together with the permit for transport of petroleum from Mola to Trapani there was the order to carry salt from Trapani to Castellammare.

Q. On your return were there ordered to carry salt to Castellammare?
A. Yes, from Trapani.

Q. When you received your second permit was there any other issued at the same time about a return voyage?
A. No.

Q. But the second permit was also for Trapani, wasn't it?
A. Yes, it was.

Q. In what month was the second permit issued?
A. In the second half of November.

BY THE Court to Defense Counsel.
Are there any Defense witnesses in the Courtroom?
A. No, there are none.

CROSS EXAMINATION (Continued).

Q. Is the engine on your schooner a Diesel engine?
A. Yes it is.

Q. Can you tell the Court how much you paid for Diesel oil at the time of your first voyage?
A. I didn't buy any Diesel oil. We got it on coupons issued by Cogena. I believe I had still some Diesel oil and I didn't need refueling.

Q. Are you in a position to tell the Court the quantity you had

1350

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

kept for the voyage Portici-Route di Procida-Trapani?

BY THE COURT. (to DEFENCE COUNSEL).

Q. Are you referring to the first voyage?
A. Yes, I am.

The question is read over by the stenographer.

CROSS EXAMINATION (Continued)

A. From about 450 to 500 kilograms.

Q. Do you remember the price of Diesel oil at that time?
A. No because Diesel oil was paid by COGEMA, We didn't pay it. I believe it was on an average of 16000 lire per ton.

CROSS EXAMINATION (For SARNELLA Eugenio).

Q. How much did you pay for loading and unloading charges?
A. For the loading there were no charges, we only paid some helps because the ship is laid alongside the pier at Monte di Procida. As for the unloading, I don't remember exactly what I paid for unloading and transport but I believe it must have been around 350 or 400 lire per Quintal.

BY THE COURT.

Q. Are you always referring to the first voyage?
A. Yes, Your Honour.

CROSS EXAMINATION (For LO PORTO).

Q. I am referring to the first episode. Provenzano stated that he was approached by an unknown man while he, Provenzano, was coming from Portici with Capt.Strazzera, and that the unknown man proposed to help them out with their applications with COGEMA. Now the question I ask the witness is as follows: "Before he, Strazzera and the unknown man met LO PORTO in Piazza Carith...."

BY THE COURT.

Please, Avvocato, address the question directly to the witness.

CROSS EXAMINATION for LO PORTO (Continued)

Q. Before meeting LO PORTO, had you and the unknown man, who later on introduced himself as SARNELLA Attilio, already reached an agreement about the presentation of the application?
A. Yes, we had made an agreement but we had not reached a conclusion.

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

BY THE COURT.

Q. Do you mean you and the other Captain?
A. Yes, Strassera.

CROSS EXAMINATION (Continued).

Q. Therefore, before meeting LO PORTO, did you and Strassera fix the price you were going to pay?
A. Yes we did, but when LO PORTO joined us we repeated the same words.

Q. Did LO PORTO's part limit itself to advising you about the wording of your two applications?
A. But when LO PORTO advised us as to the wording of our applications, he was already acquainted with all the facts.

Q. Was he acquainted with them because you and Strassera had told him about them?
A. No, because we were all four together in the discussion and we were speaking about several matters.

Q. So that when you talked all four of you together, did you tell LO PORTO what the previous agreement had been?
A. No, first SARMELLA told LO PORTO about it and then all four of us discussed together about the agreement.

BY THE COURT.

We wish to know what was said, not so many other facts. The COURT will draw its conclusions. The COURT wishes to clarify one point. You, Giovanni, as I understand, together with Strassera, had been having a discussion with a person to whom you were to pay a certain present?
A. Yes, Your Honour.

Q. Now we shall stop at this point, I wish you, Giovanni, to tell the Court in the best way you can and according to your best recollection, what you said to the other Captain, Strassera, and what Strassera said to you before meeting that unknown man who later on said he was Attilio SARMELLA. Before answering this question remember the COURT was not present on the spot at that time. You were there together with the other Captain. We are trying to have a complete picture of the facts. What did you tell Capt. Strassera? What did Strassera tell you? You must put us in the position as though we had been there invisible and had heard and seen everything that took place. Now relax and think about it and tell us what happened to the best of your recollecti
A. It happened that while myself and Strassera were on our way to

1352

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

COGENA and both of us were walking light-heartedly an unknown person approached us.

BY THE COURT.

The Court had understood from the testimony of the witness that he and the other Captain had made an agreement to pay somebody before they met the unknown person.

BY THE PROSECUTION.

No such evidence is before the Court.

BY THE COURT.

As the COURT understood from the cross examination, the COURT thought that the witness and Capt.Strazzera had agreed to give somebody a present.

BY THE WITNESS.

We were very far from such a thought.

CROSS EXAMINATION (Continued).

Q. Will you specify, Provenzano, whether in fact the request for the 30,000 and the 20,000 lire had been accepted by you before meeting LO PORTO?
A. Yes, it was accepted before LO PORTO came up.

Q. What was LO PORTO's work beside helping in making out the applications?
A. I don't know, we don't know.

Q. Now about the second episode. Was it you who in the second episode asked for LO PORTO's cooperation?.
A. Yes, but always because he had told me that, in case I needed....

CROSS EXAMINATION is ended. PROSECUTION has no further questions to make to the witness, but makes a motion to the Court to have the witness always at the disposal of the Court for eventual questions.

BY THE COURT.

Q. The COURT would like to ask the witness a couple of questions. Giovanni, did you state you were first approached by a man who was unknown to you?
A. Yes, Your Honour.

Q. I would like you to stand up, look around the Court room and tell

1353

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

the COURT whether you see the unknown person who approached you.
A. Yes, I do.

Witness stands up and points out Attilio SARNELLA.

Q. Is LO PORTO, that is the man you said came later on, also here in the Court room?
A. Yes, he is.

Q. Point him out to the Court.
A. Yes, Your Honour.

Witness points out LO PORTO Santo.

Q. When Attilio SARNELLA first approached you and Strazzera on that morning, how were you dressed?
A. We had old seaman's clothing and were unshaven. More or less as we were when at sea.

Q. Were you and Strazzera wearing suits of a seafaring kind so that you could be easily recognized as sailors?
A. We easily recognized us as sailors because when we have been sailing for a long time and have been far away from our families, we have dirty shirts, unshaven faces, we are sunburnt. A sailor is easily identified among town dwellers.

Q. Will you tell the COURT why at that time your appearance was such as you described it?
A. Among so many town dwellers a sailor with his sunburnt face, is easily identified.

Q. You have not answered the question put by the COURT. You described just now how easy it is to identify a sailor from a town dweller. At the time SARNELLA approached you, were your suits, your faces such as to make it easily understood you were sailors?
A. More or less so. Because a person who has lived in town for a long time is easily recognizable. We were in our seafaring clothes and on board we wear older clothes. When we go ashore we put on a better suit but there is always a difference between a citizen who lives at his house and a man who lives on board a ship. He stopped me.

367

Q. You can go now. But remain always at the disposal of the Court in case you are further needed.

1354

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

4 WITNESS: LUCA STRAZZERA.

BY THE COURT.

Q. Has the witness been already sworn in?
A. Yes, he has.

DIRECT EXAMINATION.

Q. Captain, what is your home address?
A. Via Badiella No.5, Trapani.

Q. What is your occupation?
A. Sea Captain.

Q. What are you captain of?
A. I am captain of a small vessel.

Q. What is the name of your ship?
A. Nuova Fortuna.

Q. What is the COGEMA number of your ship?
A. R/1371

Q. How long have you been a sea captain?
A. On that ship?

Q. No, generally.
A. I have been sailing for 28 years.

Q. Will you look to the rear of the Court room and tell the COURT whether you recognize anybody?
A. Yes, I do.

Q. Whom do you recognize?
A. The man sitting in the middle.

Witness points out accused Attilio SARNELLA.

Q. Nobody else?
A. Yes, Captain Santo LO PORTO to the left of Attilio SARNELLA

Witness points out accused LO PORTO Santo.

385

Q. Do you recognize anyone else?
A. No.

Q. Did you ever have any dealings with Attilio SARNELLA?
A. No.

1355

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

Q. Did you ever have any conversations with Attilio SARNELLA?
A. Yes, once.

Q. At the time that conversation took place, were you alone or in company of anyone?
A. I was together with Capt.Provenzano.

Q. Do you remember approximately when this took place?
A. Yes, I do.

Q. When?
A. About the first ten days of September 1944.

Q. Will you tell in chronological order what transpired on that occasion, what was said and what you remember?

With the COURT's permission PROSECUTION introduces in evidence the letter mentioned during yesterday's hearing and witness Dr.Allocca is therefore recalled.

BY PROSECUTION.

Q. Doctor, I show you this letter. Will you tell the COURT, please, what it is about?
A. It is a letter from Foggiorcale Prison enclosing a request from Capt. LO PORTO.

Q. Will you tell the date of the letter?
A. The letter from Poggioreale Prison is dated 7 July 1945 and the letter from Capt. LO PORTO Santo is dated 5 July 1945, that is 2 days previously.

Q. Do you recognize LO PORTO's signature?
A. I ought to compare it with other signatures by LO PORTO but this is the authentical letter of LO PORTO inasmuch the letter was kept by me in the records of this case.

BY PROSECUTION.

I ask this letter to be held for identification.

BY THE COURT.

Are the Avvocati satisfied? The COURT will hold this letter till the time comes for you to use it, if you wish, and you can then use it as evidence.

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

BY DEFENSE COUNSEL.

We thank the COURT.

DIRECT EXAMINATION of Capt. Strazzera (continued).

Q. Will you tell in chronological order what transpired on that occasion, what was said and what you remember.

A. While, together with Capt.Provenzano, I was going to Naples, to COGENA offices, and we were near Upim Stores in Naples, we were approached by a person unknown to us who asked us whether we were sea captains. We answered we were. "Did you meet Capt.LO PORTO?" he asked. We aswered: "We don't know him". He then said: "I had an appointment with him in Piazza Carità". Then I asked: "But who are you, please?" and that individual replied: "I am GARNELLA, the brother of the Director of COGENA". We then proceeded all three together towards the COGENA offices. On our way he said: "If you like, I can help you out at COGENA case for a voyage of your liking. Say where you would like to go. "We answered that we would like to go to Trapani. But I must now return to previous facts. When he said that he could help us at COGENA for a voyage of our liking he added: "You must however make me a present". He then said we wished to go with a cargo of pozzolana to Trapani, where we had our families. While we were talking about it a young man joined us, a small sized man, and GARNELLA Attilio introduced him to us as Capt.LO PORTO. The discussion took place also in the presence of LO PORTO.

Q. Will you specify what discussion?

A. The one we had with Attilio GARNELLA while LO PORTO was not there.

Q. Will you tell the COURT what kind of discussion it was, what it was about?

A. That he would help us out with a voyage of our liking provided we made him a present. Then GARNELLA told us to make out our applications.

Q. What GARNELLA?

A. Attilio, I am always referring to Attilio. Capt.Provenzano then left us and went buy two sheets of paper.

Q. Had you agreed with Attilio GARNELLA about the present?

A. I am now coming to that. When we said we wished to go to Trapani, we asked GARNELLA what present he wished from us, what kind of present it was to be. He then answered: "what **shhooners** have you?" I answered mine was about 50 tons and Provenzano said his was about 90 tons.

1357

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

He then said: "You are going to give me 50,000 lire of which 20,000 lire you....

BY THE COURT.

Q. Who do you mean by "you"?
A. Attilio SARNELLA said to me: "You are going to give me 20,000 lire and Provenzano 30,000".

Q. And was all this agreed prior to meeting Capt.LO PORTO?
A. We agreed to the sum before meeting Sento LO PORTO but, after LO PORTO joined us, we repeated the same talk.

Q. Did Attilio SARNELLA state to you as to how he could help you for the voyage you wished to make?
A. He didn't explain; he said he would help us at COGENA.

Q. And did Capt.LO PORTO tell you that he would help you out?
A. No, LO PORTO didn't.

Q. Did any of them tell you to whom that money was to go to?
A. No, nothing as yet.

Q. What do you mean by "nothing as yet"?
A. I understood you to ask: "To whom did you give the money afterwards"?

Q. My question is this: Did anybody tell you to whom the money was to go to?"
A. No.

Q. Who said: "Make out your requests?"
A. Attilio SARNELLA.

Q. Did Capt.Provenzano go buy the paper?
A. Yes, he did.

Q. Will you tell the COURT what happened then?
A. We sat down at a table at the cafe.

BY THE COURT.

Q. Did that happen before you got the paper or after?
A. As soon as we bought the paper we sat down.

3654

DIRECT EXAMINATION (Continued).

Q. What cafe was that?
A. At the corner of Piazza Caritè.

1398

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

Q. And then what happened?
A. We met down, LO PORTO, Provenzano and myself while SARDELLA withdrew to some little distance. I wrote down my application and Provenzano his, while LO PORTO was directing us the wording of the application.

Q. I show you this paper and I ask you what is it.
A. It is the application I filed with COGNA.

Q. In this application you made out on what day and of which you are now talking?
A. Yes, it is.

Q. Look at the signature: whose signature is it?
A. It is mine, Strazzera Luca.

The application is shown to PROSECUTION to become exhibit.

PROSECUTION offers document in evidence. No objection on the part of the DEFENCE. Document is received in evidence and is identified as Ex.I.

DIRECT EXAMINATION (continued).

Q. After you had made out your requests, what did you do?
A. When we had made out our applications, Provenzano and myself went to COGNA offices while Santo LO PORTO and Attilio SARDELLA remained at the cafe, near the cafe, waiting for us.

Q. What time was it?
A. It might have been 9, 30 or 9,45 A.M. I cannot specify the exact time.

Q. Why were Attilio SARDELLA and Santo LO PORTO waiting for you?
A. To hear our news when we would leave COGNA offices. We filed our applications with the competent office and we were told to come back during the afternoon. We then left COGNA and told Attilio SARDELLA AND LO PORTO that we were to come back in the afternoon. In the afternoon Provenzano and myself went to COGNA and there we were informed that our applications had been granted. In fact our contracts of sub-hiring were drawn up and since we could not pay the deposit to the voyage because the cashier's office was closed, we were told to come back on the following morning. When we left COGNA 36 I went to the cafe where SARDELLA Attilio and LO PORTO Santo were waiting for us and we told him that on the following morning.

1359

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

we would talk about the present for him. We said good-bye and went away. On the following morning we again went to COGENA and paid there 50,000 live each to the Cashier as deposit for the voyage of ponsolana granted to us. We were issued regular permits for the voyage and we left COGENA. When we arrived at the Cafe where Attilio SARNELLA and LO PORTO Santo were waiting for us, both Provenzano and myself we turned to Attilio SARNELLA with the money in our hands and we said: "Here is the present you have asked for". SARNELLA Attilio answered: "Give it to LO PORTO, it is just the same". We gave therefore the money to Santo LO PORTO.

Q. And where was Attilio SARNELLA when you gave the money to Santo LO PORTO?
A. He was near us but when he told us to give the money to LO PORTO he withdrew to some little distance.

Q. Did Capt.LO PORTO accept the money?
A. Yes, he did.

Q. When he took the money did he say anything?
A. No, because he had heard Attilio SARNELLA tell us to give it to him.

Q. How much money was given to Santo LO PORTO?
A. 50,000 lire.

Q. And then what happened?
A. We greeted each other and we went away.

Q. When you spoke with Attilio SARNELLA and Capt.LO PORTO on the morning of the first meeting did anyone pass by in a car and stop?
A. No. Wait a moment: some cars were passing by but I don't know.

Q. Did anyone get out of a car and speak with Attilio SARNELLA?
A. I didn't see anyone because I was writing my application.

Recess till 14:00 hrs.

CROSS EXAMINATION for Attilio SARNELLA. 361

Q. You said that you are the master of schooner "Nuova Fortuna"?
A. Yes, I am.

Q. How long have you been master of that schooner?
A. Since April 1944.

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

Q. Before September 1944 did you make other voyages from Na to Sicily?
A. I believe not.

Q. Who gave you the permits for these other voyages?

PROSECUTION objects to question on the ground that the witness had said: "I believe not".

BY THE COURT.

The objection is sustained. The witness stated: "I believe not".

BY WITNESS.

I believe I didn't make any and in fact I didn't make any.

CROSS EXAMINATION (Continued).

Q. Before September 1944 did you ever go to COGEMA offices?
A. About the end of July I believe I went there once.

Q. What did you go there for?
A. I was assigned to transport a cargo of naphta from Naples to Anzio.

Q. But had you filed an application for this voyage?
A. No, I received instructions from COGEMA.

Q. Did you file any applications with COGEMA for permits of voyages for Sicily, before September 1944?
A. No, I didn't.

Q. Where did you first see Provenzano during the month of September?
A. At Portici on the day of my arrival at Portici.

Q. Do you remember the day of your arrival at Portici?
A. It must have been on the 5th or thereabouts.

BY THE COURT.

Q. The 5th of September?
A. Yes, Your Honour.

3601

CROSS EXAMINATION (Continued).

Q. And when did you then come to Naples?
A. On the following day, the 6.

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

Q. Why did you come to Naples on that day with Provenzano?
A. In order to report our arrival to COGENA.

Q. Were you dressed in uniform or in civilian clothes?
A. In civilian clothes.

Q. How was Provenzano dressed?
A. In the same manner, in civilian clothes.

Q. Have you any agents or representatives?
A. No, we have no agents or representatives.

Q. Nowhere?
A. Nowhere.

Q. What time did you go to COGENA on that morning of 6 September?
A. At about 09:45 hrs.

Q. And in the afternoon?
A. At about 15:30 hrs.

Q. What time did you leave COGENA?
A. At about 16:30 hrs.

Q. Before you left was the Cashier's office closed?
A. It was closed.

Q. When you obtained the permit to carry pozzolana to Trapani did you receive an order for a voyage to Naples or elsewhere?
A. We were ordered to make a voyage for transport of salt from Trapani to Castellammare di Stabia.

Q. Tell me what is the H.P. of the engine of your shooner, Nuova Fortuna.
A. 40 H.P.

Q. How many days did it take you to sail from Monte di Procida to Trapani?
A. 45 hours or thereabouts.

Q. Try to remember well. How long did the whole voyage Portici-Monte di Procida-Trapani, take you?
A. 47 or 48 hours or thereabouts.

Q. Do you remember how much you paid to COGENA as advance money when they issued you the permit?
A. 50,000 lire.

1362

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

Q. Did you give o[illegible] money for the contract of sub-hiring?

BY THE COURT.

Q. To whom?

BY DEFENCE COUNSEL.

A. To COGENA.

CROSS EXAMINATION (Continued).

A. No.

Q. Were you not refunded a sum by COGENA?
A. On completetion of my voyage I was refunded from 14700 to 14800 Lire.

Q. Who gave you the naphta for the voyage?
A. I had it on board my ship prior to entering COGENA.

Q. Where did you buy it?
A. I cannot remember where I bought it. Before my ship was taken by COGENA, the ship had been [illegible] I bought that naphta with my own money.

Q. But naphta is a blocked commodity. How were you in its possession?
A. I had registered it on the ship's manifest.

Q. Do you at least remember how much you paid for it?

BY PROSECUTION.

PROSECUTION objects to the question because the line of questions made by the DEFENCE COUNSEL is not connected with the issues in the case

BY THE COURT.

The COURT cannot see what relation the questions may have with the issues in the case. In any case the Avvocato may ask all the questions he likes.

CROSS EXAMINATION (Continued).

Q. Do you at least remember how much you paid for the naphta? 358
A. I don't remember.

Q. Do you at least remember what was then the price of naphta on the market?

1363

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

A. I don't remember it. It happened 18 months ago and I cannot now remember what price was naphta at that time.

Q. Do you at least remember the expense for loading the pozzolana at Monte di Procida and for unloading it a Pozzallo or at Trapani?
A. At Baia I bought it at 100 lire and therefore I paid 5700 lire, at Trapani I had no expenses because I sold it f.o.b.

BY THE COURT.

The COURT believes the witness did not understand your question, Avvocato, because he had stated the price of the pozzolana and your question referred to the expenses for loading and unloading.

The question is read over by the Court stenographer.

CROSS EXAMINATION (Continued).

A. I had no loading expenses at Monte di Procida because the pozzolana is loaded there by the system of pouring it into the ship from the pier.

BY THE COURT.

Q. You have thus answered the question about loading expenses. What about unloading expenses?
A. I didn't have any because I sold the pozzolana on board my ship.

Q. What price did you sell it?
A. At 1500 lire f.o.b.

BY THE COURT.

Does the COURT understand that with the expression "f.o.b." you mean that the buyer was to come on board and collect the pozzolana?
A. Yes, Your Honour.

Q. And do you mean you sold it at 1500 lire a ton or a kilo?
A. I sold it at 1500 lire a ton.

NO CROSS EXAMINATION FROM THE OTHER DEFENCE COUNSEL. 351

The witness is excused by the COURT but he must always be held at its disposal in case he is further needed.

5 WITNESS: PAIUMBO Francesco

Witness states he has already been sworn in.

1364

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

DIRECT EXAMINATION.

Q. What is your occupation?
A. Maritime captain.

Q. Captain of what ship?
A. Schooner "Francesco I".

Q. What is the GOVERN number of your schooner?
A. 757 B.

Q. What is your home address?
A. Palumbo Francesco, Via Volferino 111.

Q. What town?
A. Pozzallo (prov.of Ragusa).

Q. How long have you been a sea captain?
A. 18 years.

Q. Will you please look to the rear of the Courtroom and tell the COURT whether or not you recognise any of the accused.
A. I recognize LO PORTO and Mr.Attilio, whose name I knew in Rome, I have known Comm.CARPILLA at COGHINAS.

Q. How long have you known Capt.LO PORTO?
A. For a long time

Q. How long?
A. Since we were children, when his father was living.

Q. Will you tell the COURT whether sometime in September 1944 you had the occasion to be at Porticf?
A. Yes, I had.

Q. On that occasion was anybody with you?
A. Yes, Sieli.

Q. What is his name, please?
A. Antonino Sieli.

Q. Will you tell the COURT what is his occupation? 356
A. The same as mine, maritime captain.

Q. On board what ship?
A. Schooner "Alfredo".

Q. On that occasion did you and Capt. Sieli see Capt.LO PORTO?
A. Yes, we did

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

Q. Will you tell the COURT, in chronological order, what transpired on that occasion between you, Capt.Sieli and Capt.LO PORTO?
A. Sieli and m self were walking by ourselves.

Q. Where?
A. At Portici. We were together, walking by ourselves, before LO PORTO arrived and we were compleining about the fact that we could not go to Sicily as was our wish. In the meantime LO PORTO joined us and said: "What's the matter with you two that you are so sad looking?" Since we were friends we answered him: "We are down-hearted because we cannot go to our families"; and then each of us told his story and I said that I was building my house, that I had bought so many things and, although I had a ship of my ow,n, I could not use it for a voyage on my own account. Sieli, on his side, complained because his ship looked owing to the fact that it had at one time been sunk and then salvaged.

BY THE COURT.

Q. At one time?
A. Yes, Your Honour. Then Sieli added that the ship belonged to his uncle and the latter had not enough money to have it repaired. If the ship was taken to Siracusa the carpenters there would allow him to pay in instalments. Then LO PORTO said that he could get for us the use of our ships if we paid the sum of 60,000 lire.

Q. To whom?
A. He told me to Dr.BARBELLA. Sieli was to pay 45,000 lire but later on they agreed to 40,000 lire.

Q. Who agreed ?
A. Sieli, LO PORTO and myself.

DIRECT EXAMINATION (Continued)

Q. Did LO PORTO tell you that he was in a position to be able to secure you and Sieli those permits?
A. Yes, he did.

Q. What did he tell you?
A. He said to us when we met him: "You idiots, I can help you in every possible way".

355

Q. Did he explain to you in what way he could help you?
A. He explained that, when we agreed with him, he would leave for Naples.

Q. You have not answered my question. Did he tell you precisely in what way he would help you?

1366

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

A. In order to help us he would go to Comm.CARNELLA report the matter and then the permits would be granted to us.

Q. Is Comm.CARNELLA and Dr.CARNELLA the same person?
A. Yes, it is the same person.

Q. Did Capt.LO PORTO tell you that he knew Dr.CARNELLA?
A. Yes, he did.

Q. Did Capt.LO PORTO state to you the amounts you and Sieli were to pay in order to get those permits?
A. 60,000 and 40,000 lire.

Q. Who was to pay 60,000 lire?
A. Myself.

Q. And Sieli?
A. Sieli was to pay 45,000 lire but later on they agreed to 40,000 lire.

Q. Did Capt.LO PORTO tell you and Sieli what that money was for?
A. To deliver it to Dr.CARNELLA.

Q. What happened after yiu had made that arrangement with LO PORTO?
A. LO PORTO went to Naples and came back in the evening and told us we could make out our applications.

Q. Did LO PORTO tell you the reason as to why he went to Naples?
A. In order to speak with Dr.CARNELLA.

Q. And when LO PORTO came back from Naples what did he tell you and Sieli?
A. That we could make out our applications.

Q. Did he tell you he had spoken with Dr.CARNELLA?
A. He told me that he had settled everything.

Q. With whom?
A. With Comm.CARNELLA.

Q. And upon LO PORTO's return from Naples did he tell you that he had settled everything with Dr.CARNELLA?
A. Yes, he did

Q. What happened then?
A. It happened that we made out our applications.

Q. And who was present?

1367

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

A. Sieli, LO PORTO and myself.

Q. Did you yourselves write down your applications?
A. No, Sieli wrote them down at the dictation of LO PORTO.

BY THE COURT.

Q. That is at your request?
A. At the request of both of us.

DIRECT EXAMINATION (Continued)

Q. Do you remember approximately when this happened?
A. In the second half of September.

Q. Captain, can you read and write?
A. Yes, I can.

Q. I show you this paper, can you tell me what it is?
A. It's the application we filed out about the pozzolana.

Q. Is this the application you just described in your testimony?
A. Yes, and this is my signature.

Document is introduced in evidence. No objection from DEFENCE COUNSEL. Document received in evidence and identified as Ex.J. Document is read aloud by the Court Interpreter first in Italian and then in English.

DIRECT EXAMINATION (Continued).

Q. Captain, what happened after you completed your requests?
A. LO PORTO said to us: "To-morrow morning we must go to Naples". On the following morning we met all three of us.

Q. On the following morning?
A. Yes.

Q. Where?
A. At Portici, on our ships. We went to Bellavista Railway Station.

Q. When you say "we went" who do you mean?
A. Sieli, LO PORTO and myself.

Q. What happened at the Railway Station?
A. We bought our tickets and we were waiting for the train to start.

353

1368

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

Q. Is the Circumvesuviana an electric train?
A. Yes, it is a suburban train. All at once LO PORTO comes and says: "I have forgotten to tell you that to-day is Saturday and on Fridays the Commendatore goes to Rome and returns on Monday. We must go to his house on Monday morning.

Q. What day of the week was it when you, Sieli and LO PORTO were at the Station waiting for the train to go to Naples?
A. It was a Saturday.

Q. Did Capt.LO PORTO tell you that Comm.SARNELLA used to leave for Rome on Saturdays or on Fridays?
A. On Fridays.

Q. Did he tell you Dr.SARNELLA left in the morning or in the afternoon?
A. After 5 P.M.

Q. Can you tell the Court at what time Capt.LO PORTO left for Naples on the first day in order to see Dr.SARNELLA about the permits?
A. He left us at about 13:00 hrs. and then returned at about 17:00 hrs.

Q. What time did you say he returned?
A. At 5 or 5,30 P.M., I don't remember well.

Q. What happened then?
A. At the Station?

Q. Yes.
A. He returned on board his ship.

Q. Who did that?
A. LO PORTO. Sieli and myself came to Naples in order to do some shopping.

Q. When did you and Sieli see LO PORTO again?
A. On Monday. He came to call me on board my ship at 6 in the morning.

Q. Who came? 35
A. LO PORTO. We went to the Station once more.

Q. Who went to the Station?
A. Myself and LO PORTO. We came to Naples and we started towards Comm.SARNELLA's house. He kept urging me: " Hurry up, because

1369

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

the Commendatore leaves his house at 9."

Q. What time did you and LO PORTO arrive in Naples?
A. By the first train, at 7 A.M. or thereabouts.

Q. What did you do on arriving at Naples?
A. He had a visiting card in his hand and led the way to Dr.SARNELLA's house.

Q. Who did so?
A. LO PORTO.

Q. Where was he leading you to?
A. Along Corso Vittorio Emanuele.

Q. Where did Capt.LO PORTO lead you to?
A. To Dr.SARNELLA's house.

Q. And how do you know that he led you to Dr.SARNELLA's house?
A. Because we asked the portiere (doorkeeper) and he said to us: "The car is still here; he has not yet left".

Q. Now tell in great detail what you and LO PORTO did when you arrived at Dr.SARNELLA's apartment.
A. We arrived at the entrance door of Dr.SARNELLA's house. LO PORTO knocked on the door and presented a visiting card.

Q. To whom?
A. I didn't see to whom he presented it because he left me standing at two paces' distance from the door.

Q. Captain, on what floor does Dr.SARNELLA live?
A. I can't remember because both of us ran upstairs.

Q. Before going upstairs had you and Capt.LO PORTO had a discussion between you?
A. We had an argument because he did not wish to take up tairs with him.

Q. Did he tell you why he didn't like to take you upstairs with him?
A. Because he could not take anyone with him to make the acquaintance of Dr.SARNELLA.

Q. What did you then say?
A. Since Sicli and myself were to pay 100,000 lire between us, I said to him: "If you don't show me where we are to go, I won't pay you a penny ."

351

13701

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

Q. In other words you wished to see where your money was going?
A. Yes, because if they made away with the money, Dieli and I would lose it.

Q. Did then Capt.LO PORTO let you go apetairs with him?
A. Yes, I was to stay at a few feets' distance from the door.

Q. Will you tell the Court in detail what happened when you arrive before the entrance door of Dr.SANGIELA's house?
A. LO PORTO showed a visiting card as I previously stated.

Q. Who knocked at the door?
A. LO PORTO.

Q. And did LO PORTO tell you to stay at some feets distance from the door?
A. Yes, he did.

Q. When the door was opened what happened?
A. As the door opened?

Q. Yes.
A. He handed the visiting card.

Q. And then what happened?
A. Then the door opened once more.

Q. When Capt.LO PORTO handed the visiting card did anyone from inside take it?
A. Certainly.

Q. What did the person say who had taken the visiting card?
A. The person said: "wait a moment", and we waited, LO PORTO near the door and myself at some distance from it.

Q. Did you hear anyone saying anything?
A. No. LO PORTO delivered the card and the person closed the door.

Q. Do you know what was written on that card?
A. No. He wouldn't show it to me.

Q. What do you mean by saying "He wouldn't show it to me?"
A. He wouldn't let me read it.

Q. Did you ask him to let you read it?
A. Yes, I did. I asked him: "Will you show me that note? Will you let me read it?".

Q. What did Capt.LO PORTO answer you?

350

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

A. He put it in his pocket.

Q. Without showing it to you?
A. From time to time, while we were on our way to Dr. [illegible]'s house, he looked at it to see where we were to go to.

Recess for 15 minutes

16:20 hrs.

DIRECT EXAMINATION (Continued).

Q. Prior to your going upstairs, did Capt. [illegible] know whether or not you had any money?
A. Yes, sir, he knew.

Q. Did he ask you for any money?
A. I was to give the money after we were sure about the results of the application.

Q. How was that money, in the form of a draft or in cash?
A. No, it was in the form of a draft.

BY DEFENSE for Eugenio [illegible].

I would like to draw the PROSECUTION's attention on a point on which I am sure we are both going to agree. Charge No.2 against my client [illegible] Eugenio ends with the following words: "A permit for Capt. Palumbo Francesco and Capt. Vield from Procida on a voyage on their own with their respective schooners "San Giuseppe and Nuova Fortuna". It is clear that there is a mistake.

BY PROSECUTION.

We shall move to the COURT to have the charge. May it please the COURT to look at the charges. PROSECUTION wishes to extend to the COURT his apology for the mistake and moves to the COURT to have details in charge No.2 against Dr. Eugenio [illegible] amended. The PROSECUTION to strike out the words "S.Giuseppe" and in its stead put the word "Francesco P" and moves also to strike out the word "Nuova Fortuna" and substitute for it the word "Alfredo". It also moves to strike out the word "Trapani" and substitute for it the word "Pozzallo". PROSECUTION also thanks DEFENCE COUNSEL for having called PROSECUTION's attention to this particular point.

BY THE COURT.

The motion is granted and the charge sheet is accordingly amended.

DIRECT EXAMINATION (Continued).

Q. After the door closed, what happened?

1372

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

A. The door opened once more and LO PORTO said some words, then he came towards me and said: "Go away otherwise the things will end "a schifio".

Q. Do you mean that it would end badly?
A. Yes, just so.

Q. Did anyone talk with Capt.LO PORTO when the door opened the second time?
A. Yes.

Q. Did you hear the voice of the person speaking?
A. I didn't hear anything because I was at some distance

Q. Did you hear whether or not anyone told LO PORTO to come in?
A. LO PORTO said to me: "I must go in and you must go away".

Q. Did you hear whether or not anyone told LO PORTO to come in?
A. No, I didn't.

Q. Did you hear a voice saying: "LO PORTO can come in but the other man cannot?"
A. I did not. LO PORTO brought me the answer and said to me: "Palumbo, you go away". I was standing at some distance.

Q. Where did you go then?
A. I went opposite the buildings, I crossed the courtyard and stood where there are many pillars. I stood near a tree.

Q. Where did Capt.LO PORTO go?
A. Inside.

Q. Inside where?
A. Inside Comm. CARNELLA's house.

Q. And then what happened?
A. He brought our requests, the ones that are here in Court, and that he was carrying in his pocket, into Dr.CARNELLA's house.

Q. Did Capt.LO PORTO after some time return downstairs?
A. He came downstairs.

3/8

Q. Can you state approximately what time elapsed from the time LO PORTO entered Dr.CARNELLA's house to the time he came downstairs to where you were waiting?
A. Some twenty minutes.

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

Q. Do you remember approximately what time it was when LO PORTO sent you downstairs?
A. It was 8,15, 8,20 hrs. or thereabouts.

Q. In the morning?
A. Yes.

Q. After Capt.LO PORTO came out of the building what did he tell you?
A. We must cash the draft.

Q. Did he tell you why it was necessary to cash the draft?
A. Because they did not accept money in drafts, only cash money.

Q. Who did not accept money in drafts?
A. He told me so.

Q. Who were the people that didn't want the draft?
A. He said: "The Commendatore does not want money in drafts."

BY THE COURT.

We wish the PROSECUTION to ask the witness what was said on that occasion not what the witness thinks.

DIRECT EXAMINATION (Continued).

Q. Will you tell the COURT exactly what LO PORTO told you about the draft?
A. Yes, I will. As soon as we both were downstairs he said: "This draft must be cashed".

Q. What else did he say?
A. He said: "Because your name is on it".

Q. What else?
A. I answered...

Q. I don't wish to know what you said, I wish to know what LO PORTO said.
A. He told me to cash that draft.

Q. Did LO PORTO tell you that he didn't wish to accept the draft?
A. Yes, because my name was written on it and it was made out in my name.

Q. Did LO PORTO tell you that Dr.BARNILLA did not want to accept the draft?
A. Yes, he, LO PORTO, told me so.

1374

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

BY THE COURT.

The COURT tells you that what it wants to know what LO PORTO exactly said to you, not what you think about it.

A. I already said it.

Q. We want you to repeat it, using just the same words used by Capt.LO PORTO in speaking about the draft.

A. As soon as Capt.LO PORTO came downstairs to me he said: "Francesco, we must cash this draft."

Q. What else?

A. "Because they don't want this draft, because there is your name on it".

Q. What else?

A. Then I answered..

Q. Did he tell you some other reason for which the draft was to be cashed?

A. The reason was that it was a compromising thing

Q. Francesco, the COURT was not present when you and LO PORTO had that conversation. We are trying to know the facts just as if we had been there present and invisible and to discover what said on that occasion. You can tell us about it because you were present. We wish to know what was the exact conversation and you must repeat the exact words which LO PORTO said when he came downstairs to you. You remember them, don't you, Francesco? Why don't you repeat exactly what LO PORTO told you when he came downstairs, using the same words he used. Think of it carefully and tell us the exact words LO PORTO said to you and use the same words he used, to the best of your recollection.

A. He said: "Francesco, we must cash this draft because they cannot accept it. They don't want it because it is made out in your name".

Q. Was this all the conversation?

A. Yes, Your Honour.

DIRECT EXAMINATION (Continued)

Q. When Capt.LO PORTO said to you: "They don't want this draft" or some such words, what did he mean by the words: "They don't want", if you know it?

DEFENSE COUNSEL for Eugenio and Attilio GARNELLA object to the question.

(1375)

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

BY TH COURT.

The objection is sustained.

BY THE PROSECUTION.

But I said: "If you know it".

BY THE COURT.

If he knows it, then let him say the facts upon which he knows it.

PROSECUTION explains the question and repeats it.

The COURT sustains the objection made by DEFENSE COUNSEL. The COURT has no objection if PROSECUTION asks for the facts and then leaves it to the COURT to draw its conclusion from them.

DIRECT EXAMINATION (Continued).

Q. Capt.Palumbo, did Capt.DI PORTO tell you whether or not the Commendatore accepted the draft?
A. He said: "These drafts are not accepted because they are compromising".

Q. What else did he say?
A. Nothing else. I answered.

Q. What did you answer?
A. "Who is now going to cash this draft for us."

Q. What happened then?
A. He said: "Let's wait a short time and then a person will come who is going to be our guarantor".

Q. What happened?
A. After a few minutes he said: "Let's go" and I replied: "Aren't we going to wait for that person to appear?". We started walking and I asked: "Who is this person"? and he answered: "It's the person who is walking behind us".

Q. Where had that person come from?
A. From the courtyard of that same house.

Q. Did Capt.DI PORTO tell you that another person would be guarantor for your draft?
A. Yes, he did.

Q. Did this person show up?

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

A. Yes, it did.

Q. Did Capt.LO PORTO point that person out to you as the person who was to be the guarantor for the draft?
A. Yes, he did.

Q. Did you see that person?
A. Yes, he did

Q. Did Capt.LO PORTO inform you from where that person was to come?
A. Yes. He said to me: "That person must come out from the courtyard of the building.

Q. Did that person come out from the courtyard?
A. Yes, it did.

Q. Do you remember what is the street where that building is situated?
A. Yes, I do.

Q. What is the name of that street?
A. Corso Vittorio Emanuele.

Q. Do you know the number of that building?
A. The number must be either 102 or 122. The building facing the street is numbered either 100 or 120, inside the courtyard there is number 102 or 122.

Q. What happened after Capt.LO PORTO had shown you that third person?
A. We started on our way to the nearest bank.

Q. Who spoke about the nearest bank?
A. LO PORTO said: "Let's walk and we shall find a bank nearby, to the left of the street".

Q. What happened then?
A. Walking in the vicinity of the National Museum we found a bank.

Q. As you were walking where was the person LO PORTO had talked to you about?
A. At some one hundred meters from us.

Q. Was he walking in your same direction or in an opposite direction?
A. In our same direction.

Q. Then what happened?

1377

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

A. We arrived at the bank. I presented the draft to the cashier's window and asked him whether he could cash it. He then said to me: "You need a guarantor".

BY THE COURT.

Q. Who said so?
A. The cashier. In the meantime the person who was to be our guarantor came in.

DIRECT EXAMINATION (Continued).

Q. Was it the same person pointed out to you by Capt.LO PORTO?
A. Yes, it was.

Q. And then what happened?
A. Then I said to the cashier: "Cashier, this is our guarantor".

Q. And then what happened?
A. The cashier said: "Wait a moment, I'll be back in a minute".

Q. Then what happened?
A. The person who was to be our guarantor came up to me and said: "Now the cashier will cash your draft. I am busy. You can hand the money to friend LO PORTO; it is the same as giving it to me".

Q. What happened then?
A. He went away.

Q. Then what happened?
A. The cashier came back and said:"Where has that man gone?"I said: "That man has gone away and I cannot cash the draft because he was to sign it".

Q. And then what happened?
A. We had to take the draft and go away.

Q. Will you describe to the COURT, as best as you can, the appearance of that man?
A. You mean the appearance of that person who was accompanying us?

Q. The appearance of the person who was to be your guarantor.
A. He was taller than I. 3/3

Q. What colour was his hair?
A. White.

1573

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

Q. Was he or wasn't he wearing a hat?
A. I don't remember it well but I seem to remember he wasn't wearing any hat.

Q. Can you say anything about his way of speaking?
A. He had a Palermitan accent.

Q. Do you remember the colour of his clothes?
A. I am not sure but I believe he was wearing a light coloured suit.

Q. Will you now stand up and look around in the Court and point out whether you see a person who answers that description?
A. Mr.GARNELLA, not the Commendatore.

Witness points out Attilio GARNELLA.

Q. The PROSECUTION would like to go back to its questions. Before you left the courtyard of Dr.GARNELLA's house did you see Dr.GARNELLA?
A. We saw him while on our way.

Q. On your way to the house or from it?
A. No, on our way down.

BY THE COURT.

Q. From where?
A. Towards COGNA.

Q. Where were you coming from?
A. From the house.

Q. Whose House?
A. From Comm.GARNELLA's house. We saw him driving towards the centre of the town but we had not yet cashed the draft.

DIRECT EXAMINATION. (Continued).

Q. What did LO PORTO tell you when you saw Dr.GARNELLA?
A. We have been lucky. The Commendatore has already left his house; if we had been ten minutes late we would not have found him.

Q. Now we have arrived where you left the bank with the draft not cashed. What did you do then?
A. On our way towards the centre of the town I met a merchant I knew and I asked him: "Cavaliere, can you cash this draft for me?".

Q. Who was this Cavaliere?

1379

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

A. Francesco Perricone?

Q. Where did he come from?
A. Merchants are always travelling er and.

Q. But what is his native town?
A. Regalbuto, prov. of Enna.

The COURT asks whether any witness will be produced by the PROSECUTION to explain what is COGNA and its functions.

PROSECUTION moves to the COURT to have the case adjourned till Monday because one of the Prosecutors, Mr.Lopez, is suffering from a severe cold and there is danger of pneumonia.

The COURT's decision is that the trial will continue till 13:00 hrs on Saturday and at that time the COURT will adjourn till Monday, 18 February, 9:30 A.M.

Prosecutor Mr.Lopez respectfully begs the COURT to be dispensed from attending the trial. Granted by the COURT. Major Vecchiolla will take his place.

COURT orders the 13 DEFENSE witnesses to come before the COURT. The COURT asks DEFENSE COUNSEL whether all the witnesses are needed by them. DEFENSE COUNSEL answer that up to the present moment they cannot decide whether or not they will be needed. Witnesses are therefore excused by the COURT till Saturday 16 February, at 9:30 A.M.

BY THE COURT.

Q. Is the PROSECUTION sure that by to-morrow its case will be closed?
A. Yes, Your Honour, we are sure.

BY THE COURT.

The COURT wishes to waste as little as possible of the witnesses's time. The witnesses are excused till to-morrow morning at 9:30 A.M. A medical certificate relative to one of the absent witnesses is produced to the COURT. It is received.

311

Recess to 15 February 9:30 A.M.

1380

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

15 February 1946, 3:30 Hrs.

DIRECT EXAMINATION of PALUMBO FRANCESCO (Continued).

Q. Did Cav.Pernicone cash the draft for you?
A. Yes, he did.

Q. Will you tell the COURT how he cashed it?
A. He gave me a draft for 70,000 and 30,000 lire in cash.

Q. What did you do then?
A. I delivered it to LO PORTO.

Q. Will you tell the COURT in what form was the money you handed to LO PORTO?
A. It was in a draft for 70,000 lire and 30,000 lire in cash.

Q. How is it that, in cashing your draft you received another draft for 70,000 lire and 30,000 lire in cash?
A. Because that merchant had not the whole sum in cash.

Q. And as a result Cav.Pernicone gave you a draft for 70,000 lire and 30,000 lire in cash?
A. Yes, he did.

Q. And all this, namely the 70,000 lire in a draft and the 30,000 lire in cash, were handed by you to Capt.LO PORTO?
A. Yes, I did.

Q. Where and when did all this happen?
A. At a small distance from the bank, some 200 to 300 metres distance from it.

Q. Will you tell the COURT what transpired between you and LO PORTO when you handed him the money?
A. When I handed him the money I said: "Do you want the draft for 70,000 lire?" And he answered: "Yes, because it doesn't bear your name".

Q. What kind of draft was it?
A. It was a bearer draft on the Bank of Rome.

Q. Was it endorsed to your name?
A. No, it was only endorsed by Cav.Pernicione.

Q. Was it a bearer check?
A. It was a draft with a qualified endorsment?

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

Q. What is a draft with a qualified endorsement?
A. It is a draft which, in order to be cashed, needs only be endorsed.

PROSECUTION asks the COURT whether it has fully understood what are the "assegni circolari" of which the witness is talking. The COURT says it has and gives the English name for this kind of draft, upon request from the DEFENSE COUNSEL the COURT explains it is a draft with a qualified endorsement.

BY THE PROSECUTION.

Q. It is clear in the COURT's mind that the name of the present witness did not appear on the draft?
A. Yes, it is.

DIRECT EXAMINATION (Continued).

Q. Was this payment made by you to Capt.LO PORTO before you and Capt.Field had secured your permits?
A. Yes, it was made before.

Q. You said yesterday that when Capt.LO PORTO went to Dr.ARNELLA's house he was carrying your requests in his pocket. It is correct?
A. Yes, it is.

Q. What happened with those requests?
A. We brought them to the Banca del Lavoro.

Q. Who is "we"?
A. Capt.LO PORTO and myself.

Q. You and Capt.LO PORTO then went to the Banca del Lavoro after you had paid the money to LO PORTO. It is correct?
A. Yes, it is.

Q. Why did you go to the Banca del Lavoro?
A. In order to file our requests with Capt.Smith.

Q. And who is Capt.Smith?
A. Capt.Smith was with OSCENA Board.

Q. Where was Capt.Smith's office situated?
A. In the premises of the Banca del Lavoro.

Q. At the time you presented your applications was Capt.LO PORTO with you?

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

A. Yes, he presented Sisli's application and I presented mine.

Q. Who is "he"?
A. Capt.D PORTO.

Q. Had you ever been to that office before?
A. Never.

Q. On that occasion who spoke to you about that office?
A. LO PORTO.

Q. And what did he tell you?
A. He said: "Let's go to the Banca del Lavoro".

Q. What else?
A. We must present these applications to Capt.Smith.

Q. Did you present the applications to Capt.Smith?
A. Yes, to the employee, the interpreter.

Q. And then what happened?
A. Then the employee said to us: "Come back to-morrow to COGENA".

Q. Is the COGENA another office?
A. Yes, it is.

Q. Where are the COGENA offices?
A. At Piazza Carith.

Q. Did the employee at the office in the Banca del Lavoro premises tell you why you were to go to the COGENA Office?
A. Yes, in order to ascertain whether our applications had been granted.

Q. When you presented your applications to the office at the Banca del Lavoro had some changes been made in their wording?
A. By ourselves, do you mean?

Q. No, by anyone.
A. It was on the day prior to that, on Saturday, that we made some changes in our applications.

Q. Who was it that made the change or changes in the applications?
A. We added the words "building purposes" to our application but we wrote down our application again. Sisli wrote them down because LO PORTO had said that we had forgotten to put the words "building purposes".

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

Q. You have not answered my question. I asked you who had the changes made on your applications.
A. IO PORTO had the change made.

Q. Where these recommended changes made after IO PORTO had gone to Dr.GARNELLA's house carrying your applications in his pocket or after he came down from the house in whose courtyard you were standing?
A. It was on the first day and then on the following day, Saturday, when we returned.

Q. Wait a moment. You didn't answer my question. Was any change made from the time Capt.IO PORTO went upstairs to Dr.GARNELLA's house to the time when he came downstairs to you?
A. It was made before.

Q. First listen to the question and then answer. Was any change made from the time Capt.IO PORTO went upstairs to Dr.GARNELLA's house to the time when he came downstairs to you? I went to point out to the COURT that I have already questioned the present witness on this matter some time during the past days and I am basing my question upon what he then told me. That's why I am insisting on this point.

BY THE COURT.

Q. Put your question more clearly.
A. Yes, I will but I am afraid of asking leading questions.

BY DEFENCE COUNSEL.

We also would like to have no leading questions put to the witness and we are sure that the COURT would not permit them. We are however in a condition of inferiority because the witness, in order to answer a question cannot conform to a fixed pattern. In this case PROSECUTION becomes a witness too.

BY PROSECUTION.

I don't think the matter is clear for Avv.Porzio. PROSECUTION at no time ever attempted to become a witness and deliberately abstained from putting leading questions. This is proved by the fact that I had to put ten questions to the witness while one would have been enough. In any case I think the COURT is the one that can best judge on this matter.

1354

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

BY THE COURT.

Leading questions are perfectly legal in four cases: 1) in cross-examination, 2) when the opposite side is a witness, 3) when the witness is confused or shows bad will and then there is a fourth case which I don't remember at the present moment. PROSECUTION is requested to re-shape its question so as to make it understood by the witness.

DIRECT EXAMINATION (Continued).

Q. Can you answer whether or not, when Capt.LO PORTO went up to Dr. BARNELLA's house with your applications, any changes were made in them?
A. He had a piece of paper and later on they were corrected by Bieli.

Q. You have not answered my question. Had LO PORTO a rough copy? I beg the COURT's permission to ask the witness a leading question.

BY THE COURT.

You can put the question but the witness must not answer it before receiving my permission.

DIRECT EXAMINATION (Continued).

Q. After Capt.LO PO TO went to Dr.BARNELLA's house and then came downstairs to you, did Capt.LO PORTO tell you whether Dr.BARNELLA had made some changes in your application?

No objection from DEFENSE COUNSEL. Permission is given to witness to answer the question.

A. He had a rough copy of the applications and some changes were to be made on them.

Q. Who do you mean when you say "he had"?
A. LO PORTO.

Q. And who said that changes were necessary?
A. LO PORTO.

3323

Q. Did LO PORTO tell you who had advised him to make these changes?
A. Comm.BARNELLA.

Q. Were these changes made?
A. Yes, they were.

1385

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

Q. After you and Capt.LO PORTO left the applications at the Banco del Lavoro, what happened?
A. We separated.

Q. Did Capt.LO PORTO tell you how he would help you out with your applications?
A. Through Comm. ARNELLA.

Q. Did Capt.LO PORTO tell you that he knew Comm. ARNELLA well?
A. Yes, he did.

Q. Are you familiar with the COGENA offices?
A. Yes, I am.

Q. Did you ever see Capt.LO PORTO at the COGENA offices?
A. Yes, always.

Q. What do you mean by "always"?
A. Whenever I went to COGENA I found him there.

Q. What was Capt.LO PORTO doing in the COGENA offices at the times you saw him there?
A. He went in and out of Comm. ARNELLA's office.

Q. Are you sure that he went in and out of Comm. ARNELLA's office?
A. Yes, I am.

Q. When you separated from LO PORTO on that afternoon, what happened? I wish to reshape my question. When you separated from Capt.LO PORTO on that day what happened?
A. I went back to my schooner.

Q. Before you left Capt.LO PORTO did you make another appointment with him?
A. Yes, for the following morning, at 9 A.M., at the COGENA.

Q. When you returned on board your ship did you see Capt.Sieli?
A. We saw Sieli in the morning when he corrected the applications, when we made out the new applications.

33

Q. But didn't you see him on that evening?
A. No, I didn't.

Q. On that afternoon?
A. No, I didn't.

1386

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

Q. Then tell the C[illegible] T what happened on the f[illegible]owing day.
A. We went to the COGENA.

Q. Who went to the COGENA?
A. Myself, Sieli and LO PORTO met at the COGENA.

Q. Before you and Sieli got to COGENA, did you tell Sieli what had happened on the previous day?
A. Yes, I told him everything.

Q. Why did you tell him everything?
A. Because he also had his money in that deal.

Q. Tell the COURT what happened when you met at the COGENA.
A. We went upstairs.

Q. Who went upstairs?
A. All three of us.

Q. You must always use the names.
A. Sieli, LO PORTO and myself went to the competent office at the COGENA and then we were told there to take our applications to the Commercial Department to draw up our contracts for sub-hiring.

Q. Did they tell you anything there about your applications?
A. "They have been accepted".

Q. Did they tell you so before you went to the Commercial Department?
A. Yes. "They have been accepted, go to the Commercial Department".

Q. What happened then?
A. We drew up our contracts for sub-hiring.

Q. Do you remember who told you at the COGENA office that your applications had been accepted?
A. I don't remember because the personnel there has been changed: either Capt.Forestieri or Capt.Cosulich.

10 minutes Recess

11:16 hrs.

BY THE PROSECUTION.

May it please the COURT, Capt.Palumbo has spoked to me during the recess and told me he has a correction to make.

1387

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

DIRECT EXAMINATION (Continued).

Q. Palumbo, will you tell the COURT what you told me?
A. The applications have been corrected before going to Dr.CARNELLA's.

BY THE COURT.

Q. Do you mean that they were corrected before going to Dr.CARNELLA's house?
A. Yes, Your Honour.

DIRECT EXAMINATION (Continued).

Q. When you say that the correction was made before, will you please explain in all its details how the thing happened?
A. On the day they were corrected?

Q. Yes.
A. It happened that first LO PORTO had made us write down our applications and had then gone to the ship and then he said: "Boys, we made a mistake".

Q. When you say "LO PORTO went to the ship" do you mean he went to his ship or to yours?
A. LO PORTO went to his ship.

Q. And then what happened?
A. He came back with a slip of paper and said: "We must draw it up like this". We drew up our applications accordingly.

Q. Do you know where LO PORTO got that slip of paper from?
A. He said it was a draft which had made for him by Dr.CARNELLA.

Q. Did he tell you when he had received that draft from Comm.CARNELLA?
A. No, he didn't.

Q. Didn't LO PORTO tell you that he had gone to see Comm.CARNELLA on the first day you met LO PORTO?
A. Yes, he did.

Q. Wasn't it on that day that LO PORTO brought that slip of paper from Naples?
A. I couldn't say! He had it on board his ship with him.

PROSECUTION wishes the question to be read over together with the answer given by the witness. Then PROSECUTION asks the COURT whether everything is clear. The COURT answers that it is all in the records.

Q. You were told that your applications had been accepted. What did

1368

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

you and Capt.Sieli then do?
A. We took them to the Commercial Department.

Q. Was Capt.LO PONTE with you?
A. Yes, he was.

Q. Tell the COURT briefly what happened at the Commercial Department.
A. We drew up our contracts for sub-hiring.

Q. That is you and Sieli?
A. Yes, and then we went to the cashier.

Q. And then what happened?
A. Each of us paid.

Q. Paid for what?
A. For the contract relative to the hiring of the ships.

Q. How much did you pay?
A. 80,000 lire.

Q. And how much did Sieli pay?
A. I don't remember.

Q. What did this permit issued to you entitle you to?
A. To load pozzolana.

Q. From where to where had you the permit to transport pozzolana?
A. From Baia to Pozzallo.

Q. Pozzallo in Sicily?
A. Yes.

Q. Did you transport the pozzolana?
A. Yes, I did.

Q. How much pozzolana did you transport?
A. 55 tons.

Q. How much did you pay per ton?
A. You mean what was the cost of the pozzolana?

Q. Yes.
A. 100 lire per ton.

Q. No other expenses?
A. None.

1389

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

Q. What price did you sell it at Pozzallo?
A. I sold it at Siracusa not at Pozzallo.

Q. How much did you sell it?
A. At 550 lire per ton but I didn't sell it at all.

Q. Was any refund made on the 80,000 lire you paid COGENA for the sub-hiring of your ship?
A. Yes, some 65,000 lire in the payment for the ship, plus the refund.

Q. Excluding the payment made to the COGENA for the use of your ship, how much more you refunded?
A. I cant specify the exact amount: some fourteen, fifteen or sixteen thousand lire.

Q. Before you went to Pozzallo or Siracusa did you hold any further conversations with Capt.LO PORTO?
A. No, sir.

Q. Did you see him after that date?
A. I saw him a month or forty days after I returned to Naples.

Q. I wish you to limit yourself to answering my questions without adding other details. After you paid Capt.LO PORTO the 100,000 lire, did he tell you what he would do with that money?
A. He said he was to bring it to Comm.CARNILLA.

Q. Did he tell you he was to bring all of it or only part of it to Comm.CARNILLA?
A. To me he said all of it.

Q. You said you saw Capt.LO PORTO 45 days afterwards. Was it in Naples you saw him?
A. Yes, sir.

Q. Did you have any further conversations with him?
A. Yes.

Q. What did you talk about?
A. He said to me: "If you want your ship to go to Sicily, you must pay me 40,000 lire.

Q. Did you ask him for a permit?
A. No, he volunteered to get me a permit.

Q. What did he tell you?

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

A. Since I was talking about the necessity of presenting a request to get my ship on my own account, in view of the fact that a mast was to be changed, I answered him: " First I am going to present my request and if it accepted, I shall not pay anybody".

Q. Did he tell you why he wanted the 40,000 lire ?
A. In order to get me the permit.

Q. Did he tell you why he wanted the 40,000 lire?
A. In order to obtain the permit for me.

Q. Did he tell you whether he had to pay all that sum or part of it to another person ?
A. No, he never said anything to me. He said :" 40,000 lire are needed to obtain you the permit".

Q. Did he tell you anything about the success or failure of the first trip ?
A. No, he did not tell me anything.

Q. Did you pay him the 40,000 lire ?
A. No . I was granted the permit without having to pay anyone.

Q. Did you see LO PORTO after that ?
A. We used to see each other in Naples.

DIRECT EXAMINATION closed.

Recess to 14:00 hrs.

PROSECUTION moves that after the afternoon hearing the case may be adjourned to Monday morning. The COURT asks DEFENSE's opinion. DEFENSE has no objection. The COURT says it will consider the matter and rule on it later. DEFENSE for Attilio SARNELLA and LO PORTO Santo ask that their clients' case be expedited.

1391

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

hrs., 15 February 1946.

TESTIMONY of PALUMBO Francesco (Continued).

CROSS EXAMINATION (for SARMELLA Attilio).

Q. In September 1944 were you at Portici ?
A. Yes, I was.

Q. Had you arrived there on board your schooner ?
A. Yes, sir.

Q. Can you remember on what date you arrived at Portici on your schooner ?
A. On the 13th or 14th.

Q. How many days after your arrival at Portici did you meet Capt. LO PORTO ?
A. On the following day.

Q. Do you remember what day of the week it was ?
A. It was a Friday, at about 1 P.M.

Q. Before that day had you met Capt. LO PORTO ?
A. No, I had not.

Q. How long was it since you had seen him ?
A. I had not seen him for 4 o~~r~~ 5 months.

BY THE COURT .

Q. Do you mean from to-day ?
A. No, from September 1944.

BY THE PROSECUTION.

329

DEFENSE COUNSEL has asked witness on what day of the week he saw LO PORTO and witness has answered it was on a Friday in September ; then the Attorney has asked whether he had seen LO PORTO prior to that day and witness has answered he has not seen him for 4 or 5 months.

1392

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

CROSS-EXAMINATION (Continued).

Q. Do you remember in what locality of Portici you met Capt. LO PORTO ?
A. In the main street leading to Piazza S.Ciro .

Q. How long did you remain talking with LO PORTO ?
A. Some ten minutes .

Q. Where did then LO PORTO go to ?
A. To Naples.

Q. Do you know what transport he used to go to Naples ?
A. We left him in the street.

Q. What time did he come back ?
A. At about six.

Q. Where di you meet when he came back ?
A. On board the schooner Alfredo .

Q. Where and how were the requests written ?
A. On that same schooner .

Q. During yesterday's examination you stated that after the requests were written down you left LO PORTO and that you saw him again on the following morning in order to go to Bellavista. Do you confirm it ?
A. We separated after writing down the requests and on that same evening he came back to us and we wrote down our requests once more.

Q. During yesterday's examination you stated that, after the requests were written down, you left LO PORTO and thatyou saw him again on the following morning in order to go to Bellavista. Do you confirm it ?
A. We separated in the evening after writing down our raquests and on the following morning we met again at Bellavista.

Q. You have not answered my question, which is as follows : yesterday, in your direct examination, you stated that, after writing down your raquests, you left LO PORTO and saw him on Saturday, when you went together to Bellavista. I ask you now : do you confirm these circumstances or not ?

1393

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

PROSECUTION .

May it please the COURT I object to the question on the grounds that the witness, both in direct and in cross examination, has several times testified that the requests were twice written down, therefore the question of the DEFENSE COUNSEL, in order to be a proper question, ought to specify whether it refers to the first or the second time the requests were made out.

BY THE COURT.

What point do you wish to bring out with your question, Avvocato ?

BY DEFENSE COUNSEL .

In cross examination I asked this question : Yesterday the witness , being questioned by the PROSECUTION as to what had then happened, replied : " LO PORTO said to us : To-morrow we must go to Naples ". On the following morning Sisli, LO PORTO and myself went to board the train at Bellavista". Tell the Court now whether or not you confirm those circumstances.

BY PROSECUTION .

Same objection on the part of the PROSECUTION. My objection is that the records of the case show that these questions have been put more than once, therefore the Avvocato in his question ought to specify whether he is referring to the first or the second time they have been put.

BY DEFENSE COUNSEL.

I am referring to yesterday's examination. The PROSECUTION has returned to these circumstances this morning at the last minute.

321

BY THE COURT.

According to the notes taken by the COURT I have a clear recollection that they met LO PORTO and that LO PORTO went to Naples at about 2 in the afternoon. But I still cannot see what point the Avvocato wished to bring out.

T 394

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

BY PROSECUTION.

The Avvocato wishes to pin him down to an isolated part of yesterday's testimony.

BY THE COURT.

We are wasting time fooling around because the records show clearly what he testified to and moreover the COURT has also taken notes. I have no objection to the Avvocate asking the witness whether he confirms what he testified yesterday.

BY PROSECUTION .

The Avvocato is not asking him to confirm what he said yesterday but specific detail of his testimony.

BY THE COURT.

Let us suppose that the witness confirms what he said yesterday. If he said something else, that will be found in the records.

BY PROSECUTION .

If he answers the question he will only create more confusion.

BY THE COURT.

Let us ask the Avvocato to repeat his question. Maybe he is trying to exclude something which may have been said by the witness.

326

BY DEFENSE COUNSEL.

I am only asking this ; Yesterday, upon being questioned by the PROSECUTION, he told in detail all the facts and when PROSECUTION said :" What happened then ?" He answered : LO PORTO said to us : "To-morrow we must go to Naples ". On the following morning LO PORTO, Siel and myself we went to board the train to Bella-vista". Now my question is this : Can you now confirm these circumstances which were mentioned by you yesterday ?

1395

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

BY THE COURT.

Do you wish to confirm having said so or do you wish him to confirm whether or not these facts are true ?

BY DEFENSE COUNSEL.

I wish him to confirm whether or not these facts are true.

BY PROSECUTION.

When yesterday the witness testified as to these details concerning his business with LO PORTO, when he put his thoughts into words, he was basing himself on a thought from which this statements depended. The witness stated that these requests were written twice and corrected. Is that right ?

BY DEFENSE COUNSEL.

Not yesterday.

BY PROSECUTION .

Then this morning. What I mean is that the phrase upon which the Avvocato bases his question, taken by itself, is a suspended incomplete phrase, it is a consequence of thought.

BY THE COURT.

The witness may be asked whether or not these facts are correct.

BY PROSECUTION.

The witness's testimony must be taken as a whole,only thus it is clear.

BY THE COURT.

The COURT has the testimony before it and it is clear.

The question is again put to the witness.

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

BY WITNESS.

Yes, I said so, but this morning the question was repeated.

CROSS EXAMINATION (continued).

Q. What time did you arrive at Naples ?

BY THE COURT .

There are three trips to Naples mentioned in this case. Will you specify to which one you are referring ?

BY DEFENCE COUNSEL.

Q. So that on Saturday you went to Bellavista ?
A. Yes.

Q. On that day did you go to Naples with LO PORTO ?
A. No, I didn't.

Q. When did you go with LO PORTO ?
A. On Monday.

Q. Do you remember exactly that it was on the day following a Sunday ?
A. Yes, I do.

Q. What time did you arrive at Naples Railway Station ?
A. At 6.30 or 7 in the morning.

Q. What transport did you use from the Station to Corso Vittorio Emanuele?
A. We went on foot as far as the beginning of that street, then wetook a tram and we alighted in the neighbourhood of the house.

Q. How long did it take you altogether ?
A. One hour or thereabout ; we had no watch.

Q. On your way there, did LO PORTO ever ask you whether you had money on you ?
A. He had asked me about that on the first day we saw each other.

1897

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

BY THE COURT.

The Avvocato questioned you whether LO PORTO asked you about the money on that morning
A. Yes, a hundred times since the first day, at least.

BY PROSECUTION.

The witness is a Sicilian and they use this expression when they wish to convey the idea of abundance. He means that he was asked a hundred times about the money.

BY THE COURT.

The Court is well aware that there are idiomatic phrases in use here just as in the United States.

CROSS EXAMINATION (Continued).

Q. What did you answer him ?
A. I answered him that I had a draft for 100,000 lire .

Q. Did he ever ask you to show it to him ?
A. No, never.

Q. But do you remember that draft ?
A. Yes, I do.

Q. Can you tell the COURT what form that draft took ? on what Bank ?
A. I don't remember on what bank it had been drawn, nor do I remember its serial number.

Q. But you had had it drawn ?
A. My agent, Mr. Porcelli, had drawn it.

Q. Is that the Sigona and Porcelli Firm ?

BY PROSECUTION .
I object to the question . No mention of firms has been made in direct examination ; we are now talking about Porcelli.

BY DEFENSE.

Since witness mentioned Comm. Porcelli I asked : "Who is he?"

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

and the witness answered :" A maritime Agent."

CROSS EXAMINATION (Continued).

Q. Is that your Agent ?
A. Yes, he is.

Q. Tell me, when you arrived at Corso Vitt.Emanuele, did LO PORTO take anything out of his pocket ?
A. He took out a visiting card.

Q. Can you tell the Court the reason why he kept taking out that card ?
A. In order to check where we were to go.

Q. When he took out that card, what did he do ?
A. He looked at the street numbers in order to see where we were to go.

Q. Before entering the archway of the building did you look at the street number of the house ?
A. The number in the inner building was not the same as that on the building overlooking the street. On entering the courtyard we asked the doorkeeper, on our right, and he said : "Comm. CARNELLA lives in that house beyond the courtyard and he is at home."

Q. I asked you whether you looked at the street number before entering the courtyard.
A. I said that the number did not correspond. The number was written inside the building, at its entrance. When we had entered the building we asked the porter. He said :" Go inside the building. Dr. CARNELLA lives there."

BY THE COURT.

Q. If the numbers did not correspond then it means that you saw them.
A. Yes, we saw both numbers.

CROSS EXAMINATION (Continued).

Q. When LO PORTO asked whether Comm. CARNELLA was at home, did

1399

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

the doorkeeper tell you on what floor Comm.SARNELLA lived ?
A. LO PORTO had the address and knew everything about floors, house and roof. The porter did not tell us on what floor the Commendatore lived because, on hearing that he was at home, we rushed upstairs. We only asked :"Does Comm.SARNELLA live here?" "Yes" he answered and we went upstairs.

Q. When you went upstairs, where did you stop ?
A. He left me at some six or seven paces' distance, standing behind the wall.

Q. Will you explain to the COURT what you mean by "behind the wall?"
A. In order not to be seen before he brought me back the answer as to whether or not the Commendatore wished to receive me.

Q. Is the wall in question near or far from the Commendatore's entrance door ?
A. Not near: some 5 or 6 paces distant.

Q. So you remained behind that wall ?
A. Yes, I did.

Q. Can you tell the COURT how large the landing is on which Comm. SARNELLA's apartment opens?
A. I cannot state it, I am not an architect and cannot measure distances.

BY THE COURT.

Nobody has told you to measure distances.
A. I don't know what to say ;all these facts happened two years ago.

321

CROSS EXAMINATION (Continued).

Q. Do you know how many doors opened on that landing ?
A. I didn't count them.

Q. Can you at least say on what side the door was through which LO PORTO entered ? On the right or on the left ?
A. I can't say because I did not see him enter: I was like a child led by the hand.

1400

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

Q. When you, together with LO PORTO, left Comm. SARNELLA's house and went to the building where the bank was situated, what kind of transport did you use ?
A. We went on foot.

Q. On your way to the bank, did you show LO PORTO your draft?
A. LO PORTO relied on my word about having the money because he trusted me just as I trusted him. We have always been together since we were children.

BY THE COURT.

Your answer is right about trusting each other, but you have not answered the question.
A. I don't remember whether or not I showed him the draft but there was no need to do so.

CROSS EXAMINATION (Continued).

Q. When you arrived at the Bank, did you show the draft to the cashier ?
A. Yes, and I endorsed it by writing my signature on the back.

Q. Who made you sign it, the cashier ?
A. I have cashed so many drafts in my own town and I know how to endorse them.

Q. What did then the cashier tell you ?
A. He said :" You need a guarantor " and I answered :" there is such a person ". Then the cashier said :" I am coming back in a minute."

Q. Have you any identity papers on you ?
A. Yes, my identity card.

320

Q. When that unknown person entered the bank, did he exchange any greetings with the cashier ?
A. They didn't exchange a word.

Q. You said you are well acquainted with banking transactions. Do you confirm this ?
A. Yes , I do.

Q. When that person went away without signing , didn't you say anything ?
A. At that time I was sure that the cashier would cash my draft

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

because that man had said to me : " He will cash it.".

Q. So that you didn't tell him anything ?

BY THE COURT .

Q. To whom ?
A. To the person who went away.

CROSS EXAMINATION (Continued).

A. I didn't tell him anything but he said to me : " You can hand over the money to friend NO PORTO instead of handing it to me". We greeted each other and he went away.

Q. But you knew that, in order to be your guarantor before the BANK, he was to sign the draft.
A. Yes, I know that, but in my own town, if I go to the cashier and say to him :" I know that person", the cashier will cash any drafts. This is what is done in my town.

Q. But you had the impression that this individual and the cashier were intimate friends.

BY THE PROSECUTION.

We object to the question. You can ask him what he saw, what he did, but not his impressions.

BY THE COURT.

He is cross examining and the question is allowed by the Court.
A. I didn't pay any attention. 319

CROSS EXAMINATION (Continued).

Q. When you were granted the permit for a voyage from Naples to Pozzallo , were you issued at the same time with an order for the return trip ?
A. Yes, sir.

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15 Minutes recess .

1402

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

CROSS EXAMINATION (Continued).

Q. What voyage ?
A. From Pozzallo to Civitavecchia, but it was not made.

Q. Why wasn't the voyage made ?
A. Because there was no A.C.C. at Pozzallo.

Q. This morning you said that later on you obtained another permit from COGEMA, explain what kind of permit it was. This morning you said that some 45 days later you saw LO PORTO again, who volunteered to help you out with another permit and that you turned down his help. You then added that you filed another request with COGEMA. Do you confirm all this ?
A. Yes, I do.

Q. Did you get another permit from COGEMA then ?
A. Yes, sir.

Q. For what voyage ?
A. Portici- Siracusa.

Q. Why were you granted this other voyage on your own account ?
A. In order to change the mainmast of my schooner.

Q. At the same time were you also issued with an order relative to a return voyage.
AA. No, I was not.

Q. Did you file personally this second request ?
A. Yes, sir.

Q. Did anyone accompany you to COGEMA's offices ?
A. No one did.

Q. Now I wish to question you about previous facts : When you came on that Monday to Naples in company of LO PORTO and went to Corso Vitt. Emanuele, do you remember whether it was wet or fine ?
A. I don't remember .

Q. Were you ever questioned at the Provincia Building about all the facts you have already stated to the COURT ?

1403

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

A. By Doctor Allocca, Cpl. Barone and Col. Heddon, if I remember his name correctly.

Q. Can you remember approximately on what date you were questioned at Caserta ?
A. It was at the time when I was issued the permit for the voyage on my own account , I believe on the 8 November.

Q. What year ?
A. 1944, but I can't remember exactly.

Q. Did you make a written statement on that occasion.
A. Yes, I did.

Q. Was it written by you or by other people ?
A. By Dr. Allocca.

Q. Do try now to remember the following detail : were you warned that the statement might be eventually used against you ?
A. I can't remember .

Q. But did anyone mention the fact that you might be guilty of the offense of bribery ?

BY THE PROSECUTION ;

We object to the question .

BY THE COURT.

Avvocato,no one is guilty of an offense till the COURT has found him so. You certainly would not have the COURT sentence your client guilty otherwise you would be asking for something which the COURT cannot state before hearing all the evidence. 3 1 /

CROSS EXAMINATION (Continued).

Q. I shall put my question in another manner : You know our law, don't you ?
A. I don't know anything because I am an ignorant man. I have never been in a Courtroom before and I don't know anything about law.

1404

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

Q. After signing that statement have you been called by the Police at other times ?
A. Once the Police came to my house at Pozzallo and at another time I was brought to Rome.

Q. Have you ever been confronted ?
A. Yes, at Rome .

Q. With whom ?
A. With LO PORTO , and with SARNELLA Attilio.

BY THE COURT .

Q. When and where was this confrontation made ?
A. At Rome during last month.

CROSS EXAMINATION for LO PORTO.

Q. Do you remember whether in ROME a confrontation was made between LO PORTO and Perniconе ?
A. Yes, I do.

Q. Did Perniconе recognize LO PORTO ?
A. No, he didn't.

Q. How many times did you go up to COGENA offices ?
A. I used to go there for every trip I made- some 10 or 12 times.

Q. And each time you saw LO PORTO at COGENA ?
A. Yes, I did.

Q. Did you ever see him at COGENA speaking with Comm. SARNELLA ?
A. I saw him entering but not speaking because the door closed.

BY THE COURT .

Q. Entering where ?
A. Into Dr. SARNELLA's office .

CROSS EXAMINATION (Continued).

Q. When did this happen ?
A. I don't remember the time but if I had here with me my ship's papers I could state the exact time, hour and minute.

1405

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

Q. If LO PORTO used to go to Dr. SARNELLA's house how is it that on that day he had a visiting card in his hand and kept looking for the number of the building ?

BY THE PROSECUTION .

We object because he never made such a statement either in direct or in cross examination.

BY DEFENCE COUNSEL.

If I remember correctly , he stated that LO PORTO knew Dr. SARNELLA's house.

BY PROSECUTION .

Still that was not the answer he gave.

CROSS EXAMINATION (Continued).

Q. I shall put my question differently : Do you confirm that on that morning he had a visiting card in his hand in order to find the number of Dr. SARNELLA's house.

BY PROSECUTION .

I object , the witness cannot know.

BY THE COURT.

This is a question on which SARNELLA and LO PORTO will have to testify. You can ask the witness whether he admits that that was the first time he ever went there.

BY DEFENCE COUNSEL.

Q. This does not interest me. I wanted to know whether LO PORTO was present when Fernicone cashed your draft.
A. He was at a few feets' distance from me.

Q. You said that you have known LO PORTO for many years. Have you ever had any dealings with him ?
A. Only on that occasion.

Q. Have you known LO PORTO's family since he was a child? Do you know what kind of family it is ?

1406

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

BY PROSECUTION .

The witness has testified to knowing LO PORTO not his family.

Q. I am asking whether he knows LO PORTO's family.

BY THE COURT.

Q. Now, Avvocato, you wish to know about LO PORTO's character and personality ?
A. Yes, your Honour, also about that.

Q. Then the question must refer to LO PORTO not to LO PORTO's family.
A. Yes, but since he knows LO PORTO and has known him as a child, he must know the whole family.

Q. Yes, but we are here trying LO PORTO not LO PORTO's family and his family may have the best reputation in Italy and he be nevertheless the black sheep.

CROSS EXAMINATION (Continued).

Q. Since you know LO PORTO, do you know him as a person of good reputation or as a man involved in shady dealings ?
A. I know him as a person of good reputation but I don't know what is hidden in his soul.

BY THE COURT.

You can ask him collaterally about his family.

CROSS EXAMINATION (Continued).

Q. What can you tell the Court about his family ?
A. I live at Pozzallo and LO PORTO lives at Gela. What do I know about his family ?

BY THE COURT.

Q. The COURT doesn't know about it and wishes to know it from you.
A. I know his father but not his whole family.

1407

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

CROSS EXAMINATION (Continued).

Q. Since you know LO PORTO 's father you must know also his family even slightly. Was his father a person of good reputation or a criminal ?

BY THE COURT.

The COURT knows many fathers and many sons but doesn't know anything about their respective families. For example, I know many avvocati who have tried cases before me but I have not the slightest idea what their families may be.

CROSS EXAMINATION (Continued).

Q. You said you knew his father ; tell us what kind of man he was.
A. His father was an honest man.

REDIRECT EXAMINATION.

BY PROSECUTION .

The PROSECUTION has only a few questions to ask the witness, derived from new arguments brought out during the CROSS EXAMINATION.

Q. In your answer to a question by Avv. DE LAURENTIS(for DANIELLA Attilio) concerning a return voyage from Pozzallo to Civitavecchia, I believe you said that you did not make the return trip Pozzalo- Civitavecchia because at Pozzallo there was no A.C.C. What do you mean by "There was no A.C.C.?".
A. Pozzallo is a small place. They had made a mistake. The ship was then assigned to another Firm.

Q. When you say " They had made a mistake" what do you mean ?
A. COGENA.

Q. Will you explain why you believed that, according to you, a mistake had been made ?
A. Because in that place there was neither COGENA nor A.C.C. It's a hamlet consisting in four families.

Q. Do you remember what COGENA's order was for the return voyage from Pozzallo to Civitavecchia ?
A. A load of carrobs.

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

Q. For whom ?
A. For A.C.C.

Q. Therefore the order issued to you by COGEMA said that you were to transport a load of carrobs from Pozzallo to Civitavecchia for A.C.C.?
A. Yes, Sir.

Q. I believe you stated that you considered IO PORTO to be a person of good character?
A. Yes, During the time I knew him I considered him to be a good man.

Q. Are you still of that same opinion.
A. Yes, I am.

RE-CROSS EXAMINATION (for BARNELLA Attilio).

Q. Concerning the return voyage from Pozzallo to Civitavecchia I believe you stated that the ship was allotted to another firm. Will you explain to the COURT what you mean ?
A. I stopped at Siracusa three days, then an order was issued to COGEMA Agency at Siracusa to send me to Pozzallo to load carrobs for the Cisalpina.

BY THE COURT .

Q. What is this Cisalpina ?
A. Ith a firm.

RE-CROSS EXAMINATION (Continued).

Q. Therefore you made the voyage Pozzallo -Civitavecchia with a load of carrobs ?
A. Yes, I did.

Q. Can you tell the COURT how long did the voyage take from Pozzallo to Portici ?
A. Some 15 to 20 days.

Q. Can you state approximately on what day of month you arrived at Portici with your load of carrobs?

1409

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

BY PROSECUTION.

I dislike interrupting but I can't see what relation there is between this question and the issues in this case.

BY THE COURT.

I don't like to limit cross exa ination because I don't know what the Avvocato has in mind with his questions, nevertheless I beg the Avvocato not to insist on points which he has no intention to connect with the case in question. I shall leave the Avvocato to judge about the question.

RE-CROSS EXAMINATION (Continued).

Q. When did you approximately arrive at Portici ?
A. I cannot say it. There must be documents at Portici relative to the arrival of my ship there. They can be found in Portici . I believe I must have arrived there at the end of October , or beginning of November, approximately.

The witness is excused by the COURT but must always be at its disposal if further needed.

The COURT having duly considered the motion by the PROSECUTION relative to adjourning the case till Monday 18 February 1946, decides to adjourn the case to that date.

Case adjourned to Monday 18 February 1946 at 9:30 A.M.

Monday 18 February 1946 , 9:30 A.M.

311

6 WITNESS : SIELI Antonino , Maritime Captain.
The witness has already been sworn in.

DIRECT EXAMINATION.

Q. Will you tell the COURT your name and surname ?
A. SIELI Antonino.

Q. Your address ?
A. Via Garibaldi, Pozzallo, Sicily.

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

Q. What is your occupation ?
A. Maritime Captain .

Q. What schooner are you Captain of ?
A. "Alfredo".

Q. Who is the owner of M/S "Alfredo"?
A. An uncle of mine , Ugwesti Francesco .

Q. How long have you been a maritime captain ?
A. Since 1935.

Q. Look to the rear and tell the COURT whether or not you recognize some of the accused ?
A. Yes, I do.

Q. Whom do you recognize ?
A. Capt. LO PORTO and SARDELLA Attilio. I have known the latter in Rome.

Witness points out Capt. Santo LO PORTO and Attilio SARDELLA.

Q. Can you tell the COURT whether in September 1944 you had the occasion to be at Portici ?
A. Yes, I was there.

Q. Were you alone at the time ?
A. There were several ships at Portici at the time.

Q. Did you have an opportunity at that time of meeting Capt. LO PORTO ?
A. Yes, I had.

Q. Was there anyone with you at that time ?
A. Capt. Francesco Palumbo.

310

Q. Will you tell the COURT briefly and in chronological order what transpired on that occasion between you, Capt. Palumbo and Captain LO PORTO ?
A. Yes. In the second fortnight of September 44 I was at Portici in command of the M/S "Alfredo" and at the time there was also Capt. Palumbo. One Friday afternoon, while we were walking together .....

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

Q. Who do you mean by "we were walking".
A. Palumbo and myself. While we were together, Palumbo and I were discussing the necessity of taking our ships to Sicily; myself because my ship needed repairs, as it leaked, and Palumbo, because he had bought building material for a house of his in Pozzallo. While we were thus talking we met Capt. LO PORTO who, in a friendly way, said :" What have you to grumble about, you idiots ?" Palumbo and myself explained to him what the matter was and LO PORTO said :" I am friendly with Comm. SANZELLA and shall try to help you in what you are asking me."

Q. What had you said to LO PORTO ?
A. I had told him the gist of my talk with Palumbo.

Q. Which was ?
A. The necessity of taking our ships to Sicily. Then LO PORTO made us understand that a gift was needed corresponding to the tonnage of our ships. The gift for Palumbo's ship ,as the bigger one, was 50,000 lire, mine , as the smaller one, 40,000 lire Since I had not the sum of money requested I asked for a loan from Captain Palumbo, who told me he could give me that sum. Palumbo, LO PORTO and myself having settled this .....

BY THE COURT.

Q. Whatdo you mean by "having settled this ?" Do you mean the gift?
A. Yes; Your Honour.

DIRECT EXAMINATION (Continued).

Q. Who stated what price the gift was to be ?
A. LO PORTO.

Q. And was a price settled for Palumbo's ship ?
A. It was.

Q. How much was it ?
A. 50,000 lire.

Q. Who mentioned that sum of 50,000 lire ?
A. LO PORTO.

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

Q. Did you and Palumbo agree to that sum ?
A. Yes, owing to our necessity.

Q. What did Capt. LO PORTO say about the 100,000 lire's gift ?
A. That he was to take them to Comm. SARNELLA.

Q. After the sums had been settled , what happened ?
A. That LO PORTO left us .

Q. Did LO PORTO tell you what his plans were in order to assist you in your case ?
A. Yes, he said that he had to go and talk to Doctor SARNELLA.

BY THE COURT.

Q. Go where ?
A. To his house.

Q. Did he tell you what would be the subject of his conversation with Dr. SARNELLA ?
A. No, he didn't specify that, but he gave us to understand that he would go and talk about what we three had settled.

Q. Did LO PORTO tell you that he would discuss with Dr.SARNELLA the possibility of securing these permits ?
A. Yes, sir.

Q. What plans were made, if any about the payment of the money ?
A. We were to pay in advance ,before securing the permits.

Q. And by whom was it settled ? 308
A. By LO PORTO .

Q. Q. And did he state a reason why the payment was to be made in advance ?
A. Yes, that he was to go to the Direttore with the gift.

BY THE COURT.

Q. Who is the Direttore ?
A. Comm. SARNELLA is the Creator of COGENA.

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

DIRECT EXAMINATION (Continued).

Q. What did Capt. LO PORTO do then ?
A. We left each other and Capt. LO PORTO said that he would go to Naples and meet us again in the evening .

Q. About what time was it when Capt. LO PORTO left you to go to Naples ?
A. About 2 or 2,30 P.M., because we didn't stay long together.

Q. Did he tell you that he would go and see Dr. CARNELLA and that that was the purpose of his going to Naples ?
A. No, he didn't say that .

Q. As far as you know, did LO PORTO get to Naples ?
A. So he said .

Q. Did you see LO PORTO later on ?
A. Yes, at about six in the evening .

Q. Tell what conversation you had with LO PORTO at about six.
A. Palumbo, LO PORTO and myself met again and LO PORTO told us to write down our requests. We went to my schooner and we wrote down our requests with the help of LO PORTO. When we had written them down LO PORTO went away and came back again a few minutes later telling us that he had found a more effective word to put in our requests.

Q. At that time who was in possession of the requests, you or LO PORTO ?
A. We still had them in our possession. 307

Q. Q. What happened after he had spoken to you about that magic word ?
A. We made out our requests again .

Q. Can you read and write Italian ?
A. Yes, I myself wrote them down.

Q. I ask you to look at this paper and tell the COURT what it is.
A. It is my written request.

Q. Read it .
Witness reads the request .

1414

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

Q. Is that the request you wrote down ?
A. Yes, it is.

Q. Is it the first or the second request you wrote ?
A. It's the second .

Q. Look at the signature and tell the COURT whether you recognize it.
A. It is mine.

Q. I offer this document in evidence.

No objection on the part of the DEFENSE . A copy of the translation of the document is offered to the COURT.
Document is received in evidence and identified as Ex. K
No need to read out the document because it has already been shown to the DEFENSE.

DIRECT EXAMINATION (Continued).

Q. After you completed your requests , what happendd ?
A. We made an appointment to meet early on the following morning.

Q. What for ?
A. IO PORTO said in order to be in time to find Dr.CARNELLA at home.

Q. Q. Of which day in the week are you speaking ?
A. Of Saturday morning.

BY THE COURT.

The COURT has not clearly understood the question. PROSECUTION must formulate it in another way.

DIRECT EXAMINATION (Continued).

Q. What day of the week was it when you made the appointment ?
A. It was a Friday evening and the appointment was for Saturday.

Q. What happendd then ?
A. We went to Bellavista Station .

Q. Wait a minute, where did you meet Capt. IO PORTO ?
A. We called each other in the morning, all three of us .

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

Q. What happened then ?
A. While we were waiting for the electric train LO PORTO recalled all of a sudden that that day was a Saturday.

Q. Did that happen at the Railway Station of Bellavista ?
A. Yes, at that Station. He recalled that on Saturdays the Commutators used to be in Rome. LO PORTO therefore told us to postpone to Monday and upon this each of us went his own way.

Q. Did you make an appointment for Monday ?
A. Yes, for Monday morning. On the following day, a Sunday, the wine-merchant who was the owner of the cargo I had on board my schooner , came to me and asked me whether I was willing to transport the load to Pozzuoli. I took advantage of the opportunity and thinking that Capt. Palumbo might need the money he intended to lend me. I asked that merchant for 40,000 lire since he was a close friend of my owner, that is my uncle, and also a neighbour of mine. Late on Sunday night I tried to find LO PORTO and Palumbo to inform them that I was to leave for Pozzuoli, but I could nor find them. At about 5 in the morning on Monday I went to LO PORTO whom I found on board his schooner. I told him I was compelled to leave and I left the 40,000 lire and the request with him.

Q. You mean your request ?
A. Yes, mine. Later on LO PORTO was to give that money to Palumbo. We agreed to meet on Tuesday to go to COGEMA in order to hear any news. I then left with my ship for Pozzuoli. I came back some four days later.

Q. After you left Pozzuoli when did you come back ?
A. Come back where ?

305

Q. Where did you come back ?
A. On Tuesday I went to Naples to COGEMA office.

BY THE COURT .

The PROSECUTION can ask a leading question because the witness has already testified that he left on Monday for Pozzuoli and that he returned to Portici four days later. PROSECUTION's question will clear the matter.

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

DIRECT EXAMINATION (Continued).

Q. You testified that on Monday morning you got up very early, at about 5 A.M. in order to see Capt. LO PORTO because you were to leave for Pozzuoli. Is this correct ?
A. It is.

Q. Did you see Capt. LO PORTO ?
A. Yes, I did.

Q. Did you leave your request with him ?
A. Yes, and the money .

Q. Then you left for Pozzuoli ?
A. Yes, I did.

Q. When did you leave Pozzuoli ?
A. I left Pozzuoli four days later on my ship in order to return to Portici.

Q. After that Monday morning, where did you see Capt. Palumbo and Capt. LO PORTO ?
A. On Tuesday morning I went from Pozzuoli to COGENA office at Naples without my ship.

Q. Had you an appointment there ?
A. Yes, an appointment which I had made on Monday morning with LO PORTO when he had said to me :" Show up at COGENA in case there is any news about the permits".

Q. Did you go to COGENA on Tuesday and whom did you see ?
A. When I entered COGENA I saw LO PORTO and Palumbo.

Q. What happened then ? 30%
A. After a few minutes we heard the names of M/S "Francesco E." and M/S "Alfredo" called out.

Q. What happened then ?
A. We went to Capt. Forestieri's office.

Q. Who do you mean by "we" ?
A. Palumbo and myself because M/S "Francesco E." belonged to Palumbo and M/S"Alfredo" to me. Capt. Forestieri told us to go to the Commercial Department and there we were informed that the schooners had been assigned on our own account. Then Palumbo and myself drew up our contracts for sub-hiring and we paid for the sub-hiring.

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

Q. How much did you pay ?
A. 60,000 lire.

Q. Were you authorized to transport pozzolana ?
A. Yes, sir.

BY THE COURT .

Q. Is the "pozzolana " sandstone ?
A. Yes, sir.

DIRECT EXAMINATION (Continued).

Q. What happened then ?
A. Than each of us went his own way.

Q. As a result of this trip was any refund made to you?
A. Yes , the difference in the sub-hiring.

Q. What was the charge for the transport of pozzolana ?
A. I must go on with my testimony because I didn't transport pozzolana .

BY THE COURT.

Q. Didn't the witness then transport pozzolana ?

BY THE PROSECUTION .

A. He had the authorization but no pozzolana was loaded .

BY DEFENCE COUNSEL .

This is an interpretation of the PROSECUTION. 303

DIRECT EXAMINATION (Continued).

Q. Did you receive the authorization to load pozzolana ?
A. Yes, I did.

Q. Did you load pozzolana ?
A. No, I didn't.

Q. Describe what happened.

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

A. After four days - had been staying at Portici, recalling that my ship leaked and in order not to have trouble during the navigation I travelled empty to Siracusa. There we went into dry dock and the ship underwent three months repairs.

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15 minutes recess .

DIRECT EXAMINATION (Continued).

Q. Did you notify COGENA that you travelled empty to Siracusa ?
A. Yes, sir.

Q. Did COGENA refund you the money you had paid for the contract of sub-hiring ?
A. Yes, without the balance.

Q. What do you mean by the word "balance" ?
A. Because I had deposited 60,000 lire and COGENA kept the difference relative to the days the voyage lasted.

Q. Before sailing for Siracusa did you have an opportunity to see Capt. Palumbo ?
A. Yes, once.

Q. Did he tell you as to what had transpired on tha Monday between him and LO PORTO ?
A. Yes, sir.

Q. Very briefly tell the COURT what Capt. Palumbo told you.
A. That on that Monday, together with LO PORTO, he had gone to Comm. SARNELLA's house. That he, that is Palumbo, had remained waiting outside and LO PORTO had entered. 3022

Q. Did Palumbo tell you why he remained outside ?
A. Because LO PORTO had told him so. Then they went down and Palumbo wanted to give him the draft for 100,000 lire.

Q. Did Palumbo tell you that he had gone upstairs but not inside the house ?
A. LO PORTO refused the draft and said they were to cash it.

Q. Did LO PORTO give any reasons why he refused the draft and wanted cash ?

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

A. Palumbo told me that maybe it was beca se the draft was issued in his, Palumbo's,name.

Q. What else did Palumbo tell you ?
A. Palumbo said to LO PORTO :" Where are we going to cash it since we are in a place where nobody knows us ?" And then LO PORTO answered :" There is a person behind us who is known and we shall be able to cash it in some bank." In fact they went to a bank and that person left them there to cash the draft .

Q. What else did Palumbo tell you about that person ?
A. He spoke to me about his appearance.

Q. What else ?
A. That, without cashing the draft, that person,on arriving at the bank,said :" Listen, I am busy, I am going away."

Q. What else did that person say ?
A. "You give the money to friend LO PORTO ".

Q. Did Palumbo tell you how the draft was cashed ?
A. Yes, by means of an acquaintance they met, a certain Cav. Parnicone.

Q. Did he tell you how the draft was cashed ?
A. Yes,sir. Not being able to give all cash, Cav. Parnicone gave 70,000 lire in a draft and 30,000 lire in cash.

Q. Did Palumbo tell you in what kind of draft the 70,000 lire were ?
A. H told me it was a bearer's draft.

Q. Did Palumbo tell you that he then paid LO PORTO the 70,000 lire draft and the 30,000 lire cash ?
A. Yes, He did.

Q. So at thatvtime LO PORTO had 140,000 lire because on Monday morning you had given him 40,000 lire ?
A. Yes, but later on LO PORTO returned the 40,000 li re to Palumbo.

Q. Did you have an opportunity to see Capt. LO PORTO after this affair ?
A. I don't remember but I don't think I did.

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

CROSS EXAMINATION for SARNELLA Attilio.

Q. You said you made the acquaintance of SARNELLA Attilio in Rome. Can you tell the COURT when ?
A. When we were taken for interrogation .

Q. What do you mean by "taken" ?
A. Because I was taken from Genoa to Rome .

Q. By whose order were you taken ?
A. By order of the Allies .

Q. Can you specify the time, the month, the day, the year ?
A. On January 3, 1946.

Q. Listen to me, now : in September 1944 you met LO PORTO in Portici. Had you known him prior to that ?
A. I had known him for about six years. We were formerly good friends.

Q. And how long was it since you had seen him prior to that meeting ?
A. I don't know exactly but I believe I had not seen him for about 1 year.

Q. During your direct examination you stated that on Saturday morning you went to Bellavista Railway Station. With whom did you go from Portici to Bellavista ?
A. We went on foot .

Q. With whom did you go ?
A. As I said, with LO PORTO and Palumbo.

Q. Did you go on foot or did you use some kind of transport ?
A. On foot .

Q. When you arrived at the Station , what did you do ? Did you go to the Stationmaster and buy tickets ?
A. Yes, we bought our tickets and were waiting .

Q. Were you waiting for the train ?
A. Yes, sir.

Q. Was LO PORTO always with you ?
A. Yes, sir.

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

Q. How long afterwards did he leave you ?
A. About a quarter of an hour later, as soon as he remembered that the day was Saturday .

Q. When LO PORTO informed you about it, didn't you tell him anything ?
A. No, because he himself said :" Let's postpone it to Monday."

Q. When did Palumbo inform you about what had happened on that Monday ?
A. When we met at Siracusa.

Q. And exactly how long afterwards ?
A. I can't specify the time but maybe one month later.

Q. But you had seen Palumbo after that Monday ?
A. We had seen each other at COGENA .

Q. After you received your permit from COGENA didn't you go to Portici together with Palumbo ?
A. I went to Pozzuoli where my ship was lying .

BY THE COURT.

You must answer "yes" or "no" and then add your explanations.

CROSS EXAMINATION (Continued).

Q. After you received your permit from COGENA didn't you go to Portici together with Palumbo ?
A. No, I didn't.

Q. Where did you take your leave from Palumbo ?
A. We parted as soon as we had drawn up our contracts for hiring.

Q. When did you see Palumbo again ?
A. About one month later.

Q. Did he tell you that on that Monday he had gone to Dr.CARNELLA's house accompanied by LO PORTO ?
A. Yes, he did.

1422

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

Q. Did he tell you where he remained standing while LO PORTO entered Dr. BARNELLA's house ?
A. Outside.

Q. Did he tell you how long he remained outside ?
A. He didn't tell me all these details ?

Q. In your direct examination you stated that at one time during his tale Palumbo said to you :" Then we went down and I gave the draft for 100,000 lire". Do you confirm it ?
A. Yes, I do.

Q. Therefore he told you they had gone downstairs together ?
A. I repeat that he didn't give me so many details .

Q. But during your direct examination you mentioned that detail, didn't you ?
A. What detail ?

Q. That Palumbo had said to you :"We went down and then I wished to give the draft for 100,000 lire ."
A. With "went down" I meant leaving the building, stepping into the street.

Q. When Palumbo told you that LO PORTO refused the draft, try to remember what reason LO PORTO gave Palumbo for refusing it.
A. Palumbo didn't go into so many details, he only said to me: "Perhaps it was compromising because the draft was in my name".

Q. Had Palumbo ever shown you the draft ?
A. No , he hadn't.

Q. You said that you are the captain of M/S "Alfredo".
A. Yes, I am.

Q. Is the owner your uncle Ligresti Francesco ? 233
A. Yes, he is.

Q. Can you tell the COURT who your uncle's Agent is in Naples ?
A. We had no Agent because we were run by COGENA

Q. When were you questioned the first time about this case ?
A. I cannot specify the time, it must have been one year ago or thereabouts.

Q. Can you tell the COURT who questioned you ?

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

A. Dr. Allocca and the American Cpl. Farone.

BY THE COURT .

Q. Are you talking about one year ago ?
A. Yes, about the time when I was questioned the first time.

Q. Were you questioned at Naples ?
A. Yes, sir.

Q. After you were questioned in Rome on the 3 January 1946, did you stay in Rome ?
A. Yes, I did.

Q. What for ?
A. Always at the disposal of the Allies.

Q. Up to what time ?
A. Up to some twenty days ago.

Recess to 14:15 hrs.

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18 February 1946 : 14/19 hrs.

PROSECUTION submits English translations of the documents offered in evidence during the past hearings. PROSECUTION submits Dr. BARNELLA's statement made to Col. Haddon on 27 June 1945.

DEFENSE COUNSEL would like to read the translations. The COURT says translations are only made for the convenience of the COURT but that the Italian text prevails. 29/

The COURT asks translations of Ex.A and Ex.D. PROSECUTION submits translations of Ex.D and F and reserves the right to submit translation of Ex. A. DEFENSE COUNSEL are supplied with copies of translations of Ex. D and F.

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

BY THE COURT.

All the Exhibits before the COURT are the Italian originals. Translations are not part of the records but are simply a help for the COURT. When the case is reviewed then new translations are made and they are made by a special office which the proceeds to make certified translations. The Accused have the right to examine, if they wish to, all the exhibits and the COURT will be glad to have them examine them, if they so desire. It is their right.

MR PROSECUTION.

May it please the COURT, to-day our investigation has revealed evidence which tends to form a new charge against Lt. [redacted] Eugenio and PROSECUTION respectfully asks the COURT's permission to file the additional charge.

Additional Charge Sheet is submitted to the COURT.

BY THE COURT.

Q. Mr. PROSECUTOR, has the accused been supplied with a copy of the additional charge ?
A. Not yet.

Q. Do not do it as yet, because the COURT has not yet granted permission. What have you to say in this respect ?
A. That we have documentary evidence upon which to base our charge.

Q. The specification in details does not state that he pocketted the money.
A. It is right.

235

Q. I have my doubts as to whether you have stated a charge. To impose a fine we suppose it is part of the functions of a COURT and whoever else, beside a COURT and a duly authorized Court, imposes a fine, if he does it, commits an offence. Whether by doing so he does or doesn't gain money, has no importance. You will also notice that in the details the word 'discriminately' is used.
A. PROSECUTION feels its duty to present the charge and also any evidence it has and then leaves the matter entirely to the COURT's discretion.

1425

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

Q. The COURT is not of the opinion that what you have stated constitutes an offense even if you prove that it has been committed.

A. These details come under a very general Article which is Sec.45 of Procl.2, Art.2. The above Section is broad and reads as follows : " Whoever commits illegally an act to the prejudice and good order of the Allied Forces ." PROSECUTION affirms that the illegal imposition of a fine is an act which prejudices the good order of the Allied Forces.

Q. I might agree with you if this was charged against the whole organization.

A. The reason why the charge has been preferred in this way against Dr. SARNELLA and others is because the jurisdiction of this COURT does not extend against the others.

Q. This is true ; in other words you wish to say that they might be in the Army. This may be true but the point I wish to reach is that you have not affirmed an individual act performed by him alone. I hope to have made myself clear.

A. We understand, Your Honour. The accused SARNELLA is alleged to have committed an act jointly with others, not as an individual. We should have preferred a joint charge against all three of them if all three of them had been under the jurisdiction of this Court. In order to get a step further , let us assume that a civilian, together with two soldiers, commits a homicide: the fact that the two soldiers cannot be tried jointly with the civilian does not preclude trying the civilian for murder.

Q. You have quoted the instance of this charge : let me explain what is in my mind. The act of murder is completed at the time life leaves the body of the deceased. In this case 23) if you had cited COGENA as an organization and had charged it with the act of imposing fines, by which means the organization, acting through its agents, imposed the fines which you allege they had no authorization to impose, then the act is completed by putting those fines in a drawer, which fines even now it pretends to have the right to impose. We might have such a charge but it is not a complete one in this and the other accused because they have not completed the act, that is by putting that money in their pockets, which would be an offence.

1426

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

On the contrary they have put it into the organization and we now find that that organization even now affirms to have authority over that money, as money cashed from fines. You may point out where I am wrong.

AA. COGENA has nothing to do with this organization. In my charge the fines were imposed by a Board on which COGENA had a representative. Beside that you assume that the fines were put in a drawer. This is something which the PROSECUTION will have to prove.

Q. Let's stop at this time. If you have proof that they have put these fines in their pockets then this charge cannot be applied. You must reduce the charge to getting money under false pretences.

A. PROSECUTION has thought of that and for this reason it has not stated in the details :" they have appropriated the money for their own use;" PROSECUTION states that the bare fact of imposing a fine is an illegal act in the intention of Sec. 45, without considering the fact whether those who imposed the fines appropriated the money for their own use. I would like to draw the COURT's attention on the way the details have been preferred and in particular on the words 'illegally' and 'discriminately'. By this we wish to show that only some persons were fined and most people were not fined, although they had specific knowledge of all the illegal cargo they had transported. On this basis PROSECUTION asks the COURT to file this additional charge. The COURT may deduce that when something is done discriminately some people benefit from it.

Q. The mistake in your specification is that if you preferred a charge in which the accused is alleged to have committed an illegal act by abusing of its authority or without having a real and proper authorization or contrary to the instructions received or to damage his public or private enemies, by imposing those fines, I might follow you.

A. I think that in substance this is what the details tend to prove. The particulars say that the offense is not in imposing a fine. They say that they did it illegally and contrary to instructions received and that this act is contrary to the good order of the Allied Forces.

1427

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

Q. The question the Court wishes to raise is the following : that if you affirm that an act contrary to Sec.45 has been committed, inasmuch as the accused and others, acting individually on jointly, have made use of their position in order to give course to their hostile feelings on their public or private enemies by using the device of fining, I might follow you, because this is an illegal act,since the illegal act would be that of giving vent to one's animosity against public or private enemies by imposing fines, the device of imposing fines being the means used to execute the offense of giving vent to their animosity against their enemies, but their animosity would not be that of devising a fine but the use of an exertion of their power in order to give vent to their private feelings against their public or private enemies.

A. The imposing of a fine without having the authority is an illegal act and is contrary to Sec.45. The charge goes still further and says that not only they illegally fined some persons but did it discriminately which tends to set aside any good faith in imposing the fines and therefore we respectfully beg the COURT to be granted the authorisation to add this charge.

Q. First of all you must remember that if this COURT grants the charge to be filed and tries and punishes the accused on this charge, on review of sentence the reviewing authority, of its own free will, will cancel your charge and the sentence if the charge is not legally sustained. The fact that you call this not a fine is a total of this thing in imposing a penalty, a total of them and in exerting a continuous pressure upon them as a fine, what you previously told me, i.e. the element of the individual who keeps the fines for himself is totally absent from the charge. You certainly can make a reduction in your details. I am willing to hear you discuss the point but I don't wish you nor the COURT to pass decisions on a point which upon examination will not be judged. 23

A. If I understand the COURT well, there is no offense unless in imposing a fine the jurisdiction upon the control of this fine is kept. PROSECUTION however believes that the sole act of imposing a fine contrary to any authority received is by itself an illegal act under Procl.2, Art.II,Sec.45. Maybe PROSECUTION is wrong, in which case we might change

1423

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

the words "to impose fines" as as to read : "illegally to impose fines and cash large sums of money" or "impose the payment of large sums of money not authorised". To the PROSECUTION, however, this is just another way of saying the same thing, that is, to impose a fine because that was a penalty for non-authorized cargo.

Q. Now, let's look at the question : first of all, there is a vast difference between fining a person and the offense of extracting or obtaining money by the use of force or fraud. Let us take the first : in the use of a fine there is involved in the transaction the element of an illicit act from beginning to end, that is, an exertion of a power which they alleged they had but in fact they had not. This however is not the offense of exorting money by force or fraud because what concerns the fine is a presumed legal act and the money is what is given later on under the guise of an act obviously called legal and the dominion held over it is a dominion which is derived from a fine. On the contrary if you have the offense in which these persons have entered into this act in order to extort money from people and later on put it into their private pockets, then you have illegal extortion of money. There is a difference between the two crimes and this is the difference in particular if these people in question have imposed the alleged fines although illegally and continue to keep that money as money from fines, they would be guilty as a collective group for what they may represent, but you could not punish or charge them individually with harassing an individual person and extorting money calling it a fine or any other name. This is an individual act of extortion and begins and ends as extortion and naturally this is a crime of extortion without caring what name they would then call it, whether fine or any other name. Have I made myself clear ?

A. Yes, there is however a difference between the COURT's opinion and that of the PROSECUTION. We shall however withdraw our motion at this time and we shall introduce the question at a later time.

6 WITNESS : Mr. BAYARD MACDONNELL

The witness is duly sworn in.

DEFENSE COUNSEL De Laurentis points out to the Court that the present witness has been in Court during almost the whole of the proceedings.

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

BY PROSECUTION.

We didn't know that the present witness would be used as such by us at a later time. We are using him only because, in view of his experience , he will be able to explain to the COURT what the COGENA is. He is an informative witness.

DIRECT EXAMINATION.

Q. Will you tell your name to the COURT ?
A. Bayard MacDonnell.

Q. What is your occupation ?
A. I am Executive in the Transportation Sub-Commission, Allied Comaission.

Q. How long have you been with Transportation Sub-Commission, Allied Commission ?
A. Since 6 September 1944.

Q. What branch of the Transportation Sub-Commission, Allied Commission have you been assigned to ?
A. Intthe first months I was assigned to Schooners and Shipping Section .

Q. So that an organization dealing with schooners and relative matters could not fail to come under your knowledge.
A. That is correct.

Q. Will you please tell in a loud voice and slowly what COGENA was, when it was set up, what were its purposes and everything concerning it ?
A. COGENA was constituted around the month of April 1944.

Q. When you say " was constituted" do you mean that it was constituted following an act of law or do you mean something different ?
A. I mean that it had not yet been constituted by a legislative decree. The aim of COGENA was to manage those ships whose owner were North of the front.

Q. In order to refresh your recollection I would like to show you a report you wrote on the subject.
A. Thank you. The aim of COGENA was also to manage the schooners up to a certain tonnage, which, when I entered Transportation Sub-Commission, was up to 1CC tons. COGENA was to manage those ships from a technical and commercial point of view with the

14301

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

responsibilities and the obligations of a manager in order to have, in regard to the Allied authorities, the executive representation of all Italian owners of vessels requisitioned.

Q. In order to save the COURT's time I have here the Official Gazette relative to the administrative decree.

BY DEFENCE COUNSEL.

Q. Is that the decree of 14 September published on 20 November ?
A. Yes.

BY THE COURT.

A last question : Was the framework of this administration of COGEMA set up by an Italian decree so as to have this organization act under the law ?
A. Subsequently a decree was issued which is the decree in question.

Q. Then is this the decree which made this COGEMA legal ?
A. The decree made the COGEMA a legalized body .

Q. The COGEMA which has been constituted after this decree has then been authorized by this decree ?
A. The decree made the existing COGEMA legal. After the decree entered if COGEMA functioned that had to be done within the boundaries of the power conferred upon it by the decree.

BY COUNSEL FOR BARNIELLA Eugenio.

We have no objection to this decree being produced as exhibit but, since the present witness is refreshing his recollection about details from a report he made, we would like to suggest to the COURT to produce this report as evidence.

BY THE COURT. 29 1

Q. From the only fact that the COURT may ask the question : "What was the Roman civil law about the law on loans " we would not have the whole of the Corpus Juris Civilis produced as evidence and we don't wish our records cluttered with collateral stuff. Do you, Avvocato ? nevertheless insist upon having this report introduced as evidence ?

1431

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

A. I am sorry to be insistent but I would like the COURT to know everything about the functioning of this OGGENA.

BY PROSECUTION .

Q. I didn't know that Mr. MacDonnell has in his hand only a translation of the decree of the Gazette and the decree states clearly the functions of OGGENA.

BY THE COURT.

The Gazette is introduced as evidence upon the COURT's motion, not upon either the DEFENSE's or the PROSECUTION's motion and will be identified as Ex. L.

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10 Minutes Recess .

BY THE PROSECUTION .

May it please the COURT. With the COURT's permission we would like to say that to the charge produced just now we wish to add a clause explaining the charge. I apologize to the COURT if the charge sheet is not neat, or not too neat, but we are here labouring under great difficulties.

BY THE COURT.

We shall pass it to the Defense and we shall see what the DEFENCE has to say about it.

BY COUNSEL PORZIO for SARNELLA Eugenio .

The COURT will certainly understand the difficulties I am labouring under , first of all because I can't speak slowly and I feel quite depressed by the th ught of my inferiority in not knowing the language spoken by the COURT before which I have the honour to speak . All languages have however this expression in common: it is an astonishing fact that after seven or eight months, on 18 February 1946, another charge is preferred against Eugenio SARNELLA which is utterly baseless from the Juridical point of view, in the same way as the other charges are, because if they had been based,

2011

1432

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

this one would not have arisen, and this is proven by the fact that only on 3 January the last but one witness who took the stand was interrogated. Now I cannot understand this charge because we don't know what this charge says. The charge reads as follows : " He illegally committed an act to the prejudice of good order etc. (See charge sheet). What is this act ? In the second part the charge says that "Eugenio SARTELLA, together with others etc." Now we wish to know who are the others ? Are we entitled to know who the others are ? Was it his doorkeeper ? Was it his superior ? In what capacity did he impose heavy fines ? Is it then a question of money ? It must then be an act of his office, it must then be a Board which committed the crime. But the crime is personal and when we speak of penal responsibility in regard to boards this is a mistake for the simple reason that the decisions are taken following voting and upon a majority. How is it then possible to fix the responsibility ? In short all this is unheard of. It is just the same as if I, being the Dean of the Bar Association , in a meeting held by the Bar voted against imposing a fine to one of the ushers: the fine is however imposed because of a majority in favour of it, and then I am taken before the Court by the Carabinieri, by order of the Prosecutor, to answer to the charge of illegally imposing a fine. And then I say, Your Honour, that the offense is a personal act and the punishment is individual. May there be accomplices ? But in that case you have to prove it but you must have proof that individually each of them is responsible. But that violation does not exist,my God, because you have been mistaken both in the first and in the second edition of the charges because the fine punishes an irregularity. Now how can you charge as a violation of the good order what is done in order to keep order ? I confess I cannot understand it. The fine in this case means a transgression and you say so because you say "illegally" and speak about non-authorized cargoes so that this means that non-authorized cargoes have been penalised. It is therefore impossible that a judge be punished because he has applied the law. Then you must tell me another thing, that all this has been done by fraud. It is then another thing, it was done in bad faith in order to extort money but in this case you must prefer a specific charge and you cannot even do this because the money from this fine is deposited with the Ministry of Treasure which will give an account of this sum to the Allies. But this is not enough : I would like to ask the COURT and its Honourable President to consider

1432

1433

Declassified E.O. 12356 Section 3.3/NND No. 985016

that there has been a man, sentenced to pay a fine,who, taking advantage of the fact that Mr. SARNELLA Eugenio was unjustly detained, filed a suit against COGENA charging it with just the same charges Mr. PROSECUTOR has just now preferred. The Judiciary authority rejected the charges made by that darning man considering all the acts committed by a Board as being perfectly just and legal. Furthermore Mr.SARNELLA Eugenio's functions on the same Board were subordinate ones and the fines were applied by the other members of that Board who were Allies. Furthermore Caserta issued instructions to impose fines and Caserta is the Allies HQ, therefore, as the COURT sees, all this is a heap of mistakes and there are plenty of good reasons for the COURT to reject for the second time the motion of the PROSECUTION. In penal law first of all the offense must be charged against the individual as an act, and secondly there must be a fraud,a profit,bad faith, a violation of the right, a moral violation ascribed to this individual act. One cannot be punished for having executed the order to punish the transgressors and for having defended the good order. It is just the contrary. In view of all these considerations we trust that the COURT will reject the motion. If the COURT however decides to grant the motion, which is humanly possible, we ask at least a term of 7 or 8 days in order o be able to answer and collect the evidence documenting all that we have affirmed.

BY THE PROSECUTION.

Before coming to Italy I had already heard the name of Avv. Porzio mentioned and from the time I met him here I have found that every recommendation and praise made of him is very apt. To-day however he has upset me and that was when he said that by my order he was brought before the COURT escorted by two Carabinieri. I wish to tell you, Avv.Porzio, that my respect for you, both for the man and the lawyer, would prevent me, ,under any circumstances, to be so unkind towards you. I hope this has been cleared up. Now,speaking about the charge, the DEFENSE has said that the charge we are preferring is completely wrong, that it has no value whatever and it has also said that, at the time those fines were imposed, they were imposed under the authority of the Supreme Allied Command. If the DEFENSE has proof thereof we beg the DEFENSE to produce such evidence in due time and the PROSECUTION will withdraw its charge. Thereis more in the charge than meets the eye. I believe the DEFENSE is

1434

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

labouring under a misconception. We allege that the accused and others, these others being outside the jurisdiction of this COURT, have together illegally imposed fines. The argument of the DEFENSE has been that the fine or fines have been imposed to promote the good order; but we have found that no authorization, absolutely no authorization, either in fact or under an order issued by a higher authority can serve as a basis for the acts which we charge the accused with. In fact the Legal Sub-Commission, Allied Commission, Italy , has rendered an opinion saying that these fines were illegally imposed. But I shan't discuss about this now.

BY THE COURT.

The point the COURT wishes to clarify is whether there has been an offense under the law and the COURT will not be influenced by what has been done at Caserta nor by what the Legal Sub-Commission may have said thereon.

BY THE PROSECUTION.

I was simply answering the argument of the DEFENSE.

BY THE COURT.

Q. The only point which we want to clarify is whether there is an offense under the law. Let us assume per absurdum that all you say forth is true, nevertheless is there a violation at the law ?
A. If this charge is accepted by the COURT we shall submit the facts.

Q. Where any accused is to answer before an Allied Court there must be a charge. The question is this : Have you produced a charge ? The COURT is trying to reach a point of law in these facts, all the elements of a charge, first the time, then the act/
A. The illegal act.

Q. The fact that it is illegal is a deduction you make. The PROSECUTION must prove why the act is illegal.
A. The act was made in order to get present or future benefits, and we affirm that the accused made it illegally and discriminately.

285

1435

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

Q. "Illegally" is a conclusion of the PROSECUTION. In order to describe a theft we say "illegally" took the property belonging to another because he took, stole and carried away". When you say that he has taken, stolen and carried away, you establish some facts. Now tell the COURT according to what measurements in the law. In brief, what elements the COURT would have to follow in order to determine whether it is a crime or not.

A. He imposed, first of all, a fine without any legal authorization.

Q. You say without any legal authorization. On what will the COURT base itself ? Not on Sec.45, because then the COURT will have to examine the decree and so many collateral things, not Sec.45 which is expressed in the charge. When you say without legal authorization this is a deduction made by you. You must prove what are the measurements in the law according to which you can say that there is a crime hidden behind the conclusion that it was illegal and the two other expressions. There is a quantity of collateral facts to discover which the COURT would have to go around in order to find them and also to weigh them before being able to reach the offense which is that of the charge , that is an act to the prejudice of the good order of the Allied Forces. But the elements of the offense are in the same Section. You understand that this is what is worrying the COURT concerning this charge.

A. The charges are drawn under Sec.45.

Q. This is not enough.

A. In all my experience, I shall be very clear about it, I have never found myself confronted with a set of facts so difficult to set up in a satisfactory way. It would be very unfortunate if, owing to there being no statutes either under Italian law or under Proclamation Law which may be referred to these facts, these could not come under the sanction of the law. This would mean that an illegal act would not be prosecuted. Sec.45 of the Proclamation was designed just to cover this type of illegal acts.

Q. I don't agree with you on such a wide statement, Section 45 was designed to cover illegal acts which are not covered by the other Sections. Now let us analyze your situation.

1436

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

If COGENA levied those illegal fines we have two different cases. Unquestionably if they imposed fines contrary to law then you might call before this COURT the organization of COGENA under its status as a corporation , i.e. as its legal personality. This is the first case and is covered by Sec. 45. Do you agree with me ?

A. When these fines were levied they were levied by the Schooner Control Board depending from the MEDBO.

Q. You agree with me that the persons who paid those fines can apply to the Allied Commission to obtain the refund of these expendes ?

A. Yes, I do.

Q. I have issued orders for the refund of a great amount of money when the money had not been taken under the law. Secondly: What is this MEDBO ? It is an Allied Board. Coming down to COGENA the latter is not an Allied organization and when you reach Dr.SARNELLA he is an individual and nothing else. As you are affirming it is obvious that you allege that there has been a unity of conduct presumably as COGENA or as any other Mediterranean Board and now comes the defect in your charge. In your penal status you answer to the State for your complete acts,for your compl te conduct, and just in your affirmations you say that it has not been an individual act on the part of SARNELLA but you are trying to make the act f three persons into an act of one person only. If you had charged him as conspiring with others to do something, then you might have been able to show a complete act of which you might charge him or if you affirm that acting individually or jointly with others, with fraudolent acts or using COGENA as a screen, but with the purpose of promoting some individual gain he had in mind he has used this means you would still have an individual act against one of the individuals but this would not be according to Sec.45 but according to another Section. But what I cannot understand is that you come and say that they have fined. By the use of the word "fined" itself you set up collective act which can only become a complete unity of act by the union of more people. For instance in the crime of rape we cannot have this crime without two people involved , a man and a woman. The essence of this crime is that it has in itself the essence of these two people, a man and a woman. By your very allegations that he and others have done an illegal act, that is, the levying

284

1437

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

of fines, i.e., in finding him guilty, you have an act of finding according to your affirmation, it was just a unity of act of several individuals, the act of finding takes the acts of all and makes it one act. It is different from conspiracy where each makes an individual act and thus contributes to the total act and he is charged with his own individual contribution.

A. We can ot here charge him with conspiracy because there has not been a complete act.

Q. You cannot tell me that you cannot charge a person with conspiracy because there has not been a complete act: conspiracy, when the essential element is completed, is a favourite practice in Federal Courts.

A. Here we have no evidence of conspiracy. The charge is made against him and the others are outside the jurisdiction of this Court, they cannot be tried. On the other hand, the Court, after hearing the evidence, may check their notes and make their recommendations. Personally I would take upon myself the task of filing the charges to the competent authorities.

Q. This is true but you misunderstand the thought of the COURT. Under International Law the only organization which can impose fines is the Tribunal and it can only impose fines legally, complying with all the rules and regulations of law and procedure. There is no doubt in my mind and I am only saying it for argument's sake, that this organization not only has done an illegal act, but an act which does not result to its credit in what concerns the Allied administration. But it is a quite different matter when you take an act which is the total of all three of them and in a certain way you compress it in such a way as to make it appear the act of one individual and this is what you are doing with that particular charge. You said you have amended the charge in order to meet the objection of the Court. The COURT didn't object anything. It only replied in order to have a valid charge filed against the accused because the COURT knows that if it doesn't do so it means that PROSECUTION is wasting its own time, the DEFENSE's time and the time of the COURT, beside wasting the time of the reviewing authorities. Because the reviewing authorities will never permit that any rules of expediency be substituted in lieu of what is requested by the charge. As you well know, as judiciary

283

(T 4 3 8)

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

official I have cancelled sentences , which fact has caused some painful reactions but the law has been upheld regardless of reactions.

A. It is our duty both as Prosecutors and as officers of a Court and according to our duty as sworn officials to bring before the Court those who transgress the law and the regulations under which we live, and as Prosecutors we do our best to present the truth before the Court. The charge we have brought before the Court in the opinion of the Prosecution , has the necessary elements to be a charge. I think we have presented all our arguments and we leave it now with the Court to rule as to whether or not we can file an additional charge.

Q. You understand that it is not a question of submitting it to the Court. The question is this : whether or not what you have written here is a charge.

A. That is the reason why the PROSECUTION asks the COURT to issue its opinion on the matter.

Q. It is the privilege of the judiciary officer to rule on this question. The COURT will stand recess for ten minutes.

10 minutes recess

BY THE COURT.

The COURT does not state that a further charge may not be accepted, does not express its decision on the question and secondly at the time when it begins to know your facts it ceases to be a COURT and becomes a PROSECUTION. The ruling is the following : that the charge here written and preferred does not contitute an offense under the Proclamation and this is an extension of the opinion of the COURT. It is obvious that under other regulations it may become unnecessary to rule about your motion before accepting it. 282

The COURT calls witnesses for the DEFENSE and excuses them till to-morro , at 14:00 hrs.

COURT adjourns to to-morrow, 13 February 1946, at 09:30 hrs.

1439

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

19 February 1946: 09:30 hrs.

BY THE COURT.

Captain Smith is in the Courtroom and all the DEFENCE witnesses must be here at 14:30 hrs. If DEFENCE intends to call Captain Smith to the stand he must stay outside the Courtroom and a place should be allotted where all DEFENCE witnesses may stay till called for.

BY THE PROSECUTION.

There is a room nearby where they might stay.

Avv. GRANUCCI (Counsel for SARNELLA Attilio).

We might use a room assigned to the Bar Association.

BY THE COURT

Q. Is PROSECUTION going to finish with its witnesses by noon to-day ?
A. Yes, Your Honour.

7 WITNESS : JAMES J.CAMPES , Col. Inf.

The witness is sworn in.

DEFENCE COUNSEL for SARNELLA Attilio.

I respectfully point out to the COURT that the witness has been in Court during almost all the proceedings.

BY THE PROSECUTION :

The testimony of the present witness will be of an official nature. He will only explain the organization of COCEMA latter.

DIRECT EXAMINATION.

Q. What is your occupation ?
A. Officer U.S.Army.

Q. How long have you been an officer in the U.S.Army ?
A. 23 years. I have been 27 years in the Army but during the

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

the first 4 years I was an enlisted man and then a cadet. I left West Point Academy with the rank of officer on 12/6/1923.

Q. How long have you been abroad ?
A. Three years .

Q. Then was it you were first assigned to Allied Commission ?
A. In February , two years ago .

Q. Were you assigned to a particular Sub-Comaission ?
A. Yes , I was assigned to Transportation Sub-Commission.

Q. So that you have been in almost daily contact with Allied Transportation Sub-Comaission , Italy ?
A. Not only in Italy, but during my whole stay abroad, my work has dealt with Transportation.

Q. What is the nature of your duties with Transportation Sub-Commission ?
A. For over a year I was Head of the Road Section of Transportation Sub-Commission, lateron I was in command of a Transport Brigade whose duties were to supply the civilian population particularly in the area in the rear of the Army.

Q. In the course of your duties have you been in contact with the particular functions of other phases of transport in Italy ?
A. Yes; I work in close contact with the Head of Transportation Sub-Commission.

Q. Will you tell the COURT what you know about Schooner Control Board and the Mediterranean Shipping Board and its relati ons with OCGENA ?
A. The Mediterranean Shipping Board was an Allied Committee organized by HQ Allied Command with the purpose of advising the Head of the Supreme Allied Command in M.T.O. about shipping matters. In the first months of 1943, as I recall, Schooners Control Board was established by A.F.H.Q. composed of a member of the Allied Commission, a member of the Ministry of War Transport .....

BY THE COURT.

Q. British or American ?
A. British , and a member of OCGENA.

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

DIRECT EXAMINATION (Continued).

Q. Will you please, Colonel, try to remember whether it was in 1943 or 1944 ?
A. It must have been in 1944 because I came into Allied Commission in February 1944 and this organization was already in existence.

Q. Then according to your recollection this has been in 1944 ?
A. To the best of my knowledge that organization was already in existence when I first presented myself to the Allied Commission to begin my duties there and I presented myself in February 1944. The Schooners Control Board was under the direct supervision of the Mediterranean Shipping Board. Thinking it over I would like to say that the Schooner Control Board was formed a little later in June or July 1944.

Q. To the best of your recollection then this organization was formed about the middle of June or July 1944 ?
A. That is correct.

Q. Had COGENA a representative in the Schooner Control Board ?
A. Yes.

Q. Who was that representative ?
A. Dr. Eugenio SARNELLA .

Q. Was the Schooner Control Board under direct control and jurisdiction of the Allied Command ?
A. Yes, it was.

CROSS EXAMINATION (for SARNELLA Attilio).

Q. The witness first stated that the Schooner Control Board of MEDIC was formed in February 1944, then thinking it over specified that this organization was formed a little later, that is at the beginning of July 1944. Can the witness try to remember still better and answer this question: "Was this body set up even later than July 1944?".
A. The reason why I remember that this organization was formed after I came into the Allied Commission is the following : it was after February 1944 because I have a clear recollection that this Board was composed of three members one of whom I have mentioned as Doct. Eugenio SARNELLA . The other was Mr. Williams, as a representative of the Ministry of

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

War Transport ,nd who was a British Civilian, and the third member was Capt. Smith, a member of the Transportation Sub-Com ission, Allied Commission. When I came in the Transportation Sub-Commission Capt. Smith, the third member, was not in Transportation Sub-Commission .He arrived a few months later and was put on this Board as a member.

Q. I shall narrow down my question because the witness has not yet answered it. You have said that the organization of the Board may have been started in June or July . Might it have started in August .
A. August 1944 ?

Q. Yes.
A. It was set up before that time because of the knowledge I have of this particular case.

Q. Before August 1944 ?
A. Yes, before August 1944 the Board was in operation.

Q. Are you sure of this last statement of yours ?
A. Yes. As a matter of fact I went down to Sicily on a road and schooner investigation, in June or July,1944 and the Board at that time was functioning. If this is a matter of great importance I might obtain the date for you.

Q. Yes, it is a matter of great importance. We should like to know the exact date when the Board started to function.

BY THE COURT.
The COURT will tell the witness to investigate this matter.

BY THE PROSECUTION .

We have the order contituting that Board.

BY THE COURT. 2713

Q. How long will it take you,Colonel, to get this informatio ?
A. I think the order may be found at the Provincia Building .

BY THE PROSECUTION.

We ask the COURT's permission to show the witness a paper with the s le purpose of refreshing his memory.

1443

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

BY THE COURT.

If he doesn't find it, the witness may go over to the office and look for it.

BY THE WITNESS.

A. The Board was formed on 25 August 1944.

No further Cross Examination.

BY PROSECUTION.

Before announcing that PROSECUTION rests, I shall ask the COURT's permission to consult my Co-Counsel.

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10 Minutes Recess.

BY THE PROSECUTION.

Your Honour, the case for the Prosecution rests.

DEFENSE COUNSEL For SARNELLA Attilio requests the COURT's permission to recall Witness Colonel J.J.CARNES.

WITNESS RECALLED.

Q. Can you tell the COURT whether from the time the Allies invaded Italy up to the time the Schooner Control Board was constituted ~~xxxxxxxxx~~ movement of the Schooners was free or whether it was controlled by another authority ?

A. The reason why I got confused about the dates was that COGENA was functioning before the Schooner Control Board was set up but I cannot state the exact date when COGENA was created.

Q. I shall put my question in another manner ; before the constitution of the Schooner Control Board who controlled over the schooners ?

A. I remember that COGENA controlled schooners up to a certain tonnage and other bigger ships were under control of MEDBO.

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

BY THE COURT.

The COURT would like to know what this MEDBO is.

BY THE WITNESS.

It means Mediterranean Shipping Board.

CROSS EXAMINATION (Continued).

Q. Have you ever heard one organization mentioned whose name was DSTO ?
A. Yes, I have.

Q. Do you know what DSTO's duties were ?
A. It had to do with shipping but I don't know its composition.

Q. Do you remember whether DSTO had control over schooners ?
A. I recall something about captains or owners applying to DSTO for permits.

Q. When you speak about captains and owner are you referring to DSTO for permits.
A. Yes, I am.

Q. Can you state approximately up to what date this DTSO functioned ?
A. I cannot.

Q. No further questions.

BY THE PROSECUTION.

I request the COURT's permission to put a question to the present witness.

275

BY THE COURT.

The statement by the PROSECUTION about its case resting has not been accepted by this COURT till the present witness is excused definitively.

RE-DIRECT EXAMINATION .

Q. To the best of your judgment and recollection when was it that the Schooner Control Board came into being ?

1443

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

A. During the month of August, I don't recall the exact date.

No further question from the PROSECUTION.

PROSECUTION RESTS.

BY THE COURT.

PROSECUTION rests this time, that is at 10:45 of 19 February 1946.

THE COURT requests English Translation of Ex.A
PROSECUTION states that it is labouring under great difficulties in preparing the documents but that it will do its best to get requested translation ready for to-morrow's hearing.

BY THE COURT.

COUNSEL for the DEFENSE, PROSECUTION has rested its case. What has the DEFENSE to say at this stage ?

DEFENSE COUNSEL (for all three accused).

We have to see our witnesses.

BY PROSECUTION.

Q. Are you asking for an opportunity of consulting with you witnesses ?
A. Yes, We know that they will be here at 14:30.hrs.

BY THE COURT.

Q. Do you wish to speak with your witnesses ?
A. Yes, but what we would like to check is whether they are all here. Up to now we don't know whether they are present or not.

Q. Were you in the Courtroom when the COURT spoke with the witnesses ?
A.(by COUNSEL for Eugenio BARNELLA) No, I was not.

1446

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

Q. The witnesses have all come before the COURT.

BY THE PROSECUTION .

Not all.Mssrs Nichols and Campbell have been excused by the COURT and have not come back.

BY THE COURT.

The COURT ordered all witnesses to be here to-day at 14:30 hrs. The COURT therefore was not greatly mistaken about the time the PROSECUTION would rest its case.

BY PROSECUTION.

PROSECUTION does not wish to make any suggestions but there is a witness for the DEFENSE who has been sent to the witness room to wait there till being called for .....

BY COUNSEL for Eugenio SARNELLA.

We thank the PROSECUTION for the suggestion but we reserve the right to establish the order of our witnesses. Under the circumstances we make a motion to the COURT to have the case adjourned till 14:30 to-day.

BY THE COURT.

The COURT does not accept your motion for an adjournment to 14:00 hrs because the COURT is going to grant it on its own motion. Having ruled upon its motion , the COURT adjourns the case to 14:00 hrs and at that time, if COUNSEL for Eugenio SARNELLA desire some more time to deliberate upon the order in which their witnesses are going to be called to the stand, they will duly move the COURT at that time.

274

RECESS till 14:00 hrs.

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

14:00 hrs, 19 February 1946.

The COURT discusses with the DEFENSE about the witnesses Nichols and Campbell. The first is in the United States, the second is in England. The COURT says that it will be possible to have those witnesse s in COURT since they have been warned to attend the trial on the day of its hearing. Mr.Campbell has been informed by Capt. Smith and Mr. Campbell has been in the President's office since the last hearing. The President may be mistaken but he is sure Mr.Campbell has been informed about the date of the trial. PROSECUTION says that maybe the President is under a misapprehension.

AVV. Serrao, Counsel for Eugenio SARMIENTA ,moves to have the case adjourned till to-morrow and when it will be possible that DEFENSE amy dispense with some of its witnesses.

BY THE COURT.

Q. How long do you need to speak with your witnesses ?
A. I have no need to speak with them.

Q. Are you then ready to proceed ?
A. Yes, we have already decided the order of appearance of our witnesses.

Q. Maybe by the time you need those two witnesses they will already be here... I have not allowed any witnesses to go to the United States or England.What I said was only this : " We shall not need you till such and such time. What you do in the meanwhile is your business but you must be in attendance when the case comes up for trial and you must be ready to answer when you are called for.

ALL DEFENSE witnesses are sworn in.

BY THE COURT.

All witnesses will remain in attendance till the COURT formally excuses them. During the time prior to their testimony the witnesses shall abstain from discussing their testimony among themselves nor with anybody except the DEFENSE or the PROSECUTING COUNSEL. Have the witnesses understood my words clearly ?
A. Yes, we have.

1448

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

- C O G E N A C A S E -

D E F E N C E C A S E

(First part: from page 149 to page 273)

1449

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

DEFENCE CASE.

WITNESS : PIETRO BARONI, Admiral in the Italian Navy.

Q. Will you tell the COURT your full name and rank ?
A. Pietro BARONI, Vice Admiral in the Royal Italian Navy.

Q. To what duties were you assigned at the Italian Naval Ministry ?
A. I was appointed by the Italian Naval Minister as Director General of the Mercantile Marine, on 1 October 1943. By the Badoglio Government I was appointed Undersecretary of State for the Mercantile Marine on 15 November 1943.

Q. Up to what time did you keep your appointment of Director General of the Mercantile Marine and Undersecretary of State for the Mercantile Marine ?
A. I remained Undersecretary of State till 15 April 1944 and Director General of the Mercantile Marine till 15 May 1944, on which date I was succeeded in my appointment by General Matteini of the Italian Mercantile Marine.

Q. Was COGEMA set up during this period?
A. COGEMA is short for "COMITATO GESTIONE NAVI" and that name was given by me. The Board was requested by the Allies and on their behalf by the MEDBO(Mediterranean Shipping Board). I was instructed by my Minister to deliver all ships belonging to our Mercantile Marine to this MEDBO in accordance with the clauses of the armistice. Always according to these same clauses the Allied, and on their behalf the MEDBO, had the exclusive right of employing all our navy according to their needs. We were only authorised to keep our crews on board the ships and to carry the Italian flag, while MEDBO reserved the exclusive right of employing the ships. MEDBO didn't wish to have anything to do with the administration of the ships, administration which was a very complicated matter because it concerned the collection of payment for the hiring, the payment to the crews and officers, the purchase of ship, supplies etc. Furthermore MEDBO didn't like to have anything to do with the owners and the crews. MEDBO wished to transact only with the Italian Government and, concerning the Mercantile Marine, only with the Ministry of the Mercantile Marine. The necessity of transacting only with the organ of the Government, the General Direction of the Mercantile Marine, depended above all upon the fact that most ship-

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

owners were from Northern Italy. In southern Italy there were only a few shipowners, therefore the administration was to take care of the rights of all the absent shipowners. The few shipowners present in liberated Southern Italy were authorized to administer their ships personnally. In conclusion COGENA was set up at the request of the Allies and also as a purely administrative body because, I repeat, the use of the ships was entirely regulated by the Allies.

Q. But who looked after the allotment of the ships ?
A. As to the shooners, an office looked after them which had been set up by the Allies. This office, which was composed of British Officers, was called Divisional Sea Transport Office (DSTO). This office had authority over almost all the schooners and left only a few at our disposal, that is to the Italian Government. Their total number was respectively some 4, 5, 6, 10 and left them at my precise request because with that small number of schooners I was to take care of the transport of salt and tobacco on behalf of the Ministry of Finance which has the monopoly of those two commodities. They were also used to transport firewood which the military authorities requested with great urgency since they needed it for Army use. The few schooners left to us did not succeed in performing even these small tasks. After allotting the schooners, D.S.T.O. left to COGENA the administrative side of the management. COGENA was to draw up the contract for sub-hiring of the schooners with the shippers to whom they had been allotted.

BY THE COURT.

Q. Will you please explain to the COURT what the word "sub-hiring" means ?
A. All the schooners belonging to the Italian mercantile Marine were hired by the Italian Government, by order of the Allies.

Q. Were they requisitioned ?
A. The steamers were requisitioned ; the schooners were partly requisitioned, partly hired. COGENA was to sub-hire them to the shippers.

Q. To the owners ?
A. No, the owners were paid the hiring price from our Government.

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

Our Government had been authorized to requisition all the Mercantile Marine but the traffic was not made by the ship-owners. Traffic was made after D.G.T.C. had allotted the ship to a merchant who requested it for transport of commodities. It was with this merchant, therefore, that the contract of sub-hiring was to be made.

Q. What is then the question of money being deposited as guarantee ?

A. It was a kind of deposit made by the drawer of the contract of sub-hiring. After the voyage had been effected, the shipper settled with COGEMA the refunding of money for the days the trip had lasted.

Q. The COURT still cannot understand why the individual, who was the shipowner , was to deposit money in order to use his own ship and later on was to be re-funded.

A. No, he was not.

Q. Yet there has been testimony to this effect.

A. NEDPO didn't wish to have anything to do in administrative matters. NEDPO obliged the Italian Government to requisition the totality of the Italian Mercantile Marine and to requisition meant the payment of a daily rate for the ship that they put at the disposal of the Allies. Shipowners,however, could not use them on their own account. When they received their daily rate of payment they had to think of nothing else and were satisfied.

Q. Then it is not as I thought: having received a daily rate of payment for the use of their ships, the shipowner,in case he wished to use his ship on his own account, had to refund the money he had received as payment for the hiring of the ship.

A. This was a case which never happened, but in case it did, it followed that during that period the requisition or the hiring of the ship ceased.

Q. Can you explain to the COURT why testimony given before this COURT shows that shipowners, at the time they drew up a contract to transport pozzolana, had to go to COGEMA and pay money for the use of their own ships ?

1452

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

BY THE PROSECUTION.

May it please the COURT ? We sustain that this very fact is part of the irregularities in this case, PROSECUTION sustains that this is an irregular matter and this is only one of the phases in this case.

BY THE COURT.

Q. But this has been the testimony given here ?
A. Yes, Your Honour.

BY DEFENCE COUNSEL.

We are now referring to an initial period when MEDBO did not yet exist but, more or less mysteriously , there existed DSTO. Therefore I must ask the witness a question : are you, Admiral, referring to the period when you were Director General of the Mercantile Marine?

DIRECT EXAMINATION.(Continued)

A. I am referring only to the period from 1 October '43 to 15 May 44.

BY THE PROSECUTION.

May it please the COURT, the facts in this case begin from the last part of August '44 and therefore the testimony given does not seem material to the issues in this case.

BY THE COURT. 2633

Q. Does all the testimony we have heard up to now concern the time prior to 15 May 1944 ?
A. Yes, Your Honour.

DIRECT EXAMINATION.(Continued).

Q. Also in this period could a shipowner or a captain as DSTO to have a cargo allotted ?
A. Generally merchants or transporters applied to the General Direction of Mercantile Marine for the allotment of schooners but they also applied to DSTO.

1453

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

BY THE COURT.

Q. Who are these people ?
A. The transporters, those who needed transport for their cargoes.

Q. Who are these people ?
A. Generally they applied to the Direction General of the Mercantile Marine which transmitted their request to DSTO but each could also apply directly to DSTO.

Q. Then they applied to DSTO ?
A. Yes , they did.

DIRECT EXAMINATION (Continued).

Q. Now we shall return to COGENA. Can you tell in a few words what COGENA was ?
A. COGENA was for me, as representative of the Mercantile Marine, a purely administrative body of the Italian shipping, above all COGENA was there to take care of the interests of the absent shipowners, who were the majority.

Q. Who was chosen as Director of COGENA ?
A. He was chosen by main agreement with the representatives of MEDBO, Mr.Graham and Mr. Campbell. Dr. Eugenio SARNELLA was chosen. Mr. Graham was the MEDBO representative in Algeria and Mr. Campbell was the MEDBO representative in Italy and he was in direct contact with me; I can also add that the name of Dr. Eugenio SARNELLA was made to me by Mr. Graham on the day he proposed me to set up the Board .

Q. Why did you, Mr. Graham and Mr. Campbell choose just DR.SARNELLA ?

BY PROSECUTION .

I object to the question. The witness is not competent to answer such question.

BY THE COURT.

Q. Why ?
A. The witness has not said that he knew Dr.SARNELLA. He has said that the name of Dr. SARNELLA was made to him.

(1454)

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

BY DEFENSE COUNSEL.

We wish to check this answer in the records.

BY THE COURT.

Will you please ask your question again ?

DIRECT EXAMINATION (Continued).

Q. Why was Dr.SARNELLA chosen as Director of COGENA ?
A. Dr.SARNELLA was the Director General of an important Steamship Line , the "Tirrenia", which together with the three Companies, "Italia", " Lloyd Triestino" and "Adriatica", constituted the four Steamship Lines of paramount national importance. Beside being the Director General of "Tirrenia", he was also acting Director General of the other three companies in Southern Italy because they had their main offices, the first at Genoa, the second at Trieste and the third at Venice. Mr. Eugenio SARNELLA was therefore one of the most competent men in mercantile shipping matters who could be found in Southern Italy . As to private shipping, there was in Southern Italy only the shipowner Achille Lauro who was as competent as Dr. Eugenio SARNELLA, but Achille Lauro at that time was a guest of H.M. the King of Great Britain in a concentration camp at Padula and we couldn't use him.

BY PROSECUTION.

May the COURT please I would like to point out that all this is not relevant to the issues in this case and that if we go on in the same way we shall have a very long record.

BY THE COURT.

Q. We have been hearing a lot of collateral details but this becomes a weight when it has to go into the records. The COURT had no wish to limit any of your testimonies but if you, Avvocato, stick closer to the issues, the case will be speeded up. Are all these details relevant to your Defense?
A. Yes; Your Honour. I noticed that the COURT seemed desirous to hear more details and since my friends on the left didn't do it, I have tried to bring witnesses to the stand who might explain how matters stood, and thus serve the COURT.

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

DIRECT EXAMINATION (Continued).

Q. When was COGENA office set up ?

BY THE COURT.

Q. Originally or formally ?
A. Formally .

DIRECT EXAMINATION (Continued).

Q. When was COGENA office formally set up ?
A. At the beginning of January 1944, in its very first days.

Q. But I notice that the Decree issued by the Luogotenente legally instituting COGENA is dated 14 September 1944 and was published only on 20 November 1944. Can you explain the reason of this discrepancy in the dates ?

BY THE PROSECUTION.

COUNSEL has first used the word "formally" and then "officially". PROSECUTION wishes to know what the Avvocato means by these words. He has also shown a decree.

BY THE COURT.

Q. Avvocato, much of this is informative for the COURT. At first I didn't know what you meant by the word "formally", then by producing the decree you ask the witness why COGENA began functioning in the first days of January and then there has been later on a decree regulating it.
A. Yes; Your Honour.

DIRECT EXAMINATION (Continued). 265

Q. In fact when COGENA began to function it was desirable, even necessary, for COGENA to function simulaneously also under the law because such an administration concerning large interests of absent people had necessarily to be convalidated by law. Therefore before COGENA could

1456

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

function I took care to draw a draft of decree instituting it and then I submitted it to the Cabinet meeting, but I did not succeed in having it approved by the Cabinet Council because a strong opposition arose on the part of shipowners and merchants against the publishing of the decree. The opposition on the part of shipowners was based on the fact that COGENA would block traffic, and by its control, navigation would be limited, cargoes would be controlled, hiring rates would be fixed. All these controls constituted a hindrance for shipowners and merchants. For this reason they tried every means either by directly applying to the Head of the Badoglio Government, and various ministers, or by promoting a press and radio campaign against COGENA so that during the period I remained in charge I did not succeed in having the decree issued.

Q. Why was it mentioned in the decree that its regulations were to be in force effective as from 3 September 1943 ?
A. Will you please quote the section in the decree ?

Q. Art.1,;last page reads ; " Regulations relative o the management of merchant ships of which under para B is effective as from September 1943."
A. As I have said before, the Allies and MEDBO did not wish to concern themselves with the management of the ships, but since it had been agreed that COGENA was to take upon itself the administration of the ships, it was necessary to fix a date for the beginning of this administration, and the Allies decided upon the date of 3 September 1943 because on that date at Cassibile our armistice had been signed. Beside that the fixing of 3 September 1943 had a value for the Allies from the standpoint of international relations, because we had Italian ships in neutral ports, in Portugal, Spain, Argentine, Ireland, Persia, Turkey and, since those ships might have been sequestered by the Northern Italian Government of that time, it was necessary to prevent that eventual move and thus that date was settled in order to requisition ships in the above mentioned ports from the date of 3 September 1943, notwithstanding the fact that the decree had been published almost one year later, in November 1944. To me, who represented the Italian Mercantile Marine, it was essential that COGENA functioned, that the manage-

1457

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

ment of the merchant navy began as soon as possible and functioned well, and if this administration began to function since the beginning of January I must say that everything is due to Eugenio SARNELLA.

Q. How long have you known Dr.Eugenio SARNELLA ?
A. I made his acquaintance at Taranto, in November 1943 when I was Undersecretary of State, and SARNELLA came to me in order to plead the case of the Shipping Companies of prime National Importance of which he was Director General.

BY THE COURT.

Q. Do not let us enter into so many details.
A. Anyway I made his acquaintance at that time and when in the list Mr. Campbell presented to me to set up the Board, I saw SARNELLA's name, I accepted willingly because since my first interview with him I had received a very good impression of competence and balance.

Q. During the time you have been Undersecretary and Director General of the Mercantile Marine what has SARNELLA's reputation been as to ability, honesty and sobriety ?
A. Since SARNELLA began working with COGENA I received the impression of his perfect competence and that he was in complete agreement with the Allies to whom he showed consideration and respect. I have always considered him as a perfect collaborator, honest, conscientious and scrupolous.

BY THE COURT.

Q. You didn't answer about the point about his sobriety .
A. When we speak of sobriety we mean sobriety as to wine.

BY THE COURT. 2631

The question was put by the DEFENSE COUNSEL.

BY DEFENSE COUNSEL.

Now I must ask the witness about the accused's character.

BY THE COURT.

You are questioning the witness about the accused's character.

1458

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

Ask the witness about the reputation of the accused in the community where he lives.

BY DEFENSE COUNSEL.

Do you mean I must ask him whether he is a gentleman or not ?

BY THE COURT.

What I mean about the character of a person is not the opinion the witness may have about the accused. I mean what is the total opinion the accused enjoys among the community he lives. This opinion is obtained by asking three questions : 1) Do you know the accused ? 2) Are you acquainted with the reputation he enjoys in the community where he lives ? 3) What is his reputation as to honesty, sobriety and ability, and has he ever been convicted? Thus we shall be able to get not only the personal opinion of the witness but also the opinion of the community among which the accused has been living.

DIRECT EXAMINATION (Continued).

Q. Can you tell us what was Dr.SARNELLA's reputation ?

BY THE COURT.

Not "was" , "is".

A. The best from every point of view.

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10 Minutes Recess

264

CROSS EXAMINATION by PROSECUTION.

Q. I believe you stated that you were replaced or substituted by General Matteini some time during the month of May 1944.

A. Yes, I was.

Q. Would you be in a posisition to tell us officially what has been the working of COGENA after May 1944 ?

A. I can answer.

1459

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

Q. The question said "officially".
A. Officially owing to direct knowledge I cannot, but through contacts I had with the Mercantile Marine and which gave me knowledge.

Q. Not personally, however.
A. No.

Q. I believe the COURT asked you a question, that is whether or not a shipowner could have the use of his own schooner. Correct me if I am mistaken: I believe you said that a shipowner could not have the use of his own schooner.
A. I didn't say so.

Q. Will you tell us how matters stood ?
A. At the time I was in charge no requests came on the part of shipowners to be allotted the ships on their own account.

Q. Were not the requests to be made by the merchants and not by the shipowners ?
A. Shipowners could also ask to be allotted ships on their own account because a shipowner may also be a merchant.

Q. Yes, but would not a merchant have to be registered with the Chamber of Commerce ?
A. I don't know about it but I believe it is not necessary, because a man who owns wine may become a wine merchant at the time he sells his wine and not be registered with the Chamber of Commerce.

Q. In any case you are not in a position to answer my question.
A. No, I am not.

Q. Was Dr;SARNELLA an expert in the passenger branch of the navigation business ?
A. I believe that as Director General he took care of all branches of the service.

Q. When you say "I believe" are you sure or not ?
A. I believe it must be so. I have no knowledge of these matters and I don't know what the duties can be of the Director of a Navigation Company.

Q. You have testified as to the character and personally of Dr. SARNELLA . How long have you known Dr.SARNELLA personally ?

261

1460

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

A. I never knew him before, only when he came to me about the middle of November 1943 at Taranto.

Q. Do you know his family ?
A. I have known them now, before I didn't.

Q. Do you know his f iends ?
A. No, I don't know his friends.

Q. Then how can you be a judge of his reputation ?
A. I became acquainted with his reputation in Naples above all in mercantile circles and in those of shipowners and I realized that he was considered as one of the best Director General in the Italian Mercantile Marine. When he came to see me in Taranto he was in possession of a letter of recommendation from the Admiral in charge of Naples Department.

Q. You have answered my question. Now Admiral, did you at any time entertain the thought of abolishing COGENA ?
A. Yes, I did.

Q. And did you as a matter of fact speak with anybody of MEDEC?
A. Yes, I did.

Q. Have you ever been to Dr.SARNELLA's house after ?
A. I have been to Dr.SARNELLA's house after his arrest,in Rome.

Q. Have you ever been to his house in Naples ?
A. I don't even know its whereabouts.

CROSS EXAMINATION for Attilio SARNELLA.

Q. Why did you entertain the idea of abolishing COGENA ?

BY THE PROSECUTION.

I object to the question. He is the COUNSEL for Attilio SARNELLA and this has no bearing on the issues in his case.

BY THE COURT.

The COURT asks whether or not this has any bearing.

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

BY PROSECUTION.

We have at no time alleged that Attilio SARNELLA was connected with COGENA.

BY THE COURT.

I am inclined to consider the question as good; this is a cross examination.

BY PROSECUTION.

Cross examination is only reserved to PROSECUTION; this is re-direct examination.

BY THE COURT.

There are some charges which the accused has to answer not jointly with Dr. SARNELLA.

BY PROSECUTION.

But in this case, whether or not the Admiral ever entertained the idea of abolishing COGENA, we are referring to a period prior to May 1944 while everything concerning Attilio SARNELLA took place in a period on or about September 1944.

BY THE COURT.

The witness has been offered by Dr. SARNELLA's DEFENSE COUNSEL and has been cross-examined by PROSECUTION. Why couldn't he be cross examinded by the other DEFENSE COUNSEL of the two accused in view of the fact that he has not been offered as a witness by them ?

BY PROSECUTION.

He should be re-examined by the DEFENSE COUNSEL of the other two accused in all matters that may pertain to the cases of their clients. I can't see how this question pertains to them. PROSECUTION wouldn't have objected if the question had come from Dr. SARNELLA's DEFENSE.

BY THE COURT

What could prevent DEFENSE COUNSEL for Attilio SARNELLA

1462

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

from calling the present witness as witness for their client ?

BY PROSECUTION.

The PROSECUTION has no objection if he can serve their purpose. If the Avvocato can prove that this is important for his defense we have no objection.

BY THE COURT.

Q. Can you show how this is pertinent ?
A. As COUNSEL for Attilio SARNELLA I respectfully submit to the COURT that my client has been charged with violation of Procl.2 Sec.45 for having committed an act to the prejudice of good order and safety and security of the Allied Forces . The basis of the charge, as seen from the details of the same charge, is an alleged illegal act in the matter of voyages. Under the same charge of violation of Procl.2. art.2. Sec.45 he has been accused of conspiracy to obtain, secure and procure illegally permits for travel from the Allied Authorities. It is evident that there have been reasons which have suggested the Undersecretary of the Italian Mercantile Marine the suppression of COGENA and it is not to be denied that Attilio SARNELLA's DEFENSE had a right to know these reasons, if these reasons may pertain to other reasons likely to weigh in the demonstration of the innocence of the accused.

BY PROSECUTION.

We cannot see how they can pertain to the charges.

BY THE COURT.

The COURT is inclined to think the DEFENSA COUNSEL of another accused may have the right to question the witness of another accused since all the accused are not charged jointly under all the charges.

BY THE PROSECUTION.

The witness has been called as a witness for Dr.Eugenio SARNELLA and in order to give the COURT an idea of the costitution of COGENA and, if I am not mistaken, as to

1463

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

Dr.SARNELLA's character and ability as Director of COGENA. I believe this has been the sum of Admiral BARONI's testimony. PROSECUTION asked the witness whether he at any time entertained the idea of abolishing COGENA. I only asked the question in order to show that COGENA at that time, and prior to May 1944, was not such a good working institution as it might seem. Now the question put to the Admiral, that is the reason why he entertained that idea, cannot have any relations with the charges raised against Attilio SARNELLA. SARNELLA Attilio does not come into the case before September 1944 and the Admiral has said that officially he cannot testify as to COGENA's organization after May 1944.

BY THE COURT.

Now I see more clearly. Now the COURT is taking the testimony in the defense of Eugenio SARNELLA. After all his witnesses have been heard, the DEFENSE of the two other accused may call those witnesses, speak with them and, if they so desire, they cann offer them as defense for their own clients. In case they desire any other testimony they will be allowed to have it as affirmative defense rather than as cross examination.

BY DEFENSE COUNSEL for Eugenio SARNELLA.

Since we have been tying ourselves in a knot, to separate or cut it there is no need of an Alexander the Great. We only need a servant to untie it. I shall be that servant and I shall put the following Question to the witness : Why, Admiral, did you one fine day think of abolishing this COGENA? We are curious to know why ?

BY THE COURT.

So is the COURT.

RE-DIRECT EXAMINATION (Continued). 23!

A. I f the PROSECUTION had not warned me to answer yes or no I should have answered:because I thought that for our country it was better to leave those schooners free which could be

1464

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

left free, because thus they might have served the interests of our country better. With the ties created by COGENA the scanty shipping left to us could not be used by me in the best way. The liberty of using those ships, and I am always referring to those ships whose owners were present, because for those whose owners were in Northern Italy the control was to be kept, would have produced competition and thus the high prices of black market would not have been reached. These are all the advantaged that a country tries to obtain when it discards all the ties created by war. This is why I thought that abolition of COGENA would result in an advantage for my country, abolition of that part of COGENA, however, which did not concern the administration of the ships run by the Allies and of which they disposed the use for military purposes.

NO FURTHER RE-DIRECT EXAMINATION.

Admiral BARONI is excused by the COURT.

Case adjourned to 20 February 1946 , 09:30 hrs.

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20 February 1946, 09:30 hrs.

2 WITNESS : WALTER WILLIAMS.
The witness has already been sworn in.

DIRECT EXAMINATION .

Q. What is your name ?
A. Walter Williams.

Q. Where were you born ?
A. At Cardiff, on 10/6/1876.

Q. What nationality ?
A. British.

Q. After the landing of the Allies in Italy, to what organization have you been attached ?
A. I was Deputy Representative of Ministry of War Transport at Taranto in October 1943.

1465

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

Q. Did you ever hear an office mentioned by the name of DSTO ?
A. No ,at Taranto there was an office called SSTO which was the office supervising war transport.

Q. What were the functions of th s office ?
A. SSTO was simply the office attending the loading and unloading of the cargoes, what is called Army Servies.

Q. Was this office subordinate to another ?
A. Yes, Taranto office was subordinate to Bari office .

Q. Till when were you attached to that office ?
A. Till February 1944.

Q. Did you have then another appointment ?
A. Yes, I came to Naples as Deputy Represetative of the British Ministry of War Transport for the Italian Navy.

Q. When you came to Naples at that time did you hear of an office called DSTO ?
A. Yes, I did.

Q. What were the functions of that office ?
A. The duties of that office were to attend and superintend the loading and unloading of Army Services and the requisition of schooners on behalf of NASC. There was also a separate office taking care of the release of permits for transport on schooners.

Q. Till when did that office function ?
A. Till 16 August 1944.

BY THE COURT.

Q. DSTO office, do you mean ?
A. Yes , Your Honour.

DIRECT EXAMINATION (Continued).

Q. What happened on 16 August 1944?
A. A meeting of MEDBO was held and a Board was formed called MEDBO Schooner Control Board ?

Q. Will you explain to the COURT what MEDBO means ?
A. MEDBO was under the Supreme Command and consisted of Sarshipping Administration , MSA.

1466

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

Q. Was WSA a British organization ?
A. No, it was an American administration and MWT was British. Then there was also an officer from PSTO which means First Officer Sea Transport, who was superior to DSTO.

Q. Who was the President of MEDBO ?
A. The President was Mr.Gibson Graham.

Q. Where was this office situated ?
A. At Caserta.

Q. Before being at Caserta where was this office ?
A. Always at Caserta.

Q. I mean before the landing of the Allies in Italy, where was this office.

A. It was in North Africa.

Q. Was there any other officer under Mr.Gibson Graham ?
A. Yes, Mr. Kallock, an American, and then there were two assistants, Mr. Campbell, British , and Mr. Nicholls of the Warshipping Administration (WSA).

Q. Was then decided by the members of MEDBO to set up the MEDBO Schooner Control Board ?
A. Yes.

BY THE COURT.

Q. Do you refer to the date 16 August 1944 ?
A. Yes, I do.

DIRECT EXAMINATION (Continued).

Q. Do you know whether at that date, that is 16 August 1944, COGENA was already in existence ?
A. Yes.

Q. How was this new Board constituted ?
A. There was in it Capt. Smith,of the Allied Commission, Dr. SARNELLA, Director of COGENA, and Mr. Williams as representative of the Ministry of War Transport (British). I was

14671

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

appointed as representative of Mediterranean Shipping Board (MEDBO).

Q. Was MEDBO an organization composed of British and American members ?
A. Yes, it was.

Q. Did those three members constitute then the office of the Schooners Control Board ?
A. Yes, they did.

Q. May I then say that this office replaced DSTO Office ?
A. Yes, with the exception however of the sequestered schooners.

Q. Apart from the named of these three individuals, am I correct in saying that the members of this office were the representatives of the Allied Commission, Transportation Sub-Commission, the representative of MEDBO and the third was the representative of the Comitato Italiano Gestione Navi ?
A. Yes, you are.

Q. Will you tell the COURT briefly how that office functioned ?
A. We agreed between ourselves that we should meet every day at 4 P.M. Dr.SARNELLA, the representative of COGENA, was to present a list of the schooners available, Capt.Smith, on behalf of the Allied Commission, was to present bids for transport of goods which had been approved. Then MEDBO Schooner Control Board allocated schooners against bids made by Capt.Smith. Generally those bids were from South to North and not from North to South. The Board generally endeavoured to transport cargoes from North to South, because schooners were on time charter, in other words the ships were paid from the time their cargoes were completed and they left for the port of unloading, where they unloaded till the time of their actual return to their original port. If, for example, we could obtain that a small cargo could be transported from North to South then the schooner was off hiring until he completed his load in the South. This was a benefit for the shipper in the South because thus he only paid the hiring from South to North. Of course especially during wintar, small schooners could not travel from North to South without having some kind of ballast. It took two or three weeks sometimes for these schooners

1468

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

to reach Sicily owing to bad weather. The function of the Board was to transport goods and the function of the Allied Commission was to present the bids. Naturally it happened frequently that on arrival of the schooner at the port of loading, according to the bid presented to the Allied Commission, the cargo was not available and then it was necessary to find through the Allied Commission at Palermo or Catania, any cargo available since, due to the fact that the schooners were on time charter the charterers had to pay all the same to COGENA. The utmost was done on the part of the members of the Schooner Control Board to work efficiently and economically. When we began our work in the month of August 1944 the average was of 7000 tons per month and we gradually increased that average till we reached in May 1945 an average of 26000 tons per month.

Q. Did the Board make a report according to the list of the allotments made ?
A. Yes. As I know, Capt. Smith every day sent Transportation Sub-Commission a list with the allocations made and I sent a copy to Caserta to MEDIO and to our representatives in Palermo and Catania.

Q. What can you say of the representative of COGENA ?
A. He sent a similar copy to his representatives in Sicily and every day he wired the allocations made because, as I have previously said, in many instances the ships were without cargo and it was necessary to act very promptly because every day COGENA received wires from the agents at Catania and Palermo because the Agency at Catania included all Sicily from Messina as far as Siracusa, and, on the other side, Palermo included Trapani, Gela and all that part of the Island.

Q. Am I right in assuming that COGENA was the executive of the orders of this Schooner Control Board ?
A. Yes, you are.

BY THE COURT.

Q. Do you mean the orders of the Board ?
A. Yes, Your Honour.

1469

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

DIRECT EXAMINATION (Continued).

Q. You have mentioned bids, where did those bids come from ?
A. From Capt. Smith of the Allied Commission.

Q. Did those bids concern goods which were to be transported fromSSicily to the mainland ?
A. Yes.

Q. But you have said that sometimes the Board granted allocations for the transport of,let us say, pozzolana from the mainland to Sicily.

BY THE PROSECUTION.

We object : the witness never stated so.

BY THE COURT.

This is a leading question. Please put it in another way.

DIRECT EXAMINATION (Continued).

Q. Has the Board ever allocated permits for the transport of cargoes from the mainland to Sicily, especially for pozzolana ?
A. Yes.

BY PROSECUTION .

We wish to point out that the same Italian word "Commissione" is used to mean this Board and the Allied Commission,which might create some confusion in the records.

BY THE COURT.

Both DEFENSE and PROSECUTION COUNSEL must bear in mind that the COURT is here learning something for the first time. We don't understand whether you mean the Schooner Control Board, so that you are requested to use that word when alluding to it.

DIRECT EXAMINATION (Continued).

Q. So that your answer was yes.
A. Yes.

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

Q. Did the bids presented by the representative of the Allied Commission refer only to goods which were to be transported from the mainland to Sicily ?
A. On very few occasions there were requests for transport from the mainland to Sicily and generally they dealt with very small cargoes, from 20 to 30 tons.

Q. Do you know of any specific order from the Allied Commission by which it was severely forbidden to transport pozzolana from the mainland to Sicily ?
A. No, It was not the business of the Allied Commission but it was on the contrary the business of the MEDIO Schooner Control Board which controlled the schooners.

BY THE PROSECUTION.

The witness has not answered the question.

BY THE COURT.

He has answered the question.

BY THE PROSECUTION.

He has answered saying that it was not the business of the Allied Commission.

BY THE COURT.

The question must be read over by the Court stenographer.

The question is read over.

DIRECT EXAMINATION (Continued).

Q. Can you explain why the Board gave those permits ?
A. From North to South ?

Q. Yes.
A. We always gave permits from North to South because we controlled the schooners and there had never been a specific order concerning the conveyance of specific goods.

Q. What did Dr.SARNELLA do in the meeting of the Board ?
A. The same as the other two members did.

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

BY THE COURT.

You asked him what he did. We have testimony as to what the other two members did.

BY THE PROSECUTION.

The witness has testified as to the function of that Board.

BY THE COURT.

The DEFENSE COUNSEL has asked : What did Dr.SARNELLA do? The answer has been :" He did the same as the other two members did." You must shape your question differently :" Tell me what the other two did."

DIRECT EXAMINATION (Continued).

A. I have already said that Dr.SARNELLA brought the list of the schooners available. Capt.Smith presented the bids for transport of cargoes and we jointly allocated these schooners.

Q. By the word jointly, do you mean all three of you ?
A. Yes.

Q. Now I wish to ask you another question to which I hope the PROSECUTION will not object on the grounds that it is a leading question. You said Dr.SARNELLA presented a list of the schooners available. Did he ever make any recommendation or did he ever exercise any kind of pressure in order to have a schooner preferred to another ?
A. Definitely not : otherwise I would have taken the matter as an insult.

DIRECT EXAMINATION Rests.

251

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10 Minutes Recess

CROSS EXAMINATION BY PROSECUTION.

Q. In speaking of the duties of each of the members of the Board

1472

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

I believe you stated that BARNELLA brought the lists of the schooners available and Capt. Smith the bids for goods approved, is it correct ?
A. It is.

Q. So that the function of the Board was that of acting upon the bids, upon the ~~bids~~ approved by the Allied Commission, so that with respect to the goods which were to be transported, that was a matter which concerned only the Allied Commission in that they were civilian goods. Is it correct ?
A. Yes, as far as civilian goods were concerned .

Q. So that the only function of the Board was to allocate space ?
A. Yes, and to run the schooners.

Q. Wasn't the function of COGENA to run the schoners ?
A. Yes.

Q. Then in this case it was not the function of the Board .
A. Yes, it was a function of the Board.

Q. You have answered yes to both questions, then who administered the schooners, COGENA or the Board ?
A. COGENA administered the schooners.

Q. The Allied Commission was the received, that is the receiving Agency with respect to the bids, is that correct ?
A. YES.

Q. Then the Board was empowered only to act on the bids approved by the Allied Commission.
A. Not solely.

Q. What is the exception ?
A. When we wanted cargo and the schooners were waiting about 25 doing nothing.

Q. On what regulation was the exception based ?
A. We never had contrary instructions.

Q. Did you ever receive affirmative instructions ?
A. No, we didn't.

1473

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

Q. Had you received instructions that you were to act on bids approved by the Allied Commission ?
A. Not solely .

Q. What other instructions had you received ?
A. I never had any instructions from the Allied Commission either in one way or another.

Q. The fact that you never received these instructions does not preclude their existence.
A. I don't understand. I never had any knowledge as to the question you have asked me.

Q. You never saw, therefore, any instructions relative to the transport of goods.
A. No, because it was not part of my duties.

Q. How did you know then on what bids to act before allotting space ?
A. The bids were presented by the representative of the Allied Commission and we acted in agreement with him.

Q. The procedure was then that these bids came from the Allied Commission ?
A. Yes, in agreement with the representative of the Allied Commission present.

Q. Did Dr.SARNELLA present any bids ?
A. No, he didn't.

Q. Did you present any bids ?
A. No, I didn't.

Q. So that the only bids presented were those presented by Capt. Smith ?
A. No; not the only ones . 2/3

Q. Who else presented them ?
A. When cargoes were lacking , we tried to obtain them.

Q. In the case you were looking for cargoes who presented the bids ?
A. There were already indications from Sicily of cargoes available ready on the pier.

Q. Who submitted them ?

1474

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

A. They were submitted by telephone or telegraph .

Q. By whom were they submitted , by representatives of the Allied Commission, by charterers, shipowners, by whom ?
A. By several people but generally by COGENA Agents .

Q. Whom did these people inform ?
A. They informed COGENA of Naples.

Q. And did then COGENA present the requests to the Captain ? Is it correct ?
A. Yes, it is.

Q. And the man who represented COGENA was Dr.SARNELLA ?
A. Yes.

Q. So that Dr.SARNELLA presented the requests ?
A. They were not requests.

Q. What were they then ?
A. Requests in view of the absence of cargoes.

Q. They were however requests for the transport of goods and they went all the same to the Allied Command.
A. They were treated the same.

Q. How long did you serve on that Board, Mr. Williams ?
A. From August 1944 to May 1945.

Q. In May you were replaced, weren't you ?
A. I was granted ten days'leave .

Q. You didn't go back to the Board , did you ?
A. Yes, I returned there for a very short time .

2.8

Q. And then ?
A. I was substituted.

Q. By MR.Henry Robinson ?
A. Yes.

Q. Prior to the time you were replaced, had there been many complaints addressed to MEDIO concerning this Board ?
A. Not to my knowledge.

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

Q. You mean you have no personal knowledge of them ?
A. I have no personal knowledge of them .

Q. Did you not talk with Mr. Gibson Graham about the complaints relative to the Board ?
A. No , I didn't.

Q. Did you know that there was an enquiry in course concerning that Board and COGENA ?
A. I was informed of it.

Q. In fact you were yourself questioned .
A. No ,it is not true, never.

Q. Were you ever questioned by Col. Heddon ?
A. No , I wasn't.

Q. Did anyone ever speak to you about this case ?
A. What do you mean ?

Q. Concerning the possible prosecution of this case.
A. No.

Q. Did Major Richardson question you ?
A. I never met him in my life.

Q. And Lt. Robinson ?
A. I never saw him .

Q. I ask you to refresh your memory; did Lt. Robinson of the Finance Sub-Commission question you ?
A. NO.

DEFENSE COUNSEL for Attilio SARNELLA asks the COURT's permission to question the witness .

BY THE COURT. 2/1

Q. We must clarify this matter. The present witness is a DEFENSE witness. PROSECUTION has the right to cross-examine him but the COURT is not going to permit a DEFENSE witness to be cross-examined by DEFENSE COUNSEL of another accused. It would be the same as permitting DEFENSE to examine and cross examine the same witness. Avvocato, what are the questions you wish to ask the present witness ?

1476

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

A. Only one question.

Q. You can ask it but the witness must not answer before he obtains permission from the COURT.

BY DEFENSE COUNSEL for Attilio SARNELLA .

Q. Did the Board, after each meeting, send a report to the authorities represented by the various members of the Board ?

BY THE COURT.

Q. Hasn't the witness already testified as to that ?
A. Yes, he has.

BY THE PROSECUTION .

The witness has already testified that after each meeting of the Board he sent a report to MEDDO, while Director SARNELLA sent a report to COGEMA and Capt. Smith to the Allied Commission.

Q. In the case of an authorized carriage of pozzolana from North to South, was it mentioned in the report that the cargo was authorized ?

BY THE COURT.

Q. As to quality or contents ?
A. I correct myself : was there written on the report :" cargo of pozzolana ? "

BY THE COURT.

Q. Was then the content mentioned ?
A. Yes.

2½6

Q. Does the PROSECUTION raise any objection to the question ?
A. No, we don't .

The question is put to the witness.
A. In every instance it was entered in the lists.

BY THE PROSECUTION .

This has already been produced to the COURT under the form

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

of permits.

Q. Does the witness know whether the Allied Commission and MEDEO after receiving the lists mentioning cargoes of pozzolana, ever made any objections ?
A. Never.

BY THE COURT.

We wish the Avvocato to know that the COURT allows questions to be put to the witness but this is nor cross examination.

BY THE PROSECUTION.

Since it makes no difference who asks the question we wish to have the opportunity of cross examining.

BY THE COURT.

It is very simple so that there will not be any misunderstanding on this matter. DEFENSE for Dr. SARNELLA has just examined the witness and PROSECUTION has cross-examined him. The other accused can call the witness as their own witness and PROSECUTION may cross-examine him on the arguments which are brought in evidence during the new examination. The simple difference consists in the fact that you can call the witness as your own witness. You cannot however ask him leading questions.

DIRECT EXAMINATION (for Attilio SARNELLA).

Q. Could the captain or the shipowners of schooners file requests to be assigned permits of voyage from North to South ?

BY THE PROSECUTION.

I object to the question unless he states that the witness is a qualified witness and familiar with all the regulations relative to these transports. The witness cannot answer : he has already testified saying that he had no knowledge of those regulations.

BY THE COURT.

The COURT finds that your remark about his having to be an expert in order to answer the question is unfounded.

1470

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

BY THE PROSECUTION.

The Avvocato wishes to know whether or not an order existed. Unless the witness is familiar with all regulations PROSECUTION does not see how the witness can answer.

BY THE COURT.

Evidently the interpreter did not translate the question as it was put. The question, as the COURT understood it, was whether or not the captain of a schooner could file a request. The answer to this question is very different from the question whether or not he could do it legally. If he tries to ask whether or not the captains could do it legally then the question is improper because the question asks for an opinion on the part of the witness while regulations are the better proof and evidence and then that is a question upon which the COURT must rule. Has the COURT made itself understood ? If the question is as follows : " Could a Captain materially file a request ? " PROSECUTION cannot object to it but if the question is :" By filing this request did he commit a legal act ?" then we have a question of regulations and it is a matter on which the COURT must judge from the facts as they are brought before it . Now what is your question ?

A. Have Captains or owners of schooners filed any requests to be allocated permits for voyages ?

BY THE COURT .

The Court cannot see any objection .

BY THE PROSECUTION .

There is no objection on the part of PROSECUTION. 2/4

DIRECT EXAMINATION (Continued).

A. Yes, from North to South, and the Captains and the ship-owners could file requests and they were welcome and they did take cargoes from North to South.

Q. Since those requests were welcome, as the witness has stated, that is, since the permits were granted, were ever any

1479

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

objections made by the authorities you represented in the Board ?

BY THE PROSECUTION.

The question has already been asked and an answer received.

BY THE COURT.

The COURT bbelieves the answer to have been :" No,never". The COURT believes his answer was limited to the goods.

No further questions from DEFENSE COUNSEL.

BY THE COURT.

Q. Do you want the witness held ?

BY THE PROSECUTION.

A. We shall hear something on this during the afternoon.

BY DEFENSE COUNSEL for Eugenio BARNELLA.

Mr.Williams has an important charge with the Ministry of War Transport. We might arrange with him that, in case he is needed, he will hold himself ready to answer a telephone call.

BY THE PROSECUTION .

Instructions are very clear on this matter. Provided he holds himself within reach of the COURT it does not matter where he is.

BY THE COURT.

Mr. Williams can be reached in a very short time and if we need him we shall call him. The COURT therefore does not excuse the witness completely. He is allowed to leave the Courtroom and go where he likes. The COURT will reach him by telephone in case he is needed.

Case adjourned to 14:00 hrs.

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

20 February 19 , 14:00 hrs.

3 WITNESS: Capt. F.H. SMITH.

The witness has already been sworn in.

DIRECT EXAMINATION.

Q. What is your full name?
A. Ferdinand Hardman Smith.

Q. Where were you born?
A. I was born as Wool, Yorkshire, England.

Q. Date of birth?
A. 1869.

Q. Nationality?
A. British.

Q. What is your occupation in civilian life?
A. I was shipbroker.

Q. When you arrived in Italy with the Allied Army to what office were you assigned?
A. When I arrived in Italy in May 1944 I was assigned to Shipping Branch Transporation Sub-Commission.

Q. Till when?
A. Till I was released from the Allied Commission towards the end of May 1945.

Q. Have you ever been a member of MEDSO Schooner Control Board?
A. Yes I have.

Q. From when, till when?
A. From its inauguration till about the end of March 1945.

Q. How many members were there on that Board? 24
A. There were three members.

Q. What did they represent on that Board?
A. One was the representative of the Ministry of War Transport, and it was Mr. Williams, another was the representative of COGENA, and it was Dr. GARNELLA, I was the third member and was the representative of the Allied Commission.

Q. As representative of the Allied Commission what were your

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

duties.

A. To present bids for shipping space and also, as a member of the Board, to allocate such space.

Q. From whom did you receive those bids?
A. From many sources.

Q. Can you state some of these sources from which you received requests?
A. Requests were received on the first day I joined the Allied Commission from civilians who came to see the Officer in charge, who was then Major Clandill and that practice continued, as far as I know, always; and this was a source from which requests came. Secondly requests or bids came from various Sub-Commissions, eventually I received bids from Transportation Sub-Commission, Rome.

Q. What did you do when you received these requests or bids?
A. A list was made of bids and submitted to Schooner Control Board at their daily meeting.

Q. Did those bids or requests refer to cargoes from North to South or from South to North?
A. Mostly from South to North.

Q. Then there were two kinds of navigation, one from South to North and eventually one from North to South.

BY PROSECUTION.

Q. I am sorry, Avvocato, but I cannot understand what you mean by "two kinds of navigation".
A. We are dealing now with the requests or bids for transport.

DIRECT EXAMINATION (Continued).

A. In fact we might say there were two different kinds of navigation.
Q. Did the Board grant permits for both directions? 241
A. Yes.

Q. Do you know of any specific order preventing the issue of permits for this transport from North to South?
A. There was no such order.

Q. For any kind of goods?
A. I cannot think of any such order.

Q. For instance, were there any orders preventing the

T 4821

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

transport of pozzolana, let us say, to Sicily?
A. Certainly not.

Q. But when the Board decided upon these cargoes from North to South, were these permits included in the allocation lists which were drawn up by the board after their daily meeting?
A. If the Board decided to grant those cargoes they were included in the daily allocation lists.

Q. Were these allocation lists sent to the authorities of which the members of the Board were the representatives?
A. Yes, they were.

Q. Have you ever received any remarks or objections relative to cargoes of pozzolana from North to South?
A. I can remember of no such remarks.

Q. Did the representative of COGNA, Dr. GARNELLA, on behalf of COGNA present a list of Schooners available?
A. Yes, every day.

Q. Did he ever make any special recommendation or did he e exercise any pressure in order to have permits granted to one schooner rather then to another?
A. No.

CROSS - EXAMINATION by PROSECUTION.

Q. Capt. Smith, You were a member of the Allied Commission Transportation Sub-Commission, weren't you?
A. Yes, I was.

Q. As a member of the Board, you represented A.C. Transportation Sub-Commission.
A. Yes, as far as I know, I represented the Allied Control Commission.

Q. Am I right in saying that the primary purpose of that Schooner Control Board was to allocate space in the Schooners available?
A. Yes, I should say you are.

Q. Your primary function on that Board was to present bids which had already been approved by the Allied Commission, is it right?
A. Yes, it is.

1483

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

Q. So that the Board had no jurisdiction over the selection of the cargo because that had already been done by the Allied Commission.
A. No, I cannot agree on this.

Q. Then tell me it is not correct and I shall ask another question.
A. Yes.

Q. Had Allied Commission a list of cases which were to have priority?
A. Yes.

Q. And the Board was supplied with such a list, and this list would help the Board in its selection for allotment of space, is that so?
A. Yes.

Q. But did the bids for cargoes come from the Allied Commission, Rome?
A. No, they didn't.

Q. Where did they come from?
A. At the beginning the situation of Transportation Sub-Commission and Shipping was rather vague.

Q. Referring to a statement you made on this matter you have been asked what were the sources of the bids and you said that some people filed their requests with Major Glandill.
A. At the beginning they did.

Q. I assume that Major Glandill referred them to you in order to have them brought before the Board.
A. No, because Major Glanvill was not in Naples when the Board was set up.

Q. Was he a member of A.C.?
A. Yes, he was.

Q. Then he acted for A.C.?
A. Yes, he did.

Q. Did he of his office ever transmit you these bids in order to have them brought before the Board?
A. Yes, I have already stated that eventually Rome sent these bids.

Q. You have said in reference to the second source of these

1484

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

bids, that they came from the various Sub-Commissions.
A. Yes.

Q. The third was Transportation Sub-Commission, but in any case the source of these bids was always the Allied Commission, is it correct?
A. No, wait a minute. I was the Officer in Naples for A.C. Transportation Sub-Commission and the bids were presented to me and I presented them to the Board.

Q. And who presented them to you?
A. I have already said it.

Q. Say it again.
A. They were presented to me by people who came to my office, by various Sub-Commissions and eventually by Transportation Sub-Commission, Rome.

Q. Weren't these bids to be approved by the Allied Commission before being submitted to the Board in order that the Board decide upon the allotment of space, in view of the fact that is was transport of civilian goods, which was under the control of the Allied Commission?
A. Generally they were screened.

Q. From whom did you receive your instructions? Was it from the Head of Transportation Sub-Commission?
A. Instructions as to what?

Q. As to these bids.
A. I am afraid this is not clear.

Q. You received bids from Rome, didn't you?
A. Yes, eventually.

Q. When I say Rome, I mean the Allied Commission.
A. Yes.

Q. Did they issue instructions to you as to what you were to do with these bids?
A. Yes, they assumed that I would present them to the Board.

Q. Were you then told this?
A. By whom?

Q. By your Sub- Commission.
A. I cannot remember wether I was told it but it was clearly

1485

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

understo[illegible] between us.

Q. When you were first appointed by the Allied Commission to represent them on the Schooner Control Board you came from Transportation Sub-Commission. Didn't they tell you your new duties as member of the Schooner Control Board?
A. Not so far as I can recall.

Q. When you received these bids, had they been examined by the Allied Commission or had they not?
A. When I received them from the Allied Commission usually they had not been examined, I would not say always, but usually.

Q. When did you start receiving these bids from the Allied Commission?
A. When I first took part in Transportation Sub-Commission these bids came from Transportation Sub-Commission and other Sub-Commissions.

Q. As a matter of fact A.C. was the only source from which these bids originated if they concerned civilian goods, is it correct?
A. Insofar as I was an officer of A.C., yes.

Q. Was there anyone else on the Board who received bids?
A. Wait a minute. Every day, at the meeting of the Board, there was a pile of letter and telegrams regarding cargoes, most of which referred to bids already presented.

Q. Then let us consider the bids which had not already been presented; new bids.
A. There were letters asking for allotment of space in the schooners.

Q. What did you do about these letters?
A. If we were looking for cargo, which sometimes happened, as far as I remember, we used probably to issue permits for them.

Q. Now, supposing you were not looking for cargo, what did you do?
A. It depended on the nature of the letter, most likely later on I sent the letter to Rome, to Transportation Sub-Commission.

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

Q. What do you mean by "later on I sent it to Rome"?
A. I ~~mean~~ about the end of 1944.

Q. Why didn't you do this ealier?
A. I don't mean I wouldn't have done so earlier but to say that it was about the end of 1944 because later on that would have been expected.

Q. Expected by whom?
A. By Transportation Sub-Commission.

Q. Which is part of S.C.
A. Yes.

Q. Undoubtedly you received communication to this effect from Transportation Sub-Commission.
A. There were several communications between me and Transportatior Sub-Commission.

Q. On this subject?
A. I cannot remember any particular communication on this subject.

Q. What do you mean by the words "this was expected"?
A. Let us say this had developed into a habit.

Q. In fact, Capt. Smith, isn't it so that you were obliged to send to Rome, to the Sub-Commission, all requests for allotment of space on ships because there they would have been examined according to the priority of goods?
A. I don't believe so.

Q. You have heard about a list of priorities.
A. Yes, I have.

Q. What was the use of that list, do you know it?
A. It was a guide.

Q. A guide to whom?
A. To anyone dealing in shipping transport.

Q. In fact, it was used as a guide by Transportation Sub-Commission in approving the bids.

1487

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

A. Certainly it was a guide.

Q. You kept a register as to the bids you had received, didn't you?
A. Yes, I did.

Q. The register would show where the bids came from, wouldn't it?
A. Yes, but always subject to some human error.

Q. But, as far as you know, the register is substantially correct.
A. Yes.

Q. Each of these bids received had a serial number, is that correct?
A. Yes, a serial number of the Transportation Sub-Commission, Naples.

Q. And there was also a Regional number on those permits.
A. Yes, on most of them.

Q. As a matter of fact, Captain, the Board did not concern itself with bids but simply with the allocation of space, is it so?
A. Normally, it was so.

Q. Did Dr. SARNELLA ever present bids to the Board?
A. I have mentioned a short time ago that there were instances of letters asking for allotment of space on the schooners and that they were presented to the Board.

Q. And did Dr. SARNELLA ever bring in any letters asking for an allotment of space on schooners for transport of goods?
A. So far as I remember, there were often letters asking for space in the schooners that were presented by Dr. SARNELLA.

235

Q. Was that space granted at times?
A. At times it was granted, depending on the nature of the cargo and the directions.

Q. Did Mr. Williams serve on that same Board as you did?
A. Yes, he did.

Q. Did you serve on that Board during the same period of time Mr. Williams did?

1488

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

A. I believe Mr. Williams remained on the Board a little longer than I did but I am not sure.

Q. Did Mr. Williams ever request space?
A. On what occasion?

Q. So that sometimes he requested space.
A. Yes, on rare occasions for the British or Italian Navy.

Q. Did Mr. Williams ever request space on behalf of firms?
A. I cannot remember any such occasion.

Q. Then the answer is that you cannot remember.
A. I can also say it in other words and say that, if my memory serves me well, he did not.

Q. But did Dr. SARMELLA present requests for firms?
A. I have just replied to that question. Occasionally he presented letters to the Board, letters which were there, on the table.

Q. What were these letter about?
A. They were about cargoes, I am afraid I cannot remember what these cargoes were.

Q. But they were requests.
A. Yes, requests for schooners.

Q. Which were brought in Dr. SARMELLA.
A. Yes, and they were introduced into the Schooner Control Board.

Q. Do you know anything about the procedure used to file a request for a cargo?
A. You mean the present procedure?

Q. No, I mean the procedure in use in August, September, October 1944.
A. So far as I remember, the procedure changed occasionally and no efficient procedure was ever evolved.

Q. Did you know that in August, September and October 1944, before a shipper could request space in a schooner he was to be registered with the Chamber of Commerce?
A. Not in those months, so far as I know.

Q. Are you sure?

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

A. I am not certain but I greatly doub it.

Q. Therefore you cannot state as a fact whether or not one needed to be registered at the Chamber of Commerce.
A. After such a long time it is difficult to say whether during the months you have mentioned that conditions was or not required.

Q. In fact this is a matter which you don't know.
A. I don't remember the exact months.

No further cross - examination from PROSECUTION.

RE - DIRECT EXAMINATION.

Q. Did Dr. SARNELLA present any lists of bids?
A. No, he presented single letters.

Q. When you say "single letters" do you mean personal letters addressed to Dr. SARNELLA?
A. No, I mean business letters addressed to COGENA.

Q. Then am I correct in thinking that those letters or applications were handed by Dr. SARNELLA as representative of COGENA?

BY PROSECUTION.

I object to the question.

BY THE COURT.

Avvocato, this is your witness, you cannot ask leading questions. PROSECUTION objected because you are leading your witness. The objection is good. You must put your question differently.

RE - DIRECT EXAMINATION (Continued).

Q. How were these so-called letters presented by Dr. SARNELLA to the Board? 23
A. Your Honour must excuse me if I am somewhat lengthy in my answer.

Q. Captain, you know how you must answer. Go ahead.
A. In many meetings either Dr. SARNELLA or his substitute used to have before them a pile of letters and telegrams which were discussed by us during our meetings. Have I answered the question?

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

Q. Then these were not personal but official documents.
A. Certainly they were.

Q. That is, documents belonging to COGNA offices?
A. Yes.

Q. I would like to know, always in respect to cross-examination, whether I am correct in stating that y you have said the Board grwnted permits for goods a according to the quality of the merchandise and the direction of the voyage.

BY PROSECUTION.

This is not exactly what is stated in the records.

Q. We would like to know what the witness meant when he said that the Board granted permits according to the direction of the voyage and the quality of the merchandise.
A. Generally speaking if a request was presented for a cargo from North to South the cargo was accepted.

Q. Why?
A. For two reasons: first of all in order to make the ship more seaworthy and help as ballast, and secondly because it reduced the cost of transport of goods coming from South to North.

Q. Did schooners going from North to South very often travel empty?
A. Yes, very often.

Q. And were most requests made for cargoes from South to North?
A. Yes, they were.

RE - CROSS EXAMINATION.

Q. On what days of the week did you hold these meetings?
A. On all days, Sundays excepted.

Q. Also on Saturdays?
A. I believe so, I am almost certain. Wait a minute please. I am convinced that we held them every day of the week except on very rare occasions.

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

Q. Don't you know that Dr. GARNELLA went to Rome every Friday evening or Saturday morning?
A. No, he didn't. He went to Rome from time to time. I would say he went every two or three weeks.

Q. That is to your best recollection.
A. Yes.

Q. In answer to a question from DEFENCE COUNSEL you have said that the letters Dr. GARNELLA presented to the Board were letters addressed to GOSENA. How do you know that?
A. I saw the letters.

PROSECUTION asks the COURT for Ex. I,J,K.

Q. I show you these exhibits. Are these anything like the documents Dr. GARNELLA would bring in?
A. Yes, certainly, but some of them are typewritten.

Q. Keep to the question, please. I ask you to look at them and tell me whether they were actually brought in by Dr. GARNELLA.
A. They are addressed to COSENA.

Q. Is there anything in them showing that Dr. GARNELLA introduced them on the Board?
A. Yes, there is written on it, in my handwriting, the word "agreed". Therefore, it was certainly presented to the Board because on it I see written "Return from Pozzallo to Civitavecchia with carrobe."

No further questions from the PROSECUTION.
The witness is excused by the COURT from further attendance at the trial.

231

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

4 WITNESS: Mr. .A. BELL.

The witness has already been sworn in.

Q. What is your name?
A. George Alexander Bell.

Q. Where were you born?
A. At Liverpool, England.

Q. On what date?
A. 7 July 1885

Q. What nationality?
A. British.

Q. From August 1944 till May 1945 to what organization were you assigned to?
A. I was attached as an officer to the British Ministry of War Transport.

Q. In Naples?
A. No, Rome.

Q. Were you in contact with MEDBO?
A. As an officer of the British Ministry of War transport I was indirectly in contact with MEDBO.

Q. Have you ever heard MEDBO'S Schooner Control Board mentioned?
A. Yes, I have.

Q. Have you had any occasion to have contacts with Dr. BARNELLA?
A. Yes, I have.

Q. Have you ever heard of orders forbidding the transport of cargoes from North to South?
A. No.

23

BY PROSECUTION.

I object to the questions. DEFENCE COUNSEL has not qualified his witness. What he means is " Were there any orders?". If this is the intention of his question he must qualify his witness.

1493

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

BY THE COURT .

I believe he only asked the witness whether he had knowledge of any such orders. As long as he says "no" there can be no objections

BY PROSECUTION.

As long as the phrase is not constructed to mean that there were no such orders.

DIRECT EXAMINATION (Continued).

Have you ever heard of orders from Allied authorities preventing the issuance of permits for transport from North to South?

BY PROSECUTION.

The objection remains on the same basis. He has not yet qualified his witness.

BY DEFENCE COUNSEL.

Q.What does it mean that I have not qualified my witness?

BY THE COURT.

The PROSECUTION does not object on the grounds that yours is a leading question but that you have not qualified your witness and by this PROSECUTION means that you have not examined your witness as to his background in the sense of ascertaining whether or not he is in a condition to answer your question.

BY DEFENCE COUNSEL.

One of the first questions I addressed the witness was " 2294
"To what organisation are you attached" and then I asked him whether he was in contact with ANFAO. I think that in consequence of his position the witness is in a condition to be able to answer my questions.

BY THE COURT.

Avvocato, I am Chief Legal Officer for all Occupied Italy and I am Chief Legal Advisor to the Allied Commission and yet this does not mean that I could testify as to the orders

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

issued by the Legal Sub-Commission, because I am not qualified for that. I suggest you ask the witness whether he has knowledge of the organization of MEDBO and whether he knows if MEDBO ever issued any orders, and in the affirmative case, whether he had the opportunity of seeing them, then you say: "Have you seen such orders?" The objection is not based on the grounds that the question is a leading one but that you have not yet qualified your witness so that the COURT and everyone knows what is the witness's background and whether he is speaking with personal knowledge in consequence of his position or is simply giving his opinion. Under Anglo-American law we want facts, not simple suspicion or mere suppositions, only facts and we convict on facts and acquit on facts. The question may be objected to also on the grounds that it says: "Voyages from North to South". This may also means Voyages from the North to the South Pole., that is, it covers a wide field. The COURT is learning of such things for the first time, the COURT never heard before about COSENA and other such matters and the COURT is learning them as the case proceeds.

BY DEFENSE COUNSEL.

Neither did the DEFENCE.

BY THE COURT.

The objection is sustained: I advise you to change your question.

DIRECT EXAMINATION (Continued).

Q. Have you an knowledge of orders preventing the issue permits for cargoes from Naples to Sicily?

BY PROSECUTION.

I still object on the grounds that he has not qualified his witness. 223

BY DEFENCE COUNSEL.

But he is qualified because of the officer he was attached to.

BY PROSECUTION.

1495

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

It is all vaguer and vaguer, however we withdraw out objection, and allow the question.

BY THE COURT.

Q. Between August 1944 and May 1945 what were your duties in connection with MEDBO Schooner Control Coard or the Allied Commission?
A. I was Liaison Officer between A.C. Rome and the Ministry of War Transport.

Q. Tell us what your duties were.
A. I kept in contact with all the different Sub+ Commissions which might happen to ask us information or from which we might happen to request information. The information might refer to Finance, Export, Prisoners of War, Italian ships in neutral ports, everything in General and nothing in particulnr.

Q. Have you ever heard about MEDBO Schooner Control Board?
A. Yes.

Q. What was your connection with that organization in the discharge of your duties?
A. As officer of the Ministry of War Transport I had no direct connection, but at all times indirectly we were informed of the decisions of MEDBO through its representatives.

Q. As Liaison officer were you the Channel through which the decisions were transmitted to the Allied Commission?
A. No.

Q. What opportunities had you for being able to know, in the course of your duties, what were the instructions through which MEDBO and Schooner Control Board operated?
A. It is rather difficult to answer this question in a few words but I have read the two orders setting up MEDBO and MEDBO Schooner Control Board. 221

BY THE COURT.

Q. Does PROSECUTION consider these as ample qualification?
A. A. Yes, we do.

BY THE COURT.

The COURT has addressed all the questions to the witness

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

without the remotest idea of what he was going to say but only in order to know his qualification. Now what is the question the Avvocato wishes to address the witness?

DIRECT EXAMINATION (Continued).

Q. Did you ever know or hear that Allied Commission authorities did not consent to the issue on the part of the Schooner Control Board of permits for cargoes from Naples to Sicily?

BY PROSECUTION.

PROSECUTION objects to the question on the grounds that the witness has stated to have been only Liaison Officer between the Ministry of War Transport and the Allied Commission. The witness has not stated that he had a specific knowledge of the work done by MSDBO or other similar organizations.

BY THE COURT.

Q. Were your duties such that if an order had been issued to MSDBO Schooner Control Board not to grant permits for these trips you would have known about it?
A. Are you speaking about the Allied Commission?

Q. Yes?
A. The Allied Commission might easily have issued such and order without my knowledge.

Q. Now, from your own personal knowledge do you know whether or not such an order was issued?
A. I have no knowledge.

NO CROSS - EXAMINATION.

Witness is excused by the COURT from further attendance in the trial.

1497

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

5 WITNESS: ETTORE MAZZANTI.

The Witness has already been sworn in.

DIRECT EXAMINATION.

Q. Will you please state your full name?
A. Colonel Ettore Mazzanti.

Q. When and where were you born?
A. I was born at Trapani on 15 August 1889..

Q. What is your present occupation?
A. I am Chief of Liaison Office of Merchant Marine in Naples.

Q. Since when?
A. At first I have been "Capo Divisione" offthe Mercantile Marine at Taranto and then at Naples, successively I have been Chief of the Secretary Office of Admiral Boroni and then I was appointed Liaison Officer for the Italian Mercantile Marine in Naples.

Q. Who allotted cargoes for the Schooners at the beginning of the Allied management at the time of the invasion?
A. An office called DSTO.

Q. Who represented DSTO, British, American or Italian Officers?
A. British.

Q. Till when did DSTO function?
A. It functioned till about the middle of August 1944.

Q. And by what office was it replaced?
A. It was replaced by a special Board which decided upon the allotment of Schooners.

Q. What was the name of the Board?
A. MEDBO Schooner Control Board.

Q. What organizations were represented on that Board?
A. The Allied Commission, MEDBO, and COGEMA.

Q. Do you remember the names of these representatives?
A. Yes. The representative of the Allied Commission was Capt. Smith, the representative of MEDBO was Mr. Williams and the representative of COGEMA was Dr. SARNELLA.

225

1498

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

Q. What was the duties of the representative of the COGENA, on that Board?
A. The duties of the representative of COGENA were of a technical nature because he had the lists of the Schooners available in the various ports.

Q. By whom were these lists compiled of the Schooners available in the various ports?
A. They were compiled by the Schooners Office, at COGENA, on the basis of information forwarded by COGENA representatives in the various ports.

Q. Have you been for some time a member of the NEDBO Schooner Control Board?
A. Yes, I have.

Q. During what time?
A. During 15 meetings of the Board, from 29 March 1945 to 18 April 1946.

Q. Both during the period you were a member of the Board and in connection with the duties of your charge, were at any time informed of an order issued by Allied authorities preventing the transport of cargoes of pozzolana from the mainland to Sicily?

BY THE PROSECUTION.

We object to the question.

BY DEFENSE COUNSEL.

I believe this time the witness has been fully qualified.

BY PROSECUTION.

The objection is not on the basis that the witness has not been qualified but because the facts in the case refer to a period of time running from September 1944 to November 1944 while the witness in question was a member of the Schooner Control Board from the period March, April 1945.

BY DEFENSE COUNSEL.

May the COURT please, the witness at the same time was a member and a representative of the Mercantile Marine

1492

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

and in daily contact with all the Official Boards and organizations concerning the Mercantile Marine.

BY PROSECUTION.

This is not the point.

BY THE COURT.

Avvocato, the objection raised by the PROSECUTION is that, under the facts if the case, the charges raised against the accused deal with cargoes effected in the period September to November 1944. The witness's knowledge is derived from 15 meetings of the Board he attended during the period 29 March -18 April 1945. It is therefore, obvious that what happened on that data cannot have any influence on the issues in this case. The PROSECUTION has no objection if the DEFENSE can qualify the witness for August, September, October 1944.

BY PROSECUTION.

I am labouring under a strong suspicion and maybe I am wrong, but if an order did not exist after the date mentioned by PROSECUTION that order did not exist also prior to that date.

BY THE COURT.

The COURT is taking the facts as they are brought before it and therefore doesn't know what PROSECUTION and DEFENSE wish to prove. What the witness has to say and the importance of what the witnesses may say, frequently becomes apparent to the COURT only at the end of the trial when the COUNSEL make their summations. The COURT does not know what bearing the question may have on the issues in the case or what theory you are trying to prove because that is something which must worry you alone in your mind in the same way as PROSECUTION must elaborate its theories in his own mind.

DIRECT EXAMINATION (Continued). 225

Q. I am going to put my question in a different way : From August 1944 to March 1945 what was your official occupation ?
A. I was always attached to the same office with different duties.

Q. Tell us what were these duties.
A. Up to March 1944 inclusive I was Head Division (Capo Divisione)

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

then from April 1944 to July 1944 Chief of the Secretary Office and then Chief Liaison Office.

BY PROSECUTION.

Q. What Liaison Office?
A. I was the Naples representative of the Director General of the Mercantile Marine, from July 1944 on.

DIRECT EXAMINATION (Continued).

Q. In your specific functions might you have known of orders regulating the Shipping movement on the part of the Allies?
A. Yes.

Q. Did you at any time hear of orders prohibiting cargoes of pozzolano from Naples to Sicily?

BY PROSECUTION.

I object on the same basis.

BY DEFENCE COUNSEL.

Q. I cannot understand on what basis PROSECUTION is objecting.
A. On the basis that you have not qualified your witness. If you do not qualify your witness as to these regulations you cannot ask him whether or not these regulations existed.

BY THE COURT.

The objection is good.

BY DEFENCE COUNSEL.

Q. Was COGENA an office belonging to the Mercantile Marine?
A. Yes.

223

BY THE COURT.

The COURT has sustained the objection. The COURT does not understand why you are labouring under difficulties on this matter, since you are conducting your case so well. You are asking the witness to testify whether or not a certain thing had been done. Now there are ten thousand things which have happended in connection with the

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

invasion and the deeds of the Allies and I am not qualified to testify on these same matters although I have been in Italy from the beginning. The proof is simply this: bring out facts so that the COURT may determine whether he is giving an opinion based on facts or merely a personal opinion. Avvocato, the witnesse's answer is worth nothing to the COURT if we do not know the background on which he bases his answer. In case you do not do that, we cannot place any trust in his answer, whatever he may say, if we do not have facts on which we can determine whether he really knows what he is speaking about. It is obvious that these orders were issued by Allied sources but, unless you can prove that he had access to these Allied organizations, his answer that such an order was never issued may be a supposition on his part. You remember a sentence which is familiar in Law Universities: only from the fact that a person says there is one week between Christmas and New Year it does not follow that there is also one week between New Year and Christmas; on the contrary there are 51 weeks. I am simply advising you on the best way to proceed. The COURT would like to know all the facts the witness can tell us but we don't want to know an opinion under the form of a fact till he has told us that he is in such a position that he can know what he is talking about; otherwise everything he says will only be an opinion. You have done very well in the examination of your witnesses and you can put two or three questions to the witness so as to bring into relief everything he has to say. The COURT is going now to address the witness some questions so as to straighten matters.

Q. Colonel, do you know who issued rules and regulations for the Schooner Control Boards?
A. The Allied Commission.

Q. Were you in a position to be able to see these orders issued by the Allied Commission for the Schooner Control Board? 221
A. Those that COGENA reported.

Q. What do you mean by " those that COGENA reported" ?
A. COGENA reported to our office the instructions received.

Q. Are you sure that COGENA reported to you every instruction they received?

1502

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

A. They informed our Ministry at Rome and in consequence my office.

Q. Did they report any other order that may have been issued by the Allied Commission to that Board?
A. Every order relative to traffic; for example, I remember that they reported the regulations prohibiting transport of wine from Sicily to the mainland, and then other regulations limiting traffic beyond Reggio Calabria.

Q. Could you see the reports that COMIN made to your office?
A. They were forwarded to me.

Q. Did you read them?
A. Yes, all of them.

Q. Now this is the question the Avvocato wishes you to answer: among those instructions have you seen at any time a disposition prohibiting the transport of pozzolana from the mainland to Sicily?
A. Such a regulation has never reached my office.

BY PROSECUTION.

We object to the question. I believe the President did not notice the answer of the witness saying that besides the Allied Commission there were other organizations issuing orders and those were AMGOT and the Supreme Command of the Allied Forces.

BY THE COURT.

The witness has not endeavoured to state that the Allies at no time issued such orders; he only said that he had access to rules or regulations which have been issued and he only stated that he never saw such regulation among those to which he had access; it follows that what he said is not an opinion but a fact. Now you understand what I mean when I speak about qualifying.

By DEFENCE COUNSEL.

It will be a good lesson for next time.

BY THE COURT.

1503

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

TheThe COURT wishes it to be understood that the COURT fully appreciates the difficulties under which the DEFENCE is labouring in having to conduct a case under a procedure which is not the Italian one, but in fact this is not a difficulty.

DIRECT EXAMINATION.(Continued).

Q. Owing to your duties have you or your office had at any time any complaints about irregularities by Captains for Schooners?
A. Yes, several times, on the part of COGEMA, they concerned irregularities committed by Captains of Schooners and were denounced by COGEMA.

Q. Did Dr. SARNELLA urge your intervention or that of your office against the Captains who refused to comply with the orders issued by MEDSO?
BY PROSECUTION.

We are all in the dark concerning these orders.

DIRECT EXAMINATION (Continued).

A. The orders concerning schooners were issued by the Allied Commission to COGEMA. When the Captains of the Schooners refused or tried to oppose these orders, COGEMA interested me in the matter in order to obtain my intervention and have those orders complied with. I intervened through the channel of the Harbour Masters.

Q. Do you know Mr. Eugenio SARNELLA?
A. I have known him for many years.

Q. What is you opinion of his character?
A.

BY THE COURT

Ask him only three questions : Do you know his reputation as to honesty, ability, conformity to law, society, in the community in which he lives? Have I made myself clear?

A. Yes, Your Honour.

The question is asked the witness.
A. It is the best from every point of view, both as to his professional activity and as to his honesty.

CROSS - EXAMINATION.

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

CROSS - EXAMINATION by PROSECUTION.

Q. You have said that you had knowledge of the orders issued by the Allied Commission concerning transport of goods, is it correct?
A. I said of the orders issued by the Allies.

Q. PROSECUTOR understood Allied Commission, so much so that my colleague asked you a question about MEDBO and the Supreme Allied Command.
A. I meant Allied Organizations.

Q. You mean therefore, that you had knowledge of all orders and regulations emanated by the Allies relative to the transport of goods.
A. I said that COGEMA reported to the Italian Naval Ministry and in consequence to my office the regulations relative to the transport of goods.

Q. You are familiar with all orders and regulations issued by the Allies relative to the transport of goods.
A. The Allies didn't communicate them to me.

Q. Colonel, the question is very simple: I ask you whether or not you are familiar with all orders and regulations issued by the Allies relative to the transport of civilian goods.
A. No.

Q. Then how did you answer the question addressed you by the DEFENCE that there was no order relative to the transport of pozzolana from North to South?
A. The DEFENCE asked me whether I knew the existence of such an order.

Q. You mean then that you have no knowledge of such an order but you don't know whether or not it existed.
A. I have no knowledge of such an order nor was it at any time applied during the period when I was on the Board, nor did I ever hear it mentioned.

Q. You are referring then only to the time when you were a member of the Board.
A. I am referring to the time I was a member of the Board and also to the time prior to it because I had never had any knowledge of it.

1505

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

Q. You never heard about such an order but you cannot say definitely that such an order never existed.

A. I cannot say so.

RE - DIRECT EXAMINATION.

Q. If such an order had been issued during the period you had knowledge of all these matters, COGENA ought to have reported the fact to you as they reported other regulations. Did COGENA report to you such an order at any time?

A. COGENA reported other orders.

BY PROSECUTION.

The fact that COGENA did not report such an order to you does not preclude the existence or not of such an order. I wish to know from the COURT whether this is a just question or not.

THE COURT.

The COURT has juridical knowledge of this fact that thousands of orders may have been issued and thousands of years may pass before it is known that they were issued. The COURT knows that there are orders of the Allied authorities which are not made public and that there are many that will not be seen even by us.

The witness is excused from further attendance at the trial.

211

1506

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

21 February 1946 , 09:30 hrs.

6 WITNESS : CARLO MATTEINI.

The witness is sworn in.

DIRECT EXAMINATION .

Q. Will you please state your full name ?
A. Carlo Matteini, fu Giulio Cesare, born at Leghorn on 16 January 1898.

Q. What is your present rank in the Italian Navy ?
A. Lieutenant General of the Naval Ordnance.

Q. What is your present occupation ?
A. Director of the Naval Ordnance and Deputy Director General of the Mercantile Marine .

Q. How long have you been Deputy Director General of the Mercantile Marine ?
A. Since 16 May 1944.

Q. Have you a charge in COGEMA ?
A. Yes, I am Chairman of COGEMA.

Q. Since when ?
A. Since I was appointed Director General of the Mercantile Marine, officially since the publication of the decree instituting COGEMA, namely 15 September 1944.

Q. Do you know Dr. SARNELLA ?
A. Yes, I do.

Q. Since when ?
A. Since 16 May 1944.

216

Q. Who introduced Dr. SARNELLA to you ?
A. My predecessor, Admiral BARONI .

Q. What did Admiral BARONI tell you when he introduced Dr. SARNELLA to you ?
A. Admiral Baroni , in introducing Dr. SARNELLA to me, before all the other functionaries of the Ministry, stressed the ability, honesty and capacity of Dr. SARNELLA in the performance of his duties as Director of COGEMA.

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

Q. Will you please explain to the COURT what relations existed between C NA and MEDBO Schooner Co ol Board?

A. In order to explain these relations with precision it must be stated that, in consequence of the terms of the armistice and of the agreement Cunningham - De Curten, a new organization had to be set up, subordinate to MEDBO, and answering for the whole Italian shipping, from an administrative standpoint. The whole shipping had been divided into two classes: one class included ships above 300 gross tons, the other class included ships under 300 tons. Ships above 300 tons had been included in the pool of the United Nations, ships under 300 tons were to be used according to the needs of the Allied Forces and the balance was to be placed at the disposal of the needs of the Italian civilians population. Up to about the middle of 1944 all shipping under 300 tons was practically at the disposal of the Allied Foces, successively, and precisely in August 1944, since the development of the war permitted a minimum employment of that shipping, it was decided to create a special Schooner Control Board that shippings: It was MEDBO Schooner Control Board, an organization which was to satisfy the requirements of the Allied Foces and with the balance, supply the needs of the Italian civilian population. Therefore, the body deciding upon the employment of the Schooners and giving the relative instructions was the MEDBO Schooner Control Board. Being responsible for the Administrative side of the shipping, COGENA received orders from MEDBO Schooner Control Board and took care to have these orders carried out and respected and at the same time it took care of all the administrative side, as payment of hiring rates, cashing for contracts of hiring and all relative matters. In short, MEDBO Schooner Control Board was the organization issuing instructions on behalf of the Allied Supreme Command about the employment of shipping under 300 tons, and COGENA was the organization which carried out the orders received from MEDBO Schooner Control Board.

BY THE COURT.

Avvocato, this testimony has already been established by other witnesses before the present one and no part of that testimony has been disputed. The COURT, however, does not wish to limit you in any way. 215

BY DEFENCE COUNSEL.

The present witness is the Director General of the Mercantile Marine, and, as he himself said, the Chairman of COGENA.

1508

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

BY THE COURT.

You must limit my remark to the point to which it was directed. The remark is that his testimony concerns what has already been stated by other witnesses and has not been disputed. This results in lengthening the records in this case and in wasting a lot of time. You can proceed with your defense.

DIRECT EXAMINATION (Continued).

Q. Did the Allied Commission and MEDO issue orders concerning the conveyance of schooners ?
A. Yes, they did.

Q. By reason of your charge as Director General of the Mercantile Marine and Cairman of COGENA , were all those orders reported to you ?
A. No, those orders were reported to me which the Allied authorities considered necessary to communicate to the Italian authorities.

Q. What Italian authorities ?
A. The Director General of the Mercantile Marine and the Italian Naval Minister.

Q. Did these orders which were communicated to the Italian Authorities concern the conveyance of goods ?
A. There were also orders concerning the conveyance of goods, for instance, there was once an order transmitted to us relative to a list of priority of goods to be carried .

Q. And were there any orders eventually prohibiting the conveyance of determined goods, from the mainland to Sicily ?
A. No.

Q. But would such an order be included among those which were to be transmitted to the Italian Mercantile Marine ? 217
A. Certainly .

Q. Are you sure of it , General ?
A. I am certain , because, as we had all Harbour Masters under our control and they are those who, under Italian Law, are charged with the control and check of shipping, we would have had to instruct them to look out for any possible violation of the order.

1509

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

BY PROSECUTION .

In order to save time PROSECUTION wishes to state, one for all, that it never alleged the existence of such an order, forbidding the conveyance of pozzolana. If that will help the case, we shall assume there has never been such an order.

BY THE COURT.

Let me make this remark : I don't know what may be behind the question you are asking relative to the existence or not of such an order. Is it not reasonable to assume that, in case such an order had been issued, PROSECUTION would have introduced it in evidence, because to deduce that there was such an order, without producing it, has no value before this Court. We do not try a case on a suspicion but upon facts. As I understand, you are willing to stipulate that there was no such order but that even in case there had been , this has nothing to do with the issues in this case. Perhaps the Avvocato does not know about the meaning of a stipulation ; a stipulation completely closes the issue on that point.

BY DEFENCE COUNSEL.

May the COURT please, we take notice with satisfaction of the statement by Mr. Prosecutor and are more than satisfied of the statement made by the honourable President that the COURT does not try cases on suspicion. We were even yesterday perfectly at ease when the question was raised about these orders . I felt the necessity of calling up and saying to the honourable Prosecutor : " Please show this order."

BY PROSECUTION .

PROSECUTION never affirmed the existence of such an order.

BY DEFENCE COUNSEL. 213

In the original charge sheet there was such a particular.

BY PROSECUTION .

This is a matter for your summation

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

BY DEFENSE COUNSEL.

No, it is not.

BY PROSECUTION.

No object.

BY DEFENSE COUNSEL.

It is only in order to clarify.

BY THE COURT.

I cannot understand what the Avvocato means.

BY DEFENSE COUNSEL.

I hope that it will not be necessary for me to sum up this case. In the original charge sheet mention was made of orders for illegal permits for transport of pozzolana, just pozzolana, contrary to the instructions issued by the Allied Commission. Then in the second issue of the charges we noticed a change, and mention was made of illegality, of illegal permits ; it is an ambiguous wording which compels us to demostrate that such an illegality does not exist. This I hope will clarify my meaning.

BY PROSECUTION.

PROSECUTION advises DEFENSE COUNSEL to read the charge over. PROSECUTION also points out to the Avvocato that at the end of the PROSECUTION and the DEFENSE case the avvocato will have full opportunities of discussing the charges and try to have the charges dismissed. Now, however, is not the right time for that.

BY THE COURT. 212

THE COURT sees some merit in the criticism raised by DEFENSE COUNSEL . However, Avvocato, if PROSECUTION had proceeded under the theory that such an order was in existance, PROSECUTION would have been compelled to produce it, but PROSECUTION has produced no such order. Now the Avvocati have understood that PROSECUTION is ready to stipulate that it does not affirm there was such an order relative to pozzolana. You

1511

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

heard the stipulation made by PROSECUTION and you can assume for the ~~issues~~ in this case that this is an undisputed fact in this case.

BY DEFENSE COUNSEL.

In order to be more precise can PROSECUTION stipulate " order issued by Transportation Sub- Commission , Allied Commission ?"

BY PROSECUTION.

We have stipulated for the benefit of the DEFENSE that there is no order prohibiting the conveyance of pozzolana. The question you are asking me, relative to the Allied Commission, pertains to one of the issues in this case and if the Avvocato has listened to some of his own witnesses he would have known that PROSECUTION ~~had~~ has put into strong relief that the Allied Commission had jurisdiction to determine what goods might be conveyed and that the Board was to act on bids which had been previously approved by the Allied Commission.

DIRECT EXAMINATION (Continued).

Q. Were the orders of the Allied Commission or any other Allied authority transmitted to you ?
A. Yes, they were.

Q. As Chairman of CCIMA did you comply with those orders and see about their execution ?
A. Yes, I was responsible as the Director General of the Mercantile Marine and as Chairman of CCIMA ~~I~~ that the orders be executed because the responsibility of their execution rested with the Italian Government according to the terms of the armistice. That this was done in a satisfactory way was shown by the fact that on 30 May 1945 Sir John Cunningham, ~~the~~ Supreme Commander in M.T.O., when receiving at Rome the authorities of liberated Northern Italy, expressed his satisfaction for the loyalty and the precision with which the Italian Mercantile Marine had executed the clauses of the armistice.

BY THE COURT.

The witness has added so many things which are not relevant

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

for the issues in this case. His answers might have been a simple yes ; all the rest is not necessary to prove what he has said. It is evident that a man of his standing and experience has a right to be believed when he says yes or no. Otherwise the case will drag along.

BY DEFENSE COUNSEL.

His statement has been spontaneous.

BY WITNESS.

I liked to stress my double responsibility as Director General of the Mercantile Marine and as Chairman of COGEMA.

BY THE COURT.

The responsibility to develop the case rests with DEFENSE COUNSEL not with you. You stated that you executed orders, that is enough without adding so many particulars to confirm your testimony.

DIRECT EXAMINATION (Continued).

Q. Do you remember a meeting held at Palazzo Sirignano, Naples with a British representative of DSTO ?
A. No , I don't remember it, I didn't take any part in it.

Q. Do you know Mr. Gibson Graham ?
A. Yes, I do.

Q. What office was he in charge of ?
A. He was Chairman of MSDEO.

Q. Did DSTO manage the conveyance of cargoes ?
A. Yes, it did.

210

Q. Did you at any times express a wish that cargoes towards Sicily be expedited ?
A. Yes, I did.

Q. Did you explain the reason why ?

1513

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

BY PROSECUTION .

I am sorry to interrupt but I would like to know what this has to do with the merits of the case.

BY DEFENSE COUNSEL.

Q. Probably I shall answer the question of the PROSECUTION when I enter into the merits of the case.
A. I suggest entering into the merits of the case at once.

BY THE COURT.

Q. Do you consider his testimony as important for this case ?
A. Yes.

DIRECT EXAMINATION (Continued).

Q. Did you at any time express a wish that cargoes towards Sicily be expedited ?
A. Most requests for cargoes came from Sicily towards the mainland while, in view of the destructions and the low industrial standard of the mainland there was practically nobody asking for allotments of space for cargoes towards Sicily. At that time all Italian shipping was requested by the Italian Government on behalf of the Allies. In consequance if a ship made a voyage empty it was the Italian Government which had to pay. Then Mr. Gibson Graham gave me the advice that it was useful for us to try to find cargoes from the mainland to Sicily in order to compensate expenses and the Allied Command had authorized to take such cargoes as might be found : stone, pozzolana, every kind of cheap commodities we could find.

Q. Do you remember a denouncement you received against Dr. SANNELLA ?
A. Yes, I do.

BY PROSECUTION .

We would like to ask what bearing this has on the case.

BY DEFENSE COUNSEL.

It has an absolute bearing on the case.

1514

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

DIRECT EXAMINATION (Continued).

Q. At what time did you receive that denouncement ?
A. About November 1944.

Q. From whom ?
A. Mr. Zigona .

Q. What did you do following that denouncement ?

BY PROSECUTION

Q. What was the denouncement ?

BY DEFENSE COUNSEL.

PROSECUTION has the right to cross-examine when its turn comes.

BY PROSECUTION.

We are now speaking about a denouncement nobody knows anything about.

BY THE COURT.

We cannot in this case examine Dr.SARMELLA from the time he was born up to the present day.

BY DEFENSE COUNSEL.

That is true, but we can examine him from the time he has been the Director of COGENA.

BY THE COURT.

208

Has the witness received a denouncement against SARMELLA ? What he did, has no importance in the case, let us suppose that the Steamship Company for which he had been working 10 years ago had filed a suit against him. This has no importance in the case. What is important is everything that is pertinent to the case and the issues in it. You are now speaking about a denouncement that neither the COURT nor the PROSECUTION has seen.

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

DIRECT EXAMINATION (Continued).

Q. What was t this denouncement ?
A. Dr.BARNELLA was alleged to have collected money from ship-owners in order to authorise them to make illicit voyages with their own schooners.

Q. Were the facts alleged to have happened in September 1944 ?
A.

BY PROSECUTION.

May it please the COURT ,would the COURT instruct the Avvocato not to correct what the witness is testifying to ?

DIRECT EXAMINATION (Continued).

Q. Do you remember the name of the man who alleged to have given the money ?
A. No , I don't.

Q. Wasn't it Sigona ?
A. No.

Q. Did Sigona act then as agent of a shipowner ?
A. It was a slip of paper on which there was written : "I denounce that Mr.So and So has given money " and it was signed Sigona.

Q. But was the name of the person mentioned who was supposed to ha have given the money ?
A. Yes, but I don't remember it now.

Q. What did the Direction General of the Mercantile Marine do in front of a charge of this kind ?

BY THE COURT.

207

The COURT , on its own motion, excludes all this part of the testimony as having no bearing on this case. Avvocato it is for this COURT to rule on the issues in this case and the COURT is not bound by all the collateral episodes of the accused and by what anybody may have done in connection with these collateral episoded. Any attempt to bind this COURT on the action taken by a collateral agency in acquitting or absolving the accused is beyond the issues

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

in this case and it is not binding for this Court. We are not trying this case which you have now brought before this COURT, we are passing on some particular charges and what you must do before this Court is to deal with those particulars. Anything you may say about somebody having made a denouncement against the accused and what another person did in connection with that denouncement does not mean anything.

BY DEFENCE COUNSEL.

Your Honour , this is not a collateral fact, it is just the same fact that has been brought before your judgement because it refers precisely to the Palumbo episode.

BY THE COURT.

The COURT will rule on this matter. I did not hear any testimony which might connect it with this case, that is that might be evidence permissible in this case. If you wish to relate facts which pertain to the case the COURT has no objection to hearing them but the COURT is not in the least interested in the fact that a person may have made a denouncement against Dr. SANTILLA to some collateral Committee and in what this collateral Committee may have chosen to do. We are passing on the charges which we have now here before us.

BY DEFENCE COUNSEL.

Let us suppose that that denouncement went to the Italian Authorities and is now in possession of the PROSECUTION ?

BY THE COURT.

Q. Avvocato, you may bring forward any fact you like but the only judicial body of the Allied Commission authorized to act legally in trying charges is this COURT. Will you please tell me what you expect to prove ?

A. I wish to prove that that denouncement stated that Palumbo Francesco had given money to Dr. SANTILLA to obtain a permit. In consequence of that denouncement the Chairman of COGEMA and the Director General of the Mercantile Marine must have done something. What I wish to know is whether , after the investigation was made, the Italian Government still kept Dr. SANTILLA in his functions and reported the matter to

208

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

the Italian authorities. The statement made by Palumbo in November 1944 must be rightly compared with any other statement made or not made to the Allied authorities by his own free will, in order that the COURT may know what we are looking for, that is , the truth.

BY PROSECUTION .

I take it then that DEFENSE COUNSEL is making suggestions to the PROSECUTION how it should have handled the case. As to the question asked by the COUNSEL it makes no difference whatever whether or not a denouncement was made to the Italian Government or the Italian Navy Ministry and it makes no difference whatever what decision they may have taken on that question.

BY THE COURT.

This COURT is still duty bound to judge Dr. BARNELLA on the basis of the evidence brought forward to this COURT.

BY PROSECUTION .

Q. If the Avvocato knew all these things concerning Palumbo, that same Palumbo has been here, before the COURT as a witness, why didn't the Avvocato cross examine him ?
A. I had my good reasons not to do so.

Q. Then why do you suggest PROSECUTION to bring forward documents in your behalf. This has absolutely no bearing on the issues in this case .

BY THE COURT.

The objection will be sustained and the COURT will not consider any collateral action to which the witness has testified. The COURT will only consider the charges which have been brought before this COURT and the evidence given by the witnesses brought in this Court and will not be bound by the actions of any other collateral organization regarding the charges which this COURT , and this COURT alone, can judge.

205

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

BY DEFENSE COUNSEL.

The DEFENSE had not the slightest intention to bind the judgment of the COURT with other judgments issued by other authorities. The DEFENSE intends to prove , through the evidence it produces , that Mr. Sigona has been damaged by COGENA and that he was the organizer of the charges against SARNELLA and in short that he was the originator of this case owing to the animosity, the hate, the aversion he felt against SARNELLA , of which feelings Palumbo then became the instrument. This is the substance of the case and the hidden motive which was the origins of everything and which , as the COURT well sees, is unfounded as just the evidence is unfounded which has been produced by the PROSECUTION.

BY PROSECUTION.

May the COURT please, PROSECUTION wishes to object to any deductions DEFENSE may try to draw from the case, namely, that PROSECUTION framed up all the charges.

BY THE COURT.

I wish to straighten this point for the Avvocato. The Allied Forces in Italy are before this COURT; they have raised the charges and they must prove them. There is nothing in the records proving that anyone else except the Allied Forces has brought these charges forward.

DIRECT EXAMINATION(Continued).

Q. What is SARNELLA's reputation as to honesty, sobriety and respect for the law ?

BY THE COURT.

Avvocato, you must qualify your witness.

Q. In your capacity as the Director General of the Mercantile Marine and Chairman of COGENA what is SARNELLA's reputation as to honesty /.....

BY THE COURT.

Q. Wait a minute . Are you acquainted with SARNELLA's reputa-

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

tion in the community where he lives ?
A. Yes, I am.

DIRECT EXAMINATION (Continued).

Q. What is his reputation ?
A. It is the best from a professional and a moral point of view.

Q. Do you know whether COGEMA's functioning harmed the interest of third parties ?
A. Yes, I do.

BY THE PROSECUTION.

I object to the question.

BY THE COURT.

The objection will be sustained .

Q. Did SARMELLA, as Director of COGEMA , make reports against Sea Captains ?
A. Yes, he did.

BY PROSECUTION.

Same objection .

BY THE COURT.

The objection is sustained.

DIRECT EXAMINATION (Continued).

Q. Do you know Mr. Kallock ?
A. Yes, I do.

Q. Who is Mr. Kallock ?
A. He is the Head of War Shipping Administration in the Mediterranean.

Q. Is he by reason of his office , the American representative of MEDBO ?
A. Yes, he is.

1522

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

Q. Did Mr. Kallock in this capacity , speak to you about Mr. SARNELLA ?
A. Yes, he did.

Q. What did he say ?

BY PROSECUTION .

We object to the question .

BY THE COURT.

The objection is sustained.

DIRECT EXAMINATION (Continued).

Q. Did Mr. Kallock write a statement in your presence?
A. Yes, he did.

Q. Where is that statement ?
A. It is here.

Q. After writing that statement did he read it to you ?
A. Yes, he did.

Q. May it please the COURT, DEFENSE moves to introduce the letter in evidence.

BY PROSECUTION.

PROSECUTION would like to see the letter first.

Letter is handed over to PROSECUTION.

May it please the COURT , this is a letter written by a third person and has no particular value, we shall permit however it to be introduced as evidence. The proceeding however is unusual.

BY THE COURT.

Regardless of procedure the COURT will try this case according to the law. The document speaks for itself and is received in evidence and will be identified as Ex. M .

1521

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

BY PROSECUTION.

Q. Is that document a letter ?

BY DEFENSE COUNSEL.

It is not a letter; it is a statement and it is not addressed to the porter but to whoever may be interested, and it has been handed to the Director General of the Mercantile Marine.

BY THE COURT.

The document speaks by itself .

Upon request of DEFENSE COUNSEL Ex. E is read over in English and then translated into Italian.

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10 Minutes Recess.

NO CROSS EXAMINATION.

The witness is excused by the COURT from further attendances on the trial.

201

1522

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

7 WITNESS : ALVIO MARENA.

The witness has already been sworn in.

DIRECT EXAMINATION.

Q. Will you tell your full name?
A. Alvio Marena, born at Bari on 4 September 1904.

Q. What is your rank?
A. Lieutenant.

Q. Have you been attached to Allied Commission at any time?
A. Yes, I was.

Q. In what capacity?
A. As Liaison Officer of the Mercantile Marine with Transportation Sub-Commission.

Q. From when to when?
A. From the end of December 1944 till 30 June 1945.

Q. Do you know what document relative to the allotment of schooners came daily to the Allied Sub-Commission, to which you were attached?

A.
BY PROSECUTION.

We do not wish to begin again all the story about qualification but ~~the~~ first the Avvocato must qualify his witness.

BY THE COURT.

The objection is sustained.

Q. Do you know what document relative to the allotment of Schooners was received daily by the Allied Commission from his representative at Naples?

A.
BY PROSECUTION.

If by this question the Avvocato intends to qualify the witness, we object to it.

BY THE COURT.

1523

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

Q. On what grounds ?
A. The issues in this case refer to a period from August to September 1944. The present witness has stated that he was Liaison Officer from December 1944 on. If the Avvocato wishes to qualify his witness he must prove that he might have known of regulations in force from August to September 1944. What he may have known from December 1944 on may not have anything to do with the issues in this case.

BY THE COURT.

Q. What do you say to this, Avvocato?

DIRECT EXAMINATION (Continued).

Q. While you were attached to the Allied Commission have you been aware of documents which came to your office even previously?
A. Not in all details, but generally I have.

Q. Among all these documents do you remember that the representative of the Allied Commission Transportation Sub - Commission daily sent in a list of the Allotment of Schooners to inform the said Sub- Commission?

BY PROSECUTION.

I would like to point out to the COURT that this was a function which was performed by somebody on the Board and that we have already had testimony as to that.

BY THE COURT.

Q. To what period of time is the testimony of the present witness directed; Avvocato?
A. I am referring to a question I have already asked, that is whether at the time he was Liaison Officer, he had been aware of a system which was previously in force.

BY THE COURT.

Q. The present witness has been Liaison Officer from December 1944 to June 1945; you have never qualified him as to time; the COURT has heard the question but the

V

1524

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

COURT must weigh his testimony. To what periof of time are your questions directed? The months in question in this case are August, September, October 1944; the witness has testified to have been Liaison Officer from December 1944 to June 1945. You have asked some questions, Avvocato, but in none of them have you fixed the element of time to which he is to testify therefore, the COURT assumes that you are referring to the period December 1944-June 1945.

A. He was Liaison Officer from December 1944 till June 1945 and he was informed that the same procedure was being followed even previously.

BY PROSECUTION.

We object. It does not matter whether or not he was informed. He must have direct knowledge.

BY THE COURT.

The question is proper because he says"have you been informed" but this does not prove that the information was correct.

DIRECT EXAMINATION (Continued).

A. Yes.

Q. Was the same procedure followed which was followed later on?
BY PROSECUTION.

The witness has testified that there had been no predecessor in his office. What the procedure was or had been has not been brought before this COURT.

DIRECT EXAMINATION. (Continued)/

Q. Please will you tell the COURT whether at your Office at the Allied Commission you received daily the lists of Steamers and Schooners allotted?
A. Yes, I did.

Q. Who sent those lists?
A. The representative of the Allied Commission on MEDBO Schooner Control Board.

Q. To whom did he send the lists?

1525

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

A. Transportation Sub - Commission, Ports and Warehouses Division.
Q. Were you told this by persons of the Allied Commission?

A. I was told about this in reference to the period when I was not with the Allied Commission. I personally saw the lists arrive during the period when I was Liaison Officer with the Allied Commission.

Q. Were you told that this used to happen also in the period August to November 1944?
A. I am not in a position to give a precise answer to this question. I know that the lists used to arrive for some time prior to my entry into the Allied Commission but I cannot specify the date when the lists began to arrive.

Q. What did the Allied Commission do with these lists?
A. The Allied Commission controlled the movement of Schooners in relation to the cargoes transported and in relation to the permits approved.

Q. Did you begin your work with the Allied Commission in December 1944?
A. Yes, I did.

Q. May it please the COURT; I would like to ask the witness whether he has had knowledge of Dr. BARNELLA'S reputation as to his professional capacity in the community where he lives.

BY THE COURT.
You can.

Q. Owing to your business activities do you know what Dr. BARNELLA's reputation was?
A. Yes, I do.

Q. What was his reputation in mercantile marine circles?
A. He was known as one of the most competent experts in Italian Shipping and one of the most honest workers in the Italian Shipping Marine.

Q. Was he a law abiding man?
A. Yes; he was.

NO CROSS EXAMINATION BY PROSECUTION.

The witness is excused from further attendance at the Trial.

19

1526

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

RECESS TO 14:15 hrs.

21 February 1946, 14:15 hrs.

BY DEFENCE COUNSEL.

My Co-Counsel and myself have decided to renounce the witnesses Mr. Campbell and Mr. Nichols who are not in Italy at the present time and who were prevented to come.

BY THE COURT.

The COURT will deal with those witnesses personally.

8 WITNESS: PAOLO FORESTIERI.

The witness has already been sworn in.

DIRECT EXAMINATION.

Q. Will you tell the COURT your full name?
A. Paolo Forestieri, born at Palermo on 9 may 1900, Captain.

Q. Captain of what?
A. Captain in the Mercantile Marines

Q. Did you hold an appointment with COGENA?
A. Yes, I have been with COGENA.

Q. From when till when?
A. From August 1944 till to-day.

Q. What has your appointment been?
A. I have been appointed to the Schooners Officer

Q. To what office of Cogena were the requests for the Allotment of Schooners presented?

A.

BY PROSECUTION.

We object: it is a leading question.

BY THE COURT.

Avvocato, you must add: if you know.

DIRECT EXAMINATION (Continued).

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

A. The requests for the allotment of Schooners generally were not presented. Schooners were assigned by MEDBO Schooners Control Board to those bids which were given by A.C. to COGENA. Sometimes we received requests by hand or by post and sometimes also requests by wire.

Q. When requests were brought by hand to whom were they delivered?
A. They were delivered to the Schooner Office to which I was attached; some times they were given to me by the Register Officer. When I received them by hand I sent them to the Register Officer which, in that case, in order not to keep the Schooners waiting, delivered them to the Director at the time he went to the meeting of the Board. Sometimes I myself brought those requests to the Board during the meeting of MEDBO Schooner Control Board.

Q. Who made the lists of Schooners available?
A. Myself.

Q. On the basis of what documents?
A. On the basis of telegrams which were transmitted to me by other offices and on the basis of information given by the Captains themselves of Schooners lying in the Port of Naples or neighbouring ports.

Q. To whom and when were the lists delivered that you had prepared?
A. The lists I had prepared were personally given by me to the Director of COGENA in the afternoon, at about 1530 hrs.

Q. Why were they delivered at that particular time?
A. Because at that time the Director came back for the afternoon work and because at about 1600 hrs Schooner Control Board held its meeting in order to proceed to the allotment of the Schooners.

Q. And after the deliberations of the Boards where did the bids, requests and telegrams go to?
A. They were filed in the records of the respective Schooners.

Q. But before filing them in the records what did you do after the meeting of MEDBO Schooner Control Board?
A. I gave them to the messenger boy and sent them to be filed.

Q. But did a copy of the list of the Schooners allotted by

1528

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

the Boards decision? remain with your office?

BY THE COURT.

Q. Do you mean of the Schooners that had been allotted by the Board?
A. Yes.

DIRECT EXAMINATION (Continued).

A. The lists were given to me soon after the meeting of MEDDO Schooner Control Board by the Director and I had them copied ~~by~~ and kept them in my office.

Q. You have stated that you were the Chief of the Schooners Office?
A. But a Chief presupposes a staff. I had no staff. Yes, I was attached to that office and through my office all papers passed relative to the Schooners.

Q. You have not answered my question.
A. A Chief presupposes a staff; I had no staff under me.

BY THE COURT.

Q. Has he answered your question?
A. Yes, I am satisfied.

DIRECT EXAMINATION (Continued).

Q. As the only person in charge of the records relative to the schooners, as the only person who received the requests, and compiled the lists, can you tell the COURT whether from the lists of the deliberations taken by the Board (licts which were given personally to you) you ever noticed that the Board had rejected any requests for transport of cargoes from the mainland to Sicily?

19/

BY PROSECUTION.

Might we hear the question again because we have not understood it?
The question is read over by the stenographer.

BY PROSECUTION.

In your question you assume too many things. Please divide

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

your question into shorter sentences.

DIRECT EXAMINATION (Continued).

A. When it was a case of transporting cargoes from the transport mainland to Sicily the Board always consented to such ~~transfer~~

BY THE COURT.

Q. Has he answered your questions
A. Yes, heshas, Your Honour.

DIRECT EXAMINATION (Continued).

Q. Why?
A. In order to use ships.

Q. In voyages from the mainland to Sicily which was the greater percentage, that of empty or that of loaded schooners?

BY PROSECUTION.

Q. With the Court's permission, we would like to stress that we have already received 10 answers to that question. If the Avvocato likes to stipulate this fact, we are ready to consent to the fact that most cargoes came from Sicily to the mainland.
A. It is not most cargoes, my question was different. The question is read over by the stenographer.

DIRECT EXAMINATION.(Continued).

Q. Approximately how many schooners were under COGENA's orders?
A. I cannot guarantee a precise answer but I believe that at that time there were some 900 schooners run by COGENA.

BY PROSECUTION.

I would like to know, when the witness says "at that time" what time he is meaning because no dates have been mentioned.
A. At the time I began my appointment with COGENA.

Q. Where was your office?
A. At the Insurance Building (Palazzo delle Assicurazioni), Piazza della Carità, n°.32.

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

Q. At Naples?
A. Yes, at Naples.

Q. What were your office hours?
A. Personally my office hours were from 8 in the morning to about 13:00 hrs. and from 14:30 hrs to 19:30 or 20:00 hrs.

Q. Had you frequently the opportunity to go into the Directors room?
A. I often went into the Directors room.

Q. Do you recognize any of the three accused?
A. Yes, my Director.

Q. Nobody else?

BY THE COURT.

Q. Will you please point out the person whom you identify as your Director.
A. Yes, the first on my left.

Witness points out DR. SARNELLA.

A. I must add that to-day I can say I recognize the third accused.

Witness points out Sento Lo PortO.

Q. Why do you say " to-day "?
A. Because on the occasion of a visit I made to A.C. Rome he was pointed out to me as one of the accused in the SARNELLA case.

Q. What A.C. office was it?
A. I cannot specify what office.

Q. But by whom was the man pointed to you?
A. By somebody who was there.

BY PROSECUTION.

This is not an answer.

DIRECT EXAMINATION.

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

Q. Do you know the person who was there?
A. I know him.

Q. And who is he?
A. Major Vecchiolla.

Q. Did Major Vecchiolla tell you also the name of that accused?
A. He told me also the name.

Q. What name?
A. LO PORTO

been
Q. Before he had pointed out to you and before the meeting you have mentioned, had you at any time seen LO PORTO ?
A. I had never seen him.

Q. Never at COGENA?
A. Never.

Q. Had you seen him at any time during your frequent visits to the Director's Office?
A. I had never seen him.

BY THE COURT.

If he says he never saw him he never saw him.

BY DEFENCE COUNSEL.

If I have made a mistake I withdraww my question immediately.

BY THE COURT.

Q. You are giving the impression that you wish to raise doubts on the veracity of your witness.
A. I wished to explain the situation so as to leave no doubts in the COURTS mind.

191

BY THE COURT.

The witness stated that he had never seen him. If the COURT does not believe this testimony the witness could neither add nor withdraw anything. The COURT, however, does not wish to hold you back in your questions.

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

DIRECT EXAMINATION (Continued).

Q. Can you tell the COURT what were the Office hours of your Director, Mr. SARNELLA?
A. From 08:30 hrs, till 12:30 hrs and from 15:30 hrs till 19:30 or 20:00 hrs.

Q. Did he use to absent himself at any time from Naples?
A. He used to be absent himself sometimes.

Q. For how long?
A. Generally he absented himself every fortnight from Naples and precisely he left the office on Fridays and came back on Monday afternoons shortly before the meeting of MEDBO Schooner Control Board was held. Sometimes, but seldom, instead of absenting himself every fortnight he absented himself for two consecutive weeks.

NO CROSS-EXAMINATION BY PROSECUTION.

The witness is excused from further attendance at the trial.

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10 minutes Recess.

1533

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

9 WITNESS : PIETRO DE BELLIS.

The witness has already been sworn in.

DIRECT EXAMINATION .

Q. Will you state your full name ?
A. Pietro De Bellis, son of the late Gaetano, born at Naples on 29 September 1891.

Q. What is your occupation ?
A. Labourer.

Q. Where do you work ?
A. I used to work with Tirrenia Steamship Company and later on I was transferred to COGENA.

Q. How long have you been working there ?
A. Since COGENA was started .

Q. Did many people come to COGENA ?
A. Yes,sir , sea Captains.

Q. Do you recognize any of the present accused ?
A. I recognize Dr. SARNELLA as my Director.

Q. Will you point him out ?
A. Yes, he is the last one in the row.

Witness points out accused Eugenio SARNELLA .

Q. Have you seen the other two accused at any time ?
A. No , I have not.

Q. What were Dr. SARNELLA 's office hours ?
A. From the morning till eight or nine.

Q. Was it necessary for persons who wished to speak with Dr. SARNELLA to be announced ?
A. Yes, near the Director's office there was an office attendant and each person who presented himself had to be announced.

189

1534

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

Q. In case someone wished to enter without first being announced what happened ?
A. He was stopped and was not allowed to enter. He was stopped by the Chief of the office attendants.

Q. But were also employees required to be announced to the Director ?
A. Yes, they had to be announced too. Even Gen. Matteini , when sometimes he came to the office, had to be announced by the office attendant.

NO CROSS EXAMINATION BY PROSECUTION.

Witness is excused from further attendance at the trial.

BY PROSECUTION .

May it please the COURT , PROSECUTION in order to save time wishes to stipulate as to Dr.SARNELLA 's reputation, personality and capacity or as to any other matter they would like to affirm in that respect, because PROSECUTION does not intend to attack his reputation . Therefore if there are other character witnesses on Dr.SARNELLA's behalf we are ready to stipulate as that we shall be able to dispense with them, of course if that is convenient for the DEFENSE.

BY THE COURT.

Q. The Avvocati have heard ; what do they intend to do ?
A. We agree and we thank.

Q. The Avvocati know the effects of a stipulation : what is stipulated becomes an undisputed fact in the case.

183

1535

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

10 WITNESS : Francesco OPALO.

The witness has already been sworn in.

DIRECT EXAMINATION .

Q. What is your full name ?
A. Francesco Opalo, born at Torre del Greco on 1 January 1891.

Q. What is your occupation ?
A. Office attendant .

Q. What does office attendant mean ?
A. I am receptionist.

Q. In the entrance room ?
A. Yes.

Q. Who was the office attendant attached to the Director's office ?
A. The Chief office attendant.

Q. What is his name ?
A. Mennella. In case he was not there we did his work.

Q. Who do you mean by " we did his work " ?
A. When Mennella was not there, I took his place, when both Mennella and myself were not present, then someone else took our place.

Q. How long have you been working at COGENA ?
A. Since it was started.

Q. Did many people come to COGENA offices ?
A. Very many .

Q. Will you please stand up and look at those three persons in the rear. Do you know any of them ? 137
A. Yes , my Director

Witness points out accused Dr. SARNELLA.

1534

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

Q. Are you sure you don't know the other two persons ? Look at them .
A. That Captain , LO PORTO , has come sometimes.

Q. Do you know his precise name ?
A. No , not his precise name .

Q. How did you meet him ?
A. Because he came up sometimes.

Q. Whom did he enquire for ?
A. For the cashier.

Q. Had the persons who asked to speak to the Director to be announced ?

BY THE PROSECUTION .

The question suggests the answer but we are going to allow it .

~~By the WITNESS~~ DIRECT EXAM. (Continued)

A. They were to be announced to the Director in any case, and even to the cashier. In fact he came to see the cashier.

Q. Did LO PORTO ask you at any time to be introduced to the Director ?
A. He never asked me.

Q. In case anybody had tried to enter the Director'd office without being announced, what would you have done ?
A. I would have prevented it at any cost. Nobody could enter.

185

NO CROSS-EXAMINATION .

The witness is excused from further attendance at the trial.

1537

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

11 WITNESS : ETTORE BOBBA.

The witness is sworn in.

DIRECT EXAMINATION .

Q. What is your full name ?
A. Ettore Bobba.

Q. Where were you born ?
A. At Genoa, in the year 1890.

Q. What is your occupation ?
A. Chief accountant with COGENA.

Q. How long have you been in your present occupation ?
A. Sime it started.

Q. Do you know this signature ?
A. Yes, it is mine .

Q. Did you make this statement ?
A. I had it made by one of my employees, and I obtained it from the account-book.

Q. Will you please read it ?

BY THE COURT.

Before reading it , please hand the document over to PROSECUTION.

PROSECUTION reads document .

BY PROSECUTION .

Q. Is DEFENSE COUNSEL trying to prove the list of incidentals ?
A. Yes.

PROSECUTION has no objection to the statement being offered in evidence.

BY THE COURT.

Document is received in evidence and identified as Ex.N.

1538

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

Document is read over and translated into English.

DIRECT EXAMINATION (Continued).

Q. Do you remember what was closing time for the cashier at COGENA in the month of September 1944?
A. The cashier at COGENA functioned in full till about 13:30 hrs. and then resumed its work in the afternoon for more urgent transactions.

Q. But till what time did you remain in your office ?
A. Cash office closed habitually at 17:00 hrs for the daily transactions.

Q. But if the cashier's office was closed and there happened to be an urgent need to deposit money for contracts of sub-hiring on the part of anyone, what did you do ?
A. If the office where contracts were drawn up sent people who needed to leave on the following day, the transactions were made even when the cashier's office was closed.

BY THE COURT.

Q. What was this office?
A. The Commercial Department.

DIRECT EXAMINATION (Continued).

Q. Please, Cavaliere, stand up. Dou you recognize any of these these people ?
A/ Yes, I recognize Comm. SARNELLA .

Q. Will you point him out ?
A. The first.

Witness points out accused Dr. Eugenio SARNELLA.

18.

Q. Do you recognize the other two accused ?
A. Yes, the second accused. He was pointed out to me in Court as the Director's brother at the time the COURT granted provisional liberty to Comm. SARNELLA.

Q. By reasons of your office had you the opportunity of seeing any Sea Captains ?
A. Yes, they came to me in order to pay their hirings and on

1539

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

on other matters.

Q. Are you sure you never saw this sea captain ?
A. I am.

Q. Didn't you even have the opportunity of glancing at him in COGENA premises ?
A. No, I cannot recognize him because so many people came.

Q. But this person never came to you otherwise you would remember him .
A. I might also not remember him .

BY PROSECUTION .

I object. The Avvocato has been asking leading questions and we have made no objections but now this is too much.

BY THE COURT.

You must withiraw your question.

BY DEFENSE COUNSEL.

I shall put it differently.

DIRECT EXAMINATION (Continued).

Q. Do you confirm having never seen nor recognizing this person ?

BY PROSECUTION .

The witness has answered at least three times.

BY THE COURT.

Q. Avvocato , do you doubt your witness is telling the truth? 18
A. No , I don't.

NO CROSS EXAMINATION

The witness is excused from further attendance of the trial.

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15 Minute# Recess.

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

12 WITNESS : CHARLES CROOKS.

The witness has already been sworn in.

DIRECT EXAMINATION .

Q. What is your full name ?
A. Charles C. Crooks.

Q. Where were you born ?
A. In Maryland .

Q. When ?
A. On 8 June 1897 .

Q. What nationality ?
A. U.S.A.

Q. Have you ever been a member of the Allied Commission ?
A. Yes.

Q. From when to when ?
A. From 18 August 1944.

Q. In what capacity ?
A. With Transportation Sub-Commission.

Q. Did your office deal with matters relative to the allocation of schooners ?
A. Sometimes.

Q. I mean the allotments decided by MEDBO Schooner Control Board ?
A. Part of the time.

Q. Did they refer also to the allocation of schooners from the mainland to Sicily ?
A. Yes, part of the time.

BY PROSECUTION.

All this refers to a principal question. We would like to know it.

Q. Do you know whether these cargoes from the mainland to the South were granted by special requests ?

1541

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

BY PROSECUTION.

We would like to have the time element specified because we must refer this question to the time under discussion.

BY DEFENSE COUNSEL.

I am asking these questions to the witness because he was a member of the Allied Commission. Later I shall put him other questions.

BY PROSECUTION.

PROSECUTION however insists that you fix the time element.

BY THE COURT.

The objection is good as to the question of time.

DIRECT EXAMINATION (Continued).

Q. I am referring to the period August to November 1944.
A. I never had anything to do with the allocations till March 1945.

Q. Were you not a member of the Allied Commission , Transportation Sub- Commission ?
A. Yes.

Q. In what period ?
A. From August 18, 1944 till to-day.

Q. So that in August, September, October and November you were with the Allied Commission ?
A. Yes , I was.

Q. And in August, September, October and November was the Allied Commission informed as to the allocations of schooners from North to South ?
A. I am not in a position to tell it because I spent most of my time outside Rome.

Q. So that you were not informed about it ?

1542

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

A. I never heard about it till the time I entered the Schooner Control Board as a member.

Q. When ?
A: In the month of March 1945.

Q. What did you hear about it ?

BY PROSECUTION.

Q. I have not understood the question . Concerning what ?
A. Concerning the allocations of schooners from the mainland to the South, disposed bybthe Schooner Control Board.

Q. If you are asking such a question, PROSECUTION will object because the question is undefined and uncertain.

BY THE COURT.

The objection is good.

BY DEFENSE COUNSEL.

It is very difficult to ask questions because I am always afraid to ask leading questions.

BY THE COURT.

Avvocato , please, relax and if objections are made, the COURT will rule them.

DIRECT EXAMINATION (Continued).

Q. At the time you were working with A.C. Rome did you ever hear that the Board disposed of schooners for the transport of goods from the mainland to the South ?

183

BY PROSECUTION.

PROSECUTION will be very happy to stipulate upon this matter, namely that Schooner Control Board did allocate schooners for transport.

BY DEFENSE COUNSEL

Q. Might the stipulation then be completed by this clause that

1543

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

the Allied Commission was duly informed about these allocations ?

A. We are not in a position to be able to settle this point.

Q. I have put the above question to the witness just in order to put you in a condition to settle that point.

BY THE COURT.

Q. What has the question been ?

BY PROSECUTION .

The Avvocato has two distinct questions to ask the witness and he is confusing them : at one time he speaks of allocations of schooners and at another he speaks of bids for the allocation of goods and then he speaks of informing the Allied Commission. All these issues are distinct and separate and it is not difficult, in view of the testimony we have had ,and very simple to know that allocations were made by the Schooner Control Board. In fact we would be very pleased to stipulate this, so that this point will not be any longer in dispute, between the DEFENSE and ourselves.

A. Yes, this is stipulated.

The second point is the question of the bids. PROSECUTION maintains that these bids were to be approved by the Allied Commission and I assume that this is one of the issues in the case. The third point,namely, whether the Allied Commission was informed of the allocations made, was ascertained through Capt. Smith's testimony who said that he used to send the lists to Rome. It is up to the COURT to weigh that evidence.

The question put by DEFENSE COUNSEL is read over by the COURT stenographer.

BY PROSECUTION . 179

The witness has already stated that he was not in Rome all the time and that he used to absent himself from time to time.

1544

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

BY THE COURT.

Q. I think the question is good. Did you hear the question, Mr. Crooks ?
A. Yes , I did.

DIRECT EXAMINATION (Continued).

Q. Was the Allied Commission informed of the fact ?

BY THE COURT.

Ask him whether he knows.

DIRECT EXAMINATION (Continued).

Q. Do you know whether the Allied Commission was informed of the fact ?
A. I do not know.

CROSS EXAMINATION .

Q. Mr. Crooks, while you were with Transportation Sub-Commission were you familiar with the rules and regulations relative to the transport of civilian goods by sea ?
A. They were never very clear, but I believe I had knowledge of the praxis.

Q. In view of your answer can you state that you had a fair knowledge of the rules and regulations directing the transport of civilian goods by sea ?
A. Are you referring to the matter of the bids or of the allocations ?

Q. I am referring in general to the transport of civilian goods by sea. Are you acquainted With the rules and regulations in general? 175
A. Yes, I think I am.

Q. The allocations were made by Schooner Control Board but the requests for goods to be transported were passed on by the Allied Control Commission . Is that correct ?
A. Only part of the time.

1545

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

Q. Would you say that from August 1944 till November 1944 was a period during which the requests were first approved by the Allied Commission and then sent to Schooner Control Board for the allotment of space. Is that correct ?
A. I believe that it was not so for the whole period. This is a fact.

Q. And fromAugust to November is it clear in your mind ?
A. Yes.

Q. Do you know definitely one way or another ?

BY DEFENSE COUNSEL.

We object because he has already answered.

BY PROSECUTION.

This is cross-examination.

CROSS EXAMINATION .(Continued).

Q. Can you answer to this ?
A. I do not believe for that the whole of the period the bids came to Rome for approval.

Q. I have not said that all the bids came to Rome for approval. Didn't provisions establish that requests were to go first to the Allied Commission and then be sent to the Schooner Control Board for the allotment of space?
A. I believe that was the practice but I don't know about the provisions.

Q. Then to your best knowledge that was the practice. Is it correct ?
A. If I have the qualification to answer I must say that they were applied to the traffic northbound from the island.

Q. You said that sometimes during the months of August, September October and November you left your office , is that correct ?

A.Yes, it is.

1546

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

Q. What did you do ? Did you inspect roads, did you make other
A. inspections, what did you do ?
A. For example , I was sent to a port to load the first cargoes of supplies for the civilian population. I went there to organize the stevedores, and also to kaak see that the ship be loaded in the shortest possible time.

Q. Specifically , what were your duties with the Allied Commission during the months from August to November 1944 ?
A. From 1 November I was chief of the Port and Shipping Branch.

Q. Prior to that will you tell the COURT what your duties were in the month of August ?
A. Trouble shooting.

Q. The example you gave us does not apply to the idiomatic expression you have used.
A. When we had trouble in ports I was sent to square difficulties.

Q. During this time did you have any contacts with COGENA ?
A. I worked with the steamers.

Q. Then you never dealt with schooners ?
A. Not till 1 November .

Q. Then any praxis relative to schooners in those times would not have concerned you directly.
A. It would have because during the time I did not travel I was in the office and helped in office work.

Q. You stated , I believe, that there were no regulations relative to the transport of goods and to the requests to be filed with the Allied Commission.
A. There were certain regulations which were printed on the back of the applications.

Q. Were there any other regulations ? 175
A. There were some precise regulations concerning transport of cargoes from South to North.

Q. Did you read all the regulations issued by your Department concerning navigation ?
A. I cannot say it with certainty but I think so.

Q. Might you have missed some ?
A. Yes.

1547

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

The witness is excused from further attendance at the trial.

Case adjourned to 22 February 1946, 09:30 hrs.

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22 February 1946 , 09:30 hrs.

The COURT commemorates George Washington's birthday.

13 WITNESS : GIUSEPPE MELUCCI .

The witness is sworn in.

DIRECT EXAMINATION .

Q. What is your full name ?
A. Giuseppe Mellucci, born in Naples on 11 February 1906.

Q. What is your occupation ?
A. Porter (Portiere).

Q. How long have you been a porter ?
A. Almost four years .

Q. Of what building are you the porter ?
A. I am the porter of the building situated at Corso Vittorio Emanuele No.122, of the third villa.

Q. Is it No.122 ?
A. Yes, it is.

Q. Is this number written on the streetdoor ?
A. No , it isn't.

Q. Is there then another number ?
A. No , there is not.

Q. Are there any other entrances in the courtyard ?
A. No ,there are four entrances.

BY THE COURT.

Q. Where are these entrances ?
A. At Corso Vittorio Emanuele.

1548

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

Q. Are there four entrances in the courtyard ?
A. Yes, in the alley, that is in ~~the~~ an alley.

Q. Are there numbers upon these four entrances ?
A. No.

BY THE COURT.

Q. It would be a good thing if you narrowed your questions to the period August, September, October.
A. That is the reason why I asked him how long he had been a porter there.

DIRECT EXAMINATION .

Q. Were you the porter in August, September, October, November 1944?
A. Yes , I was.

Q. Have you been the porter of that building for four years ?
A. Yes, I have.

Q. When was the house built ?
A. It has been built some 5, 6 ,7 years ago.

Q. But as long as you have been there there have been no numbers
A. No, there have been no numbers.

Q. Why is it then that we hear of this number 122 ?
A. There has never been a number. I have been there four years and I never saw any number. That number 122 was given because the adjoining house bears No.121.

Q. Stand up and look at these three people. Do you know them ? Whom do you recognize ? 17

A. Commandator SARNELLA and that young man.

Witness points out accused Dr. SARNELLA and Capt. LO PORTO.

Q. How do you know Dr. SARNELLA ?
A. He is one of the tenants in the building.

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

Q. And how do you know that young man ?
A. Once he cam with two British officers.

Q. Can you remember the approximate date when he came ?

BY THE COURT.

Q. Do you mean the date of his visit ?
A. Yes , the date of the day when he met him .

DIRECT EXAMINATION .

A. It was some two or three days after Dr. BARNELLA had been apprehended.

Q. Did Dr. BARNELLA use to absent himself from Naples ?
A. Every fortnight.

BY THE COURT.

Q. But is he in a position to answer such a question ? He is the porter .
A. And in order to leave the building .....

Q. All right, Avvocato, but how can he answer ? We have here a man who is the porter of a building just as there is a porter at the hotel where I am at present at Rome. I am in the habit of coming and going from the hotel, how can the porter there know what I am going to do when I leave the hotel? Qualify him so that we know that he knows what he is saying and that he is n t making mere suppositions and then his testimony will have some weight. During the trial of cases here in Italy I have noticed that witnesses are ready to testify on anything based on guess work and not on facts. Now, Avvocato, you wish his testimony to have some weight and the COURT has to determine from all the facts. I might allow the question and he might answer ; " Yes, he left Naples" but actually the COURT would not give any weight to such an affirmation because we do not know whether or not he knows what he is saying. If you ask your witness questions which can prove his knowledge and then he gives you answer h based on that knowledge then the COURT will not find itself faced with a supposition but a fact.

173

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

A. Your Honour must allow me to give an explanation in order to qualify this porter. I might qualify ~~him~~ Neapolitan or Italian porters because porters are here in Italy under certain police obligations.

Q. If you ask this witness :" Have you ever seen him leave his house ?" this is the first question. " How was he dressed, was he wearing a hat, an overcoat, a suitcase ? " and then "Did he remain a certain time away? Did he return wearing his hat, his overcoat, his suitcase ?" then you have qualified your witness on simple facts on which his knowledge is based. Avvocato, when we say " Qualify your witness " we simply want the simple facts on which he bases his testimony. Now when the COURT hears that testimony and hears that the accused used to leave his house, then the witness's statement has been corraborated by credible facts. But if you ask him, as the porter, whether the accused used to absent himself from Naples without a so asking him those facts which support his testimony, we do not know whether or not the witness is guessing. I wish to stress this point and the reason for it is that I do not wish to put you in a position of false security because when you ask your witness any question without first stressing those facts the COURT will give small weight to the witness's answers. Therefore the COURT is trying to be more than fair to you by telling you not to leave anything out of a fact and in developing all your facts. By now it ought to be well known that we place a higher premium on facts : in direct examination you develop them through the witness , in cross-examination you try to prove with leading questions whether or not he knows what he is talking about.

DIRECT EXAMINATION (Continued).

Q. Do you know whether the Director used to absent himself from Naples ?
A. No , he left every two weeks.

172

BY DEFENSE COUNSEL.

I apologize to the COURT but the COURT must realize that I am questioning a witness who has a very imperfect knowledge of the language I am speaking.

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

DIRECT EXAMINATION (Continued).

Q. Did the Commendatore leave sometimes Naples ?
A. Yes, he did.

Q. How do you know he left ?
A. I saw him because I used to do the cleaning in the building and saw him.

BY THE COURT.

The answer is not sufficient. The COURT will allow you to ask leading questions.

DIRECT EXAMINATION (Continued).

A. Did the Commendatore go out every day ?
A. Yes, he did.

Q. How can you say that he left twice a month ? What difference was there ?
A. When he left he did not return in the evening, when he went out he ~~did not~~ returned.

Q. When Comm. SARNELLA left his house how did he leave it ?
A. When he left it he used to carry a bag.

BY THE COURT .

Q. Do you mean a suitcase ?
A. Yes, a bag.

DIRECT EXAMINATION (Continued).

Q. Did his car come to fetch him ?
A. The car used to come when it was raining , but not when it was fine weather.

BY PROSECUTION .

These questions are too vague, ask him leading questions.

BY THE COURT.

Also the COURT allows DEFENSE to ask leading questions because this is one of those instances when the witness needs being

16521

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

asked leading questions.

DIRECT EXAMINATION (Continued).

Q. Did he carry his bag every day or only when he was going away ?
A. When he was going away he carried his bag, the other days he used to carry his newspaper in his hand.

Q. When Comm. SARNELLA was going away did he leave on foot ?
A. When he was going away the car came to fetch him .

Q. Normally on what day of the week did he leave and approximately at what time ?
A. He left on Fridays at 6 or 6,30.

Q. And approximately on what day of the week did he come back ?
A. On Mondays.

Q. At what time on Mondays ?
A. Either at about 13:00 - 13:30 hrs or in the evening at about 18:00 - 18:30 hrs.

Q. You said that you saw that young man two or three days after Dr. SARNELLA had been arrested.
A. Yes.

Q. Have you seen him on any other occasions ?
A. No.

CROSS EXAMINATION by PROSECUTION.

Q. How long have you been a porter ?
A. I have been almost four years a porter .

Q. You said you have been 8 years a porter.
A. No , some three or four years .

Q. What are your working hours ?
A. I begin at 5 in the morning and I end at about 10:30 or 11 at night.

Q. Do you live on the same premises where you work ?
A. Yes.

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

Q. Exactly on what place do you live ?
A. Near the staircase.

Q. But there are four buildings !
A. There are four porters.

Q. Do you live in the same building where Dr. SARNELLA lives ?
A. Yes, I do.

Q. What time do you eat in the morning ?
A. I don't eat in the morning. I eat after twelve o' clock.

Q. Do you have your breakfast in the morning ?
A. No , I don't.

Q. What time do you lunch ?
A. At twelve, half past twelve, at one in the afternoon, I have no fixed time.

Q. What time do you eat in the evening ?
A. At seven or half past seven .

Q. How long does it take to you to have your lunch ?
A. About half an hour.

Q. Where do you eat ?
A. In my kitchen, of course.

Q. You might also eat at the restaurant.
A. I should need a money wallet as big as that !

Q. Are you the only porter in the building ?
A. Yes, I am.

Q. And you remain in the building all day long ?
A. Yes, and when I go out there is my wife or my nephew.

Q. Answer my question ; do you remain there all day long ?
A. When some of the tenants send me on an errand I go out.

Q. Do you absent yourself from the premises from time to time ? during the day ?
A. Yes, I do.

1553

163

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

Q. And do you see all the people who enter the courtyard ?
A. Certainly .

Q. Might anybody enter while you are not there ?
A. There is always somebody keeping watch.

Q. But can you see them ?
A. I can certainly see them .

Q. If you are absent from the premises and somebody comes to the building you cannot see him .
A. There is always somebody keeping watch.

Q. You must answer the question.

BY THE COURT.

Let the stenographer read over the question.

CROSS EXAMINATION (Continued).

Q. If you are absent from the premises and somebody comes to the building you cannot see him .
A. Certainly not.

Q. Then you do not see all those who enter or leave the courtyard.
A. If I do not see them there is somebody who keeps watch.

BY PROSECUTION .

The witness does not understand that he must answer for himself alone.

BY THE COURT.

I wish to make a suggestion. It is not necessary for him to admit that he is able to see people enter when he is out on some errand because if he had said so the COURT would not have believed him. This is common knowledge that a porter cannot see people enter the building when he himself is absent from the premises. 166

CROSS EXAMINATION (Continued).

Q. According to your best recollection , were there many Allied

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

officers and enlistedmen living in the building where you live ?
A. There were many Allied cars coming and going from the building.

Q. I believe you said that many Allied officers and enlisted men were living in that building.
A. Yes, because there were many requisitioned apartments in the whole building.

Q. Then it was not out of the ordinary to see officers and soldiers coming and going from the building.
A. They kept coming and going from their apartments , there were British, American and French soldiers.

Q. The Avvocato asked you how come that you remember when that young man came to the building .
A. Two British officers who were with him called me and asked me whether I knew him.

Q. And you said you did not.

BY THE COURT.

Q. Of whom are you speaking , COUNSEL ?
A. Of the accused LO PORTO.

CROSS EXAMINATION (Continued).

Q. I ask you to look at this man (PROSECUTION COUNSEL points at DR. Allocca, Commissario of P.S.) and tell the COURT whether or not you have seen him at any time .
A. Yes, I have.

Q. Where did you see him ?
A. At the Central Questura.

Q. Did you ever see him on the premises where you work ?
A. No , I have not.

Q. Are you certain ?
A. Yes , I am.

Q. I ask you to look at this man (PROSECUTION COUNSEL points at Dr. Amendolea, Commissario of P.S.) Have you ever seen him before ?
A. Yes, I have.

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

Q. Where ?
A. He came to fetch me in a car.

Q. Did he then come to the house where you live ?
A. Yes , he did.

Q. I ask you to look at this person (PROSECUTION COUNSEL points at witness Palumbo) ; look at him well and tell the COURT whether you recognize him and whether you have seen him before.
A. I have never known him.

Q. Are you certain ?
A. I am quite certain .

Q. Before coming into the Courtroom did you speak about this case with anyone ?
A. No , with no one.

Q. Are you certain ?
A. Quite certain.

The witness is excused by the COURT subject to being recalled if needed by the COURT.

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15 Minute Recess.

BY COUNSEL PORZIO for Eugenio SARNELLA.

In order to simplify matters because time urges and complete Dr. SARNELLA's Defense, Counsel Serrao and myself move to introduce two documents to the COURT which eventually may be also testified to by witnesses. One is a document showing what is already known by the COURT, namely that Dr. Eugenio SARNELLA left Naples on Fridays, was absent on Saturdays and Sundays and came back on Mondays. It is an abstract drawn up by a Notary Public. The other is a certified statement showing that Dr. SARNELLA was absent from Naples, on a mission to Rome, during the days mentioned in the statement. From this document we draw the proof and the evidence that just on 15 September 1944 Mr. Eugenio SARNELLA was one of his missions. The signature of the Chairman of the Company is

1557

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

certified by the Notary Public. Then I introduce a Calendar printed in English, in order to clarify the matter of the days under discussion. Then we introduce an abstract, signed by a Notary Public, from the registers of the Company showing the lists of incidentals due to Dr. SARNELLA for the days when he was absent f om Naples or on a mission. These lists show that Dr. SARNELLA was paid incidentals for Friday, Saturday, Sunday and Monday , which presupposes Dr. SARNELLA returned on a Monday afternoon because when a person returns during the morning he has no right to be paid incidentals for that day. We have also English translations of the documents.

BY COUNSEL Serrao for Eugenio SARNELLA.

The COURT knows what the qualification of a Notary Public is In Italy. Of course both the Notary ublic and the employee of Tirrenia Company who drew up the documents are ready to come and testify in Court if their presence is needed.

BY PROSECUTION.

May it please the COURT , there are some discrepancies which we would like to have clarified. Therefore it would be a good thing to have here in Court the person who drew up this document. We do not mean to delay the case but we need that person in COURT.

BY DEFENSE COUNSEL.

For both the documents ?

BY PROSECUTION .

Because one of the documents mentions that SARNELLA used to go to Rome on behalf of the Steamship Company and I must assume that Dr. SARNELLA went to Rome sometimes also on some business of his own. 165

BY DEFENSE COUNSEL.

We must always assume that he went to Rome on business, not to see his own family.

1558

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

BY THE COURT.

The COURT is not going to allow the accused to testify before it has been warned about his rights.

BY PROSECUTION.

We would not raise any objections if these documents told us all the times he went to Rome either on business or on other matters.

BY DEFENSE COUNSEL.

Only for the period relative to the issues in this case, that is August, September , October.

BY PROSECUTION.

If the COURT, however, allows us to talk it over with DEFENSE COUNSEL we might reach a conclusion.

BY DEFENSE COUNSEL.

Maybe the accused himself will be able to answer PROSECUTION.

BY PROSECUTION.

This is not the right time. DEFENSE wishes to introduce these documents in evidence and of course wishes to know whether or not we object. Maybe we don't understand these documents sufficiently, therefore I ask the COURT to be allowed 10 minutes time in order to confer on these matters with my Co-Counsel.

16

BY THE COURT.

It is clear of course that the documents cannot be received in evidence if PROSECUTION objects.

BY PROSECUTION.

Maybe the objection is not founded and we shall perceive it only after talking it over with the DEFENSE.

1559

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

BY THE COURT.

The suggestion is good not only in order to save time for the final argument but also because it will save an unnecessary qualification of the witnesses. The COURT is allowing DEFENSE and PROSECUTION ten minutes time in order to talk it over.

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10 Minutes Recess

BY PROSECUTION .

We have examined the documents in question and PROSECUTION is sorry to say it objects, nevertheless DEFENSE knows that it can prove its point if it so desires.

BY THE COURT.

Q. What are your grounds ?
A. By that document DEFENSE is attempting to show that Dr.SARNELLA was absent from Naples during some periods of time, periods of time which form a vital part of the issues in this case. PROSECUTION would thus be unable to cross-examine on those points. This is the basis of our objection.

BY THE COURT.

The objection is good in law and there is also a further objection, namely that is the delegation of this COURT to adjudicate upon facts, and this function belongs solely to this COURT. For this reason , if the COURT accepted the statement of the Notary Public as a true statement of facts it would make the Notary sole judge of the facts and not this COURT and this COURT must perform its functions. Of course DEFENSE COUNSEL understand that the COURT's ruling only refers to the offer of the documents under that form. the rule of the COURT does not prevent them in any way from proving the facts they desire to prove by producing witnesses in Court.

BY DEFENSE COUNSEL.

May it please the COURT, I would like to produce the account-

1560

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

books from which the Notary Public derived the statement in question. We shall now ask the COURT's permission to have our witness heard.

BY THE COURT.

Avvocato, it is not necessary to ask the COURT's permission in order to produce legitimate evidence. The COURT has only been trying to make everybody understand that the COURT insists only on having all the facts. DEFENSE COUNSEL not only does not need to ask the COURT's permission to produce whatever evidence or witnesses he considers pertinent to the case of his client but on the contrary he is compelled by law to do so in his client's defence.

BY DEFENSE COUNSEL.

With the COURT's permission I would like to make a present to the COURT of the calendar for 1944. A good Counsel offers anything from which he may hope to obtain an advantage.

14 WITNESS : GIUSEPPE MARANZANO.

The witness is sworn in.

DIRECT EXAMINATION.

Q. What is your full name ?
A. Maranzano Giuseppe.

Q. Where were you born ?
A. At Palermo in 1891.

Q. What is your occupation ?
A. I am an employee at Tirrenia Steamship Company.

Q. Does Tirrenia Company keep books ?
A. Yes, it does.

Q. Are these account books stamped according to our law regulations ?
A. Yes, they are stamped and certified by the Tribunal.

1662

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

Q. Is this your signature ?
A. Yes, it is.

Q. From where did you take all the information which is written on this document?
A. From the ledger.

Q. Are those who travel entitled to be paid a travel allowance?
A. Yes, they receive a travel allowance.

Q. Who pays the allowance ? Who makes the accounts ?
A. The Personnel Office .

Q. And who is in charge of this Personnel Office ?
A. I am the Chief of that office .

Q. Who checked whether the employees really went on a mission ?
A. That same office.

Q. Did Comm. SARNELLA leave for Rome or didn't he ?
A. He did.

Q. On what business did he leave , if you know ?
A. Sometimes he left on business connected with the Tirrenia Company and sometimes on business connected with COGENA.

Q. Do you know what were the days he would leave and the days he would come back.
A. Habitually he left on Fridays and came back on Mondays.

Q. Was a travel allowance paid for the whole day of his absence, namely, if the allowance was paid for a Monday did that mean that he had returned in the morning or in the afternoon of that day ?
A. When he came after twelve it was calculated as a whole day.

Q. What time were the meetings of the Board held ?
A. What Board ?

Q. Where was SARNELLA ?
A. At Rome.

Q. Are you with the Tirrenia Company ?

1562

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

BY THE COURT.

Specify. The COURT does not know anything about these matters. You must say Naples Board or Rome Board.

BY DEFENSE COUNSEL.

I apologize to the COURT. I meant COGENA while the present witness is with Tirrenia Company.

DIRECT EXAMINATION (Continued).

Q. Is the payment of travel allowances made by the Tirrenia Company ?
A. Yes, it is.

Q. And then what happens ?
A. Then Tirrenia charges COGENA.

Q. From the account books, stamped and certified , did you collect the information that on the days 16,17,18,19 September 1944 Mr. Eugenio SARNELLA was paid a travel allowance for having been absent on a mission at Rome?
A. If that period is duly shown in the certificate then it must have been so because I wrote the certificate personally , and then I am sure about it because I duly collected the dates from the ledger.

Document is produced to the COURT as evidence.

BY PROSECUTION .

Q. Have you testified on the basis of this document ?
A. Yes, I have.

160

Q. We object. PROSECUTION is confused on the basis that the witness testified to his being an employee with the Tirrenia Company. The only evidence we have here in Court is that Dr. SARNELLA is Director of COGENA. While there may be a connection between COGENA and the Tirrenia nevertheless this connection has not been brought up before this COURT. Beside that, he speaks on the basis of documents belonging to the Tirrenia Company and I assume Dr. SARNELLA's absences were on behalf of COGENA. Furthermore we might have the opportunity of seeing the books so as to be able to examine them and have a better understanding of what those documents mean. On this basis PROSECUTION objects to this document being introduced in evidence.

1563

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

BY THE COURT.

This testimony might be admitted to this limited extent that the books of the Tirrenia show this fact. Of course whether what they show is true or false is left in the thin air.

BY PROSECUTION.

In this case his testimony would be of no value whatever and PROSECUTION might then ask, since his testimony is of no value, to have it struck off the records.

BY THE COURT.

This might be true at the conclusion of all the evidence, but not of his testimony. The best evidence on this matter would be what Dr. GARNELLA has or has not to say on this matter. The COURT will accept the documents as establishing these premisses, namely, that the account books of Tirrenia Company show these entrances, but the COURT however wishes it to be clearly understood that the COURT does not proceed further to accept what they represent as truth, which is another matter.

BY PROSECUTION.

PROSECUTION however is still labouring under the disadvantage of not knowing whether these books exist, who made these entrances in the account books, and whether that person was authorized to do so. The present witness did not state that he made these entrances in the book.

BY THE COURT.

It may happen that this testimony , at the conclusion of the trial, that is, when all the evidence is in, be absolutely valueless. The COURT however comes to this conclusion at the present time because the DEFENSE has not yet completed all its evidence. This witness stated that the account books reflect these figures. This is his testimony and to this extent. Nevertheless it must not be believed that in accepting these documents their figures are proof showing Dr. GARNELLA was absent as those figures pretend to show. We have no evidence on this point.

BY PROSECUTION.

On this basis PROSECUTION withdraws its objection.

1564

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

BY THE COURT.

The documents is received in evidence and will be identified as Ex.O.

DIRECT EXAMINATION (Continued).

Q. Was Dr. SARNELLA Eugenio the Director of the Tirrenia ?
A. Yes, he was.

Q. Was he Director of COGENA ?
A. Yes, he was.

Q. At what time was he Director of COGENA and Director of Tirrenia ?
A. He has always been the Director.

Q. Did the Tirrenia charge expenses to COGENA ?
A. Tirrenia Company did not only charge to COGENA travel allowances paid to Dr. SARNELLA but also the expenses of the whole Tirrenia personnel attached to COGENA and the same do all the other Companies which have their personnel attached to COGENA. In short COGENA's personnel is constituted by employees taken from the agencies of the four Steamship Companies.

Q. And it is from those books stamped and certified that you collected those extracts you produced in Court.? Can you show those books to the COURT?
A. Yes, I can.

BY THE COURT.

Q. If he shows those books this will prove that Dr. SARNELLA was absent and we shall thus have learnt what those books show. These are extracts from those books, are they not ?
A. Yes.

Q. They have been introduced in evidence ; it is not necessary to bring those books in COURT.

BY DEFENSE COUNSEL.

At this time , with the COURT's permission, we shall produce a deed drawn up by a Notary Public, which means that a Notary Public examined those books and drew up a statement.

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

DIRECT EXAMINATION .

Q. Did a Notary Public come to the Tirrenia offices to examine your books ?
A. Yes.

Q. Who is this Notary ?
A. The Avv. Casale .

Q. Did he examine all your books relative to that period ?
A. Yes, he did.

BY THE COURT.

The COURT would like to address a question to DEFENSE and PROSECUTION COUNSEL : What is this document ?

BY PROSECUTION .

It is a document drawn up by a Notary , stating that he went to the Tirrenia, examined the registers and transcribed some extracts from them which I believe the Avvocato considers pertinent to this case and which I believe he proposes to introduce as evidence.

BY THE COURT.

In what is this document different from the former one ?

BY DEFENSE COUNSEL.

They are both similar but the second one is more important.

151

BY PROSECUTION.

May PROSECUTION see it ?

BY DEFENSE COUNSEL.

The Tirrenia Company charges to COGENA the payment of travel allowances for that determined period.

BY PROSECUTION.

That document , Your Honour, is supposed to show the days

1566

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

when he was absent, this document, on the contrary , is supposed to show the payment made to Dr. SARNELLA for his days of absence. This second document has , however, been drawn up by a Public Notary.

BY THE COURT.

Let us forget everything about the Public Notary. The present witness can look at the document and say whether it represents the registers in his possession.

DIRECT EXAMINATION (Continued).

A. Those documents were drawn up by the Notary Casale when he examined the account books. I recognize them perfectly.

BY THE COURT.

The witness must forget about Notary Casale. In this Court the witness's word is as good as the word of a Public Notary. Let the witness look at the paper : do these figures represent the figures which have been col ected from your account books ?

A. Yes, they do.

BY THE COURT.

If the COURT understands it will the Avvocato means to produce it in evidence.

BY PROSECUTION.

In the first document we had hearsay evidence, now there is here hearsay evidence on third degree. At least the first document had been collected by the witness from account books which had not been written by him. Now we have a person who is a complete outsider who takes down those figures and the only reason given of their having been collected from the account books is because the Notary came into the office, but I doubt whether the witness personally checked the work done by the Notary or at least we have had no evidence about it.

BY THE COURT.

Now the COURT will speak about matters it mentioned a

1567

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

moment ago. First of all hearsay evidence is admissible in this COURT so that this part of your objection is not good. You cannot sustain a fact on hearsay evidence alone: it must be sustained by collateral facts. The COURT admits this testimony as hearsay evidence, that is,that the account books show certain payments made to Dr. SARNELLA for trips he had made. This is as far as this evidence goes. Hearsay evidence , however, does not establish whether in fact Dr. SARNELLA made those trips which are represented by the figures brought before this COURT. Some human witness, such as Dr. SARNELLA himself or any other person who may have gone with him will have to take the stand and establish these facts. Because if this is done we have direct evidence that he really performed those trips and then also hearsay evidence sustains those facts. Have I at last succeeded in explaining this point ? In view of the fact that we admit this hearsay evidence about payments effected nobody must concluded or must be allowed to conclude that/ these facts establish that Dr. SARNELLA went to Rome. All these facts show some entries in the account books : whether or not they are true is not established by those figures : we shall need a human witness who says whether or not he went to Rome. If this is not clear I shall make it clear. I have admitted this hearsay evidence presupposing that subsequent evidence will be produced. All that the Avvocati are going to do will be done later on ; I say , however, that the whole testimony has not yet been made. I believe the witness stated that he examined the document and that the facts mentioned in it are facts contained in the account books and that he knows it. His testimony to that effect is better than any testimony of a Notary Public and , according to what he stated , the paper may be admitted as hearsay evidence. Avvocato, are you going to produce this paper in evidence ?

A. Yes , Your Honour.

BY THE COURT.

The COURT receives this paper in evidence and identifies it as Ex. P.

BY DEFENSE COUNSEL.

The remark made by the COURT is quite right. For the present we shall forget that a certified document shows that in the days A, B, C, Dr. SARNELLA left for Rome and was paid travel

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

allowances for his mission . Whether in fact he left Naples this is quite another matter.

BY THE COURT.

Avvocato we are working on the same lines.

BY DEFENSE COUNSEL.

Under Italian law account books stamped and certified are authentic documents and in order to prove that they are forged it is necessary to start a judiciary proceedings.

BY THE COURT.

The COURT has accepted it and this has been the reason why it has overruled PROSECUTION 's objection.

(To PROSECUTION).

Q. Are you going to ask for the account books to be produced in Court ?
A. The document speaks by itself. It is the DEFENSE not the PROSECUTION which must worry about it.

RE- DIRECT EXAMINATION for Santo LO PORTO.

Q. Was the list produced in evidence drawn up by you from the account books kept by the Tirrenia ?
A. Yes.

Q. From what elements did you collect the entries made on the register ?
A. From the Journal. In order to issue a document and sign it I had to ascertain that in fact those dates were shown by the Ledger.

BY THE COURT.

You have made a confusion between the Journal and the Ledger.
A. The Journal shows payments made daily : and there are such entries in it : we have paid so much to Tom , so much to Dick and so much to Harry.

Q. This is a Journal and it is quite a different thing from a Ledger . Is that right ?
A. Yes, Your Honour.

1569

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

RE-DIRECT EXAMINATION (Continued).

Q. Who supplied the information for the Journal, that is who gave information about the trips ? Was it given by the interested parties themselves ?
A. Yes, by the interested parties.

Q. Was any check made on this information supplied by the interested parties ?
A. Do you mean a check in the sense that we followed those who were going on a trip ? Evidently not.

BY PROSECUTION.

May it please the COURT , we would like to have the witness answer this question because it is an important one .

A. Who leaves on a mission does so following instructions. Our Director General did not leave following instructions but on business he had in Rome or when called by COGENA.

BY PROSECUTION.

This however is not responsive to the question asked by the Avvocato.

BY THE COURT.

The document only proves that he had been paid for travel expenses.

BY PROSECUTION.

I request a more exhaustive answer because the witness has spoken that it was impossible to follow them on their trips and other irrelevant matters.

The COURT instructs the stenographer to read the question over.

RE-DIRECT EXAMINATION (Continued).

A. No check was made, not even as to the humblest of our employees.

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

Q. Did the interested parties produce to the Cashier's office any documents, bills, receipts, after their trip ?
A. We did not ask for documents.

Q. Dr. SARNELLA was with COGENA. When he left for Rome or when he came back from that town was it COGENA that informed the Tirrenia Company or he himself personally ?
A. No, Comm. SARNELLA himself informed the Tirrenia Company.

BY PROSECUTION (CROSS-EXAM.)

Q. I ask you to look at the last two exhibits with the relative translations. Have you stated that this document has been drawn up by a Notary and is a correct copy of the entries in the account book ?
A. It is collected from the invoice book.

The question is repeated and the answer is yes.

Q. Would you say that this document is complete as to the time it shows ?
A. This document is complete as to COGENA. The document I showed a short time ago includes all the absences made by Dr. SARNELLA.

Q. I do not think the question is difficult but PROSECUTION would like to compel the witness to give a precise answer.

The question is read over by the stenographer.

A. No.

Q. Does the document drawn up by you give a list of the days during which Dr. SARNELLA is alleged to have been absent ? Is that document accurate ?
A. Yes.

Q. Insofar as it is collected from the registers ?
A. Yes, collected from the registers.

Q. Is it a complete one ?
A. Yes, it is complete.

Q. With reference to the absences made during the period of time beginning 21 June 1944 and ending 15 June 1945 is Ex.O complete?
A. Yes, it is complete.

1571

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

Q. With reference to travel allowances from 21 June 1944 to 18 December 1944, is Ex. P complete as to all the absences made ?
A. No , it is not complete because there is another list which is the list made by the Tirrenia Company.

Q. I withdraw the question and I show you Ex.P . Will you tell us what it is ?
A. These are the trips Dr. SARNELLA made on behalf of COGENA and they are included in the bill charged to COGENA .

Q. And does it show all travel allowances received by him for trips made during the period covered by those two dates ?
A. Yes.

Q. And you stated that it is complete for that period.
A. We must distinguish as to the period of COGENA .

Q. Did then Dr. SARNELLA make also other trips on behalf of COGENA ?
A. Yes, sometimes, on behalf of the Tirrenia Company in particular.
A. T
Q. But those trips are not on behalf of the Tirrenia.
A. This is complete as to all the absences.

Q. But then all trips mentioned in Ex. O should be shown on Ex. P as regards COGENA.
A. ~~Yes~~ yes,

Q. Why did you state that those documents are correct meaning Ex.O and Ex. P. ?
A. Ex.O is complete with all the absences.

151

Q. But then those absences should be shown by Ex.P as to travel allowances.
A. I don't understand the question.

Q. If the absences are shown by that document then correspondently they should be shown in Ex. P under the point of view of payment of travel allowances, should or shouldn't they ?
A. Yes, and they are listed in this document for the very fact that they are charged to COGENA.

Q. Then all absences shown in Ex.O as made on behalf of COGENA should appear in that document because travel allowances

1572

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

were to be charged to COGENA.
A. Yes, quite right.

Q. Look at Ex.O I ask you to look at the absences relative to the period 1 September 1944 to 4 September 1944. That absence should have appeared on Ex. P under the form of travel allowances to be charged to COGENA.
A. No, because it was not charged to COGENA. This means that it was charged to the Tirrenia Company.

Q. But are not absences in Ex.O all made on behalf of COGENA?
A. All of them are there.

Q. What does it say on this line here ?
A. It says : for absences from our Company and from COGENA, therefore our Company means Tirrenia Company.

Q. Then on this document Ex.O, absences made on behalf of the Tirrenia Company and C GENA are listed all together?
A. Quite right .

Q. Have you a book or a Register showing what absences were made on behalf of COGENA and what on behalf of Tirrenia Company ?
A. The Director General stated what travel allowances were to be charged to COGENA and what to Tirrenia Company. We charged to COGENA those pertaining to COGENA and those pertaining to the Tirrenia Company were charged to the Tirrenia and therefore no bill was drawn up on COGENA.

BY DEFENSE COUNSEL for SARNELLA Eugenio.

Q. Why was a bill made ?
A. In order to be refunded by COGENA.

Q. So those bills were drawn up for COGENA ?
A. Yes.

Q. Therefore there were travel allowances for the Tirrenia Company and travel allowances for COGENA and then bills were drawn up ?
A. The bill was made for the Accountant's office.

150

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

Q. Who was the Director General of whom you have been speaking?
A. Comm. SARNELLA .

Q. Then the Director used to tell you which travel allowances were to be charged to COGENA and which to the Tirrenia Company?
A. Yes.

Q. And also he himself informed you when he left and when he returned.
A. Yes.

Q. And how did he inform you ?
A. He said :" To-morrow I leave ;"

Q. To whom did he say so ?
A. He said it to the Chiefs of all the different offices because he was the only Director left in Naples therefore when he absented himself we were left alone.

Q. Did he always inform you before he left or did he sometimes inform youonly on his return ?
A. Habitually we supposed that he left also for another motive, habitually when he went to Rome on business connected with COGENA he could also take care of business connected with the Tirrenia Company.

Q. This is not the question. PROSECUTION thinks that the proceedings are not speeding up and therefore ends by cross examining the witness.

BY THE COURT.

Maybe PROSECUTION does not know about bookkeeping ; the COURT knows about such matters and therefore was able to follow the testimony.

BY PROSECUTION.

PROSECUTION admits having no knowledge of bookkeeping but in the first exhibit all the absences are listed without being specified on whose behalf they were made and we wonder at their not being listed separately.

1574

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

- C O G E N A C A S E -

D E F E N C E C A S E

(Second part: from page 274 to page 393)

1575

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

BY DEFENSE COUNSEL for Eugenio SARNELLA.

This is ordinary bookkeeping . Nobody could foresee that those entries were to be examined by a Court.

BY PROSECUTION.

It is very difficult to follow the present witness.

BY THE COURT.

The COURT has followed him.

The witness is excused from further attendance at the trial.

Recess to 15:00 hrs.

15:00 hrs.

BY DEFENSE COUNSEL for Eugenio SARNELLA.

Gentlemen of the COURT, I have already informed the honourable representative of the PROSECUTION that we intend to introduce Comm. SARNELLA's wife in order to give a better understanding of the situation. We propose asking the witness some questions whose answers have already been taken down in writing by us and which I have shown to PROSECUTION. If the honourable PROSECUTOR is satisfied with the answers as they are it is useless to have the lady here in Court ; if on the contrary PROSECUTION intends asking other questions Mrs. Sarnella is here ready to take the stand. In the meanwhile the COURT might consent to hear Dr. SARNELLA's testimony.

BY PROSECUTION.

Before we proceed to the interrogatory of the accused let us consider the situation. Avv. Porzio has given me a paper which contains the substance of the testimony given

1576

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

by Dr. SARNELLA's wife. PROSECUTION realizes this would be quite an unusual procedure, nevertheless, if the COURT permits it , although we cannot stipulate on what is written on that paper, we would have no objections to having that paper the in the records.

BY THE COURT.

Q. Avvocato , what is written on that paper ?
A. The answers Mrs Sarnella would have given to my questions.

BY PROSECUTION.

PROSECUTION would have no objection in having the substance of what the Avvocato told me written in the records as testimony of Mrs. Sarnella, had she taken the stand. This is done with the object of not having Mrs. Sarnella coming from Rome.

BY DEFENSE COUNSEL.

Mrs Sarnella is in Naples.

BY THE COURT.

I believe DEFENSE and PROSECUTION can agree in saying that this would have been her testimony.

BY PROSECUTION.

But to say that this is her testimony would mean that we have had the opportunity of cross-examining her.

BY THE COURT.

Only under one condition will the COURT receive that document in lieu of the person in flesh it is when PROSECUTION and DEFENSE agree that this would be her deposition. If they do not agree upon this point then we must have the lady called to the witness stand. 176

The testimony is as follows , translated from the Italian by the COurt interpreter.'

"Mrs Letizia Turrici, married Sarnella.

1577

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

I am the wife of Eugenio SARNELLA, I have been living in Rome since birth. I am a resident of Via Lorenzo N.15 Rome . I came to Naples after my husband's trial started. From 6 September 1943 till 21 June 1944 my husband usually came every fortnight. He came to Rome on Fridays and left Rome on Monday morning and especially in 1944 because it was dangerous to leave in the evening. I live in perfect harmony with my husband. I left Rome in order to assist him in such a sad period which neither he nor I deserved.

15 WITNESS : Accused Eugenio SARNELLA .

BY THE COURT.

Q. You are one of the defendants in this case and it is the COURT's duty to warn you that you cannot be obliged to testify in this case and that if you do testify, the decision testing with you to do so, you must testify under oath and must submit to being cross examined not only concerning the facts upon which you ~~will have~~ testified but on any other point referring to your veracity. Having been thus warned by the COURT is it still your desire to testify ?
A. Yes, it is.

The witness is sworn in.

DIRECT EXAMINATION .

Q. What is your name ?
A. Eugenio SARNELLA.

Q. Your father's name ?
A. Sabato.

Q. Where were you born ?
A. At Palermo on 8 August 1890.

Q. What have been your past occupations, your work ?
A. From June 1938 I was Director General of the Steamship Company " Tirrenia ". Prior to that I developed my activities in steamship companies and even prior to that I sailed as Mercantile Captain. In a consecutive period I took my degree

1578

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

in Commercial and Economic Sciences.

BY THE COURT.

Q. What do you mean by a "consecutive period" ?
A.

DIRECT EXAMINATION (Continued).

A. Because I was already married and had children and I studied at night in order to take my degree, so much so that I took it in 1927. By the end of 1943 I was called to Taranto and Admiral Baroni talked with me about the intentions of the Allies of setting up COGENA. After an interview with Mr. Nichols of WSA and Mr. Campbell of MEDBO, I found the premises for the office, the furniture, papers, forms and everything necessary for the functioning of the office taking all that material from the Steamship Company Tirrenia and other Steamship Companies of which at that time I was the Director. Thus , about the middle of January 1944, having been officially appointed by the Minister De Curten as Director of COGENA I started my work retaining however the direction of Tirrenia Company. We now reach 16 August 1944, on which date the constitution of MEDBO Schooner Control Board was settled of which so much talk has been here during the past days. COGENA , as is shown by the decree 1944, was chiefly to see to the administration of all Italian shipping requisitioned or hired by the Italian Naval Ministry and placed at the disposal of the Allied authorities. I shall not go into the matter of the steamers in order not to bore the COURT , I shall only speak about the motorschooners. The motorschooners were used by DSTO, an office constituted of British Naval Officers only and a few U.S.Army officers. Very few were the schooners left at the disposal of the Italian Government. During the period the schooners were used by DSTO nearly all of them were employed for war transport, the remaining part was utilized for transport of civilian goods. DSTO , in agreement with MEDBO, which at that time was in Algeria, drew up the contract of hiring by time charter which was imposed on all shipowners. The Allies required all single contracts of hiring to be drawn up by the Italian Naval Ministry.

BY THE COURT.
Q. The COURT has not clearly understood what single contracts of hiring mean.

1579

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

Q. We had a great many schooners, almost one thousand, and therefore we had to draw up a contract for each schooner. The Allies requested that the hirer of the schooners be the Italian Naval Ministry.

BY THE COURT.

Q. You mean then that the Naval Ministry made the contracts of hiring and then made a single contract of hiring for each schooner ?
A. That is correct. The Naval Ministry delegated COGENA to draw up all these contracts, COGENA therefore every month was to check the rentals.

Q. To whom were they to be paid?
A. Contracts of sub-hirings were drawn up with the shipowners when schooners sailed with cargoes for civilians, in other words a contract was drawn up with the person on whose behalf the goods were to be transported, by which contract were assumed by the sub-hirer.
all the clauses of the main Contract
Q. Thus the clauses were assumed by the sub-hirer.
A. Yes. COGENA had no funds of its own and therefore was to obtain from the sub-hirings the money needed to pay the rentals to the shipowners. In short COGENA had to find the balance between the sub-hirings, which it cashed, and the rentals it had to pay to the owners.

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10 Minutes Recess.

143

BY THE COURT.

Q. The COURT would like to suggest at this time that Dr. SARNELLA quote an instance.
A. As I stated , the Italian Naval Ministry did not supply COGENA with the necessary funds for the running of COGENA, therefore, having to hire a schooner I was to obtain the money to pay the rentals at the end of each month. Since I had to pay the owner and I had no money I sub-hired the schooners and the sub-hirer at the

1580

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

beginning of the sub-hiring paid me the rentals. For instance I paid the shipowner 5000 lire per day for the hiring of his schooner; the sub-hirer had to pay the same rental, that is 5000. 5000 lire remained to me for one day of sub-hiring and with that sum I could pay the owner.

BY DEFENSE COUNSEL.

May it please Your Honour, I am sure that the idea is clear but...

BY THE COURT.

From what the witness said , the idea is now clear.

BY DEFENSE COUNSEL.

In order to make it still clearer to the COURT I should like to be allowed to give an example and I ask Dr. SARNELLA to tell me whether I give an apt quotation or not. Let us imagine that I am a shipowner and that my schooner has been hired by the Italian Naval Ministry. If ,as a shipowner, for my own reasons I wished to have my schooner on my own account, I had to pay the sub-hiring. Isn't that so ?

DIRECT EXAMINATION (Continued).

Q. The Avvocato has quoted a particular instance, that is the case of the shipowner who obtains the schooner on his own account for a tranport, but the schooner could also be hired to any merchant or private citizens In the particular instance quoted by Avv. Porzio there is a special feature because the shipowner was the sub-hirer of the schooner and the former contract of hiring did not cease. Even when a contract of sub-hiring was drawn up the shipowner continued to collect the rentals from COGENA. At the time he became sub-hirer he was treated just as any other private citizen and he had to pay COGENA the rentals for the sub-hiring, in other terms it was a reimburse, the same sum is paid to and collected from the same person. In fact the shipowner at the end of the month collected 100,000 lire of rentals for the sub-hiring but at the same time he had to pay COGENA 100,000 lire for the contract of sub-hiring . Thus we,as COGENA, balanced the 100,000 lire paid as hiring with the 100,000 lire collected by us as sub-hiring.

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

BY THE COURT.

There is something , however , which the COURT has not understood. In your testimony you have stated that the Italian Government did not pay for the monthly hiring of the schooners.

A. The Government paid a daily hiring because the rental was a daily rental.

Q. All right, let us say it was a daily rental : the owner was paid according to a daily rental, but was he paid at the end of the month ?

A. Yes.

Q. You said that the Italian Government did not pay those rentals at the end of the month.

A. No , because they were paid by me, that is COGENA.

Q. That rental was then paid by COGENA.

A. Yes.

Q. Now, where did that money come from ?

A. At the beginning, and I remember it was just on the very day I started the office, I didn't dispose of a penny and I then applied to Mr. Campbell who advanced me on that same day L. 10.000.000. These 10.000.000 lire became, in the course of time 220.000.000 lire advance money.

Q. How did you arrive at this difference between the 10 and the 220 millions lire ?

A. At COGENA I did not only manage schooners but also steamers and we did not cash any hiring for the steamers because they had all been given to the Allies and I had to see to the payment of the crews, ship supplies, repairs etc. At one given time MEDIO informed us that we were to refund all that money because they had already made arrangements with the Italian Government and this was done.

BY THE COURT.

Q. The question was as follows : At the beginning you were given 10 millions advance money.

A. Yes; and as soon as we finished them I asked for another 10 millions and so on.

1582

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

Q. And this advance money has grown to 220 millions ?
A. Yes.

Q. Where did they come from ?
A. I used to write a letter asking for 10 millions for my needs and sent it to Mr. Campbell's office. When my request was granted , Mr. Campbell's accountant used to pay me through the English Bank which was situated in the premises of the Banca Commerciale. Once I had cashed the money I deposited it in the current accounts with the Banca Commerciale. At the time we were requested to refund the money advanced, the Bank of Italy on the authorization of a Finance Colonel who was in Naples, whose name I don't remember, but who was the Chief Finance Officer of the Allied Forces, gave me that money. I refunded it to MSDBO, to Mr. Campbell. From that day on it was the Bank of Italy which advanced me the necessary money for OGGMA therefore there exists a debt of OGGMA, if we may call it by that name, with the Italian Naval Ministry for all the sums I had to borrow in order to pay the ships and this debt will be charged to the Ministry of the Treasury and I do not know how that debt will be settled because it represents the employment of shipping on behalf of the Allies. On the contrary, in the management of the schooners on one side I balanced expenses by the contracts of sub-hiring and on the other , that is in regard to the schooners which have been used .....

Q. I asked you the following question ; You said you received 10 millions from Mr. Campbell of MSDBO ; then you said that in the course of time that sum grew to 220 millions; then the Judge asked you : Where has this sum of 220 millions come from ?"
A. The whole of the 220 millions has come from the English Bank which was situated on the premises of the Banca Commerciale. Mr. Campbell id not give them personally.

Q. This is the physical means through which the money was given to you , but who authorized the payments ?
A. Mr. Campbell or someone in his stead.

Q. Then it was Mr. Campbell who obtained the 220 millions for you ?
A. Yes, his office.

T 5 8 3

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

Q. And you obtained it through a credit with the English Bank ?
A. The first time I personally went with my accountant to Mr. Campbell's office , at the Bank, because there are two or three rooms of the Banca Commerciale turned over to the English Bank, and used as Allied offices.

Q. One thing at a time. Then it was Mr. Campbell who gav the money ?
A. Yes, he issued instructions to give me the money.

Q. Out of those 220 millions was the money taken to pay the hirings to the shipowners at the end of each month ?
A. No , these 220 millions were used by COGENA to pay the expenses of the ships and the steamers, which are not to be confused with schooners.

Q. We are now only speaking about schooners. The Italian Government, by means of a contract with each single ...
A. With Your Honour's permission , I might bring an English copy of the contract, to-morrow.

Q. In the meanwhile the COURT wishes to straighten out this matter ; as the COURT understood it , the Italian Government took all the schooners,presumably through COGENA , and an individual contract was made in which on one side there was COGENA and on the other there was each individual shipowner. By this contract the Italian Government undertook to pay the shipowner a certain amount of lire each day for the use of that ship. Now from your testimony I understood that the Italian Government did not pay that money.
A. If the COURT will give me permission I shall try to clear this matter : if I am not mistaken I stated that at the beginning and up to the middle of August schooners were almost exclusively used for the transport of war cargoes, therefore, there were only a few sub-hirings for civilians. In this case COGENA did not collect any money for sub-hiring but at the same time COGENA was to pay for the hiring.

Q. Where did you obtain the money from ?
A. From those 220.000.000 for the crews,for ship supplies,for steamers and schooners in the service of the Allies. In other words although we don't know who is going to pay for the expenses of these ships there is to-day a list of expenses

1584

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

at the Italian Naval Ministry for the payment of steamers and schooners used by the Allies. In fact the 220 million up to the time I left COGEMA grew to 300 or 320 million but they were given to me by the Italian Government not by the Allies. The Allies gave me only 220 million and this in consequence of the fact that while the accounts concerning the schooners were already being settled by sub-hiring, nothing had been settled concerning the steamers.

BY PROSECUTION.

I believe that money came from MEDIO.

DIRECT EXAMINATION (Continued).

Q. Were these accounts approved later ?
A. Yes, at COGEMA there was a Committee on which there were 3 auditors : one represented the Ministry of the Treasury, another the Director General of the Mercantile Marine and the third was an expert in accountantship . All three of them not only checked the accounts very often but at last examined and approved the budget, which then was also approved by the Board of Directors. The first budget covers the period 3 September 1943- 31 December 1944 and from the accounts of COGEMA the dates when I collected the money to reach the amount of 220 million may be observed , and also the date when that amount was returned.

Q. Were these accounts checked by the Allies ?
A. Up to the day of my arrest nobody checked the accounts but each time we asked MEDIO for advances of money we were to make an estimate of expenses. The fact that no check of the accounts was ever made by the Allies is nothing unusual for me because the expenses were charged to the Italian Government and the Italian Government had put one of its representative with the Ministry of the Treasury and another with the General Management of the Mercantile Marine, that is the Italian Naval Ministry. On the Board we also had a member , Gen .Matteini, as Chairman another member, whose name I cannot remember, was the representative of the Ministry of the Treasury, Avv; Scorini as representative of the Italian Shipping and myself as expert and Director. Beside these people there were the three auditors therefore the Ministry of the Treasury had two representatives on the Board of Directors.

Q. We would like to know something about the Board of which

1585

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

you were a member, that is MEDBO Schooner Control Board.

A. MEDBO Schooner Control Board was set up on 16 August 1944 and started to function on 18 August 1944. MEDBO had three members : Mr. Williams, as representative of MEDBO, Capt. Smith as representative of A.C. and myself of COGENA. We began our work on the Board at a very difficult time .

BY THE COURT.

Q. What do you mean by this ?

A. I mean that there were protests on all sides because the shipowners were dissatisfied inasmuch as the rentals for hiring were low, at least in their opinion, and they wished to have freedom of transport as the restrictions imposed by the Allies were certainly not accepted with pleasure. Other dissatisfied people were merchants and exporters who, not being able to obtain all the space they wanted for cargoes, kept grumbling. Furthermore we began our work at a time when the Allied Commission had not yet been able to issue all the regulations relative to the transport of goods, that is the reason why I think that nobody can to-day specify what directives had been received by the Board. Certain it is that when instructions were issued they spoke only of goods that had to be transported from Sicily to the mainland. In no instance did I receive, as member of the Board or Director of COGENA , orders forbidding the transport of goods from the mainland to Sicily, on the contrary, if I remember correctly, in the very first days or about the middle of August 1944, at Palazzo Sirignano, on the former premises of the Tirrenia Steamship Co?, an important meeting took place to which officers from DSTO, the officer commanding PSTO , the representative of MEDBO, the representative of A.C., and Lt. Col. Glandill intervened and among other matters which were discussed, the Allied representative urged the representative of COGENA to try to find cargoes from Naples and neighbouring ports going to Sicily.

Case adjourned to 23 February 1946
09:30 hrs.

1586

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

23 February 1946 : 09:30 hrs.

Avv. De Laurentis Counsel for SARNELLA Attilio apologizes to the COURT for the absence of Avv. Granucci who is ill.

BY THE COURT.

COUNSEL for the DEFENSE ; this man, Capt. Di Dio, is one of your witnesses and he has come from Sicily and has been in attendance at the trial. Last night he informed me that you have finished with him, however, he is still at the disposal of the COURT and apparently he is undergoing considerable expenses and , so far as I can judge, no effort has been made to reimburse him . The DEFENSE has stated that it no longer needs him. I enquired on this matter at some length and the COURT has not yet excused him. Now I ask the DEFENSE whether it is possible to excuse him because he is here at the disposal of the COURT and I would like to know what arrangements have been taken about his expenses.

BY DEFENSE COUNSEL Porzio.

Also in this case there is no difference in judiciary procedure between the Allied Courts and the Italian ones. Usually we do not wish to have contact with the witnesses. The witness, under Italian procedure, is like one of those poles along the roads which bear a notice :" Who touches it dies". Therefore we consider it as contrary to our legal procedure to give money to witnesses before their testimony is heard.

Q. This is also contrary to our customs and this is not the case.
A. As soon as the witness is excused by the COURT he will be refunded his expenses. The reason why we renounced this witness is as follows : Since the COURT in its justice considered that all matters relative to the Sigona Case were not pertinent to the issues in this case, we do no longer require the present witness.

Q. Have you finished with the present witness ?
A. Yes, Your Honour.

Q. Have you other witnesses whom you do not need, because the COURT laid great stress on this point and we would like to have them before the COURT so that we can excuse them.
A. The DEFENSE of Eugenio SARNELLA has no further witnesses to produce except Eugenio SARNELLA himself.

1587

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

Q. And the DEFENSE COUNSEL for the other accused ?

DEFENSE COUNSEL for Attilio SARNELLA.

We have no other witnesses.

DEFENSE COUNSEL for Santo LO PORTO.

We need this witness as a character witness on behalf of LO PORTO unless PROSECUTION is willing to stipulate with us about it.

BY PROSECUTION.

PROSECUTION is ready to stipulate as to LO PORTO's character.

BY DEFENSE COUNSEL for LO PORTO.

Then we renounce this witness.

BY THE COURT.

You are officially excused by the COURT from further attendance at the trial and it is now perfectly right for the DEFENSE to make arrangements with him about the expenses and this is the reason why the COURT wishes formally to excuse the witnesses because that is the signal for the DEFENSE to arrange the financial questions.

Mr. Lopez, PROSECUTOR , is formally excused by the COURT as he is ill.

DIRECT EXAMINATION of SARNELLA Eugenio (Continued). 135

Q. Go on with your testimony.
A. Taking advantage of the permission given to me by the COURT yesterday I have brought here a complete form of the contract of time charter issued by DSTO in agreement with the Headquarters at the time situated in Algeria.

BY PROSECUTION.

PROSECUTION has no objection.

BY THE COURT.
This instrument will be received by evidence and identified in the records as Ex. Q.

1588

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

DIRECT EXAMINATION (Continued).

A. May it please the COURT I would like also to submit a form of the contract of sub-hiring, only in Italian however.

BY PROSECUTION.

PROSECUTION has no objection.

BY THE COURT.

The form will be received in evidence and identifies as Ex.R.

DIRECT EXAMINATION (Continued).

AA. If it can be of any use to the COURT I would like to produce also form relative to navigation licenses. They are of 4 different colours for each three months of the year.

BY PROSECUTION.

The PROSECUTION has no objection.

BY THE COURT.

The navigation licenses will be received in evidence and identified as Ex. S.

DIRECT EXAMINATION (Continued).

A. The forms for license of navigation are made in four different colours because each colour was valid for three months of navigation, therefore the forms in a given colour were, at the end of every three months, changed and substituted with those of another colour. These licenses of navigation in the first months of 1944 and up to the beginning of August were released by DSTO.

BY THE COURT.

Q. Up to the month of August ?
A. Yes.

1589

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

Q. Up to the month of August and successively by COGENA ?
A. During the period COGENA released them and up to the day DSTO was functioning licenses of navigation released by COGENA were to be visaed by DSTO ; only schooners in possession of these licenses could sail. I should like to produce at the present time a form of the permit released by COGENA following the allotment ofor the transport of goods.

BY PROSECUTION.

PROSECUTION has no objection.

BY THE COURT.

The COURT had no objection. The document is received in evidence, and will be indentified as Ex.T. The COURT assumes that the Avvocati do not wish to have all the forms translated into Italian.

BY DEFENSE COUNSEL.

We thank your Honour but it is not necessary.

DIRECT EXAMINATION (Continued).

A. The last form I have introduced in evidence is the pe mit COGENA issued to schooners in consequence of the allocation of space for the transport of goods granted by the Board.

BY THE COURT.

Q. Do you mean by the Schooner Control Board ?
A. Yes. The Captain of the schooner who came in possession of such form was to present himself t the Allied authorities in order to have the routes.

Q. The prescribed routes, do you mean ?
A. ~~Yes~~ Yes, Your Honour.

Q. We should like to have the Avvocato ask the questions so as to know where the testimony is leading.

DIRECT EXAMINATION (Continued).

Q. Have you finished ?

1590

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

A. May it please the COURT last night I had reached the point when Schooners Control Board had begun its works I interrupted my testimony in order to produce the forms, so as to clear my words. MEDPC Schooner Control Board, the members together of which (all with those stated, met daily at COGENA offices. The representative of the Allied Commissio, Capt. Smith, brought bids into the Board for goods destined to transport. Such bids, as far as I can remember , exclusively referred to goods to be carridd from Sicily to the mainland. Dr. SARNELLA brought into the meeting the list of schooners available and in addition those lists which referred to the position of the schooners in the different ports. A copy was given to Capt. Smith, another copy to Mr. Williams and this with the object of leaving the two Allied members of the Board the possibility of checking the list of the schooners available. Beside these documents I brought in all the telegraphic and postal requests which had reached COGENA during the morning. Likewise Capt. Smith, beside the list of bids for goods to be transported, from time to time brought in requests for transport.

BY THE COURT.

Q. In addition ?
A. Yes. Many times it happened that during the meeting Capt. Forestieri, attached to the Schooners Office, brought in other urgent requests. On the basis of all these documents MEDPC Schooner Control Board proceeded to the allocation of the schooners. When the meeting was over, I transmitted the list approved by the Board to the Schooners Office of COGENA so that instructions could be issued to the different Agencies and Sea- Captains . Since the lists brought in by Capt. Smith did not refer to transport from the ports on the mainland to Sicily, MEDPC Schooner Control Board accepted the requests filed for transport from the mainland to Sicily; furthermore I can add that these same requests were welcomed by the members of the Schooner Control Board for three specific reasons : the first in order to avoid the schooner sailing empty and therefore give stability to the ship, the second because by doing so, the goods which were to be loaded from Sicily to the mainland paid only the freight Sicily-mainland instead of paying the freight from the mainland to Sicily and return voyage. This in view of the fact that when a schooner sailed empty from the mainland to go and load goods in Sicily the freight mainland-Sicily-mainland had to be paid. The third reason was that almost in all cases, when a schooner was granted

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

a permit for transport of goods from the mainland to Sicily, the captain was obliged on his return voyage from Sicily to the mainland to transport salt on behalf of the State monopoly. Cargoes of salt were not very popular with the captains of the schooners because it was a commodity of small value and carried on behalf of the State Monopoly. I can never remember any objections made by the Allied Commission , either through its representative, Capt. Smith, or through the other member of the Board.

DIRECT EXAMINATION (Continued).

Q. Who received the telegraphic and postal requests brought to the meeting ?

A. The telegrams and requests by post were received by the Registry Office and hand-delivered requests were received by Capt. Forestieri , of the Schooners Office. All the requests were delivered to me a few minutes before the meeting of the Board by Capt. Forestieri who, at the same time, gave me the list of the schooners available. There may have been some instances when requests were passed through the Registry Office on the morning following the allocation of the schooners and these are requests which Capt. Smith or Capt. Forestieri brought in while the Board was holding its meeting.
I ask the COURT's permission to go back to the point when I stated that the Allied Commission never made any objections: I like to add simply this, that even when regular instructions began to arrive from the Allied Commission, which however did not exclude the possibility of cargoes of goods from the mainland to Sicily, the members who substituted them, I mean the members of the second Board which began on 25 March 1945, continued to work as those of the first Board. The graphs at COGEMA and with the Allied Comaission will show that during the period the second Board was working many cargoes were brought from the mainland to Sicily especially from Salerno and other ports.

131

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10 Minutes Recess.

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

DIRECT EXAMINATION (Continued).

A. If the most excellent COURT is interested I might produce for its information a graph showing the number of tons transported from the day we began our work up to the day the second Board began to function.

BY PROSECUTION.

Q. Does this graph refer to the tonnage transported in both directions ?
A. Yes, it does.

BY PROSECUTION.

PROSECUTION has no objection.

BY THE COURT.

The COURT has no objection and the graph is received in evidence and will be identified as Ex.U.

BY DEFENSE COUNSEL.

As the COURT will notice, this graph shows that starting from 7000 tons we reach an amount of more than 25000 tons.

DIRECT EXAMINATION (Continued).

Q. Had you to discharge much personnel ?
A. If you are referring to our Agents, we had to discharge many of them. We discharged our agents of Villa S.Giovanni, Messina, Augusta, Siracusa, Trapani and many other , as far as I remember.

Q. And outside Sicily ?
A. No one.

131

Q. Did you ever received any complaints ?
A. A great many.

Q. Have you ever received any complaints against Captains and shipowners ?
A. Many complaints.

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

Q. Why ?
A. Many captains opposed themselves to carrying out the orders of COGENA which , on instructions of the Allies, had to issue them and then many captains managed not to carry them out and many were denounced to COGENA by the exporters. In the first case COGENA intervened through the Italian Port authorities .....

BY THE COURT.

Q. What do you mean by "in the first case ?".
A. In cases where schooners refused to comply with the intructions they had received. In the second case, that is when denouncements were received on the part of exporters, COGENA forwarded those denouncements to the General Management of the Mercantile Marine, at the same time informing the other two members of the Board in order that they might inform the organization they represented. These were the main facts which caused all the anger against COGENA and its Director.

DIRECT EXAMINATION (Continued).

Q. What difference is there between a Captain of long haul and a Captain of short haul ?
A. The Captain of long haul must have followed a course of study in the elementary schools, the Inferior Technical Institute and the Nautical Institute. After having acquired the certificate of Captain of long haul he must have sailed for at least four years of which one at least outside the Mediterranean. Only after being in possession of a certificate of captain of long haul and a certificate showing that the bearer has sailed for a period of four years, of which at least one outside the Mediterranean, can an individual pass an examination at an Harbour Master's office. When this examination has been passed a captain may be put in command of any mercantile ship. The captains of schooners on the contrary may be simply masters or authorized sailors and both the certificate of master and of authorized sailor are obtained by a simple theoretical-practical examination at any Harbour Master's office. Of course this examination must be passed both for master and for authorized sailor, after a certain period of navigation of I don't remember how many years, even as a simple sailor.

1594

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

By this it is not to be excluded that the captain of long haul may also be in command of a schooner , but masters and authorized sailors can only command schooners or small ships? I beg the COURT's pardon, only schooners up to 100 tons.

Q. Have you ever known Capt. Palumbo ?
A. Never. I met him here in Court the first time.

Q. Did you know at any time Capt. Strazzera ?
A. The same as with Palumbo. I saw him for the first time sitting here in Court.

Q. Did you know Capt. Sieli ?
A. No , I didn't.

Q. Capt. Provenzano ?
A. No.

Q. Did you know Capt. LO PORTO ?
A. Yes.

Q. Did you see him ?
A. Yes, I did.

Q. How many times did you see him ?
A. I met Capt. LO PORTO one morning while I was getting out of my car in front of COGENA offices. My brother, whom I had not seen for a long time, approached me.

BY THE COURT.

Q. What brother ?
A. My brother Attilio. While he was greeting me I saw a young man draw near to us.

Q. Who was greeting you ?
A. My brother Attilio. I asked who that young man was and my brother Attilio answered :" He is the Captain of the Motor-schooner " Invidiato", on which I came to Naples. This Captain has some matters of his to settle with COGENA . If you can help him, I recommend him to you." I answered :" Come to COGENA whenever you like ". The Captain of the " Invidiata" came in fact to COGENA.

1595

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

Q. Was it LO PORTO ?
A. Yes, I am not mentioning him by name, I shall name him later. In fact he came to COGENA. Having heard from him that he was engaged in the settling of the hiring of his schooner, I called the Captain in charge of the Schooners Office and handed him over to him for the settling of his affairs. I saw LO PORTO again on 29 September 1945 at Poggioreale before being brought here and only then I knew that his name was LO PORTO.

DIRECT EXAMINATION (Continued).

Q. Did you file a memorandum written by you while you were in prison ?
A. Yes, on 16 October 1945. The memorandum I wrote at Poggioreale after an interview I had with Major Vecchiolla was handed by On. Porzio to Capt. Bandò at the hearing held after 16 October and precisely on 5 November 1945.

Q. Do you confirm that memorandum ?
A. Yes, in full.

BY PROSECUTION .

That memorandum,however, is not before this COURT.

BY THE COURT.

We know.

BY DEFENCE COUNSEL.

We might introduce it.

124

BY THE COURT.

Try and see whether there are any objections.

BY PROSECUTION.

Your Honour, I have copies of that memorandum. I did not introduce it in evidence because it was not made in the presence of anybody and was simply a spontaneous statement made to me. If the accused had not taken the stand I would have offered it to the COURT, but since he has come to testify I am sure that everything he said in his memorandum can be

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

repeated by him before the COURT and possibly what he may have to say will be of more value:

BY DEFENSE COUNSEL .

We shall then ask questions about its contents.

BY THE COURT.

The COURT is going to judge not on papers but on what the accused will say.

DIRECT EXAMINATION (Continued).

Q. We are going to ask a question which will offend Dr. SARNELLA's sense of modesty but we must ask it. Did you receive any official acknowledgement , any praise, for the work done at COGENA ?

A. Yes, in two meetings of the Board General Matteini and Prof. Scerni, the representative of the Italian shipping, have expressed themselves in a very flattering way to me about the organisation of COGENA and about the work I had performed at COGENA up to that time. I remember that on that occasion they expressed their wish to pass a decision about granting me a bonus of 50,000 lire for the organization of COGENA.

BY DEFENSE COUNSEL.

May it please the COURT, among the witnesses we intended to produce before the COURT there were Mr. Campbell and Mr. Nichols who, for reasons the COURT knows, have not been able to come here in Court.

BY THE COURT.

125

The COURT will deal with those witnesses.

BY DEFENSE COUNSEL.

What does the COURT mean , please ?

BY THE COURT.

Q. The COURT will handle those witnesses. Will you please, Dr. SARNELLA, tell the COURT whether both Mr. Campbell and Mr. Nichols gave you either verbal or written testimonials of

1597

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

the work you had performed ?

A. I received verbal testimonials , but on 30 May, at Rome, at a very important meeting, to which Admiral Cunningham, Admiral Stone, the Italian Naval Minister De Courten, took part, Mr. Graham and Mr. Campbell in their reports to said authorities expressed their high praise for the work I had performed and added that they wished me to go on with my work at COGENA. In the minutes of that meeting held at Rome and which are of course not in my possession , proof of my statement will be found.

DIRECT EXAMINATION (Continued).

Q. Will you please tell the COURT what your monthly wages were ?

BY PROSECUTION.

May it please the COURT, I would like to say that all this is already in the records because documents have been produced stating Dr. BARNELLA's wages and every other payment due to him.

DIRECT EXAMINATION (Continued).

Q. What were then your montly wages ?
A. From 47 to 48 thousand lire a month.

Q. Im introduce then Invoices N.30 of the Tirrenia Company showing the payment made to COGENA about which so much time was wasted yesterday.

BY PROSECUTION.

I believe we have that already in the documents.

BY DEFENSE COUNSEL.

125

It is practically the confirmation of the certificate issued by the Notary Public.

BY THE COURT.

We have a statement which has been identified by a witness and the witness has testified in Court as to its contents

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

Maybe it was drawn up by a Notary but it derives its value from the fact that a witness testified as to its contents. Can PROSECUTION explain to the COURT what that document is ?

BY PROSECUTION .

The document shows the accused's monthly wages, his indemnities. If DEFENSE is of the opinion that the document helps its case, PROSECUTION has no objection to its being received in evidence.

BY DEFENSE COUNSEL.

This document shows in fact the so much talked about absences during the month of September. It is the authentic document issued by the Tirrenia Company.

BY THE COURT.

Q. What difference is there between this document and that one ?
A. Those were copies we had collected from the account books ; on the contrary this is an original letter by which the Tirrenia notified COGENA of the payments due by this latter organization. Now I ask Dr. SARNELLA to explain what were the indemnities he was paid and for what reason they were paid to him.

BY THE COURT.

Let me ask this question." What evidence are you disputing "?

BY PROSECUTION.

We are not disputing what the amount of wages is supposed to have been , amount which is shown by a document produced in evidence du ing yesterday's hearing. His wages are not one of the issues in this case. I understand quite clearly what DEFENSE is trying to prove by producing that document. They are trying to prove that Mr. SARNELLA received a certain allowance for some days he is supposed to have been in Rome, which I assume they consider one of the vital points in the defense. On this basis, and if the document is produced for that reason PROSECUTION objects. The witness is here who knows quite well about this matter.

BY THE COURT.

We wish to know what the witness has to testify in this matter.

1599

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

not what the books may say.

DIRECT EXAMINATION (Continued)

Q. As the COURT sees , it is not my fault. Will you Dr. SARNELLA tell the COURT whether you absented yourself from Naples and for what reasons?

A. 21 June 1944 was the first time I went to Rome after the Allied occupation, and I went also to Anzio on duty upon instructions issued by the Allies. Later on I usually went to Rome every two weeks on duty in connection either with COGENA or with the Tirrenia Company. Of course I took advantage of that opportunity to go visit my family. Usually I left on Fridays mornings at about 6 or half past 6, and returned on Mondays at about noon, 13 hrs or 14 hrs so as to be present in the afternoon at the meeting of MEDIO Schooner Control Board. Sometimes I left during the week and latterly, before I was arrested, I returned to Naples even on Sundays. This happened when I had a meeting on the following morning. My wages and every other indemnities were assessed and paid to me by Tirrenia and then by this latter charged to COGENA. COGENA only paid to me directly, not through Tirrenia channels, the bonus deliberated by COGENA Board of Directors and the allowances due to me for the hiring of my car and other incidentals.

Q. During the month of September on what days did you leave Naples and on what days did you return ?

BY THE COURT.

Q. Of what year ?
A. 1944.

DIRECT EXAMINATION (Continued).

A. At 6 or 6,30 on the morning of 15 September I left Naples bound for Rome; at 12 or 13 hrs on 18 September I arrived in Naples.

Q. What day of the week was it ?
A. Almost certainly a Monday. On arriving I went to the Tirrenia because that was my habit but I could not swear to doing so on that day. Then at three or half past three in the afternoon I went to COGENA to take part in the meeting of the Board. This is absolutely certain because I have examined the indemnities paid to me by the Tirrenia and it cannot be otherwise since, as Director General, I was the first to

1600

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

comply with regulations., in order to have the other employees do the same.

BY THE COURT.

Q. Are there other absences during September ?
A. Yes, I left on 1 September and came back on 4 September , this is at least what I remember after a year and a half... On that occasion however I left on business connected with the Tirrenia.

BY THE COURT.

Q. Was this all in the month of September ?
A. No , I don't remember but I left every two weeks. I identified the dates from 15 to 18 September from the books at the Tirrenia, but I do not remember about the rest.

BY PROSECUTION.

May it please the COURT, PROSECUTION has no intention of delaying the case in view also of the fact that Col.Block is under orders for his return to U.K. and I to the U.S. but we have had a very long week. If we could adjourn to Monday instead of to this afternoon I should be very grateful to the COURT. The COURT must appreciate that I am now without my colleague, Mr. Lopez, and it is not a very easy job to search amongst all the documents of the case and at the same time follow the testimony of the different witnesses. Therefore I respectfully beg the COURT to adjourn ,if possible, till Monday.

BY THE COURT.

Let us hear the remaining questions and then we shall adjourn till Monday.

BY DEFENSE COUNSEL.

All those documents we have produced and which have been the cause of the PROSECUTION's frequent objections have been produced with the object of proving Dr. SARNELLA's statements. 122

BY PROSECUTION

We object. We have originally objected and we have explained the grounds of our objections. Then the COURT has explained on what

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

basis it would receive those documents and on that basis we have withdrawn our objections.

BY DEFENCE COUNSEL.

Yes, they have been accepted as hearsay evidence. Now, after Dr. SARNELLA's testimony we wish to know whether what has been accepted as hearsay evidence is the result of the registries which are kept by the Companies.

BY THE COURT.

This is an improper question on your part, Avvocato.

BY DEFENCE COUNSEL.

Why ?

BY THE COURT.

Q. Avvocato, I suggest that you put in question this way ; and I believe this is what you are trying to prove :" Are the facts these documents reflect correct or are they not ?". Is this what you wish to know ?
A. Yes, Your Honour.

DIRECT EXAMINATION (Continued).

Q. Are the facts as shown by those documents exact or are they not ?
A. Yes, they are.

BY THE COURT.

Q. Is the Avvocato alluding to Ex.O and P.?
A. Yes, I am.

DIRECT EXAMINATION (Continued).

Q. Please tell us how many brothers you have.
A. We were 7 brothers, now there are three left, myself, my brother Attilio and another brother whose name is Emilio who is older than I and lives at Turin. He was Divisional Chief in State Railways at Turin, but he is now pensioned. 121

1602

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

Q. What were your brothers' occupations ?
A. One of them was theowner of an Operetta Company at Palermo, two others were chief engineers on Italian mercantile ships, and another was in the Italian Royal Navy but died at the age of 22 during the war in Lybia.

Q. Do you know whether Gen. Matteini received a denouncement against you and whether that denouncement was forwarded to the Allies ?
A. I know that Gen .Matteini upon the instructions of the Minister De Curten, brought it to Mr. Graham, Chairman of MEDBO, and about two monthe later Mr. Graham said to General Matteini :" Upon an enquiry ordered by me what I always thought about Dr. SANCELLA has beenn ascertained, therefore no weight is to be given to the denouncement". This is what Gen . Matteini told me.

Q. Do you remember who made that denouncement ?
A. Signora Salvatores I know because when Gen. Matteini came from Rome to COGSNA and said to me :" I am sorry but the Italian Naval Minister has received a denouncement against you " I answered the General :" Forward it at once to the Allies because I am afraid of nothing, since I have done nothing."

BY THE COURT.

All this testimony will be struck off the records because it is a testimony tending to encroach upon the rights of this COURT, without considering what any other agency may have done in favour of the Allies and concerning the charges which are before this COURT, this COURT and this COURT only will pass on the charges and is not interested in the least about the conduct of these other persons. This is a Judiciary body which passes on the charges according to the law and once for all I don't wish to have witnesses coming here in open COURT who hear what the PROSECUTION and the DEFENSE have to say and answer.

120

BY DEFENSE COUNSEL.

The reason why I asked that question is not that I wished to inform this COURT about any judgment passed by other autho-

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

rities but only prompted by two motives : the first to ascertain the fact that a denouncement had been made by Mr. Sigona , which fact was stated in that memorandum which the COURT has permitted us to use as the basis of our questions to the witness.

BY THE COURT.

The charges have been here preferred by the Allied Government and we are not interested in learning at the present time the reasons for which these charges are here and what motive may be behind these charges. When the Allied Government enters this Courtroom it is not under a different aspect than the DEFENSE. The Allied Government has preferred its charges and the COURT says now as it has always said : "Prove them". We do not care about motives. That has no importance. Charges have been preferred and they have to be proven. Have I made myself clear on this point ?

A. Yes.

The COURT hopes to have made itself understood on this point. This is a Court where ah internation' law is administered and it does not cede its privileges to any other person. Here cases are tried under the law and the COURT hands down a sentence which is as binding for the Allies as it is for the accused. While I stress this point there must het bethe slightest suspicion that this case has been or will be tried in any other place than in this Court of Justice and with all the public present which has every opportunity of witnessing all the proceedings. The administration of Allied justice will never allow any diversions from these rules. You can be sure that this Court intends to follow these rules and I believe it has been made clear in the two weeks this case has been going on that when the COURT has said that it is going to follow the rules it means it will keep its word. The COURT says so not only in order to have the DEFENSE and the PROSECUTION but also everyone else here hear it. This is our system and only this COURT is going 11 J to pass on the issues in this case and no one else. The opinion of the Allied Command and of anyone else is only an opinion . This is the voice of the law.
Since we all have been having a rather tiresome week we shall all finish it happily and therefore the COURT adjourns to Monday 26 February , at 09:30 hrs.

1604

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

25 February 46, 09:30 hrs.

CROSS - Examination of accused Eugenio SARNELLA.

Q. In your direct examination you have mentioned a control exercised by COGENA on the schooners.
A. Yes.

Q. What was your position respecting that control?
A. COGENA received daily telegrafic and telefonic information from all its agencies as to the position of the motor-schooners in the various ports. It received also from Mr. Williams of NWT another list of the position of the Schooners in the various ports. The Commercial Department of COGENA, to which all this information was addressed, made a summary of it and a list or lists so that I could give them daily to the two other members of the Board, besides the list of the schooners available at the beginning of our daily meeting.

Q. In your capacity as Director General of COGENA did you ever receive any complaints as to the cargoes carried and as to whether or not they were correctly transported?
A. As you mentioned and as I mentioned in my statement during the last hearing I reported to the Ministry of the Italian Army, Direction General of the Mercantile Marine, and also to the Allied representatives, Capt. Smith and Mr. Williams, any information which reached my office.

Q. Capt. Smith stated the other day, under oath, that the SchoonersControl Board met every day, including Saturdays, during the period August, September, October, November 1944, is it right?
A. The Board met everydday but on the days I absented myself, that is habitually every two weeks, the Board did not meet officially.

Q. What do you mean by "officially"?
A. I am going to explain my meaning. In case there was an urgent departure of Schooners this was reported by Capt. Forestiere by means of a telephone call to the two members left in Naples and Mr. Williams together with Capt. Smith decided what was to be done. However, as far as I can remember, there have been few such instances.

BY PROSECUTION.

Your Honour, may I have Ex. I,J,K?
Ex. I,J,K, are handed to PROSECUTION.

Q. How long did it take for an application for space on a

1605

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

Schooner from the time it arrived at the office till the allocation was made?

A. It might be decided at once, depending on the time the application arrived at the office and the possibility of having a schooner available. In fact, in the last hearing of this trial, I stated that the above mentioned requests many times were brought by the Chief of the Schooners Office or by Capt. Smith during the meetings.

Q. When and how did Capt. Forestieri begin to work with COGENA?

A. I believe about the middle of August and he was first assigned to Portici to the supervision of the schooners there and after a few days he was called to COGENA to replace Capt. Cosulich.

Q. I show you Ex. and I ask you if you have ever seen this document before.

A. I must have seen it on 7 September when it arrived at COGENA and these words "Sta bene" have certainly been written by me.

Q. What has been written by you?

A. "Sta bene" and my signature.

Q. Will you please read the contents of this letter?

A. "I, the undersigned, Strazzera Luca, ask the authorization to transport 57 tons of pozzolana from Baia to Trapani on Motorschooner "Nuova Fortuna", N°. 1371 for building purposes of an urgent nature. With regards, Strazzera Luca, Naples 6 September 1944."On the document there is a stamp of the Registry office, dated 7 September 1944, N° 7324, Commercial Department.

Q. I show you Ex. J and ask you if you have ever seen this paper before.

A. I must have seen it because there is my signature on it and certainly on 19 September because there is the COGENA stamp dated 19 September.

11/

Q. Doctor, there is no need reading it over because it has already been read. Is that a request for the use of a schooner?

A. Yes, it is.

Q. Who filed the application?

A. Palumbo Francesco and I see there is a visa of Capt. Smith and underneath a notation: "Return from Pozzallo to

1606

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

Civitavecchia with carrobs on account of the Allied Commission, Capt. Smith."

Q. To the best of youlrecollection was there at Pozzallo an Officer of the Allied Commission?
A. I remember it quite well; because while there was a list...

Q. Doctor, you must answer my question with a yes or a nor
A. Certainly, there was no such officer.

Q. Doctor, I show you Ex. K and ask you if you have ever seen this piece of paper before.
A. Yes, there are my initials on it.

Q. What were those initials, an O.K.?
A. This is the visa that I, in my capacity as a Director, used to place on all the correspondence I examined, and this in order to avoid any doubts in the minds of my collaborators about my having or not having seen any letter whatever, not only this one.

Q. Will you please tell us what that letter is? There is no need to read its contents aloud.
A. This is a request filed with COGENA, by Mr. Sisli Antonio, I don't know what channel it went through.

Q. What does that letter request?
A. The COURT has already read it, it asks permission to transport 20 tons of pozzolana from Bala to Siracuse for building purposes. Also this letter bears Capt. Smith's initials.

Q. What date does that letter bear?
A. The application bears no date, it bears COGENA'S Registry stamp and the date 19 September.

Q. Doctor, just now you said that your initials were on Ex.K soley for the purpose of showing you had examined the correspondence, namely; that that correspondence had been submitted to your examination. Ex. I also bears your initials but above them there are the words "Ste bene". 116
A. It means that I wrote those words because the application was brought in while we were holding our meeting and having examined the application and decided that we would grant it, I wrote "Ste bene".

Q. Doctor, I was not present here on Saturday and I have not seen my colleague, Major Vecchiolla, nor have I had the opportunity of going through the testimony which was given

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

Saturday, therefore, if I am mistaken, you can stop me. Did you ste te that it was not necessary to have a permit for the transport of pozzolana?

A. No.

Q. The COURT will see that the documents produced in evidence speak by thamdelves. I have no further question at the present time and I move to the COURT to allow me 10 minutes recess.

10 minutes recess

BY PROSECUTION.

Your Honour, PROSECUTION has no further questions.

BY THE COURT?

Q. Has defence any other questions on Re-Direct?
A. Yes, Your Honour, it has.

RE - DIRECT EXAMINATION.

Q. Commendatore, you stated that at Pozzallo there was no Agent or representative of the Allied Commission. Can you state to the COURT for what reason the Board assigned a destination for Pozzallo?

BY PROSECUTION.

I cannot see any connection between the answer given by the witness and the question asked by the Avvocato.

BY THE COURT.

I think the objection is good. You asked him whether there was an agent and then you have asked him the reason why such destination has been assigned.

BY DEFENCE COUNSEL

Not the reason but the destination of the cargo.

BY THE COURT.

The question may be good but we cannot understand why you had it preceded by the other question whether or not there was an agent of the Allied Commission there. Now I shall explain my meaning to you. It is the same as if you

1698

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

you said: "President Roosvelt died last year. Do you know why permission was granted for the transport of that merchandise to Pozzallo"? There is no connection. You can put your question in a different way.

BY DEFENCE COUNSEL.

My question is connected with the question asked by PROSECUTION.

RE - DIRECT EXAMINATION.(Continued).

Q. Upon what instructions did that Board grant the permit for the transport of those cargoes of pozzolana?

BY PROSECUTION.

To what cargo is the Avvocato referring? The question is not clear and I belive Your Honour should straighten this point because I believe the Avvocato did not understand my objection which was based on the fact that there was no connection between the questions.

BY THE COURT.

The objection is this: that the question is not clear and accurate. We cannot understand what you wish to bring out. We have here before us two or three Exhibits and we cannot identify to which you are referring.

BY DEFENCE COUNSEL.

Q. May I see the document referring to Palumbo?
A. Yes, you can.

RE- DIRECT EXAMINATION (Continued). 11

Q. On Ex. J, which you saw and identified, there is a written order in English "Return from Pozzallo to Civitavecchia with carrobs on account of A.C. "There is a signature, therefore, this is an order which was to be carried out at Pozzallo.

BY THE COURT.

Q. Avvocato, are you testifying?

1609

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

A. No, I am going to ask the question.

RE-DIRECT EXAMINATION (Continued).

Q. Was that order issued?
A. Yes, it was.

Q. Why was that order issued for Fossallo?
A. Certainly it must have been included among bids that had come from Rome signalled for transport because, as I already stated in the last hearing, goods to be transported from Sicily to the mainland were always signalled by A.C. Roma.

Q. When requests came for transport of pozzolana, were they examined and decided upon?
A. Certainly they were, by the Board?

Q. Why were those permits issued?
A. I already stated on Saturday last that from the mainland to Sicily MEDBO Schooner Transport Board always welcomed these requests for the three reasons I stated last Saturday and which I can repeat now.

Q. When you were away from Naples did anyone replace you on the Board?
A. I already stated that, to the best of my recollection, the Board never met officially during my absence but I gave instructions to Capt. Forestieri, before I left, to inform by phone the other two members of the Board about pressing cases about which it might have been necessary to take decisions.

Q. But you stated that no permits were needed for the transport of pozzolana. Then why did you issue permits?
A. No schooner was allowed to leave without the permits of which I have introduced a copy in evidence and then it was a matter of allotting space; even though only space for goods considered as ballast, and that was up to the Board to decide. On the other hand it has been made clear that COGEMA, with reference to transport matters, was but the executive body of the orders issued by MEDBO Schooner Control Board.

BY DEFENCE COUNSEL for Lo PORTO.

Q. May it please the COURT, I would like to have Ex. H.

BY PROSECUTION.

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

I ask the Avvocato's permission to address the witness a question on the same line of thought begun By Avv. Serrao.

BY THE COURT.

PROSECUTION is entitled to ask questions on RE-CROSS EXAMINATION following RE - DIRECT EXAMINATION, of Avv. Serrao.

RE- CROSS EXAMINATION.

Q. Doctor SARNELLA, you just stated that in fact no Schooner could leave port without the approval from your organization, is it correct?
A. Yes, in consequence of the orders issued by MEDMO.
Q. In fact no ship could leave port without your approval, that is the approval of the Board.
A. Yes.
Q. And you further stated that pozzolana being a kind of merchandise, the requests for the shipment thereof were to be filed with the Board, is that a fact?
A. Yes, when it was a matter of cargo, as I stated, not of ballast.

DEFENCE COUNSEL FOR SANTO LO PORTO.

I would like to ask some questions to the witness.

BY PROSECUTION.

Q. Is it a RE - DIRECT EXAMINATION or a CROSS - EXAMINATION?

BY THE COURT.

We are going to see what the question brings out. This is DEFENCE COUNSEL of another accused therefore we wish to allow him ample opportunity of questioning.

BY COUNSEL FOR LO PORTO.

Q. Will you please, state whether the initials on Ex.H are your's?
A. Yes, I already stated they were put by me.
Q. Will you specify in whose hanwriting are the words

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

written in blue pencil?
A. No, I don't recognize them, maybe they were written later on.

BY THE COURT.

It is the identification of the Exhibit made by the COURT.

Q. When did you see LO PORTO?

BY PROSECUTION.

The question "when did you see LO PORTO" is vague and uncertain.

Q. When did you see LO PORTO the first time?

BY THE COURT.

Q. In his life, do you mean?
A. Yes.

Q. When did you see LO PORTO for the first time in your life?
A. I already stated that while I was getting out of my car in Piazza Carità in front of COGENA offices my brother Attilio came towards me and while we were greeting each other I saw a young man approach us. I asked my brother: "Who is he?" My brother answered: " He is the Captain of the Schooner "Invidiato" which brought me to Naples."

Q. After that first meeting did you see him again?
A. I repeat what I said on Saturday, that after some days, I don't remember exactly how many, the captain of the Schooner "Invidiato" came to my office and told me that he had some business at COGENA relative to the liquidation of the Hiring of his schooner. Upon which I called the Chief of the Commercial Department and turned LO PORTO over to him to have his business examined.

Q. After that first morning have you ever seen LO PORTO again?
A. I saw him on the morning of 29 September at Poggioreale before coming to the Tribunale and only at that time did I know that his name was LO PORTO.

Q. In what year?
A. In 1945, when I was at Poggioreale. I could not have been there in the previous year.

Q. Did LO PORTO ever have himself announced at your office?

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

A. Certainly on the occasion he came to see me: he could not enter my office without first being announced by my office attendant.

Q. I would like you to answer my question: after that first meeting at COGENA did LO PORTO successively have himself announced?

A. I repeat that after that first time I saw him at Poggioreale on 29 September 1945.

BY THE COURT.

Q. The answer is not responsive to the question. The Avvocato asked you: "After that first time did he get announced at other times?" and you answered: "I saw him at Poggioreale".

A. I meant that after that first time he was announced at my office I never saw him again until I saw him at Poggioreale on 29 September 1945.

BY DEFENCE COUNSEL for LO PORTO.

Q. I didn't ask whether or not you saw him, I asked you whether he had himself announced or not.

A. I cannot remember whether or not he was announced but I did not receive him and this for the reason that during my office hours I never succeeded in seeing all the persons who were announced to me.

BY THE COURT.

Q. Your answer is that you never saw him again after that first time at your office till you saw him at Poggioreale.

A. Yes, the only time I saw him after that first time in my office was at Poggioreale while we were leaving it to come here.

BY THE COURT.

Q. Then that was the first time you saw him after his first interview with you.

A. Yes, Your Honour.

Q. Has the witness answered your question? Avvocato?

A. Yes, he has.

BY DEFENCE COUNSEL for LO PORTO

1613

Declassified E.O. 12356 Section 3.3/NND No. 985016

Q. Did LO PORTO ever come to your house?
A. Most certainly, not.

Q. Did you ever hear from any of your familiars of any visits made by LO PORTO or of any notes left by him at your house?
A. NO.

Q. Where does your brother Attilio live, or, to be more precise, where did he live at the time the events in this case took place?

BY THE COURT.

Q. Do you mean in August, September, October?
A. Yes, when he met him with LO PORTO.
A. I didn't know. He told me he had found a room in a pension but I did not know where.

Q. When you saw your brother with LO PORTO did you know whether your brother was coming from Palermo?
A. Certainly, because my brother himself told me that he had come on the Schooner "Invidiato" and introduced her Captain to me.

Q. So that your brother's permanent domicile is at Palermo?
A. Yes, from the time he was born.

Q. From the time he came to Naples from Palermo and during the period he remained at Naples how many times did you see your brother?
A. Only on that occasion.

Q. On what occasion?
A. On that occasion, as I previously stated, when, as I was getting out of my car, he came towards me to greet me.

Q. So that you did not see him again either at your office or at home?
A. No, he never came to my house.

Q. Do you remember how long it was since you had seen your brother before that meeting?
A. About three years.

Q. Did you receive any telephone calls from your brother?
A. No.

Q. Did you receive any letters, any notes from him?
A. We never used to correspond with each other even in peace time.

Q. Can you specify whether you corresponded with your brother

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

during the per 1 he stayed in Naples?
A. I did not corresponde with him.

Q. Did you ever see your brother at Rome?
A. Before the war broke out.

Q. Did you ever se LO PORTO at Rome?
A. No, never.

RE-CROSS EXAMINATION BY PROSECUTION.

I respectfully beg the COURT to have this document identified by the witness.

Q. I show you Ex. O and ask you if you have ever seen it before.
A. Yes, there is written by me: "Submit to the Board" and my initials.

Q. Will you then, without reading all the document, tell the COURT briefly what the document requests, what its purpose is?
A. It is a request by Mr. Provenzano Giovanni asking a permit for the transport of 92 tons of pozzolana from Baia to Trapani on his schooner "S. Giuseppe E."

Q. Will you tell the COURT what is the date of the document, not the date as results from the COGENA stamp, but the date written by the person who wrote the document?
A. The date is 6 September 1944.

Q. Will you tell the COURT what the date of the COGENA stamp on it is?
A. 7 September 1944, with Registry number 7325.

Q. Doctor, I show you Ex. H and ask you if you have ever seen it before.
A. Yes, there is my signature on it and the words: "Bta bene".

Q. Will you please state what the contents of the document are without reading it aloud since it has already been read over.
A. Mr. Provenzano requests the permission to transport 90 tons of pozzolana from Baia to Trapani on his schooner "S.Giuseppe E.". The request bears no date but there is the date of the stamp of COGENA Registry Office, 9 November 1944.

Q. Have you ever had any opportunity of holding conversations with Santo LO PORTO besides that time when you met him in company of your brother?
A. No, I have not.

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

Q. Have you ever had any opportunities of talking with LO PORTO at the time when he brought your brother to NAPLES?
A. No.

I am asking you whether you have ever held a conversation with him.
A. No, only at COGENA and he came to talk about the liquida= tion of the hiring of his schooner. After that time, never.

Q. Have you ever spoken with Santo LO PORTO in this Court?
A. Here? No.

Q. You have ever had any conversation with him?
A. No.

Q. Did he ever speak to you about the dorequisition of his boat in view of the fact that he was here in prison?
A. No.

Q. Now in order to ask a more specific question, at that time you came before this COURT in November, at the time when provisional liberty was granted to you by this COURT, and I believe that was on 5 November or thereabouts, did you have on that occasion a conversation with Santo LO PORTO relative to his schooner?
A. No.

Q. Didn't he ask you whether or not his boat might be derequisi tioned?
A. No.

Q. Then you deny having had any conversation whatever with Santo LO PORTO after that time you saw him with your brother here in Naples?
A. Yes, I deny it.

BY THE COURT.

The accused Eugenio GARNELLA may return to his place. 107

10 Minute~~s~~ Recess

BY THE COURT.

Q. Are there any other witnesses for defence of Eugenio GARNELLA?
A. No.

Q. You have rested your case then.

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

A. Yes, we have rested our case but since there are other witnesses to be heard we reserve the right to ask questions, to them. Defence for Eugenio SARNELLA, however, reats.

DEFENCE FOR EUGENIO SARNELLA RESTS.

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

A. Yes, we have rested our case but since there are other witnesses to be heard we reserve the right to ask questions, to them. Defence for Eugenio SARNELLA, however, rests.

DEFENCE FOR EUGENIO SARNELLA RESTS.

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

DEFENCE for ATTILIO SARNELLA.

1 WITNESS : BARTOLOMEO RAPPA.

The witness has already been sworn in.

DIRECT EXAMINATION.

Q. What is your name?
A. Bartolomeo Rappa, born at Castelvetrano on 31 August 1893.

Q. Where do you live?
A. At Palermo.

Q. How long have you lived at Palermo?
A. Since 1918

Q. With whom do you live at Palermo?
A. I am married.

Q. When you live with your family?
A. Yes, I do.

Q. Please stand up and look at the accused. Do you identify any of them?
A. Yes, I do, I know Mr.Attilio.

Witness points out accused Attilio SARNELLA.

Q. How long have you known Mr. Attilio SARNELLA?
A. Since he married, some twenty years ago.

Q. Do you know Attilio SARNELLA's occupation?
A. He is the manager of the Central Railway Station Restaurant.

BY THE COURT.

Q. Where is that Station situated? 103
A. It is the Central Station at Palermo.

Q. Do you mean a Railway Station or a Police Station?
A. Railway Station.

DIRECT EXAMINATION (Continued).

Q. Did you often meet him?
A. Yes.

Q. Where? on what place?
A. At the Station? at the Restaurant.

1619

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

Q. Now tell the COURT where were you staying at [redacted] in the month of September 1944.
A. At Palermo.

Q. And where was your family?
A. It had moved into a small village.

Q. During that month, where did you have your meals?
A. At the station Restaurant.

Q. How many times a day?
A. Twice a day.

Q. At what time?
A. At noon and at 7 in the evening.

Q. During that month of September did you see Attilio SARNELLA?
A. Yes, I did.

Q. Did you see him on every day of the month?
A. I did not see him during the first days of September because he was not at Palermo.

Q. You said in the first days of September. Can you specify for how many days you did not see him?

A. For about eight days.

Q. Did you ask after him?
A. On the first day I did not, but on the second day I asked the personnel about him and I was told he had left.

Q. Did they tell you where he had gone?
A. To Naples.

Q. Can you tell the COURT approximately on what day you saw him again at Palermo?
A. About the 9th.

Q. After that day did you see him at other times up to the end of the month?
A. Yes.

Q. How many times did you see him?
A. Every day.

Q. Can you confirm this detail?
A. Yes, I can.

Q. Will you please tell the COURT whether you know Dr. Cherubino Scudero?
A. Yes, I know him.

Q. Do you know where this Doctor lives?

1620

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

A. Yes, I do.

Q. Tell the COURT?
A. Corso Vittorio Emanuele 79.

Q. In what town?
A. Palermo.

Q. How many days ago did you come to Naples in order to testify at this trial?
A. I came last Monday.

Q. Before leaving Palermo did you see Dr. Scudero?
A. Yes, I did.

Q. Where did you see him?
A. At Palermo.

Q. Precisely where?
A. I went to his house.

Q. Tell the COURT the reason why you went to Dr. Scudero's house.
A. Because Mrs. SARNELLA rang me up to tell me to go to the Doctor and beg him to come to Naples.

Q. What was his business here in Naples?
A. He had to give evidence in a case.

BY PROSECUTION.

I object to the question, he cannot testify as to what Dr, Scudero had in mind to do.

DIRECT EXAMINATION.

Q. This was not my question. I asked the witness what he was to tell Dr. Scudero.
A. That Mrs. Sarnella had asked me to tell him that he was to come to Naples.

103

Q. What did the doctor answer you?
A. That he couldn't come to Naples because he could not leave his patients.

Q. What did the Doctor do then?
A. He wrote a certificate and gave it to me to deliver to Mrs. Sarnella in Naples.

Q. Did you see the Doctor write this certificate?
A. Yes, I did.

Q. After writing it did he read it over to you?
A. Yes, he did.

1621

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

Defence introduces in evidence the certificate sent by the doctor.

BY PROSECUTION.

PROSECUTION objects first of all on the basis that the document is offered in lieu of a testimony and PROSECUTION in that case could not have the opportunity of cross examining the witness.
In the second place the document has not been officially introduced in the records therefore, we respectfully suggest to the COURT not to receive it as evidence.

BY DEFENCE COUNSEL.

We wish to stress to the COURT the great difficulty under which DEFENCE has been labouring because every pressure has been exerted in order to have the attendance of the witness on this COURT. As the present witness stated to the COURT the doctor excused himself by saying that he had many patients and couldn't come. We met with the same misadventures in the case of an employee of the Bank of Italy. DEFENCE wished to have the employee here in COURT as a witness but the Bank authorities only sent a certificate. In case the most excellent COURT refuses to receive this document, in view of the seriousness of the testimony to be given by the witness we beg the COURT to issue an order compelling the above witness to appear before this COURT.

BY THE COURT.

Avvocato, as to your request relative to the enforced attendance of your witnesses, you must remember that this COURT repeatedly asked the following question: " Did your call all your witness?" The fact that the Doctor was or was not busy is a matter which does not concern the COURT therefore this COURT would have brought him here. Had you, Avvocato, made a request in time and had the process been served, the COURT then would not have been impressed by the request which you are now making about compelling the witness to be present here. But this request now comes much too late because we are already in the third week of this case and this trial had got to come to an end. This does not mean that if your request had been made in due time it would not have been granted but now it comes much too late. As to the statement of the doctor this is

1622

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

an attempt to have testimony without the presence of the witness whereby the COURT cannot have the opportunity of examining and notice from his demesnour whether or not he is telling the truth. In the second place there would be no opportunity for the PROSECUTION, that is the opposite party, to test his veracity by means of that very effective weapon that is cross examination, which is always available for the opposite party of whoever presents the evidence. The COURT does not see any objection in accepting this statement as hearsay evidence in second degree, but under no circumstances it must be believed that the COURT accepts it as a document proving what the document says. We shall take it as hearsay evidence, whatever it may be worth, but hearsay evidence, not corroborated by facts, is of no value whatever.

BY DEFENCE COUNSEL.

First of all I apologise to the COURT for not having requested this witness in time, but the reason is that up to yesterday I was labouring under the illusion that in view of my insistance the doctor would end by coming. A telegraphic order issued by the COURT could bring the witness here to-morrow and we make the above request; in case this request is not granted by the COURT we shall accept the statement as hearsay evidence.

BY THE COURT.

Q. How is it possible for a witness to come to Naples from Palermo in one day?

A. He might be here the day after to-morrow, in the morning.

Q. Avvocato, what the COURT has always tried to stress, is the fact that the COURT has the authority to oblige any witness to come before the COURT.

A. We didn't like to bother the COURT and therefore tried to 101 get the witness here by our own exertions;;... Just now the family of our client showed me the following cable; "Impossible for Scudero to leave, confirmation needed". It's a cable and this shows the urgency of the matter.

Q. The COURT appreciates the good faith of the Avvocato which is praiseworthy in regard to his client's interest, nevertheless, Avvocato, witnesses have also their right, that is they have the right to be notified some time in advance in order to adjust their affairs for the time when they are to be in

1623

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

attendance ~~to~~ the COURT, and the COURT is very reluctant to issue a telegraphic order because ~~if~~ that order is not complied with, the COURT is then obliged to issue a warrant of arrest for that person under the charge of contempt of COURT for having disobeyed an order of the COURT and this COURT would be extremely reluctant to take such action against the doctor realising that the doctor has the right to have been given ample notice as to the time when he was to be present in COURT. Then there is a second proposition why the COURT is unwilling to issue such order which cannot be complied with. It would be difficult to have a military witness from Palermo to-morrow here and civilians meet with much greater difficulties on transport than the military. Avvocato, the COURT does not feel it has the right to issue such a telegraphic order. I would have issued it without discussion last Saturday morning but to issue such an order now is too late. I appreciate the good faith you have shown but nevertheless this is a vital part of the testimony and I think that the attention of the COURT should have been brought to this matter in due time so as to issue an order which would have been also fair to the doctor, Instantaneous orders on a doctor are dangerous orders to issue. He may have patients hovering on the brink of death and in order to comply with our instructions he might leave his patients unattended. Has the COURT made itself clear? Has the COURT made itself understood why it is reluctant to issue such an order at the present time?

A. Yes, Your Honour.

Q. If you wish to produce the document as hearsay evidence the COURT will accept it but as hearsay evidence at most and excessively unreliable.. In fact, the longer I have administered justice and practised law the less I regard this evidence favourably. This statement will be received as hearsay evidence and identified in the records as Ex. V.

Ex. V is read in Italian and in English.

1624

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

CROSS EXAMINATION.

Q. Where were you last Saturday?
A. At Naples.

Q. What did you eat?
A. Spaghetti with tomato sauce.

Q. Where did you eat?
A. At the Restaurant Bergantino.

Q. Did you eat only spaghetti?
A. No, I had also a second course.

Q. What was the second course?
A. Pork meat.

Q. What is you occupation?
A. Chinaware merchant.

Q. Where is your shop or office?
A. At Palermo.

Q. Where is your shop situated?
A. Via Calderai.

Q. Is it a shop?
A. Yes.

Q. Is it the only shop you own?
A. Yes, I only own one shop.

Q. Have you no other shops or offices in other towns of Italy?
A. No, I have not.

Q. You stated that during the month of September 1944 you were displaced from Palermo with your family.
A. Yes, I used to come down to Palermo on business.

Q. And did you say that your family was displaced to another locality?
A. Yes, I did.

Q. Where?
A. At Palazzo Adriano.

Q. What distance from Palermo?

A. 100 Kilometres.

Q. How often did you go to see your family at Palazzo Adriano?
A. Every week.

Q. What transport did you use?

A. I went by bus and sometimes by train.

1625

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

Q. On what day did you usually leave Palermo for Palazzo Adriano?
A. I left on Mondays and returned on Saturdays.

Q. On what day did you leave Palermo?
A. On Saturdays.

Q. Did you travel by train on Saturdays?
A. Yes, I did.

Q. What time did the train leave Palermo?
A. It left Palermo in the morning and arrived at Palazzo Adriano at about 4 o'clock.

Q. Just now you said that you left Palermo on Saturday evenings.
A. The train left in the morning and arrived at Palazzo Adriano in the evening.

Q. How long did the trip take?
A. 6 hours.

Q. Where is that place called Palazzo Adriano? Is it in the direction of Ottavia?
A. One has to stop at Lercara di Bosso, then you have to take another train and you arrive at Palazzo Adriano.

Q. Then you left Palermo on Saturday mornings?
A. Yes.

Q. And you arrived at Palazzo Adriano at 4 in the evening.
A. The train is scheduled to arrive at 2.10 P.M. but it was always late.

Q. Was the train always late?
A. Yes, always late.

Q. And on what days did you return to Palermo?
A. On Mondays.

Q. In the mornings?
A. In the evening. I arrived at Palermo at 1 P.M. 93

Q. What time did the train leave Palazzo Adriano?
A. In the morning at 6.30.

Q. Did the train arrive at Palazzo Adriano on time?
A. Yes, it left on time.

Q. And did it arrive at Palermo at the scheduled time?
A. Always late, one or two hours late.

Q. Then you were usually absent from Palermo from Saturday morning till Monday afternoon.
A. Yes, every week.

1626

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

Q. Did you stay sometimes at Palazzo Adriano over the week-end?
A. No.

Q. How many children have you?
A. I have no children. I support my sister-in-law and a nephew.

Q. How long have you been in the chinaware trade?
A. Almost since I was born.

Q. Is your shop situated near the Railway Station?
A. It is at a distance of some 250 metres.

Q. And you stated that you went every day to the Station Restaurant and sometimes twice a day.
A. Yes.

Q. Has you trade been always flourishing?
A. I don't know, we go on working.

Q. Soon after the Allied occupation and one year later did your trade flourish?
A. Yes, we worked and did some business.

Q. Have you ever had to be dependent on someone for food, lodging etc?
A. No.

Witness is excused.

Recess till 14:30 hrs.

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

BY DEFENSE COUNSEL for Eugenio SARNELLA.

We beg the COURT's permission to introduce the original decree relative to the appointment dated November 1944, of Dr.Eugenio SARNELLA as Director of COGENA as soon as it arrives. I have been promised that it will be here to-morrow night or at the latest the day after to-morrow.

BY PROSECUTION.

We have no objection to introducing this document which is alleged to be the original copy of the decree, but we wish to stress that at no time have we had any doubts about Dr.SARNELLA being the Director of COGENA. If Avv. Porzio would state his reasons for producing the document then we might wait and avoid.....

BY DEFENSE COUNSEL.

The reason is a very simple one. Since Dr. SARNELLA was officially appointed in November 1944 then all his acts, those which he really performed and those which are alleged to have been performed by him, have been performed by an individual, by a person who was not a public official, a person who had not the capacity of a public official.

BY PROSECUTION.

Q. The decree appointing Dr.SARNELLA as Director of COGENA is retroactive.
A. No , it is not.

Q. But the decree setting up COGENA in November is retroactive.
A. Yes,but from an administrative point of view. Now we must differentiate between this matter, which is purely administrative and some of the acts performed by this person before the issue of the decree so that they cannot be called official acts.

BY THE COURT.

The COURT makes this suggestion to you: Up to the present time there is nothing before this COURT. When the decree arrives you will please talk with PROSECUTION on this matter. The chances are that you will be able to decide upon it with the PROSECUTION without wasting time. The COURT,then,when you

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

produce the document, will rule about its offer.

BY DEFENSE COUNSEL.

May it please the COURT, DEFENSE wishes to stress the fact that it has no intention of availing of any juridical expedient or any subtlety arising from a question of procedure, in short, it does not intend to hide itself behind any shelter whatsoever, but is going, on the contrary, to offer the COURT a complete demonstration.

BY THE COURT.

The COURT will rule on the matter when you offer the copy of the decree.

NO FURTHER WITNESSES for Attilio SARNELLA.

DEFENSE for Attilio SARNELLA RESTS.

DEFENSE for Accused LO PORTO Santo.

BY DEFENSE COUNSEL for Santo LO PORTO.

I would like to call PROSECUTION's attention and recollection to the stipulation DEFENSE for LO PORTO requests to be made about the character, respectability and morality of LO PORTO. We had a witness whom we renounced following an agreement with PROSECUTION. We ask PROSECUTION whether he has any objection to the stipulation.

BY PROSECUTION.

Your Honour, PROSECUTION is going to stipulate that Santo LO PORTO's character and reputation is good and that it will not be made an issue in the case.

BY THE COURT.

Q. Do you accept the stipulation ?
A. Yes, we do.

1629

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

BY DEFENSE COUNSEL.

Although the honourable President has adjourned the decision on the request made by Avv. Porzio , DEFENSE for LO PORTO at the present time asks that decree relative to Dr. SARNELLA's appointment be received in evidence. The decree is not yet here but we make a request and explain the reason of it. Among the charges preferred against LO PORTO under para B there is the charge of vaunted credit (Art.346 of Italian Penal Code). Although we reserve discussion as to this alleged crime, we would like to stress the fact that our Penal Code requires that in order to have the commission of that crime, the person under whose name the credit has been vaunted, must have the capacity of public official. Since the acts attributed to LOPORTO are alleged to have been committed during September and August 1944, and since Avv. Porzio's contention the decree appointing Dr. SARNELLA as Director of COGENA is dated November 1944, LO PORTO's DEFENSE is interested in having that document as Exhibit in the case for the deductions said DEFENSE may draw from it and illustrate in asummation.

BY THE COURT.

Q. Have you other witnesses ?
A. No, we have not. We wish now to inform Your Honour and the PROSECUTION that we are well aware of the procedure in use in the Allied Courts and that the right time to ask for the dismissal of the case against an accused is at the end of PROSECUTION's case, but in this particular instance we did not move to the COURT for the dismissal of the case against LO PORTO because we wished to have all the prodeedings completed.At this time, that is at the beginning of the DEFENSE case for LO PORTOand before the accused takes the stand, we respectfully make a request to the COURT.

BY THE COURT.

Q. DEFENSE case for the two SARNELLAS has rested.
A. We are aware of it. There are no other witnesses, there is only the question whether or not LO PORTO is going to take the stand but as to that , we have made a request to the COURT.

Q. We have reached the point when it is to be decided by you whether or not you have further witnesses to produce and it is up to you to decide on this point.

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

A. We have no further witnesses except LO PORTO himself and he will take the stand only if the request we have submitted to the COURT is not granted.

Q. State briefly what it is about.
A. I stated that we know the procedure in use in the Allied Courts. It is a motion we were to have made at the end of PROSECUTION 's case.

BY PROSECUTION.

I believe I understand perfectly well what the Avvocato meant to do at the conclusion of PROSECUTION's case nevertheless the Avvocati had then the right to make this motion and say that the charges had not been proven. They did not do so at that time, therefore they have waived the right to make that motion. Now if he intends to make a motion stating that the charges have not been proved he must wait till the time all his DEFENSE is completed after the DEFENSE of the other two accused.

BY DEFENSE COUNSEL.

In short we ask that the case against LO PORTO be dismissed for one motive.

BY THE COURT.

The motion is denied, because it was not made at the proper time.

BY DEFENSE COUNSEL.

We wished first to see all the proceedings completed in order to give the COURT the opportunity of judging the facts and after the testimony of the witnesses Provenzano, Strazzera and Palumbo who are in the same position as LO PORTO and are free while LO PORTO has been detained for several months.

1631

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

BY THE COURT.

Avvocato, we shall try to make clear this point of the procedure for your benefit. When the case was called the first time , when it was announced by PROSECUTION whether he wished to have his case severed from that of the other two accused, then it was the right time to make this motion. Not having made it the motion is automatically denied. After having gone to trial and at the conclusion of the PROSECUTION's case you could move the COURT that the charge had not been proved, that there was no charge to answer to. This however must not be confused with the motion of severance of the case. Not having made the motion you have waived your rights by operation of law. Now you can put up all your testimony as defense and then make any motion you like on the whole case, but the motion of severance from the cases of the other two accused coming after the whole case has been tried, is certainly out of the order because all the accused have been tried and there is only one question before this COURT : are or are they not guilty under the charges ? The reason why you were to move for severance at the beginning of the trial is, that once the case is being tried it cannot be severed. That is the reason why the motion for dismissal of the case is put at the conclusion of PROSECUTION's case at the time when all the evidence produced by PROSECUTION is in possession of the COURT, and the reason why that motion may also be made at the end of DEFENSE case is because at that time all the evidence produced by the DEFENSE is in possession of the COURT. You cannot therefore divide the evidence in half and make a motion at this time because you cannot try a case dividing it into two halves. Have I made myself clear ?

A. Yes, Your Honour, you have. However we might ask the PROSECUTION to do it for us since we cannot do it as DEFENSE.

BY THE COURT.

No , you cannot.

92

BY PROSECUTION.

Fundamentally I agree with Your Honour and therefore PROSECUTION does not express any opinion on this matter. However, Your Honour, I would not consider it amiss if you were favourable to listen to the matter. I make no question as to the

1632

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

the grounds on law quoted by Your Honour, namely that DEFENSE has waived its rights under dispositions of law, but I respectfully beg the COURT to permit the DEFENSE to state its reason for the severance.

BY THE COURT.

He has given his reasons but the COURT cannot take any action on them : it is now too late.

BY PROSECUTION.

I agree with Your Honour that the DEFENSE has not made its motion for the severance of the case of their client at the right time ,nevertheless I move the COURT to permit the Avvocato to state his reasons on these premises, that Your Honour is here the representative of a Court of Justice and Law. On these premises I request Your Honour to permit the Avvocato for the DEFENSE to state his reasons at this time.

BY THE COURT.

Even if he stated the reasons of his request the COURT would not have at this time any power to consent to the severance of the case of LO PORTO.

BY PROSECUTION.

I only wished to stress in the records the fact that PROSECUTION acquiesces in your conclusions based on your opinion and on the operation of law and that PROSECUTION expresses no opinion relative to the request made by the DEFENSE.

BY THE COURT.

Q. What the Avvocato does not understand is this : this is a very vital point; when the case was called, the DEFENSE was to have moved to have the case of LO PORTO severed. The DEFENSE having not done it at that time, DEFENSE has waived its right at the time PROSECUTION has proceeded on its case. Now that PROSECUTION has produced all its case, DEFENSE must do the same by producing all its evidence and then the COURT will make its decision whether the accused are guilty or not guilty. Has the COURT made itself clear ?

A. Yes, Your Honour.

1633

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

Q. I would like to explain another pointof our procedure, the precision of which maybe has not been very clearly understood by DFENSE COUNSEL. When a motion is presented at the conclusion of PROSECUTION's case, that is,when a motion is presented on the grounds that there is no charge to answer, this is the same as saying : " There is no evidence, no proof showing the culpability of the accused". The COURT in denying or sustaining the motion deliberates only on one point :" Is there any evidence whatsoever showing the culpability of the accused ?". When the trial proceeds and also the evidence from the DEFENSE is in, then we have all the evidence before the COURT. In this case it is quite a different point to be discussed by the COURT : " Is this evidence showing the guilt of the accused beyond any reasonable doubt ?" There is a vast difference between denying a motion where there is no charge proven ,because, in that case, there is evidence sufficient to deny the motion, but when we come to the conclusion of the whole case we must have something more than mere evidence. There must be evidence beyond any reasonable doubt. I realize the Avvocati find some difficulties in understanding our procedure, but you must understand that you waive any right you may have, owing to the fact that you do not assert it at the right time. Now you find yourselves in the same position as if you had moved for the case to be severed when the case was called and then the COURT had denied your motion. At the conclusion of PROSECUTION's case it would have been the same as if you had moved for the dismissal of the case on the grounds that the charges had not been proved, and the COURT had denied it. Now you have both concluded your cases and there is an order for you to present a motion, but only after he has concluded as to the procedure in this Court. This is only an argument relative to procedure. Now you must produce whatever evidence you have to offer.

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10 Minutes Recess

BY THE COURT.

The COURT has decided , without taking into account the reasons

1634

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

previously stated, to permit the Avvocato to state his grounds for the purpose of writing them in the records of the COURT and for the purpose of making the COURT fully understand his theory, so that the COURT may not be put in the position of having to rule on matters it has not fully understood.

BY DEFENSE COUNSEL for LO PORTO.

The DEFENSE of LO PORTO respectfully moves the COURT to have the case against the accused LO PORTO dismissed, in other words, and to use terms under our Italian procedure, to state that penal proceedings are not to be dismissed against LO PORTO.

BY THE COURT.

The COURT must now deliberate upon your motion. This motion could be presented at the conclusion of PROSECUTION's case. The Avvocato already offered to stipulate on this matter. The President of the COURT has understood the point at which you are driving. Your motion is made in time and the COURT will listen to it. You have followed the right procedure and you are right.

BY DEFENSE COUNSEL.

May I mention the reasons upon which I base my request ?

BY THE COURT.

Q. First of all I wish to know to what charge you are referring.
A. To all the charges.

Q. Then name each charge and discuss it and then go on to the second and so forth. Take each of them singly as if each was the only charge and so on, unless your argument refers to the totality of the charges.
A. I am referring to the totality of the charges . The case has been wrongly set up by PROSECUTION since the beginning in so far as LO PORTO is in the same position as the other

1638

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

PROSECUTION's witnesses, namely Siele, Palumbo, Provenzano and Strazzera. If these latter men, as it is stated by th charges, gave money with the intent to bribe, under our Penal Code, those who act together with the physical authors of the crime must answer to the charge of complicity. At a second stage it is to be ascertained whether that complicity is essential or secondary. This is what our Penal Code says about the crime of bribery or instigation to bribery. The same applies to the crime of vaunted credit, always in the case when that crime is proven, and to the crime of criminal association. PROSECUTION, in the case of those who might be charged with complicity as Provenzano and the other Captains, has not thought it convenient to proceed against them and has raised them to the condition of PROSECUTION witnesses and has put LO PORTO, who was in the same position as the others, on the bench of the accused. That is why, at the conclusion of the case of PROSECUTION and of the other two accused, from which cases elements might have been deduced of charges against all or none of them, we as DEFENSE for LO PORTO, have thought it was the right time for us to present our request that LO PORTO be treated in the same way as the others who might have been considered as accomplices, that is , Provenzano, Strazera, Siali and Palumbo. We move therefore the most excellent COURT that in its justice it may put LO PORTO on the same level as these men, who have been free for many months while LO PORTO has been detained for several months. This is the request we respectfully present to the COURT.

BY PROSECUTION.

PROSECUTION bases itself on the evidence. We express no opinion as to this motion.

83

BY THE COURT.

Motion is denied.

1636

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

BY DEFENCE COUNSEL for LO PORTO.

Your Honour, LO PORTO wishes to take the witness stand but he is not in good physical conditions because he has a temperature.

BY THE COURT.

Q. Does he or does he not intend to take the witness stand?
A. He does.

Q. Then let him take the stand because this case has to be finished. Accused LO PORTO, you understand that as a defendant in this case you are not required to testify but that if you decide to do so you must do it under oath and you will be submitted to cross-examination not only as to the facts on which you have testified but also as to your veracity. Having been warned as to your rights do you still wish to testify on your behalf?
A. Yes, I do.

Accused LO PORTO is sworn in.

DIRECT EXAMINATION.

Q. What is your full name?
A. Santo LO PORTO son of the late Carmelo, born at Gela on 5 June 1916, resident at Gela.

Q. What is your occupation?
A. Maritime Captain.

Q. Are you the owner of a schooner?
A. Yes, I am.

Q. What is the name of your schooner?
A. "Invidiato".

Q. When did you come to Naples?
A. What do you mean?

Q. When did you arrive at Naples in 1944?
A. At the end of August or the beginning of September 1944?

Q. What transport did you use to come to Naples?
A. I came on my schooner.

Q. Why did you come to Naples on that occasion?
A. I was transporting a cargo of wine and Marsala.

Q. On that occasion did you come alone or did you take somebody with you?
A. Mr. Attilio SARNELLA.

1637

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

Q. How did you happen to make his acquaintance?
A. I had known hi for meny years.

Q. Where did you meet him again?
A. Always at the Station Restaurant.

Q. Where?
A. At Palermo.

Q. Was it he who asked you to take him to Naples?
A. Yes.

Q. Was it easy to get railway tickets from Palermo to Naples at that time?
A. No.Moreover travelling at that time was full of hardships.

Q. When you arrived at Naples, how long did you stay in that town?
A. Some three months.

Q. Why?
A. When I lended from my schooner in order to liquidate some financiary matters at Rome with the SAAVEM, first I needed a permit to go to Rome and then it was difficult to get it. While I was waiting for it I fell xxxx ill and then, as soon as I recovered, I undertook my trip to Rome. I liquidated there the debt I had made for the purchase of a ship engine and returned to Sicily.

Q. Can you tell the COURT what happened at the meeting at Piazza della Carità, at COGENA, with Attilio SARNELLA and Comm/ SARNELLA?

BY THE COURT.

If it is possible, try to specify the time.

DIRECT EXAMINATION (Continued).

Q. In September 1944 did you meet Dr.SARNELLA on the premises of COGENA?
A. Yes, I did.

Q. Will you specify exactly where you met Dr.SARNELLA the first time?
A. At Piazza Carità, on the curb in front of COGENA building.

Q. Who was in your company?
A. Mr.Attilio SARNELLA.

Q. Why did you make Dr.SARNELLA's acquaintance?
A. Because I had some pending matters to settle at COGENA relative to the payment of hiring money.

Q. Were these matters settled?

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

A. Yes, They were.

Q. What kind of matters were they?
A. I have already stated that they were matters relative to the hiring of my ship.

Q. Did you see Comm. SARNELLA again?
A. Yes.

Q. For what reason?
A. In order to get his help for two requests filed by Palumbo and Sieli and later on for a request filed by Provenzano.

Q. But did Sieli, Palumbo, Strazzera and Provenzano apply to you?
A. Yes, but Strazzera has nothing to do with it. First Palumbo and Sieli, then later Provenzano. Strazzera and Provenzano were helped by Mr. Attilio SARNELLA, and this has nothing to do with my case.

Q. So that in the episode Provenzano and Strazzera the agreement was made with Attilio SARNELLA not with you?
A. It was made with Attilio SARNELLA.

Q. And what was your participation in that affair?
A. I gave my opinion as to the wording of the requests.

BY THE COURT.

Q. Are you referring to the first episode?
A. Yes, the episode Provenzano - Strazzera.

DIRECT EXAMINATION (Continued).

Q. Did you present the requests for these two people?
A. No, I didn't.

Q. Did you recommend them?
A. No, I did not.

Q. Did you know Provenzano and Strazzera?
A. No, I didn't.

Q. By whom were they introduced to you?
A. By Attilio SARNELLA.

Q. When?
A. I do not know because I found everything already settled.

~~I wished to know because I found everything all already settled.~~

16391

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

Q. I wished to know whether Provenzano and Strazzera were introduced to you by Attilio CARNELLA on that occasion at Piazza Carith.
A. Yes, at Piazza Carith.

Q. You said you are a maritime Captain.
A. Yes, I am.

Q. And you also said that you came from Palermo to Naples on your schooner.
A. Yes, with a cargo of Marsala wine.

Q. Can you tell us what profits Provenzano or Strazzers or any one else could get by transporting a cargo from Sicily to Naples?
A. It depended on the request for the merchandise transported and on the merchant one dealt with. One might get big profits.

BY THE COURT.

Q. From Sicily to the mainland?
A. Yes.

DIRECT EXAMINATION (Continued).

Q. And from the Mainland to Sicily?
A. A small profit.

Q. Can you tell us what the average payment per ton on cargoes was from Sicily to the mainland?
A. There have been times the payment was as much as 28 lire per kilogram and then times when the payment was 4 lire a kilogram for transport.

Q. When were you arrested?
A. On 29 May 1945.

Q. Have you been detained at Poggioreale Goal all the time?
A. Also at the Questura and at Palazzo Pepe, then also at Regina Coeli Gaol, in Rome.

Q. Can you remember when it was that you were brought to Palazzo Pepe and to the Questura?
A. I believe it was on 16 October, if I am not mistaken.

Q. In what year?
A. 1945.

Q. How were you treated during that time?

1620

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

A. As usual, w..n the Questura, badly.

BY THE COURT.

Q. This is an opinion; tell the COURT what happend.

DIRECT EXAMINATION. (Continued).

Q. Did you get regular meals there?
A. At Palazzo Pepe I was fed on bread and water, at the Questure on 200 grams of bread, then I was transferred to the military guard room at that same Questura and I received 2 tins of meat and 8 biscuits.

Q. Could you change your clothes, your linen?
A. No, I could not.

Q. Where did you sleep?
A. On a slab of ciment.

Q. Were you alone in your cell?
A. No, I was not alone.

Q. With whom were you?
A. I was in company of other detainees.

Q. Have you any other details to add about your detention at Palazzo Pepe and at the Questura?
A. I was questioned.

Q. During that period were you submitted to beatings, were you ill treated?
A. Certainly, I was.

Q. For how long?
A. For 23 days.

Q. How long were you held undere these conditions?
A. 23 days.

Q. Were you questioned during those days? 83
A. Ys, I was, by the Allied Commission and by C.I.D. men.

Q. Do you remember how many?
A. Do you mean how many times I was questioned?

Q. Yes.
A. I don't remember how often but they were many.

Q. Do you remember why you were brought back to Poggioreale?
A. Owing to Major Vecchiolla's intervention after my mother had begged him to send me back there.

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

Q. Have you a family?
A. Yes, I have.

Q. How many people?
A. My mother, two sisters and one brother.

Q. How old is your mother?
A. About 60 years old.

Q. Is your father living?
A. No.

Q. Who provided for your family?
A. I am the only support of the family.

Q. How do you support your family?
A. By my work.

Q. What kind of work?
A. By sailing.

Q. You said you are the owner and captain of Schooner "Invidiato".
A. Yes, I am.

Q. From the date of your arrest up to to-day what has become of your schooner?

A. It was requisitioned.

Q. By whom?
A. By the Italian Royal Navy.

Q. So that you can no longer effect any transport on your own account?
A. Certainly not.

Q. So that the only means of support for your family have been stopped by the requisition of the schooner?
A. Yes.

82

Q. Have you other means of support?
A. No, I have not.

DIRECT EXAMINATION RESTS.

Case adjourned to 26 February 1946, 09:30 hrs.

1642

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

26 Febbuary 1946 ; 09:30 hrs.

BY THE COURT.

Capt. Di Dio tells me that he has reached no agreement with the DFENSE.

BY DEFENSE COUNSEL for Eugenio SARNELLA.

I took upon myself the responsibility of advising my client that in no case he was to pay a penny before duly informing the COURT about Capt. Di Dio's requests, and above all before he, Dr. SARNELLA, had made his testimony under oath. This for obvious reasons.
When we decided, in view of the circumstances, to renounce his testimony I said to this man, and this was the first time I spoke to him directly, to send me his note of expenses and at the same time I told him that it was my duty to inform PROSECUTION of his request. His note of expenses is 72.600 lire and when I asked my honourable friend, Mr. Prosecutor, his advice on the matter, he said :" My dear friend Serrao, this is a staggering amount of money". Under the usual Italian procedure I would have asked the COURT what amount I was to pay and in a similar case the COURT would have reduced the sum to a few thousand lire. I consider I am in a very delicate position and I like to inform the COURT and the PROSECUTION about the matter. If the COURT orders me to pay, I shall pay the 72.800 lire.

BY THE COURT.

This seems to the COURT a considerable amount of money: The only order issued by the COURT was to tell the witness that he was to be in attendance on determined days. The witness however has stated he made some trips to Rome upon request of the DEFENSE. This is a matter which must dealt privately between the witness and the DEFENSE and not before the COURT. Certain it is that the COURT never instructed anyone to go to Rome. The instructions only referred to the fact of being here present in Court. I now suggest you this : you talk this matter over with the PROSECUTION, inform him of the facts and then hear what advice PROSECUTION can give you.

1643

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

BY DEFENSE COUNSEL.

I have already had the priviledge of PROSECUTION's advice and upon it I raised the sum to 20,000 lire , as suggested by PROSECUTION. At the same time I would like to inform Your Honour that nobody told him to go to Rome. We heard what Your Honour said about written statements to be taken in Rome from those witnesses who we thought might thus be dispensed from coming to the trial. This was said by Your Honour in open Court and the witness which was to be decided between myself and the PROSECUTION and , later on, by Your Honour, not by me. PROSECUTION however thought it advisable to have all the witnesses in Court, therefore, although I appreciate the situation of this man, it is not right of him to hold me responsible for his trip to Rome. I know of many trips from Naples to Rome made by people involved in this case but I can assure Your Honour that we are not responsible for the trips made by him.

BY THE COURT.

The COURT made the suggestion about reaching an agreement, but certainly we shall not try here in this COURT a civil suit for damages. Try to talk with the PROSECUTION and the witness and reach an agreement. You may then inform the COURT.

BY PROSECUTION.

We already suggested the Counsel for the DEFENSE to have the witness treated as a PROSECUTION's witness. We notified him to be present in COURT and, as Your Honour well knows we have a fixed indemnity as to the sums we must pay. According to our rates for expenditure he will be paid much less than the amount settled by DEFENSE.

BY THE COURT.

The COURT made a suggestion and now it is up to you to try to reach an agreement. If that is impossible come back to the COURT. If a reasonable offer is made to you, Capt. Di Dio, it is up to you to decide whether or not you are going to accept it. The orders issued by the COURT referred onl y to the dates when you were to be present in Court. The COURT does not understand how such an expenditure has been made but the COURT is not interested in this fact because it is

1644

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

only interested in the presence of the witnesses. Twice the COURT has tried to help you but the COURT has no intention to try a suit for damages because this is outside the jurisdiction of this COURT. We have already gone a long way trying to arrange matters between you and the other party.

BY DEFENSE COUNSEL for LO PORTO.

Q. You stated yesterday that your schooner had been requisitioned by the Italian Navy ?
A. Yes.

Q. Can you state what indemnity was fixed by the Italian Navy for the requisition of your schooner ?
A. I was informed by my family that the amount was 7000 lire a month but up to now I did not collect one penny for it.

Q. You stated yesterday that, after being brought to Palazzo Pepe and to the Questura, you were taken back to Poggioreale Jail by Major Vecchiola's intervention.
A. Yes.

Q. Where were you taken later on ?
A. To Rome.

Q. By whose orders ?
A. By order of the Allied Sub-Commission .

Q. Were you questioned at Rome ?
A. Yes, I was.

Q. By whom ?
A. By Major Vecchiolla and Mr. Lopes.

79

Q. What treatment did you get in Rome ?
A. A very good one, I was treated more like a witness than an accused.

BY PROSECUTION.

Since the accused LO PORTO has testified as to Eugenio and Attilio SARNELLA, I ask the COURT to have him cross-examined first by the DEFENSE of the two other accused.

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

BY THE COURT.

Q. I do not see any reason why this cannot be considered as cross-examination. He is not a witness of the other two accused, he is rather an adverse witness therefore the rules of cross-examination will be applied also by you. Defence of the other accused. You may test him not only as to the facts but also as to his veracity. Have DEFENCE COUNCEL understood my meaning? They may also ask leading questions.
A. Yes, we have.

CROSS EXAMINATION for Attilio SARNELLA.

Q. You stated yesterday, during Direct, that in the month of September 1944 you came to Naples. With whom did you come?
A. With Mr. Attilio SARNELLA.

Q. On what day did you see him again in Naples, at Piazza Carità ?
A. I cannot remember the date .

Q. Well, say it approximately.
A. About 4, 5,6,7 September .

Q. Can you tell the COURT whether you saw Attilio SARNELLA on the following days ?
A. I believe I saw him on the next days.

Q. And did you see him again two days later ?
A. I don't remember exactly .

Q. Do you know whether he left for Sicily ?
A. Yes , I do.

Q. Do you remember how many days after the meeting at Piazza Carità he left for Sicily ?
A. To the best of my recollection he left some 4,5,6 days afterwards.

Q. To the best of your recollection did you see him again in Naples during the month of September after he had left for Sicily ?
A. No , I did not.

Q. Can you specify whether or not on 18 September you saw him anywhere in Naples ?
A. No , I did not see him.

1644

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

NO CROSS-EXAMINATION for Eugenio SARNELLA.

CROSS-EXAMINATION by PROSECUTION.

Q. When did you meet EugenioSARNELLA for the first time ?
A. In Piazza Carità.

Q. That is when you brought his brother to Naples on your schooner ?
A. Yes.

Q. About what time of the year 1944 ?
A. September .

Q. What part of September ? The early part or the latter part ?
A. The early part of September .

Q. You have already made a description of the circumstances under which you met Dr. SARNELLA .
A. Yes.

Q. After that first meeting did you see him at any other time ?
A. Yes.

Q. When did you meet him again ?
A. When I went to the COGENA to withdraw the rentals for the hiring of my schooner.

Q. When was that ?
A. Three or four days after the introduction.

Q. And you say that this happened in COGENA office ?
A. Yes.

Q. After this did you see Dr. SARNELLA again ?
A. Yes.

77

Q. Where did you meet him again ?
A. My statement explains everything.

Q. I would rather you told this to the COURT. When and where did you see him again ?
A. At his home.

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

Q. You must be more precise and specify at whose home and when .
A. At Comm. SARNELLA's home on 17/16/18/19 of the month of September.

Q. Had you ever been to Comm. SARNELLA's home before ?
A. In order to support the requests made by Palumbo and Sieli.

Q. How much did you receive in payment from Palumbo for the assistance you were to give him ?
A. I do not remember . In what sense ?

Q. How much did he give you in order to pay you for the help which he was to receive from you ?
A. 100,000 lire Palumbo and Sieli.

Q. Did you share this 100,000 lire with someone ?
A. Yes.

Q. With whom ?
A. With Dr. SARNELLA.

Q. How much did you give Dr. SARNELLA ?
A. 50,000 lire.

Q. For what purpose ?
A. In order to help out the request.

Q. Therefore in order to have the request approved ?
A. Yes.

Q. Your Honour, may I have the Exhibits G,H,I,J ?

BY THE COURT.

A. Yes.

Q. Now I show you the Ex.G and ask you if you have ever seen this paper before .
A. Yes.

Q. When did you see it ?
A. This bears the date , 6 September .

T 648

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

Q. When did you see it ?
A. Do you mean when did I see this request ?

Q. Yes.
A. When Provenzano presented his request to COGENA.

Q. Did Provenzano have any assistance when he wrote down this request ?
A. Yes , he did.

Q. From whom ?
A. From me.

Q. I show you now Ex. H and ask you if you have ever seen it before now.
A. Yes.

Q. When and where did you see it for the first time ?
A. In Naples in November .

Q. What was the object of this request ?
A. The transport of a cargo of pozzolana to Sicily.

Q. Who made the request ?
A. Provenzano.

Q. Did you help him when he wrote the request ?
A. No.

Q. I show you Ex.I and ask you if you have ever seen this exhibit before.
A. Yes, I have.

Q. When and where did you see it ?
A. IN September, in Naples.

Q. How come you saw it ?
A. I gave my opinion as to the wording of the request . 75

Q. Whom did you assist ?
A. Strazzera and Provenzano for the first requests.

Q. So you helped them make the request?
A. Yes, I did.

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

Q. Where was it written ?
A. At the cafe in Piazza Caritè.

Q. And in regards to the other document, Ex.J, which I show you, where was that written ?
A. Also in the Cafe at Piazza Caritè.

Q. I sho w you now document Ex.J and ask you if you have seen this Exhibit before nowM
A. Yes.

Q. What is it ?
A. It is the request for the transport of pozzolana from Baia to Pozzallo.

Q. When and where did you see it for the first time ?
A. In September , on board the schooner "Alfredo".

Q. Whose schooner is it ?
A. It belongs to Francesco Ligresti, if I am not mistaken.

Q. And who is the Captain ?
A. At that time Sieli was.

Q. Did you assist him in drawing up this request ?
A. Yes, I did.

Q. I show you the document Ex.K and I ask you if you have seen this paper before now.
A. Yes, I have.

Q. When and where did you see it ?
A. On the schooner "Alfredo" in September.

Q. What was the purpose in drawing up this document.
A. To get a transport of pozzolana from Baia to Siracusa.

Q. And did you help write it ?
A. Yes.

Q. Where was this paper written ?
A. On the schooner " Alfredo".

Q. So it was written at the same time as Ex.J, that is, Palumbo's request.
A. Yes.

74

1630

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

Q. At the same time you assisted in drawing up the requests of Palumbo and Sieli, that is Ex.j and K , what was the purpose in drawing up those requests? ~~at that time~~ ?
A. In order to draw up the requests.

Q. Were those papers given to you later on ?
A. No.

Q. But you stated that you saw Dr. SARNELLA again when you h gave him part of the money that Palumbo had given you. Is that correct ?
A. Yes.

Q. Did you see him prior to that occasion ?
A. Whom ?

Q. Dr. SARNELLA.
A. Yes.

Q. Will you tell the COURT what transpired on that morning when the requests of Palumbo and Sieli were written down. What was said and what was done relative to this matter.
A. I went to Dr. SARNELLA to have his support for these requests and he said to me :" File the application with CCGENA office and then the Board will decide about it".

Q. What day of the week was it ?
A. I do not remember .

Q. Was it a Friday ?
A. I cannot remember, I cannot say it because I don't remember anything now .

Q. What were you supposed to do in order to carry out those requests ?
A. Nothing.

73

Q. On the following day were you to do anything, meet anyone ?
A. I have not understood the question.

Q. Did you go to the railway station on the following day to get to Naples ?
A. Yes, I remember I did.

1651

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

Q. With whom did you go to the station ?
A. With Palumbo. I am not sure whether there was also Sieli.

Q. And you and Palumbo and Sieli if he was there too, went to Naples?
A. Yes.

Q. Did this happen on the day after the requests were written down ?
A. Yes.

Q. And was not Dr. SARNELLA at Naples ?
A. I cannot remember this particular indident related by Palumbo, I cannot remember, I can only say that we went to Dr. SARNELLA's home.

Q. I am not speaking about that , I am speaking about the day when you were to go to Naples and ,knowing that Dr SARNELLA was not at home, you put the visit off. After that time when you went to Naples to Dr. SARNELLA's house did you see Dr. SARNELLA later ?
A. Yes , I did.

Q. Will you tell the COURT where you saw him ?
A. At his house .

Q. Did you see Dr. SARNELLA again ?
A. Yes, I did.

Q. You stated you saw him at his house ?
A. Yes.

Q. Then it was after the time you went up there with Palumbo.
A. Yes.

Q. Were you paying him a visit ?
A. No, I handed him the 50,000 lire.

Q. Did you talk with Dr. SARNELLA about the 50,000 lire ?
A. No.

Q. On the morning you went up to the house with Palumbo had you money on you ?
A. Yes, I had money of my own.

1652

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

Q. And when you saw Dr.SARNELLA on that morning what did you talk about ?
A. Only about his support to the requests.

Q. Did you talk about money ?
A. No.

Q. And when was it that you talked with him about the 50,000 lire ?
A. After the visit Palumbo and myself made to his house.

Q. What happened then ?
A. I gave him the 50,000 lire.

Q. Did you tell him what that money was for ?
A. It was a present for his support to the requests.

Q. On the morning you went with Palumbo to DR. SARNELLA's house did Palumbo give you a draft ?
A. Yes.

Q. Did you show Dr. SARNELLA that draft ?
A. No.

Q. But you wished to cash that draft, didn't you ?
A. Yes.

Q. Did anybody advise you to cash it ?
A. No.

Q. Was it necessary to cash it ?
A. It was not necessary to cash it, it was a bank draft.

Q. You stated that your boat was requisitioned by the Italian Mercantile Marine.
A. No, by the Italian Royal Navy.

Q. And that since the time the boat was requisitioned, that is shortly after your arrest, you never received any income from the boat.
A. That is correct.

Q. Did you talk with anyone about this matter ?
A. Yes.

1653

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

Q. With whom ?
A. With Dr. SARNELLA.

Q. When did you talk with him on this matter ?
A. At Poggioreale, when we were taken out in the open air and brought here in Court at the time Dr. SARNELLA was granted provisional liberty and later on I begged him during the trial to obtain the derequisition of my boat.

Q. You stated that once you talked with him at Poggioreale while you were taking the air.
A. No, when we left the Prison to come here to the Tribunale.

Q. Then at that time you talked with him about your boat and asked his assistance in having it derequisitioned.
A. Yes.

Q. And later on you came into the Courtroom ?
A. Yes.

Q. When did you talk again about this matter ?
A. On the day the COURT granted Dr. SARNELLA provisional liberty.

Q. Then it was about 6 November.
A. Yes.

Q. What did Dr. SARNELLA answer you about your request ?
A. That he would interest himself .

Q. Did he say anything else ?
A. No.

Q. Did you talk with anybody else about the derequisition of your boat ?
A. Yes.

Q. With whom ?
A. With Major Vecchiolla and Mr. Lopes.

Q. The issue is not the derequisition of the boat but the fact that the witness on several occasions talked with Dr. SARNELLA . Did you talk with Major Vecchiolla and with me about the derequisition of your boat ?

1654

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

A. Yes , I spoke about the derequisition of my ship because my financiary conditions were such that my family could no longer support themselves during my detention.

Q. Didn't you at that time tell us that you had spoken with Dr. SARNELLA and that Dr. SARNELLA had promised to help you ?
A. Yes.

Q. And didn't you say that your family was labouring under great hardship because your ship had been taken and they had no means of supporting themselves ?
A. Yes.

Q. And didn't you tell us that SARNELLA had done nothing towards helping you ?
A. Yes, because my requests to him had had no results.

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10 Minutes Recess.

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

CROSS - EXAMINATION BY DEFENCE COUNSEL for Eugenio SARNELLA.

Q. I would like to explain to the COURT that, had I followed my impulse and my mind ~~relative to~~ and also the ~~scanty~~ scanty knowledge I have of the rules and regulations relative to juridical proceedings in force all over the world, I would not have asked any questions of the present witness but out of pure curiosity I would like to know this: you said you had some money on you; I would like to know how much money you had at the time you went to Dr. SARNELLA's house.

A. I had a sum equivalent to the liquidation of the debt I had in Rome.

BY THE COURT.

Avvocato , please in your question ~~specify~~ specify the time.

Q. When you went to SARNELLA's house, how much money did you have on you?

A. I had a sum equivalent to the liquidation of the debt I had in Rome.

BY THE COURT.

Q. Are you meaning the time when he went there together with Palumbo?

A. Yes, according to what he alleges.

Q. How much did you pay in Rome for your engine?

A. 144,000 lire.

Q. When did you pay it, in what month? approximately on what day?

A. I believe in November 1944.

RE-DIRECT EXAMINATION.

Q. In Direct you stated that you had come from Sicily to Naples in order to proceed to Rome and pay your debt

A. Yes. 68

Q. Therefore, coming from Sicily, you had brought with you enough money to settle your debt?

A. Yes.

Q. Did you keep that money on you during all the time you remained in Naples?

A. Yes.

1656

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

Q. How long did youvstay in Naples?
A. Some three months.

Q. Where did you fall ill, in Naples?
A. Yes.

EXAMINATION BY THE COURT.

Q. Now, LO PORTO, the COURT wishes to address you some questions. First of all you realise that you are under oath. You have been present throughout this trial and you have heard the testimony given by all the witnesses up to now.
A. Yes, Your Honour.

Q. One of the Witnesses was one Palumbo, do you recall his testimony?
A. Yes I do.

Q. And do you recall that Palumbo stated he had accompanied you to Dr. SARNELLA's house. Is that correct?
A. Yes, Your Honour.

Q. Do you recall that Palumbo stated he kept aside while youu WERE GREETING SOMEONE on the doorstep of Dr. SARNELLA's house?
A. He kept aside alone.

Q. Do you recall it?
A. Yes I do.

Q. Who was the person you greeted at that time at Dr. SARNELLA's house?
A. The maidservant opened the door.

Q. And were you admitted into the house?
A. Yes, I was.

Q. Then to whom, besides the maidservant, did you talk to at that house?
A. To the Commendatore.

Q. To no one else?
A. To no one else.

Q. Now look at the two accused and point out the person to whom you talked.
A. Commendatore SARNELLA.

The Witness points out accused Dr. SARNELLA.

Q. Do you recall Palumbo's testimony when he stated that you

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

left the house and joined him on the street?

A. Yes, I do.

Q. Is Palumbo's testimony as to this particular, correct ?

A. Yes, I joined him in the Street.

Q. Then do you recall Palumbo's testimony when he stated that he had gone to the Bank with you?

A. Yes, I heard his testimony.

Q. Is that testimony correct?

A. No, it is not.

Q. In what particular is it not correct?

A. We went down from Dr. SARNELLA's house, I found Palumbo in the street who was walking near the Courtyard. We began to walk down towards the centre of the town, the, I do not remember anything else, only that he gave me 100,000 lire, of which 70,000 were in a draft and the balance was in cash.

Q. Did you go to the Bank together with Palumbo as Palumbo stated?

A. No, I did not.

Q. Can you swear to it?

A. Yes, I swear to it.

Q. The you deny it?

A. Yes, I do.

Q. How come that you can be so positive in denying and just now you said you could not remember?

A. Because since I cannot remember I give a positive confirmation.

Q. What do you confirm?

A. That I never went to the Bank with Palumbo.

Q. Do you say so because you do not remember or because it was not so?

A. To the best of my recollection it was not so.

Q. You stated that on leaving Dr. SARNELLA's house you walked towards the centre of the Town.

A. Yes.

Q. Then tell now in details what happened from the time you left Dr. SARNELLA's house.

A. On leaving Dr. SARNELLA's house we walked towards the centre of Naples and, to the best of my recollection, Palumbo

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

filed the requests with Capt. Smith, of the Allied Sub-Commission at the Banca del Lavoro.. Then I don't remember anything else. He was granted his permit, I received the money. I cannot remember so many particulars.

Q. I wish to know how you received the money.
A. A draft of 70.000 lire and the balance in cash.

Q. You stated what you received but not how you received it.
A. What do you mean?

Q. You must answer the questions of the COURT because you are not a fool.
A. I did not understand your question.

Q. You can understand it all right. You stated what you received, I wish to know about the facts relative to the manner in which you received that money.
A. He gave me the money.

Q. Who do you mean by "he"?
A. Palumbo.

Q. Then tell how, when and at what time all this took place.
A. I cant remember it. I only remember that he gave me the money.

Q. Where, in what place?
A. I cannot remember this detail, I couldn't specify this detail, even to Major Vecchiolla.

Q. The COURT is not interested in what you have said to the others. The COURT is interested only in what you are saying now before the COURT. A Witness took the stand and gave a detailed testimony and said that, on leaving Dr. SARNELLA's house he proceeded with you to a Bank and that you were followed by a third person. The Witness identified that third person as answering the description of one of the defendants in this case, Attilio SARNELLA. What the COURT wishes to know is this: why is it that you could give us all the details and then you cannot remember how you received that money and also about going to the Bank? How do you explain this fact? 6.
A. The details about the Bank and the third party are imaginary.

Q. Go ahead.
A. There is nothing else to add.

Q. Nevertheless, you received the 70.000 lire. How did you receive them?
A. In the form of a draft.

Q. Where?
A. I don't remember.

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

Q. Can't you remember such an important matter?
A. It took place almost two years ago.

Q. Yes, but almost the rest of these facts took place two years ago.
A. Yes, but they were more interesting therefore, I remember them.

Q. Therefore getting 70.000 lire is not important to you?
A. Yes, it was.

Q. Then how come you can't remember how you received them?
A. I cannot remember them because I was very far from imagining such a thing.

Q. You remember however, all the other details quite well!
A. They are more essential .

Q. Then the receiving of 70.000 lire was not essential.
A. Yes, it was.

Q. The COUNT has a different notion. Now you say that Palumbo lied when he stated that he went together with you to the Bank and was followed by a third person?
A. To the best of my recollection, he did.

Q. But you could swear that this did not take place?
A. I can swear to it.

Q. Do you swear that this did not happen or that you do not remember?
A. I swear that it did not happen, to the best of my recollection.

Q. To the best of your recollection, then.
A. Yes.

Q. Palumbo testified as to your character and he is a good friend of yours.
Would you say that he has as good a character and reputation as you have?

A. Yes.

Q. Palumbo swore that you went with him to the Bank, that a third person entered. Do you remember the details of Palumbo's testimony?
A. Yes, I do.

Q. Do you remember his saying that the person who entered answered the physical description of Attilio SARNELLA?
A. Yes, I do

Q. Do you say that his testimony is a lie?
A. It was a mistake.

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

Q. You must answer whether or not it is a lie.
A. It is a lie.

Q. In his testimony Palumbo stated that when you and he went to Dr. SARNELLA's house you had a visiting card in your hand. Is it correct?
A. It is.

Q. How did you get it?
A. It was a visiting card of Attilio SARNELLA but on it the Street and number of Dr? SARNELLA's house were named.

Q. Who wrote it?
A. Attilio SARNELLA.

Q. So Attilio SARNELLA evidently knew where his brother lived.
A. Yes.

Q. In any case that was the house that was mentioned on the visiting card.
A. Yes.

Q. And had Attilio given you a visiting card?
A. Yes, not having any paper on him he gave me the visiting card on which he wrote the home address.

Q. LO PORTO, when you went out to Palumbo's house with Dr. SARNELLA did you at that time give the money to Dr. SARNELLA?
A. No.

Q. When did you give the money to Dr. SARNELLA?
A. When Palumbo's request was accepted.

Q. When was it, in respect to the day when you and Palumbo went to Dr. SARNELLA's house?
A. I believe it was the day after or two days afterwards.
Q. And where did this transaction, I mean, giving the money to Dr. SARNELLA, take place?
A. At his home, in Corso V.E.

Q. Whose house is it?
A. Commendatore Sarnella's.

Q. This was the same house where you and Palumbo had gone to?
A. Yes.

Q. At what time did this occurr, by day or by night?
A. When we went with Palumbo.

Q. Answer the question asked by the COURT? You can't try to

1861

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

deceive me by trying to avoid the questions. I have examined thousands of witnesses, Answer the questions I am asking you, you are trying to evade the answers. You said you went to Dr. Sarnella's house one or two days afterwards.

A. Yes.

Q. Then don't get muddled up. When you went the other time, I mean the second time, what time was it?

A. I believe I went in the afternoon at about 3 o'clock.

Q. Who went with you?

A. No-one, I went alone.

Q. When you got there, who was there?

A. He came to the door himself.

Q. When you got there, who was there?

A. No-one.

Q. So Dr. Sarnella was not there?

A. Yes, Dr. Sarnella.

Q. I asked you who was in the house.

A. Dr. Sarnella.

Q. It seems as though you find difficulty in answering even a simple question, so Dr. Sarnella was there?

A. Yes.

Q. So what transpired?

A. I gave him 50.000 lire.

Q. What happened, you must give the details.

A. Yes, he took the money.

Q. The COURT wants to know all the details; I want to know what you said to him, what did Dr. Sarnella say to you; What did you do, what did Dr. Sarnella do, what did Dr. Sarnella do from the time you entered until you left.

A. Comm. Sarnella told me to be seated in the parlour, I gave him the 50.000 lire and I said to him "this is the present from Palumbo and Gioli" and accepted it.

63

Q. So this is all?

A. Yes.

Q. And what did you do?

A. Nothing, I went out.

Q. And how long did it take to do all this?

A. Some two or three minutes.

Q. So you saw Dr. Sarnella, you said: " these are the 50.000 lire" he took them and you went away.

1662

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

A. He told me "don't mention my name".

Q. Now stand up and point out to the COURT who said this.

A. Comm. Sarnella (the Witness points to accused Eugenio Sarnella).

Q. Where did you get the 50.000 lire which you gave to Dr. Sarnella?

A. 30.000 lire in cash that Palumbo had given me and 20.000 lire of my own money.

Q. But a moment ago you said that Palumbo gave you 70.000 lire.

A. 100.000 lire, a check of 70.000 lire and 30.000 lire in cash.

Q. In what month was this, in what day more or less of the month was it?

A. It was in the month of September 1944, about 18, 19, 20, in the second half of September I believe.

Q. Now LO PORTO, on the occasion that you and Palumbo went to Dr. Sarnella's house and you entered the apartment and then you left, did Palumbo offer you a draft for 100.000 lire?

A. I don't remember.

Q. Well then, tell me what you remember from the time he paid you the 100.000 lire.

A. I remember what I told you just now, we entered Dr. Sarnella's house; he was outside in the hall, we went towards the Banca del Lavoro to see Capt. Smith, he presented the applications and then I believe that he gave me 100.000 lire.

Q. How?

A. A check of 100000 lire and 30.000 lire in cash.

Q. Where did this occurr?

A. I don't remember.

Q. LO PORTO when you and PALUMBO went out to Dr. Sarnella's house, what day of the week was it?

A. I don't remember.

62

Q. Had you been out to Dr. Sarnella's home before?

A. No.

Q. So you didn't know to which floor you had to go when you reached the building?

A. We asked the doorkeeper.

Q. So that was the first time you went to Dr. Sarnella's home?

1665

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

A. Yes.

Q. And this happenda in the morning?
A. Yes.

Q. When was the other time you went to Dr. Sarnella's house?
A. One or two days afterwards for the purpose of bringing him the money; I believe it was in the afternoon, at about 3 o'clock.

Q. And how many times did you go to Dr. Sarnella's home after these two occasions?
A. I think only once more.

Q. And when was this other time you mentions?
A. When I handed him the money of the Provenzano case.

Q. When was it?
A. I believe it was at the beginning of November.

Q. This was the only other time you remember to have been there?
A. To the best of my recollection, it was.

Q. And was there any difference from September to November?
A. Yes.

Q. In the meanwhile, you had been ill?
A. Yes.

Q. You were also in Naples?
A. Yes.

Q. In the meanwhile, you had been to Rome?
A. No. After the Provenzano case I was nearly recovered. I went to Rome.

Q. So you paid the Schooners thgine in Rome after the Provenzano case?
A. Yes?

Q. Has the COURT understood well when it says that you paid only three visits to Dr. Sarnella's house?
A. Yes.

61

Q. When did the first visit take place?
A. I thing it was about the 14, 16, 18 at the end of the first half of September or at the beginning of the second half.

Q. This was the first time?
A. Yes.

Q. And Attilio Sarnella had given you the visiting card which you took with you?

1664

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

A. Yes.

Q. So after that morning when you went there with the visiting card and with Palumbo, where and when did you see Attilio Sarnella?
A. In Palermo at the end of November, the beginning of December 1944.

Q. And where and when did you see him in Naples?
A. Attilio Sarnella?

Q. Yes.
A. When he came on my Schooner with me and he left for Sicily. I saw him no more in Naples.

Q. After he came to Naples on ~~his~~ your Schooner and then he left for Sicily . Now let us stop here. Did you see him leave for Sicily?
A. No.

Q. So you know when he left for Sicily?
A. No, I didn't see him any more.

Q. When did you receive the visiting card from Attilio Sarnella?
A. I think it was a few hours after the introduction to the Commendatore.

Q. When did this happen?
A. At the beginning of September 1944.

Q. Approximately, on what day?
A. 6;7.

Q. And what did you do with the visiting card Attilio Sarnella gave you?
A. I kept it.

Q. How long after Attilio had given you the visiting card did you use it?
A. When we went to Mr. Sarnella's house with Palumbo.

Q. When?
A. About the 16, 17.

Q. When you went to Dr. Sarnella's house with Palumbo, how long was it after you had talked or seen Attilio Sarnella?
A. About 7 or 8 days.

Q. 7, 8, 9, days, is that correct?
A. Yes, it is.

Q. Have you ever held any telephone conversation with Attilio Sarnella?

1663

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

A. No.

Q. So Attilio SArnella introduced you to Dr. Sarnella?

A. Yes.

Q. And did you hear the statement which said that Attilio Sernella had introduced you to the two Merchantile Ceptains?

A. Yes.

Q. Did this introduction take place before or after you spoke to Dr. Sarnella?

A. To be frank, I don't remember.

THE COURT IS AJOURNED.TO 2.15 hrs.

1666

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

Accused LO PORTO is re-called by PROSECUTION.

RE-CROSS EXAMINATION .

Q. Captain, do you remember that sometime in January 1946 you, Captain Sieli, Captain Palumbo, Captain Provenzano, Captain Strazzera and Attilio SARNELLA were in the same room when you had a discussion with Attilio SARNELLA to this effect . You said ;" What did you do with the 40,000 lire ?" and he answered you : " You know where the 25,000 lire went to ! Don't you remember ?
A. No , I don't.

Q. Do you recall that Attilio SARNELLA offered you 15,000 lire to withhold certain facts which concerned Attilio SARNELLA; don't you remember this ?
A. No , this never happened.

Q. Did Attilio SARNELLA offer you any money to withhold certain facts concerning this case ?
A. No.

Q. ~~X~~ On the witness stand you said that, to your knowledge, Attilio SARNELLA remained in Naples 4 or 5 days then he departed for Sicily.
A. That is what I believe.

Q. Weren't you seen with Attilio SARNELLA towards the middle of September 1944 in Portici ?
A. I don't know on what day, it was two years ago !

Q. Do you remember or not ?
A. No.

Q. Have you ever been to Portici with Attilio SARNELLA ?
A. I remember him coming to see me once.

Q. Do you remember approximately the date ?
A. No.

Q. Do you recall a conversation you held with one Pasquale of Portici during a certain period of the month of September 1944 ?
A. I can't remember

58

1667

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

Q. Can't you remember ?
A. He came to Portici.

Q. Who came to Portici?
A. Attilio SARNELLA, but I don't remember this meeting with De Pasquale.

Q. Are you sure you don't remember Attilio SARNELLA once telling you : " You know where the 25,000 lire went to ?"
A. I am sure .

CROSS EXAMINATION by DEFENSE COUNSEL for Attilio SARNELLA.

Q. With regards to the last circumstance, LO PORTO, do try to remember. This morning you said you saw Attilio SARNELLA in Piazza Carità, in September 1944.
A. Yes.

Q. Then you saw him again the following day, you stated this morning.
A. Yes.

Q. Can you determine with a certain accuracy how many days after you saw him, you saw him again at Portici ?
A. I can't remember. It happened about two years ago, and I can't remember all these minor details.

Q. Not even approximately ?
A. Perhaps after 2, 3 or 4 days.

RE-DIRECT EXAMINATION.

Q. Your answer to the question asked by the COURT , was that you had not been to the Bank. Do you or don't you remember this circumstance.
A. Yes, I do.

Q. About this circumstance you were confronted with the cashier of the Bank ?
A. Yes.

Q. Where ?
A. At the Banca Commerciale near the station.

1668

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

Q. Were you accompanied by Allied officers ?
A. Yes, I was accompanied by Col. Carnes and by Dr. Amendolea.

Q. What was the result of the confrontation ?
A. He stated that he had never seen me and that it was the first time he had ever seen me.

Q. You answered, I believe, on a question by the COURT, that you had never met Cavaliere Pernicone, do you remember this ?
A. Yes, I do.

BY THE COURT.

The COURT never asked that question I believe. PROSECUTION did.

Avvocato , do you confirm it ?

A. Yes.

BY PROSECUTION.

That question was never asked the witness.

RE-DIRECT EXAMINATION (Continued).

Q. Did you ever meet Cavaliere Pernicone ?

BY PROSECUTION .

This is re-direct examination . This is a leading question .

BY THE COURT.

Direct Examination is over and we cannot continue to examine this witness for ever, the COURT has permitted a few extra questions, but is not going to open the case again.

RE-DIRECT EXAMINATION (Continued). 56

The question is the following : Have you ever been confronted with Cav. Perniconi ?
A. Yes.

Q. Where ?
A. In Rome.

Q. In the presence of whom ?

1669

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

A. Major Vecchiolla . I believe Mr. Lopes and Palumbo.

Q. What was the outcome of the confrontation ?
A. That he had never seen me.

LO PORTO 's DEFENSE is over.

DEFENSE for LO PORTO RESTS.

1670

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

REBUTTAL BY PROSECUTION.

1 WITNESS: Roderick P.ROBINSON.

BY PROSECUTION/

Lt.Robinson has been called to test the veracity of witness Mr.Williams.

The witness is sworn in.

DIRECT EXAMINATION.

Q. What is your name and rank?
A. Lt.Roderick P.Robinson.

Q. Are you an officer of the British Forces?
A. Yes.

Q. What is your present assignment?
A. I have been assigned by the Allied Commission to carry out an investigation regarding the financial side of COGENA.

Q. Are you a member of Finance Sub-Commission, Allied Commission, Rome?
A. Yes.

Q. To the best of your recollection when were you first assigned to my office?
A. About 15 or 16 November.

Q. What year?
A. 1945.

Q. Did you receive any instructions from me?
A. Yes, you instructed me to carry out an investigation into the accounts of COGENA.

Q. And in pursuance of these orders and in order to carry out such orders what did you do?
A. I came to Naples, I contacted several people in the COGENA Offices and I also went to the Ministry of War Transport to see Mr.Williams.

Q. Did you go to see Mr.Williams by my specific request?
A. Yes, your order was transmitted to me through Lt.Col.

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

Weyman.

Q. Did you question Mr.Williams?
A. Yes.

Q. Was the interrogation about the COGENA case?
A. Yes, precisely.

Q. Did you make him understand clearly the object of your visit?
A. Yes, I showed him the written authority to conduct the investigation.

Q. How many times did you see Mr.Williams?
A. Three times in all.

Q. And each time you saw him did you tell him that you were carrying out investigations about the COGENA case?
A. No, only the first time and afterwards he recognized me as the person who was carrying out the investigation.

Q. In other words the other times he saw you he recognized you as the person concerned in the investigation.
A. Yes.

Q. Did you ask Mr.Williams for anything?
A. Yes, I asked about the allotment of schooners by the Schooner Control Board.

Q. Did he tell you anything about these books?
A. Yes, he gave me the books and the second time he told me that there was nothing wrong with the books.

Q. Did he tell you anything else with regards to the books, that is, how long you could keep them and when you had to return them?
A. Yes, when he gave me the books the first time he told me that I was to return them by 31 December because that was the date when the case was to come to trial.

53

Q. Did you sign a receipt for those books?
A. Yes, I did.

Q. Did you insist for the receipt?
A. No, Mr.Williams advised me to issue him a receipt.

Q. Lieutenant, will you stand up please and look round and see if Mr.Williams is present, the person whom you questioned?

1672

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

A. Yes.

The witness points out Mr.Walter Williams.

BY DEFENCE COUNSEL.

I want to say that on 21 February I received a letter from Mr.Williams which the day after I showed to PROSECUTION. This letter enclosed a receipt signed by the present witness. May I present it to the COURT?

BY PROSECUTION.

With the permission of the COURT I would like to say that this letter addressed by Mr.Williams to Mr.Serrao has no bearing with the issues in this case.

BY DEFENCE COUNSEL.

Q. May I show it to the COURT?
A. Yes, you can.

Q. Your Honour, Mr.Williams has been called by PROSECUTION. He was out of the Court room, then the Prosecutor called him in and he is present here.

BY THE COURT.

Q. What is the materiality of this testimony?
A. We are attacking Mr.Williams' credibility.

Q. The letter says that there was no question of an interrogatory and that nothing had been discussed bearing on the SARNELLA case. This has been Mr.Williams' original testimony.
A. May it please the COURT, I interrogated Mr.Williams and asked him whether he was questioned in respect to COGENA case. I think he said he was not. I then pressed the matter and asked him whether he was ever questioned by Lt.Robinson of the Finance Sub-Commission and he said he was not.

Q. We have the original testimony and also the testimony of the present witness. This document will not be received as an exhibit but as an Ex-parte statement.

1673

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

BY DEFENCE COUNSEL.

For our own satisfaction and in view of the seriousness of the charge laid against Mr.Williams we would like to have Mr.Williams called here.

BY THE COURT.

Q. Both members of the COURT and myself have taken down notes of the testimony and the testimony states that he said he had never met either Major Richardson or Lt.Robinson. This is what we have in our notes. We shall take the document as an Ex-parte declaration, that is, this is what he says. PROSECUTION has offered this witness in Rebuttal. Now we receive this statement ex-parte for whatever worth it may have. Are you satisfied, Mr.Prosecutor?

A. Yes, Your Honour.

CROSS-EXAMINATION BY DEFENCE COUNSEL.

Q. Did you take down a record of the interrogatory under the form of questions and answers and did you get Mr.Williams' signature underneath?

BY THE COURT.

The issue before the COURT does not refer to the interrogatory of Mr.Williams. In cross-examination he testified that he had never met Major Richardson or Lt.Robinson, therefore PROSECUTION produced this witness who has stated he met him. Now it is up to the COURT to weigh this testimony and pass on its value.

BY DEFENCE COUNSEL.

Q. Will the COURT excuse me but I am an illiterate man: Mr. Williams is here, I beg the COURT to listen to him.

A. He was questioned already.

Q. Can't he be questioned again?

A. We are wasting our time over things that aren't worth a penny. The COURT has listened to both parties and is also in possession of a statement. It is the COURT that has now to determine what weight is to be given. The COURT can only pass judgment.

The witness is excused.

1674

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

2 WITNESS: Rena.. PAGANO.

The witness is sworn in.

DIRECT EXAMINATION.

Q. Where are you employed?
A. At the Lloyd Triestino but at present I am attached to COGENA.

Q. During the month of September 1944 where were you employed?
A. At the COGENA.

Q. Who was in charge of COGENA at that time?
A. Comm. SARNELLA.

Q. Will you tell us what your duties were at that time?
A. I was in charge of the Registry Office.

Q. Will you tell us what precisely your duties were?
A. I opened the incoming mail.

Q. When the mail arrived what was the first thing you did?
A. I registered it in a special Register.

Q. And did you mark the correspondence to prove that it had been received?
A. I stamped it with the date of the arrival.

Q. And then what did you do?
A. It was initialled according to the office it was destined to.

Q. And if the correspondence was addressed to Dr. SARNELLA at COGENA?
A. If the letters were personal and private they were left closed for Dr. SARNELLA.

Q. And if the letters were addressed to COGENA, Naples?
A. They were opened at once.

Q. And to whose office would you have sent them?
A. To the office they were destined.

Q. Didn't Dr. SARNELLA look at all the correspondence?
A. He didn't look at all the correspondence.

Q. Did he initial the correspondence he examined?
A. Yes, he did.

1675

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

Q. Do you recognize these initials?
A. Yes, I believe I do.

Q. Look at this paper, are Dr.SARNELLA's initials on it?
A. Yes.

Q. Are you certain that they are his initials?
A. They should be his, but I am not sure.

Q. Look at these others.
A. Yes.

Q. Look at this. (PROSECUTION shows a telegram).
A. Yes.

Q. And this other.
A. This as well.

Q. Do all of them bear the stamp showing the date they arrived?
A. Yes, all of them.

Q. And in the course of your duties would you have passed these papers on to Dr.SARNELLA during the same day?
A. They were usually given to him in the evening.

Q. And to your knowledge when would Dr.SARNELLA have seen them?
A. He could have seen them the same evening if he had time, otherwise the day after.This was the habit.

Q. Will you look at this letter and tell the COURT when it was received?
A. On 15 September 1944.

Q. According to the usual procedure when should Dr.SARNELLA have received it?
A. On 16.

Q. I ask you to look at this one.
A. On 16 September 1944.

49

Q. When would he have seen it?
A. The same as the others, either in the evening or the day after.

Q. When was this one received?
A. On 16 September 1944.

Q. And when would he have seen it?
A. The same as the others.

1676

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

Q. Is this 16 September 1944?
A. 18 September 1944.

Q. And would he have seen this telegram?
A. If the telegram had arrived in the morning he would have seen it during the day.

Q. I ask you it.
A. On 18 September 1944.

PROSECUTION offers letters in evidence as they have a bearing on the documents produced by the DEFENSE on the question of the days of absence and ,therefore, the indemnities.

BY DEFENSE COUNSEL.

I ask that Dr.SARNELLA be heard as a witness.

BY PROSECUTION.

This is evidence in Rebuttal.

BY DEFENSE COUNSEL.

May I answer?

BY THE COURT.

Q. I wish to give one order at a time. I have not yet looked at these documents and I have not the remotest idea what they all are about. Have you looked at them ,Avvocato?
A. No, Your Honour.

Q. PROSECUTION has produced them as evidence in refutation.
A. I do not object; I only wish to express my opinion; I do not know the procedure.

BY PROSECUTION.
The Avvocato states he has not yet looked at them; I would like him to do so.

BY THE COURT.

Under our procedure we have reached this point. When PROSECUTION produces these documents as exhibits in Rebuttal of some documents you have produced,you have the right to objecy

48

1677

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

to their being received, but of course a mere objection is not enough. You must state the legal foundation on which your objection is based and the COURT has not the remotest idea of what may be in those documents.

BY DEFENCE COUNSEL.

We object because our documents have been received by the COURT as hearsay evidence. We have then produced witnesses who have corroborated. PROSECUTION must allow me to explain that even without looking at them I have understood what they are all about. The documents are meant to prove that on 16,18,19, Mr. SARNELLA was in Naples while we proved that he was in Rome. This is circumstancial demostration. When a letter arrived and Dr. SARNELLA was not in, what was done? They waited for SARNELLA's return and then SARNELLA signed it.

BY THE COURT.

This witness, according to the opinion of the COURT, has only testified as to a practice.

BY PROSECUTION.

This witness has laid sufficient predicate to establish other than a custom in the course of business. We don't consider this as positive proof in the same way as the documents they have produced in the course of their Defence case are not positive proof. We shall produce these documents. The COURT will then accept them for whatever value they may have.

BY THE COURT.

I believe what is worrying the DEFENSE is the value the COURT may give to these documents is they are received as evidence. I don't believe the objection of the DEFENSE is good in the law but even if the COURT permits the testimony as the explanation of a custom, the whole testimony will amount to this:that it was a custom. If in the particular instance this custom was or wasn't followed, we have no proof before this COURT. Avvocato, I am inclined to think that your objection is not good but if the COURT does not sustain it, it is the duty of the COURT to warn you that these documents have little or no weight.

Q. Have I been clear?
A. Yes, Your Honour.

Q. The COURT will receive these documents for whatever weight

1678

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

they may have reference to the testimony of the witness that that was the usual procedure.

BY DEFENCE COUNSEL.

Am I permitted to ask the witness a few questions?

BY THE COURT.

Q. The COURT will give you an opportunity to crossexamine when PROSECUTION is through. Do these documents represent official correspondence received by COGENA?
A. Yes, Your Honour.

BY THE COURT.

Documents are all received as one Exhibit and will be identified in the records as Ex.W.

DIRECT EXAMINATION (COntinued).

Q. Did you register the outgoing mail?
A. There was no official Register for that purpose.

Q. But were some kind of records kept?
A. For for accounting purposes, that is postage expenses.

Q. Did you write down the name of the person to whom the letter was addressed?
A. Yes.

Q. Was the date of the departure of the letter registered?
A. Yes, the date of the departure of the letter was registered.

Q. Were you aware of the procedure Dr. SARNELLA followed in regard to the signing of letters?
A. No.

Q. If a letter had been typed to-day, in the customary practice of office work when would it have been signed by Dr. SARNELLA?
A. On the following day.

Q. Then this was the customary practice.
A. Yes, in the evening or the following day.

Q. Is this what you call Postage Expense Book?
A. Yes.

1679

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

Q. Are you sure?
A. Yes, I am.

Q. Look please at these letters; are they letters coming from COGENA offices?
A. Apparently they are.

Q. Look at them carefully.
A. Yes, but they are not signed.

Q. This does not show that the original was signed.
A. This should be the copy of the letter.

Q. What I asked you is this:does this show that the original letter was ~~xxx~~posted?
A. Yes.

Q. And in the ordinary course of business would it have been signed by Dr.SARNELLA as shown by the copy?
A. That is correct.

Q. What is the date of the letter?
A. 15 September.

Q. Just now you told the COURT that it was customary to have the letters signed on the following day.
A. Yes, but when Dr.SARNELLA was at Naples.

Q. As you previously stated, in the course of the usual office procedure Comm.SARNELLA would have signed it on the following day.
A. Yes.

Q. Then check please these letters and see when they were posted.
A. Here is one posted on 15, ~~one~~ on 16, one on 16 and another on 20.

BY THE COURT.
The COURT wishes them to be first shown to DEFENSE COUNSEL.

45

DIRECT EXAMINATION (Continued).

Q. What was the purpose of these books?
A. To justify postage expenses I made, in view of the fact that I was allowed some funds of which I was to answer.

Q. And you kept that book in order to keep a record of all correspondence posted by you?
A. Above all to justify postage expenses made by me.

1680

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

Q. Therefore just in order to justify your expenses you wrote down in this book that on such and such a date you had sent a letter, let us say, to Catania.
A. Yes, a letter to Catania, a telegram.

Q. And these are all letters which were posted.
A. They should have been posted.

Q. What do you mean by this? Do you mean that they have not been posted?
A. Following the usual office procedure if they were signed they were posted.

Q. Then following the usual office procedure this letter should have been posted.
A. In the course of the usual procedure, however I cannot guarantee....

Q. You must not make your observations but only answer the questions.
A.
BY THE COURT.
You must answer the questions as they are addressed to you.

DIRECT EXAMINATION (Continued).
Q. And if during the course of the usual proceedings those letters had been posted, would they have been listed in the Register?
A. They would have been registered there.

Q. Then according to the usual proceedings they would have been registered in this book?
A. Yes.

Q. Then I have asked you to look in this book to see if these letters had been listed in it.
A. But not...

Q. You have said that one was posted on 15, one on 16 and another on 20.
A. I told you that some letters were posted to Catania, to Nicotera (See the exhibits). I don't know if they are those letters, I cannot guarantee it.

Q. I should like to tell the witness not to give voluntary evidence.

BY THE COURT.
Witness, allow the lawyers to make ~~their~~ their case,;they will

1681

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

ask questions a... you will reply. You are ...t the lawyer in this case. When replying the questions state only what you know.

DIRECT EXAMINATION (Continued).

Q. According to the usual procedure those letters would have been posted.
A. Yes.

Q. And according to the usual procedure you would have written in the Register as you posted them.
A. Yes.

Q. Then look in the Register and say when it was, according to you, that these letters were posted. I don't ask you to guarantee anything.
Q. On 20 it was a telegram and not a letter that was posted and a registered letter.

Q. I ask you to look at these letters and say on what day they were posted, according to the Register.
A. How can I see those letters from the date but not from the number of the Register? I cannot.

BY THE COURT.

While the witness is looking for the information, the COURT will recess.

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10 Minute Recess.

DIRECT EXAMINATION (Continued).

Q. I ask you to look at these letters and say on what day they were posted according to the Register.
A. On 20.

43

Q. All of them?
A. Yes.

Q. Give me the letters. Will you look at this paper?
A. Yes.

Q. Is this your signature?
A. Yes, it is.

1682

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

Q. Read it. (Witness reads). Is it right?
A. No, there is a mistake.

Q. What is the mistake?
A. I made a mistake on the 16 as there was a telegram and not a letter.

Q. Was this letter shown to you before you made this statement?
A. I don't remember exactly.

Q. From Dr.Allocca?
A. I don't remember.

Q. Did this happen on 25 February?
A. Yes.

Q. Was it shown to you then and as a result of this have you made a statement? What is the truth? That which you told the COURT or your statement?
A. I became aware of this error only now on re-examining the Register.

Q. What is the mistake?Show it to me.
A/ A telegram to Bettuccia Nicotera, receipt of telegram No.104.

Q. Will you show me in the Register the date when it was posted?
A. Here it is.

Witness shows the date and says that on 16 there was a telegram and not a letter sent. As shown from the Register 2$,10 lire is not the payment for a letter but for a telegram.

Q. In the course of the usual procedure who signed telegrams?
A. Comm.SARNELLA.

Q. Then the telegram which left on 16 in the normal course of proceedings would be signed by Dr.SARNELLA. We offer this letter in evidence.

No objection on the part of DEFENSE COUNSEL.

This document, together with the Register, is received in evidence 42 and identified as Ex.X.

1683

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

DIRECT EXAMINATIO (Continued).

Q. Have you testified that if the letters were written during the absence of Dr.SARNELLA they would have awaited his return for his signature?
A. I have not testified because the request was not made to me.

Q. When I showed you the letters and asked you when Dr.SARNELLA would have signed them, you stated that he would have signed them either on that same day or on the following day. You added that if he were absent you would have awaited his return. Is that correct?
A. Yes, Mr.Bobba signed them.

Q. Then Mr.Bobba signed in his absence.
A. This was signed one year ago, I don't know whether at that time he used to sign them.

Q. Do you know what form was used in September 1944?
A. I believe that one awaited the Director in order to send the post.

Q. I did not ask you about posting, I asked you about signing.
A. Yes, my reply referred to that.

Q. How long have you been employed at COGENA?
A. From 2 February 1944 on.

Q. Then you say that in February 1944 the form was to wait for the return of Dr.SARNELLA in order to sign the letters.
A. Yes, because work was rather slack then.

Q. And before September 1944 had [illegible] you even less work?
A. Yes, at the beginning we had very little work.

Q. When I showed you a letter dated 31 August 1945 was it at that time the custom of the accountant Bobba to sign the letters in Dr.SARNELLA's absence?
A. It was possible but when I sent letters I did not look at them.

Q. I have shown you a letter of 31 August and you have said that it was the custom of the accountant Bobba to sign letters; in September 1944 or in the former period was it the custom to wait for Dr.SARNELLA to sign them?
A. Yes, usually.

Q. Are you certain?
A. Not certain, no, because I did not study signatures on let-

6841

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

ters very caref `ly. I only sent them.

Q. Look at that letter and see who signed it.
A. Accountant Bobba.

Q. Is it correct that there is the name of Dr.SARNELLA and it is written for Dr.SARNELLA?
A. Yes.

Q. What is the date?
A. 31 July 1944.

Q. Then you say that it was customary to await the return of Dr. SARNELLA in the period September 1944 and the period prior to that?
A. It was not customary, it was not necessary to wait.

BY PROSECUTION.

PROSECUTION offers this document in evidence.

No objection from DEFENSE COUNSEL.

The document is received in evidence and identified as Ex.Y.

BY THE COURT.

The COURT points out that it is evidence concerning customs.

BY PROSECUTION.

The question of the dates is very important.

BY THE COURT.

I do not wish to hinder you in your case but I find that we are taking up a lot of time.

CROSS-EXAMINATION for Eugenio SARNELLA.

Q. Did the Commendatore go away at times?
A. Yes.

Q. Then what happened? Was COGENA closed for that time?
A. No, it was not.

Q. Did correspondence continue?
A. Yes.

Q. Then were letters also posted?
A. Yes.

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

Q. Who signed these letters in the absence of Comm. SARNELLA?
A. Either we awaited the arrival of Comm. SARNELLA, if the letters weren't urgent, otherwise they were signed by Cav. Bobba.

Q. Were the letters sometimes prepared in the evening and then the Commendatore signed them on the following morning?
A. Yes.

Q. If he did not sign them in the morning what happened?
A. Letters remained suspended till they were signed.

Q. If on the evening of departure he could not sign all the correspondence, what happened the next day?
A. I believe that he had a direct understanding with his substitute, Cav. Bobba. I am not sure.

Q. When the Commendatore was absent and there was in and out-correspondence did you register it and then what happened to these letters?
A. It was distributed to all the different offices.

Q. When SARNELLA arrived did he see letters which had arrived during his absence?
A. If the heads of the different offices showed them to him.

Q. So you don't know this?
A. No.

Q. Excuse me but I would like to know something, if you don't mind. Are you a regular employee at COGENA?
A. Yes.

Q. Were you simply in charge of postage stamp Register?
A. Precisely.

Q. Did you collect them?
A. I stuck them on.

DEFENSE CASE RESTS.

39

PROSECUTION CASE RESTS.

1686

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

SUMMATION BY AVV. ZACCARIA for Santo LO PORTO(1st part).

SUMMATION BY AVV. GRANUCCI for Attilio SARNELLA.

SUMMATION BY AVV. PORZIO for Eugenio SARNELLA.

SUMMATION BY AVV. BENEVENTANO for Santo LO PORTO(2nd part).

SUMMATION BY PROSECUTION.

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

2 March 1946 09:30 hrs.

BY THE COURT

The COURT has reached its verdict. It will announce its verdict in two sections : the first will be a finding of the facts on which the verdict is based , the second will be the verdict itself.

This is the unanimous decision of the COURT.
The COURT wishes this point to be clearly fixed in the mind of everyone : There will be no demonstrations either of approval or of disapproval regarding the verdict issued by this COURT . Whoever so acts will be dealt with promptly by this Court for contempt of COURT.
The finding of the facts given by the COURT is as follows:

Paragraph A- That on or about the end of August or the first part of September 1944 there was in existence at Naples a public institution known by the name of Schooner Control Board, which was charged with the administrative functions and among other things of granting permits to the Captains of Italian schooners in Mediterranean waters.

Paragraph B.- That the Schooner Control Board was organized and operated by and under Allied Authorities.

Paragraph C.- That an organization known as COGENA carried out the executive details and the orders issued by said Schooner Control Board .

Paragraph D.- That the Schooner Control Board consisted of three members, two of whom were Allied officials.

Paragraph E.- That the third member of the Schboner Control Board was one Dr. Eugenio SARNELLA, who was also the Director of COGENA and is one of the accused in this case.

Paragraph F.- That Dr.Eugenio SARNELLA is a blood relative of Attilio SARNELLA,one of the defendants in this case. 37

Paragraph G.-+That at said time, that is at the end of August or the beginning of September 1944, Attilio SARNELLA and Santo LO PORTO entered into an agreement, which,

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

with the intent of defraud , they unlawfully would pretend from the Captains of the Motor Schooners,by means of the public office held by Dr. Eugenio SARNELLA and the blood relationship existing between Attilio SARNELLA and Dr. Eugenio SARNELLA, sums of money for their own private gain ; that they, Attilio SARNELLA and Santo LO PORTO, would be able to obtain from the Allied Authorities the necessary sailing permits for the vessels of said Captains.

Paragraph H.- That in pursuance of the agreement of conspiracy, the said Attilio SARNELLA and Santo LO PORTO met Captains Provenzano Giovanni, Strazzera Luca, civilian Captains of Italian Motor Schooners and that the said Attilio vaunted his blood relationship and his influence with Dr. Eugenio SARNELLA in his capacity as a Public Official and undertook by this means to procure Allied permits for the sailing of the schooners of these two captains on the promise by the said Captains to pay him, that is to the said Attilio SARNELLA, a sum of money as a price for his good offices with his brother ,Dr.Eugenio SARNELLA, who occupied the position of a public official and/or employee performing a public office,dealing with the issue of such permits.

Paragraph I .- That requests for permits were filed by Captains Strazzera and Provenzano and were approved by the Schooner Control Board and the permits were duly issued.

Paragraph J.- That notwithstanding Attilio SARNELLA well knew that his pretence of aid in obtaining such permits through the credit vaunted with his brother, in his quality of public official and/or employee performing a public office, were false, by means thereof and with the intent to defraud he obtained fraudulently a sum of money from Captains Strazzera and Provenzano, out of which he kept the sum of 40,000 lire for his own private gain and gave the sum of 10,000 and/or 15,000 lire to Santo LO PORTO for his own private gain and as a reward for his assistance in the fulfillment of their conspiracy.

35

Paragraph K.- That in so acting Attilio SARNELLA did not receive money on the pretext that he was to purchase the favour from his brother dr. Eugenio SARNELLA or reward, as is set forth in Art.346 of the Italian Penal Code.

1689

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

Paragraph L.- That thereafter, in the month of September 1944 and nearer the middle of that month, acting in accordance with the agreement of conspiracy and/or in any event individually and without Attilio SARNELLA being physically present, Santo LO PORTO met Palumbo Francesco and Sieli Antonino, Italian civilians, Captains of Motor Schooners and vaunted his influence with Dr. Eugenio SARNELLA, in the capacity of a Public Official and/or employee and by reason thereof he agreed to help them in the procuring of Allied permits for the sailing of the schooners of these two Captains on a promise of these two Captains to pay Santo LO PORTO a sum of money as a price of his good offices with Dr. Eugenio SARNELLA in his capacity of Public Official and/or employee ; that the said requests were filed by Captain Palumbo and Sieli and were approved by Schooner Control Board and permits were issued; notwithstanding Santo LO PORTO well knew that his pretance of aid in obtaining those permits through his vaunted credit with Dr. Eugenio SARNELLA in his capacity of public official and/or employee performing a public office, by means thereof and with the intent to defraud, were false, he did faudulently obtain from Captains Palumbo and Sieli the sum of 100,000 lire, from which he kept a substantial part for his own private gain.

Paragraph M.- That thereafter, in the month of November 1944, Santo LO PORTO met Capt. Provenzano, civilian Captain of an Italian Motor Schooner and vaunted his influence with Dr. Eugenio SARNELLA, in the capacity of the Doctor as a public official and/or employee, and by reason thereof agreed to aid him in the procuring of an Allied permit for the sailing of the Motor Schooner of Capt. Provenzano, on the promise of said Captain to Santo LO PORTO of a sum of money for his good offices with Dr. Eugenio SARNELLA, in his capacity of public official and/or employee.
That the request was filed by Capt. Provenzano and was approved by the Schooner Control Board and the permit was duly issued; That notwithstanding Santo LO PORTO well knew that his pretence of aid in obtaining such permit through his vaunted credit with Dr. Eugenio SARNELLA, in his capacity of public official and/or employee performing a public office , was false, by means thereof and with the intent to defraud, Santo LO PORTO fraudulently obtained from Capt. Provenzano a sum of money, approximately 50,000 lire, of which amount he

35

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

kept a substantial part for his own private gain.

Paragraph N.- In receiving the amounts of money from Captains Palumbo, Sieli and Provenzano, as described in the two preceding paragraphs, Santo LO PORTO made the pretext that he was to buy said paper from Dr.Eugenio SARNELLA and/or reward him therefor.

Paragraph O.- That the testimony given in this trial by Captains Provenzano, Strazzera, Palumbo and Sieli is sustained by the oral and written admissions of the defendants Attilio SARNELLA and Santo LO PORTO.

Paragraph P.- That the testimony given by Santo LO PORTO that Attilio SARNELLA and Santo LO PORTO or either of them were participants or part of a conspiracy with Dr.Eugenio SARNELLA is not corroborated by direct or circumstantial evidence that in any important respect confirms not only that the offence was committed but that Dr. Eugenio SARNELLA did commit it.

Paragraph Q.- That without regard to the above the testimony of Santo LO PORTO in that particular is so lacking in convincing evidence as to raise grave doubts as to its veracity.

Paragraph R.- That the testimony given by Santo LO PORTO that he gave Dr. EugenioSARNELLA either directly or through Attilio SARNELLA amounts of money not due to him, but as bribes or reward for an act of his office in issuing permits to Captains Provenzano, Palumbo, Strazzera and Sieli or to either of them, is not corroborated by direct or circumstantial evidence which under any material respect might confirm not only that the offence or offences were committed or that Dr. Eugenio SARNELLA did commit them.

Paragraph S.- That without regard to the above, testimony of Santo LO PORTO in that particular is so lacking in convincing evidence as to raise grave doubts as to its veracity.

Paragraph T.- That the offence of criminal association with the purpose of committing crimes, as stated under Article 416 of the Italian Penal Code and interpreted by the Italian Court of Appeal, is not applicable to

1691

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

the facts in this case.

Paragraph U.- That whereas the specifications under the charge of conspiracy affirm a corrupt agreement to commit an illegal act, the evidence shows that the corrupt agreement was to commit a lawful act in an unlawful manner; the COURT finds that no injustice has been done to the accused by the lack of specification to affirm the charge of conspiracy in this respect and directs the specifications thus amended and corrected.

Paragraph V.- All the collateral facts not numbered in this verdict, which are considered necessary to support the verdict in all particulars or in part have been considered and found, supporting what has been stated above.

The defendants will approach the center of the court.

Now we shall announce the finding of the law.

For the accused , Dr. Eugenio SARNELLA :

On Charges 1, 2, 3, 4 and 5 and Paragraph a) of the charge under the Italian Law the COURT renders a verdict of NOT GUILTY.

For the accused, Attilio SARNELLA :

On Charge 1, GUILTY ; on Charge 2 , GUILTY ; on Paragraph b) of the Charge under the Italian Law, GUILTY.

For the accused Santo LO PORTO :

On Charge 1, GUILTY ; on Charges 2, 3, 4, and 5 NOT GUILTY.
On Paragraph b) of the Charge under Italian Law , GUILTY.

As to all three defendants, under Paragraph 3 of the Charge under Italian Law , the COURT finds you NOT GUILTY and directs the Charges be dismissed.

As to the defendant Dr. Eugenio SARNELLA he is herewith released from custody and it is ordered that the sum of 33 money heretofore deposited by him as bail be immediately refunded to him.

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

The COURT must now consider the question of punishment . Has PROSECUTION any evidence of previous convictions ?

BY PROSECUTION.

The PROSECUTION has thoroughly examined the past records of the accused and it has ascertained that they have never been charged with any offence, neither arrested nor imprisoned. They have been hard workers and their past is blameless and in view of their past record and also of their sufferings, PROSECUTION begs Your Honour to use every possible consideration in sentencing them, and that the sentence be the minimum possible. The second reason is that the situation of which we have been investe ed, that is, of investigating in the best possible manner, does no longer exist; therefore, there is no reason why a fixed sentence be inflicted on the defendants Attilio SARNELLA and Santo LO PORTO.

BY THE COURT.

Q. How long have the defendants been in jail ?
A. About nine months.

Q. What are the exact dates ?
A. Attilio SARNELLA has been detained since about 25 June 1945 and LO PORTO Santo, I believe, since 29 May 1945. The sums involved are small, Your Honour, and I believe the accused learnt their lesson. We have performed our duty in putting a stop to that racket and, remembering that much undue hardship would be inflicted on the families of the accused, PROSECUTION would ~~M~~and no objection if their sentence were suspended.

Q. I do not think the COURT has the power to pass a suspended sentence on a crime under Italian Law.
A. I wonder whether the fact they have been tried under our procedure could not have an effect on the matter.

Q. Italian Law, as I understand it, fizes a sentence. The COURT has the power to pass any sentence it deems just. In view of the recommendation made by PROSECUTION I do not think it necessary for the DEFENSE to add anything further.

32

Recess

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

SENTENCE.

BY THE COURT.

Before passing sentence on the two accused the COURT wishes it to be noted in the records that the COURT has complimented the PROSECUTION for the able manner in which they have presented their case and for the fairness which has prompted their recommendations to the COURT, an act on their part which represents the highest traditions of Anglo-American law where a Prosecutor is not a Prosecutor. The COURT also wishes to compliment especially Madam the stenographer and last but not least Madam the interpeter who I believe all of us will agree has done a very accurate job of work during the trial of this case. Now the COURT will pass sentence.

ATTILIO SARNELLA :

On Charge 1 the COURT sentences you to one(1) year's imprisonment and a fine of 3500 lire to be paid on or within 1 July 1946. In default of payment you will serve 3 additional months imprisonment.

On Charge 2, the COURT sentences you to one(1) year's imprisonment and a fine of 3500 lire to be paid on or within 1 July 1946. In default of payment of the fine you will serve 3 additional months imprisonment.

On paragraph b) of the Charge under Italian Law the COURT sentences you to one(1) year's imprisonment and a fine of 3000 lire to be paid on or within 1 July 1946. In default of payment of this fine, you will serve 3 additional months imprisonment.

The sentences under Charge 1 and 2 and paragraph B of Italian Law will be CONCURRENT and are hereby SUSPENDED as of this date. Fines are NOT SUSPENDED and if not paid the terms of imprisonment will be served CONCURRENTLY.

SANTO LO PORTO :

On Charge 1 the COURT sentences you to one(1) year's imprisonment and a fine of 5000 lire to be paid on or within 1 July 1946. In default of payment you will serve 3 additional months imprisonment.

31

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

On Paragraph B of the Charge under Italian Law the COURT sentences you to 2 (two) years' imprisonment and a fine of 5000 lire to be paid on or within 1 July 1946. In default of payment you will serve 3 additional months imprisonment.

The sentences under Charge 1 and Paragraph B of Italian Law are CONCURRENT and are hereby SUSPENDED as of this date. The fines are NOT SUSPENDED , and if not paid the terms of imprisonment will be served CONCURRENTLY.

BY PROSECUTION.

PROSECUTION wishes to thank the COURT for the able and just manner the COURT has handled this case and would like to add that the manner the COURT has dealt justice should be a good example for all those who have been present during the last three weeks of the high sense of justice shown by our Allied Courts in handling cases here in Italy.

The Court is adjourned.

30

1695

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

JOHN K. WEBER
Colonel, Infantry
President of Court

Lt.Col.A.J.C. BLOCK,D.S.O?
24th Field Regiment, R.A.
Member of Court

Major F.D.STOTT
Hq 56 Area
C.M.F.
Member of Court

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

File V

L2A

HEADQUARTERS
NAPLES LIAISON GROUP
ALLIED COMMISSION
LEGAL DIVISION
APO 394

MAG/abj.

27 April 1946.

SUBJECT : Sentence in COGENA case.

TO : Chief Legal Adviser, Headquarters, Allied Commission , Legal Sub-Commission.

The case record

1. In compliance with telephonic instructions of Chief Legal Adviser this date, transmitted herewith in duplicate is copy of sentence of Court in the COGENA case, 2 March 1945.

2. Every possible effort is being made to expedite the completion of the record in this case at the earliest moment .

For the Chief Liaison Officer :

Rosario A. Gaziano
ROSARIO A.GAZIANO,
Capt. Infantry.,
Senior Legal Officer.

LEGAL SUBCOMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian - Section
CLERKS
29 April 46

28

1697

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

AC/4196

8 8

21A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/[illegible]/VFS

WS/ns
20 Feb 46.

SUBJECT : FALUMBO Francesco.

SUBJECT : Ministero dell'Interno.

FALUMBO Francesco was required as a witness for the prosecutio in the Cogena case at Naples. He was not under arrest.

He has cabled his family to that effect.

Anthony P. Nugent
ANTHONY P. NUGENT,
Major, AUS,
Chief Counsel,
for Chief Legal Advisor.

Copy to : Public Safety S/C
File AC/4196/L.

1698

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

20A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/pa.

9 January 46.

SUBJECT : COGENA case.

TO : Mr. Nicholas F.LOPEZ .

1. Your attention is directed to the attached letter from the Chief Commissioner, which is self-explanatory.

2. Please acknowledge receipt of this communication.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Incl.

2F

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

19A

AC/4196/L. 8th January 1946.

SUBJECT : COGENA case.

TO : Chief Legal Advisor.

The administration of occupational law is a function of Allied Military Government.

Rendition of assistance in the prosecution of a case by representatives of governmental agencies does not make the case the concern of such agencies. It is proper for a representative to report to his superiors concerning the nature of his employment, as such matter is collateral to, but not a part of the judicial proceeding.

Matters within the boundaries of the judicial proceeding itself remain the sole concern of Allied Military Government and must not be shared with such agencies.

Please bring this to the attention of Mr.Lopez, the prosecutor in the COGENA case.

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

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

(181)

3 January 1946

MEMORANDUM FOR THE COMMISSION

On September 15, 1945, I undertook the investigation of the Caltagirone case. I am submitting this memorandum to inform you of my activities to the present time.

With the able assistance of Major Frank L. Vecchiolla, J.A.G.D., U.S. Army, I have made a thorough investigation of the various allegations and rumors relative to malfeasance, misfeasance, and affirmative action and/or omissions relative to Allied Military personnel and Italian civilians working in behalf of the Allied Government in Italy. This investigation, which has exhausted approximately three and one-half months, has now reached the stage where I shall, on or about the 29th day of January, 1946, proceed to trial at the Tribunale in Naples before an Allied General Military Court on the charges preferred against Count Dott. Eugenio Caracciolo, former Director General of Finance, Attilio Caracciolo, and Dante Lo Forte, on charges of bribery, corrupt practices, and other charges preferred against them as defendants. I am also gathering evidence for the preferment of charges against the above-named persons and others for the offense of conspiracy and expediency to commit fraudulent acts. Evidence has also been collected against three other defendants, Italian civilians, and as an expression of confidence in the loyal presence of the Italian Government, I have turned the prosecution of these three defendants over to the Procuratore del Regno at Palermo. I shall send a representative from my staff to Palermo at the time the trials of these defendants commence to sit as my personal observer and who will also verbally report to me.

During the time that I have been charged with the carrying on of this investigation, Major Vecchiolla and I, together with Colonel James J. Carnes, Inf., and members of the Criminal Investigation Division, PBS&T, have made several field trips covering the length and breadth of Italy, and have examined approximately 250 persons who have been connected, either directly or indirectly, with this case. I have also been assisted by Major Colyer Meyman of the Royal Army, and others to examine the books of the Caltagirone Customs Yard (Dogana).

At the conclusion of the trial, I shall submit a fully detailed report relative to the entire case.

24

[signature]
[illegible]
Colonel, A.G.
Attache, U.S. Embassy.

1701

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

1951

SECRET.

SUBJECT:- The Cogena Case.

GHQ GMF

5217/A3.

29 Dec 45.

HQ No.3 District

Copy to:- HQ Allied Commission (your tpm 9499 dated 20 Dec 45 refers)

UNCLASSIFIED

Reference AFHQ letter G-1(Br)5217/A3 dated 22 Sep 45 and telephone conversation TOSH - COHEN of 21 Dec 45.

1. The hearing of the Cogena case will recommence on 23 Jan 46.

2. Please warn the British members of the Court, Major ED STOTT and Lt Col BLOCK that they will be required to sit on the Court on 23 Jan 46 and possibly for several days after, as the case is understood to be complicated.

3. It is suggested that Lt Col BLOCK and Major STOTT should be required to be available in NAPLES from 21 Jan 46 in case the President of the Court wishes to interview them.

Confidential

Major General,

DAG.

JTM.

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

H196 ✓ FRANK 16A

CONFIDENTIAL

F 32482
NOV 091239 A

G/3256
NOV 091525
PRIORITY

AFHQ FROM 'A' BRANCH CMF
ALCOM FOR LEGAL SC

Confidential

CONFIDENTIAL.

Your G1X/15120/852/D and our 5217/A3 both of 6. Have arranged for SMITH to be returned UK release immediately. He has signed certificate of willingness to return whenever required and is reporting troopers on arrival in UK. Essential you notify this HQ soonest whether SMITH will be required on 3 December. Consider his return should not be requested until date for final disposal of case is absolutely firm. 14 days notice of this date necessary to ensure SMITH'S return.

AC DIST

ACTION G - 1 (B) 3
INFO CHIEF COMMISSIONER
LEGAL SC 2
FILE 2
FLOAT

GENERAL HEADQUARTERS
30 NOV
LEGAL SUB-COMMISSION
C.J.O.
DCLO
Chief Provost
CJO
Italian Section
CLERKS
30 NOV 1944

CONFIDENTIAL

DOWN GRADED 22
TO
UNCLASSIFIED

Col. Inf.
Chief Judicial Officer.
for Chief Civil Affairs Officer.

1703

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

15A

HEADQUARTERS, ALLIED COMMISSION
Navy Sub-Commission APO 394

3 November 1945

MEMORANDUM FOR COLONEL WEBER, CHIEF LEGAL SUB-COMMISSION, AC.

Subject: Doctor Eugenio Garnella.

1. After attached letter, NSC/3907, of 1 November 1945, was approved by Mr. Lopez and signed, he requested the Navy Sub-Commission to modify the letter and include complete information as furnished in Legal Sub-Commission, AC, letter AC/4196/L, of 31 October 1945.

2. Your approval of the revised draft would be appreciated.

H. St. J. BUTLER
Captain, U. S. Navy

Revised draft approved.
5/11/45
Anthony J. Marquez Maj.
for John R. Weber
Chief Legal Adviser

1704

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

231

4196 ✓8

11A

Subject : THE COGENA CASE

CHQ CMF

5217/A3

6. Nov 45

HQ Allied Commission
APO 394

Copy to : Legal Sub-Commission
HQ Allied Commission, APO 394

12A

Reference Chief Commissioner's DC letter AC/4196/L dated 1 Nov 45 to DAG.

1. It is considered that every effort should be made to mitigate the hardship of Capt SMITH's present position, and it is proposed, therefore, if you agree, to despatch Capt SMITH to the UK on release, subject to his giving a guarantee to make himself available for return to this theatre when the date of the trial is confirmed.

2. In making this proposal, it is assumed that the case will not be ready for final hearing by 3 Dec 45. You are requested to confirm that this is so and to forward to this HQ as soon as possible a certificate, presumably from Mr. LOPES, that you have no objection to the proposed course.

3. In the event of Capt SMITH being returned to the UK, a clear fortnight's notice of the final date of the trial will be required to ensure his return.

4. If you agree, this HQ will take necessary steps to effect Capt SMITH's release as soon as possible.

LEGAL BRANCH
CLO
DCLO
Chief
CLO
Italian
CLERKS
5 NOV 1945
Miss Cooper

JGW/jaml.

Major General,
DAG.

1705

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

4196

legal

13A

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

Originator's Reference: M/C 1431

Date/Time of Origin: NOV 3/1320A

Message Centre No: C/2777

Date Time Rec'd: NOV 3/1725A

Precedence: PRIORITY

FROM: AMG NAPLES COMMUNE FROM CAPTAIN DANNO SENIOR LEGAL OFFICER

TO : HQ ALCOM CITE ACLEG

UNCLASSIFIED.

Reference telephone conversation regarding SARMELLA case. Major STOTT in Sardegna on military court expected to return in 1 week. Lieutenant Colonel BLOCK out of NAPLES expected back 5 November.

DIST

ACTION : LEGAL SC

INFO : CHIEF COMMISSIONER
FILE (2)
FLOAT

DCLO
Chief Comm-r
CIO
Italian Section
CLERKS
Mr Lopez
5 NOV 1945
HEADQUARTERS

4

19

1706

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

12A

AC/4196/L

1st November 1945

My dear General,

Thank you for your letter of the 27th October concerning the COGEMA case.

I have looked into this case and find that it was originally set for trial on the 31st October 1945, but was thereafter adjourned to 3rd December 1945. This adjournment was necessary because the case required additional investigation which is presently going on. The evidence collected to date appears to indicate that many more persons are implicated than the original reports by Lt Col Heddon and Major Richardson showed. The present status of the case is such that it is not possible at this time to state with any degree of certainty that the case will in fact be tried on 3rd December.

I fully appreciate Captain Smith's position and there is no objection on the part of the prosecution to Captain Smith being released provided he is made available as a witness on the date of the trial.

The investigation of this case is now progressing satisfactorily and everything is being done to bring the case to a close.

Yours very truly,

ELIEMY W. STONE
Rear Admiral, USNR
Chief Commissioner

Major General M.W.H. MACLEOD, CBE, DSO,
Deputy Adjutant General,
GHQ. CMF.

17

Col Webber
Sm. Bragell
Wg Cdr Blackwood.
Consult Lopez
Prepare reply GMS

DO/100/DAG

1155
OCT 29 RECD

SECRET

IIA

FROM : MAJOR GENERAL SIR N.M. MACHOD, CBE MSO

DEPUTY ADJUTANT GENERAL

GENERAL HEADQUARTERS

CENTRAL MEDITERRANEAN FORCE

Confidential

My Dear Admiral

I am a little disturbed at the slow progress we are making in bringing the COCKNA case to a conclusion. As you know, enquiries have been going on for some months now and the end still does not seem to be in sight.

My main worry is that I am having to postpone the release of an officer, SMITH, who is wanted, I understand, as a witness for both prosecution and defence, and he has now been held back for nearly six months. SMITH has already lodged a protest against his retention with the War Office in London, and I foresee pressure being brought to bear from that quarter unless we can show that SMITH has not been held back without good reason. Incidentially, in forwarding SMITH's protest, we told the War Office that we hoped to complete the case by the end of October; in saying this, we were influenced by LOPES' forecast that the case would be brought on again for final trial not later than mid-October.

As I told LOPES when he was here, I entirely agree that the question of any allied responsibility for the matters under investigation in this case should be thoroughly ventilated.

I appreciate the difficulties under which LOPES is working particularly as he only came into the case at a late stage, and we will do everything within our limited resources to help him. Nevertheless, I do feel that we must put some form of time limit on the investigation, and I do not know whether the scheduled time of 1 Dec 45, is firm or is merely tentative.

I should be grateful if you would consider this matter and let me have your views. At the same time, in order to put the War Office more fully in the picture, perhaps you would ask LOPES to let me have a brief statement on the whole position.

Yours Sincerely

N M Machod

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

bringing the COCKEN case to a conclusion. As you know, enquiries have been going on for some months now and the end still does not seem to be in sight.

My main worry is that I am having to postpone the release of an officer, SMITH, who is wanted, I understand, as a witness for both prosecution and defence, and he has now been held back for nearly six months. SMITH has already lodged a protest against his retention with the War Office in London, and I foresee pressure being brought to bear from that quarter unless we can show that SMITH has not been held back without good reason. Incidentially, in forwarding SMITH's protest, we told the War Office that we hoped to complete the case by the end of October; in saying this, we were influenced by LOFTUS' forecast that the case would be brought on again for final trial not later than mid-October.

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I should be grateful if you would consider this matter and let me have your views. At the same time, in order to put the War Office more fully in the picture, perhaps you would ask LOFTUS to let me have a brief statement on the whole position.

Yours Sincerely

W. W. Macleod

Rear Admiral Ellery W. STONE, USNR,
HQ Allied Commission
APO 394

DOWNGRADED
UNCLASSIFIED

Col. Inf.
Chief Judicial Officer
for Chief Staff Judge Advocate

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

10A

HEADQUARTERS ALLIED COMMISSION
APO 394
Legal Sub-Commission

4c/41961c

SUBJECT :- COGENA Investigation

TO :- Navy Sub-Commission HQ.
Allied Commission.

1. Your communication N 30/3863 under date 26 October 1945, with reference to the COGENA case has been received and contents noted.

2. The COGENA case has been set for trial at Naples for the 3rd of December 1945. Doctor Eugenio Sarnella has been charged as follows :-

CHARGE SHEET

1st Charge — Violation of Proc.2 Art.2 Sect.45=
Does any act to the prejudice of good order of the oppupied territory of the safety or security of th Allied Forces or any member thereof.

Particulars — Eugenio Sarnella, Attilio Sarnella, 4 Santo Lo Porto did on or about September 6th, 1944, at or near Naples Italy cospire together to use the Italian schooners M/US Giuseppe No. 1323 to transport cargoes of Pozzolana from Bela to Sicily, such use of the schooners being wrongful, and without authority of Allied Commission Headquarters.

2nd Charge — Violation of Proc.2 Art.2 Sect.44=
Disobeys any order given under the authority of the Allied Forces or the Allied Military Government where no specific punishment is prescribed.

Particulars — Eugenio Sarnella did on or about September 7th, 1944 at or near Naples Italy authorize the use of the Italian schooners

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14

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

1. Your communication N SC/1863 under date 26 October 1945, with reference to the COCENA case has been received and contents noted.

2. The COCENA case has been set for trial at Naples for the 3rd of December 1945. Doctor Eugenio Sarnella has been charged as follows :-

CHARGE SHEET

1st Charge — Violation of Proc.2 Art.2 Sect.45= Does any act to the prejudice of good order of the occupied territory of the safety or security of the Allied Forces or any member thereof.

Particulars — Eugenio Sarnella, Attilio Sarnella, Santo Lo Porto did on or about September 6th, 1944, at or near Naples Italy cospire together to use the Italian schooners M/US Giuseppe No. 1323 to transport cargoes of Pozzolana from Baia to Sicily, such use of the schooners being wrongful, and without authority of Allied Commission Headquarters.

2nd Charge — Violation of Proc.2 Art.2 Sect.44= Disobeys any order given under the authority of the Allied Forces or the Allied Military Government where no specific punishment is prescribed.

Particulars — Eugenio Sarnella did on or about September 7th, 1944 at or near Naples Italy authorize the use of the Italian schooners S.Giuseppe No. 1373 Nuovo Fortuna to transport Pozzolana from Naples to Sicily, in disobedience of orders from Transportation Sub-Commission of Allied Commission

3rd Charge — Violation of Proc.2 Art.2 Sect.34= Offers or accepts a bribe in connection with any official matter.

Particulars — Eugenio Sarnella as a member of the Schooner Control Committee, advised and assisted by Santo Lo Porto did on or about September 18th,

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

1944 at or near Naples Italy, accept from Francesco Palumbo a bribe of 115,000 lire in exchange for a permit to use the Schooner Francesco E. No. 757 to transport a cargo of Pozzolana from Naples to Sicily.

4th Charge — Violation of Proc.2 Art.2 Sect 45= Does any act to the prejudice of good order of the occupied territory of the safety or security of the Allied Forces or any member thereof.

Particulars — Eugenio Sarnella did on or about September 7th, 1944, at or near Naples Italy authorize the use of the Italian schooners S.Giuseppe No. 1373 Nuovo Fortuna to transport Pozzolana from Naples to Sicily, in disobedience of orders from Transportation Sub-Commission of Allied Commission.

CHARGED WITH

a) bribery for an act against his official duties (Art.319,C.P.) having, in his position as Director of CO.GE.NA and member of the Schooner Control Committee", received in various occasions from Mrss. PROVENZANO Giovanni STRABBRA Luca, PALUMBO Francesco, SIELE Antonino and CATANZARO Antonino directly and thru SARNELIA Attilio and LOPORTO Santo a great amount of money, as bribe for release of permits for the following steamships: a) Francesco F.,No. 757 NA; b) Alfredo No.683; c) S.Giuseppe, No.917. d) Nuova Fortuna, No. 1371;

b) the second and third charged with boasting credit (Art. 346, C.P.) for making boast with Mr. Eugenio SARNELIA Director of CO.GE.NA. and member of the "Schooner Control Committee", received several times from Mrss. PROVENZANO Giovanni, STRABBRA Luca, PALUMBO Francesco, SIELE Antonino, and CATANZARO Antonino, great amounts of money as price of his brokerage for release of travel permits for the above mentioned (a) ships;

c) charged with conspiracy against the law (Art.416.C.P.) for having conspired to commit crimes and offences mentioned in the aforesaid charges.

13

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

Nuovo Fortuna to transport
to Sicily, in disobedience of orders from
Transportation Sub-Commission of Allied Commission.

CHARGED WITH

a) bribery for an act against his official duties (Art.319,C.P.) having, in his position as Director of CO.GE.NA and member of the Schooner Control Committee", received in various occasions from Mrss. PROVENZANO Giovanni STRAZZERA Luca, PALUMBO Francesco, SIBILE Antonino and CATANZARO Antonino directly and thru BARNELLA Attilio and LOPORTO Santo a great amount of money, as bribe for release of permits for the following steamships: a) Francesco F.,No. 757 NA; b) Alfredo No.683; c) S.Giuseppe, No.917. d) Nuova Fortuna, No. 1371;

b) the second and third charged with boasting credit (Art. 346, C.P.) for making boast with Mr. Eugenio BARNELLA Director of CO.GE.NA. and member of the "Schooner Control Committee", received several times from Mrss. PROVENZANO Giovanni, STRAZZERA Luca, PALUMBO Francesco, SIBILE Antonino, and CATANZARO Antonino, great amounts of money as price of his brokerage for release of travel permits for the above mentioned (a) ships;

c) charged with conspiracy against the law (Art.416.C.P.) for having conspired to commit crimes and offences mentioned in the aforesaid charges.

3. This office is not in a position to give you any additional information without disclosing the prosecutions' evidence.

JOHN K. WEBB
Colonel, Inf
Chief Legal Advisor

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

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

8 4196 ✓ 8 9A

HEADQUARTERS, ALLIED COMMISSION
Navy Sub-Commission APO 394

NSC/3863
26 October 1945.

From: Navy Sub-Commission, Hq. Allied Commission.
To : Legal Sub-Commission, Hq. Allied Commission.

Subject: COGENA Investigation.

Enclosure: (A) Copy Ministry of Marine ltr. B.7834 of 27 June 1945.
(B) Copy Ministry of Marine ltr. B.10534 of 28 August 1945.
(C) Allied Force Headquarters G-1(Br)/5217/A-3 of 9 September 1945.

1. Enclosures (A) and (B) contain requests from the Italian Minister of Marine to the effect that he be informed of the present whereabouts and status of Doctor Eugenio Sarnella, former director of Cogena, who was taken into custody by Allied Police on 25 June 1945.

2. As of the present date the Navy Sub-Commission has been unable to obtain appropriate information concerning Doctor Sarnella's status, which could be supplied to the Minister of Marine. In response to an inquiry addressed to Allied Force Headquarters, enclosure (C) indicated that final arrangements regarding the case would be made in Rome on Friday, 14 September 1945; however, at the meeting referred to in enclosure (C) it was determined that further investigation of the case was necessary.

3. The Chief Commissioner, Allied Commission, has informed the Navy Sub-Commission that the Legal Sub-Commission should now be able to furnish the required information concerning Doctor Sarnella, as it is understood he will be tried by an Allied Military Government Court. It is requested, therefore, that appropriate information concerning Doctor Sarnella be forwarded to the Navy Sub-Commission at an early date in order that it may be transmitted to the Minister of Marine.

H. St. J. Butler 12

H. St. J. BUTLER,
CAPTAIN, U. S. NAVY,
FOR REAR ADMIRAL
CHIEF, NAVY SUB-COMMISSION, AC.

→ Mr Lopez
Chief Counsel
CIO
Italian Section
CLERKS

1714

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

From: Ministry of Marine (Cabinet)
To: M.C. - Rome
Date: 27 June '45
Ref.: R.7834

Subject: Doctor Eugenio BARNELLA.

On Monday morning, 25th inst., two British officers visited Dr. E. BARNELLA's office in Naples (he is the Director of COGENIA) and, after conversing with him, they took him away and from that moment he has neither returned to his office nor been heard of since.

During the same afternoon said officers searched Dr. BARNELLA's office in Naples, and M.Ps. searched his private rooms in Naples and yesterday, 26th inst., his residence in Rome.

As he is an Executive officer of an organisation under this Ministry, which is carrying out duties of interest to the United Nations, and in regard to which this Ministry is responsible to Allied Authorities in accordance with definite accords in being, it is requested that you make known Dr. BARNELLA's present whereabouts and what reasons existed for the action taken against him.

(Sgd.) THE MINISTER.

DG.-)

(A)

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

From: MINISTRY OF MARINE (Cabinet)
To : N.S.C. - Rome
Date: 28 August 1945
Ref.: B.10534

Subject: Dr.Eugenio SARNELLA.

1. In my letter No.B.7834 of 27th June last I requested information concerning the arrest of Dr.Sarnella, Manager of COGENA and in consequence subordinate to the Ministry of Marine, in order to be acqueinted with the circumstances in which he found himself and the motives occasioning this measure.

2. Subsequently, as you were informed in my letter No.B.7891 of 28 June 1945, I learnt of the allegations against the said Dr.Sarnella from the bulletins appearing in the newspapers.

3. However, two months have passed since that date and as yet I do not know whether these accusations have been confirmed by legal proceedings, nor whether his preventive arrest has been altered to detention.

4. Consequently, and in view of the effect which the above could have on the Government administrative responsibilities, it is requested that the Commission may inform me of the present position of Doctor Sarnella and of the results of the enquiry.

(Sgd) THE MINISTER

IO

GGE/P.

(B)

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

SUBJECT: COGENA Investigation.

ALLIED FORCE HEADQUARTERS
G-1(Br)/5217/A-3
9 September 1945.

HQ Allied Commission

Reference your NSC/3450 dated 4 Sep 45 and enclosure.

1. Since your letter was written Lt. Col. GUNNING of DJAG has visited your HQ and has made arrangements for Major HAMILTON of his Branch to visit ROME on Friday, 14 September. 45, to complete the final arrangements regarding this case.

2. It is hoped that as a result of these discussions you will be in a position to provide the Minister of Marine with an appropriate reply to his letter of 28 Aug 45.

/s/ ILLEGIBLE

for Major General,
DAG., G-1(Br).

MMW/jaml.

COPY

COPY

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

Ltr. 4196

8

8A

1

Confidential

DOWNGRADED
UNCLASSIFIED

Col. Inf.
Chief Judicial
for Chief

8

LEGAL S/C

302

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

7A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4196/L. /rlp.
17 October 1945.

SUBJECT : Capt. F. H. Smith, 1464 - 59 R.E.

TO : G-1 (B), Hq AC.

1. I have given very careful consideration to the status of the above-named. I am not at this time in a position to recommend the release of this officer from service or from any other duty that he is performing in Rome at this time. The case with which he is connected has not yet been fully investigated and it may be necessary that at the close of said investigation and subsequent trial Capt. Smith appear as a witness. If he should be permitted to return to England at this time it may cause further delay and inconvenience not only to the Court, Prosecution and Defense but moreso to himself.

2. I can readily understand, appreciate and be sympathetic toward Capt. Smith's present position. I wish that I could possibly recommend his immediate release but the circumstances which presently exist do not make it either possible or prudent.

NICHOLAS F. LOPES,
Counsel to AC,
C/o Legal S/C.

AC/4196/L. 1st Ind. JKW/rlp.
LEGAL S/C, HQ ALLIED COMMISSION, APO 394, 18 Oct 45. TO: G-1 (B), Hq AC.

I concur in the above recommendation and request that the release date of Capt. F. H. Smith be deferred for a period of one month, and, if necessary, on the conclusion of this period be further detained.

JOHN K. WEBER,
Colonel, Inf,
Chief Legal Advisor.

7

1719

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

64

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4196/L.

HFL/rlp.
11 October 1945.

MEMORANDUM

TO : Admiral Stone.

FROM : Mr. Lopez.

Re: Capt. F. R. Smith.

The following draft is suggested as a reply to Capt. Smith's inquiry of 6 October 1945.

. . . . . .

Dear

Reference is made to your letter of 6 October 1945 wherein you request that I issue necessary instructions for your urgent release.

Referring to your paragraph 2 I feel that you have undoubtedly misunderstood any thought that Mr. Lopez conveyed to you relative to your detention here. The matter does not rest with me but must go through military channels.

You will at the proper time be duly informed by your personnel section as to when your presence here is no longer necessary.

Capt. F. R. Smith
1464- 59 R.E.
C/o Transportation S/C
Hq Allied Commission
(Messages to Room 13)

. . . . . .

1720

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

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/4396/1. NGL/rlp.
11 October 1945.

MEMORANDUM

TO : Admiral Stone.

FROM : Mr. Lopez.

Re: Capt. F. H. Smith.

The following draft is suggested as a reply to Capt. Smith's inquiry of 8 October 1945:

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Dear

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You will at the proper time be duly informed by your personnel section as to when your presence here is no longer necessary.

Capt. F. H. Smith
2/Lt. 59 F.E.
C/o Transportation S/C
Sq Allied Commission
(Messages to Room 19)

. . . . . .

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

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4196/L. NFL/rlp.
11 October 1945.

MEMORANDUM

TO : Admiral Stone.

FROM : Mr. Lopez.

Re: Capt. F. H. Smith.

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Capt. F. H. Smith
1464- 59 R.E.
C/o Transportation S/C
Hq Allied Commission
(Messages to Room 19)

. . . . . .

1722

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

25 Sep. 45

0900 hours

Phone conversation between Col. MM Wheeler and Sgt. Latella; Col. Wheeler requested

"..... Please tell our Col. Hedden to keep in close contact with Naples AMG and Mr. Lopez." The Message was repeated two times.

Sgt Latella.

1723

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

I, M. Carr, Brigadier, Vice President Civil Affairs Section, Allied Commission, hereby appoint Colonel John X. WEBER Inf., ASN 0-102751 to be President and Judicial Officer, and Lt. ~~Col. Sir Thomas ROBERTS (B)~~ See 4002/11/L for amendment and Major F.D. STOTT (B) to be members of a General Military Court for the trial of all persons who may be brought before it.

M. CARR, Brig.,
VP, CA SEC, HQ AC.

26 Sept. 45

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

4459 4196.

SECRET

LEGAL S/C

SECRET

1A

SUBJECT : The COGENA Case.

Confidential

ALLIED FORCE HEADQUARTERS

G-1(Br)/5217/A-3

22 Sep 45

HQ Allied Commission

Reference AICOM signal 5711 of 20 Sep 45 (not to No. 3 District).

1. It is suggested that the most convenient way of making the arrangements for the COGENA case will be for you to deal direct with HQ No. 3 District (copy to G-1(Br)A-3).

2. As you know, Major STOTT and Lt. Col. Sir Thomas ROBERTS have been nominated as members of the court. It is understood from Mr. LOPES that the adjournment which will be asked for on 29 Sep will not be for more than a fortnight; he hopes then to be in a position to go straight through with the case which we are extremely anxious to complete as soon as possible. since it has involved the retention of certain Allied personnel in this theatre after the time that they were due to return to the UK.

3. As the case is to be held in the AMG court in NAPLES, perhaps you would instruct the NAPLES AMG office to keep in the closest contact with HQ No. 3 District.

DOWN GRADED UNCLASSIFIED

SECRET

for Chief Civil Affairs Officer.

M.M. Wheeler, Lt Col AAG
/Major General,
DAG., G-1(Br).

MMW/jaml.

2 SEP

Copy to : HQ No. 3 District -(paraphrase of AICOM signal is attached.)

1725