0002

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

ACC

10000/142/949

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

10000/142/949

ALLIED MILITARY COURTS
OCT. 1943 - JAN. 1944

FOLIO	DATE	REF.	TO/FROM.
1.	9. 10. 43.	A4/21/5a	To : G.O.C. & C, 15 A.G.
2.	13. 10. 43.	5-13-10AMG3.	From : 5 ARMY.
3.	17. 10. 43.	FA. 43.	To : AMG, 5 ARMY.
4.	18. 10. 43.	8954.	From : AFHQ.
5.	7. 10. 43.	175/116 A.	From : PRINCIPAL SEA TPT OFFR, MEDITERRANEAN.
X 6.	15. 10. 43.	ECA/26/4.	From : AMG, REGION III.
X 6A.	15. 10. 43.	ECA/26/3	From : AMG. REGION II.
X 7	16. 10. 43.	FA 56	To : SEARS FOR AMG.
X 8	23. 10. 43.	1306 CITE [illegible]	From : AFHQ.
X 9	24. 10. 43.	AMG/30/1	To : 5 & 8 ARMIES, AMG.
10	29. 10. 43.	3913 CITE FMMED	From : AFHQ.
11	30. 10 43.	FA. 109.	To : SEARS FOR AMG.
12	29. 10. 43.	AMG 201/1.	To : S.L.O., AMG, 5 ARMY.
13	26. 10. 43.	AMG 498.	From : SEARS FOR AMGOT.
14.	30. 10. 43.	AMG 527.	From : SEARS FOR AMGOT.
15.	3. 11. 43.	B-145	From : SEARS FOR CHANLER.
16.	3. 11. 43.	AMG 551.	From : " " "
17.	9. 11. 43.	AMG/209/1.	To : C.C.A.O.
18.	11. 11. 43.	—	From : CCAO (FURTHER FILE CONTD IN TWINING BARN)
19.	10. 11. 43.	—	To : C.C.A.O.
20.	10. 11. 43.	AMG/209/20.	To : S.L.O. 5 & 8 ARMIES.
21.	12. 11. 43.	AMG/201/3.	Extract from Col Post's minutes of meeting
22.	13. 11. 43	458.	From : FREEDOM.
23.	14. 11. 43.	596.	From : A.F.H.Q.
24.	15. 11. 43.	MA 743.	From : 15 ARMY GP.
25.	15. 11. 43.	1085.	From : Hayline Barker AFHQ
26.	16. 11. 43.	AMG/209/25.	To : Bde of Public Health
27.	16. 11. 43.	1611.	From : AFHQ.
28.	16. 11. 43.	1835	From : AFHQ.
29.	16 11. 43	1781	From : AFHQ.
30.	7. 11. 43.	AMG/209/30.	From : C.L.O. to S.S.O.
31.	-	-	Extracts of Conference Minutes.
32.	16 11. 43.	AMG/209/25.	From : C.L.O. to D.P.H.
33.	16 11. 43.	2722.	FROM : EISENHOWER.
34.	18. 11. 43.	3405. (Pt I).	FROM : AFHQ.
35.	-	- (Pt II).	FROM : -
36.	18 11. 43.	2447.	FROM : FREEDOM.
37.	21 11 43 (2 cys).	FA 252	To : 5 Army for AMG
38.	25. 11. 43.	AMG/209/38.	To : Col Shields, Reg III
39	-	FA 276.	To : Sears Freedom, Fatima.
40	26. 11. 43	AMG/209/40.	To : CLO ACC. Palermo.
41.	27. 11. 43.	AMG/209/41.	To : 5 & 8 Army AMG.
42.	28. 11. 43.	-	To : Gen Clark, 5 Army.
43.	1. 12. 43.	SAG/1400/2/G(Ib)	From : 15 A.Gp.
44.	22. 10 43.	-	From : -
45.	27. 11. 43.	880. (S-3208)	From : Sears.
46.	"	1142.	From : Fatima
47.	29. 11. 43.	G1/8/3222/A3.	From : ?
48.	30 11. 43.	FA 335	To : Sears Freedom, Fatima.
49.	"	AMG/206/20.	To : Col Upjohn
50.	14. 11. 43.	3/607/L	From : AMG. Region III
51	24. 11. 43.	Memo.	To : CCAO.
52.	18 11. 43.	3/605a/L	From : AMG. Region III
53.	24. 11. 43.	Memo.	To : CCAO.
54	30 11. 43.	AMG/209/54	To : SLO. 5 Army
55.	-	AMG/209/55.	To : -

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12.	29. 10. 43.	AMG/201/1.	To :	S.L.O., AMG, 5 ARMY.
13.	26. 10. 43.	AMG 498.	From :	SEARS FOR AMGOT.
14.	30. 10. 43.	AMG 527.	From :	SEARS FOR AMGOT.
15.	3. 11. 43.	B-148	From :	SEARS FOR CHANLEN.
16.	3. 11. 43.	AMG 551.	From :	" " "
17.	9. 11. 43.	AMG/209/17.	To :	C.C.A.O.
18.	11. 11. 43.	-	From :	CCAO. (Instruc. re Col. R.T. & marine corps).
19.	10. 11. 43.	—	To :	C.C.A.O.
20.	10. 11. 43.	AMG/209/20.	To :	S.L.O., 5 ARMY.
21.	12. 11. 43.	AMG/201/3.	Extract	from Col. Rose's minutes of meeting
22.	13. 11. 43.	458.	FROM :	FREEDOM.
23.	12. 11. 43.	596.	FROM :	A.F.H.Q.
24.	15. 11. 43.	MA 743.	FROM :	15 ARMY GP.
25.	15. 11. 43.	1085.	FROM :	Hazeltine Barrett AFHQ
26.	16. 11. 43.	AMG/201/25.	To :	Dir of Public Health
27.	16. 11. 43.	1611.	FROM :	AFHQ.
28.	16. 11. 43.	1535.	FROM :	AFHQ.
29.	16. 11. 43.	1781.	FROM :	AFHQ.
30.	7. 11. 43.	AMG/209/30.	FROM :	C.L.O. to S.S.O.
31.	-	-	Extracts	of Conference Minutes.
32.	16. 11. 43.	AMG/209/25.	FROM.	C.L.O. to D.P.H.
33.	18. 11. 43.	2722.	FROM.	EISENHOWER.
34.	19. 11. 43.	3405. (Pt I)	FROM	AFHQ.
35.	-	- (Pt II)	FROM:	-
36.	18. 11. 43.	2471.	FROM.	FREEDOM.
37.	21. 11. 43. (12 AM)	FA. 252.	To.	5 Army for AMG.
38.	25. 11. 43.	AMG/209/38.	To	Col Shields. Rec'd.
39.	-	FA 276.	To.	Sears. Freedom. Fatima.
40.	26. 11. 43.	AMG/209/40.	To.	C.L.O. ACC. Palermo.
41.	27. 11. 43.	AMG/209/41.	To.	5 & 8 Army AMG.
42.	23. 11. 43.	-	To.	Gen Clark. 5 Army.
43.	1. 9. 43.	15AG/400/2/G(I6).	From:	15 A.Gp.
44.	22. 10. 43.	"	From:	"
45.	27. 11. 43.	880 (S-3208)	From:	Sears.
46.	-	1142.	From:	Fatima.
47.	29. 11. 43.	G1/8/3221/A3.	From:	
48.	30. 11. 43.	FA 335.	To.	Sears. Freedom. Fatima.
49.	-	AMG/206/20.	To:	Col. Upjohn.
50.	14. 11. 43.	3/6071/L.	From.	AMG. Region III
51.	24. 11. 43.	Memo.	To.	CCAO.
52.	18. 11. 43.	3/6059/L.	From.	AMG. Region III
53.	24. 11. 43.	Memo.	To:	CCAO.
54.	30. 11. 43.	AMG/209/54.	To:	SLO. 5 Army
55.	-	AMG/209/55.	To;	" "

* TRANSFERRED TO FILE 205.

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

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

SUBJECT: British Mer ant Seamen.

A.A.G.,
15 Army Group,
C.M.F.

AAG/209/85

TO: Military Government Section,
Allied Force Headquarters.

9. Dec. 43.

1. Considerable difficulty is being experienced over the question of the trial and imprisonment of British Merchant Seamen. This question arises in occupied territory in Italy and in non-occupied territory, but this Headquarters is only concerned with the former type of territory.

2. A British Merchant Seaman is not subject to the Army Act or the Naval Discipline Act when he is on shore, and he can therefore not be tried by Army or Naval court-martial, or be imprisoned legally in a military or naval establishment.

3. It is my opinion that a British Merchant Seaman, like all other civilian persons in occupied territory, is subject to the jurisdiction of the Military Governor and, therefore, to his Proclamations and Orders. This was recognised in Madagascar and, since, in Tripolitania and possibly other British occupied territories.

4. Under the Proclamations in Italy at present in force, a British Merchant Seaman could be tried by an Allied Military Court in occupied territory for offences committed therein against the Proclamations and Orders of the Military Governor. He is also, in my opinion, amenable to the ordinary courts of the territory as he is not a member of the Allied Forces and as such exempt under International Law.

5. It is recognised that it would be unwise and impracticable to try a British Merchant Seaman in an Italian Court, but an offence against Italian Law could properly be tried in an Allied Military Court under a transfer of jurisdiction in accordance with the provisions of Proclamation No.4. An Allied Military Court can also properly try a British Merchant Seaman for an offence created by Proclamation or Order of the Military Government.

6. It is requested that a decision be made on policy as to whether trial of British Merchant Seamen shall be in accordance with para.5 of this letter.

7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonmen which may be imposed. All persons convicted by Allied Military Courts serve their sentences in Italian gaols. It is considered that it would be unjust and add to the punishment of a British subject were made to serve a term of imprisonment in the gaol of an occupied country where the language was unknown to him, where gaol conditions were contrary to British conceptions of maintenance and where victimisation might result.

8. It is not possible under existing law for a person sentenced to

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8. It is not possible under existing law for a person sentenced to imprisonment by an Allied Military Court to serve such such imprisonment in a Naval or Military establishment. It is also not possible for him to be sent to a Gaol in British territory unless the law is amended or directions can be given by the British Government which will allow this to be done. The maintenance of a special prison under the control of the Military Governor is legally possible, but not practicable as personnel would probably not be available and sentences might extend beyond the period of occupation.

9. The whole matter/....

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9. The whole matter is very urgent as cases are constantly occurring, and, whilst serious charges like murder can be dealt with under the Merchant Shipping Acts by sending the accused for trial to Malta or some other convenient British territory, this is impracticable in the ordinary day to day cases.

Lt.Colonel,
Chief Legal Officer,
For, Chief Civil Affairs Officer.

/RAC.

Copy to: Chief Legal Officer,
Legal Sub-Commission, A.C.C.

Senior Legal Officer,
AMG. 5 Army.

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Delegations of powers to appoint courts:

To R.C.A.O's. – AMG/211/33 + 34

See also: AMG/209/189 (Region 3)

To SCAO's with Courts –

AMG/210/5 + 6

AMG/209/138, 96, 96A

AMG/209/87, 79

Summary –

Courts

GOC in C's delegation to Task Force or Divisional Commanders – AMG/209/61

GOC in C's delegation to Task Force Commanders or to SCAO or his deputy – AMG/209/79, 87

Commanding Officers 5th + 8th Armies to S.C.A.O's. AMG/209/96, 96A.

Regions 3 + 4 ; 2.6

1) CCAO to R.C.A.O's – AMG/211/33 + 34

RCAO (Region 4) to RCLO (Region 4) –

No delegation from RCAO to RCLO, Region 3 – AMG/209/189

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

1st Ind. 30/1/44

To C L O Q M S 1Kg 15 Regmy 5th. — 230

Explanation (1) Attached in response to my request for
Appointment as Acting Judge Advocate is returned.

(2) For your information only.

Edwin F. Mercer

EDWIN F. MERCER, Maj. Ord.
SENIOR LEGAL OFFICER, A.J.A.G., 8th ARMY

Serial 230

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

Ref: C.P./Legal/18.

28th. Jan. 1944.

SUBJECT: Summary Courts held 4th. and 6th. Jan. at Termoli.

TO: Senior Legal Officer, A.M.G. H.Q. 8th. Army Main.

FROM: P.S.L.O. Campobasso Province.

Attached hereto is an explanation of the sentences pronounced at a Summary Court by C.A.O. Termoli, and is forwarded in response to your memo of 13th. Jan. 1944.

Stanley R. Mark CaptaiN.
Provincial Senior Legal Officer.
Campobasso Province.

S.R.M./N.J.M.

Declassified E.O. 12256 Section 3.3/NND No. 785016

229

Subject:- Summary Courts held on 4th and 6th Jan.

A.M.G. TERMOLI
20 Jan 44.

To:- S.I.C. AMG HQ 8 Army
(through S.C.A.O. CAIROFASSO)

From:- C.A.O. TERMOLI.

Ref memo CA/13 of 13 Jan 44 respecting sentences awarded at a Summary Court held at MONTENERO on 4 Jan 44.

The circumstances were as follows:-

Large quantities of empty and part empty Jerry cans have been left lying about in the town by departing troops during the past few weeks with the result that the population having come to the not unreasonable conclusion that the property in the Jerry cans was abandoned, had been in the habit of using them for water containers.

On 1st Jan 1944 4 F.I.D.C., Canadian Army preparatory to moving stacked a number of petrol cans (empty) in the streets and the population thinking that this further supply of cans was going to be left removed them.

The number of cans so moved numbered 75 and the Major i/c unit made it known that after a stated lapse of time he would search every house in the town. Prior to carrying out this search the population replaced over 340 cans which had been in the place for weeks. As a result of the search 10 persons on whose premises ~~some~~ petrol cans were found were arrested by the Canadians and placed in the Carabinieri Barracks.

At the subsequent tribunal held on 4th January, 7 persons were found guilty of possessing these articles. In 3 cases the accused were found not guilty as their responsibility for the sole ownership of the premises could not be proved. In the other cases the offence under Proclamation 2 (2)(4C)was proved since the offence is merely to be in possession of these articles.

In these circumstances bearing in mind that the whole population practically were at some time equally guilty of a technical offence and that the 7 men who were arrested had not heard of the ultimatum issued by the Major i/c Canadian troops and were all men of good character I came to the conclusion that a just decision was to impose what by Italian standards is I am told a stiff fine accompanied by a suitable homily for the benefit of the population as to their duties if property of the Allied Forces was left by departing soldiers in their possession.

There was no evidence to show that the cans in the cases dealt with were identical with the cans removed from the Canadian units dump in the roadway.

From a deterrent point of view the effect has been the recovery of many more petrol cans than were originally lost and I am further informed that in the event of soldiers passing through the town leaving behind any materials, the population hasten to inform the nearest Military Unit.

L. Graham
..... Capt.
C.A.O. TERMOLI

Ref: CP./Legal/ 27.

224

27th. Jan. 1944.

SUBJECT: Sentence of [redacted]NADUCE Luciano.

TO: Captain L.F.B. Coling, C.A.O. TERMOLI.

FROM: Provincial Senior Legal Officer, Campobasso Province.

The undersigned has received a copy of your report made 20/1/44 to H.Q. 60 Sub Area. I am sorry my message did not reach you until after your trial of this case was completed, as I feel the sentence given was entirely inadequate in view of Army wishes in this type of case. Your sentence may have been entirely sufficient in so far as this individual defendant was concerned, but it would serve as no warning to other persons. Signs have been posted throughout the Province warning the Italian people that one who tampers with wires or any communication lines may be subjected to the death penalty. To pos such a sign and in the same period to give a two months suspended sentence for the crime is definitely inconsistent. Should further violations of this nature occur in your area please hold a preliminary hearing and bind the accused over for trial by Superior court.

Stanley R. March Captain.
Provincial Senior Legal Officer.
Campobasso Province.

S.R.M./N.J.M.

Copy to Senior Legal Officer, AMG. 8th. Army Main.

1st Ind. 31/1/44

To: C.A.O. 2 Sub Sec 15 Army Group

1. Forwarded, approved for information.

Edgar Mercer

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

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Captain.
Provincial Senior Legal Officer.
Campobasso Province.

S.R.M./N.J.M.

Copy to Senior Legal Officer, AMG. 8th. Army Main.

1st Ind. 31/1/44

To: C.C.O. 2 A & 4 Sq 15 Army Group

1. Forwarded, approved, for information.

EDWIN J. MERCER, Maj. Ord.
SENIOR LEGAL OFFICER, A.M.G. 8th ARMY

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

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

A.M.G.,
Region 4
27 January, 1944

Dear Howe,

I am writing personally, and not " through channels ", because there seems no point in prolonging the official correspondence.

With regard to your point about Proclamation 2, Article IV, my position is quite plain-namely that I will cheerfully obey any directive given by your H.Q., as to the effect to be given to this pronouncement. You represent the higher formation, and what you say is law.

But when you ask me to agree that, as a matter of strict construction, the words of the Proclamation are capable of bearing the meaning you seek to place upon them, I must firmly but politely decline.

The construction for which you argue would involve writing into the Article an additional phrase at the end, somewhat like this- " or he may be punished in such other manner as the court may determine". Without the addition of some such words the court has no power to punish except as provided by " such law"-i.e. Italian Law. If this is not so, what are the limitations on the punishment which the court may impose? None are stated. Article I is careful to specify death, imprisonment or fine: Article II specifies fine or imprisonment or both. But Article IV specifies nothing except punishment in accordance with Italian Law.

When one turns to Proclamation 8, Article V, again one finds the limitation of punishment specified, viz: imprisonment or fine or both.

To me the conclusion is irresistible that ~~it~~ had been intended that a court sitting under Proclamation 2, Article IV, should have power to impose any punishment different from that prescribed by the Italian Law, the Article must have said so in express terms, and must have specified the limits.

I am wholly in agreement with what you say about the inconvenience of adopting the construction of the Article for which I contend. But, if I may say so, what you say is entirely beside the mark in any ~~argument~~ argument as to the construction of the actual words used. The cure for the evils you foresee is surely to amend the Proclamation, and not to force upon the words used a meaning which they are incapable of bearing.

Personally I do not think the matter is of sufficient importance to warrant the loss of any sleep. But if you think otherwise, I seriously suggest that you explore the possibility of getting the Proclamation amended, rather than direct A.M.G. Courts to interpret the existing words in a way which not only, in my opinion, does violence to their plain meaning, but is also liable to shock the unfortunate Italian who has taken the trouble to read the Proclamation.

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Do not bother to answer this note. I expect your time is fully engaged in other matters. When you next come this way, I hope you will not fail to call upon me. I say this for two reasons-firstly because I have a new office in a new building, which I should like to show you, and secondly because, as usual, I have already accumulated a number of points in my notebook which are awaiting the opportunity of discussion with you.

Yours sincerely,
Sandheimer.

Major Mark Howe,
Chief Legal Officer,
A.M.G., H.Q., A.C.M.F.

0018

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

MC/jg

221

HEADQUARTERS REGION 4 MAIN
Allied Military Governme
APO 394

TO : D.C.C.A.O., A.M.G., HQ A.C.M.F.

FROM : R.C.A.O., A.M.G., Region 4

SUBJECT: Summary Court Records

REF : R4/250.5

DATE : 25 Jan. 44

1. Reference is made to this HQ letter R4/1064 of 1 Dec. 43, addressed by Regional Chief Legal Officer to Chief Legal Officer, A.M.G., 15th Army Group. This contained a proposal for the abolition of the Summary Court Record Book, and the substitution of an alternative and simpler means of maintaining records, by endorsing the disposal of each case on the back of the summons or charge sheet.

2. I understand that this proposal was not at the time approved, and consequently no action has been taken.

3. Since the date of this proposal, Rule 12 of the Rules of Procedure has been amended, and a Summary Court judge is now required, in addition to maintaining the Summary Court Record Book, to keep a record of the evidence in every case where the plea is "not guilty", and to submit this record on Form 8 in every case where the punishment exceeds 90 days imprisonment or a fine of 4000 lire, or where a petition for review is filed.

4. Most of the Summary Court work has in practice to be done by C.A.Os, because legal officers are too few and the distances and difficulties of transportation too great to admit of the possibility of legal officers going around to the centres of population where courts have to be held.

Copy to: R.C.L.O.

0013

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5. C.A.Os, if they are to carry out their manifold duties, have an exceedingly busy time, and in many cases are already overworked. It is considered important that, in connection with their duties as judges of summary courts, they should not be burdened with any work beyond what is absolutely necessary.

6. I have before me a letter from the S.C.A.O., Foggia Province, complaining that the C.A.Os in that Province are already overworked, and that their work in other directions is being hampered by the excessive amount of time which has to be spent in mere office work in connection with the maintenance of Court records. There are not enough C.A.Os assigned or attached to Region 4, still less is there enough clerical staff, to cope with more than the barest essentials in respect of office work.

I do not ask at present for the elimination of the record of evidence required by the amendment of Rule 12. I should like to see the new procedure tried out in practice before forming a final opinion. I do ask, however, that further consideration be given now to the proposal previously made for abolishing the Court Record Book. As this proposal would involve an amendment of the Rules of Procedure, I consider that I should have your authority before putting it into effect.

M. CARR, Brigadier
R.C.A.O., Region 4

0020

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

HGW/pec

23

HEADQUARTERS REGION 4
ALLIED MILITARY GOVERNMENT

28 JAN 1944

TO: : S. L. O., AMG, HQ., 8th Army.

FROM : R. C. L. O., Region 4.

SUBJECT: Forms.

REF : R4/LE/25.

DATE : 26 January 1944.

1. Reference your OA/13 of 19 January 1944, it is noted that you do not approve of the use in 8th Army Area of the form of "Arrest Report," specimens of which I sent to you.

2. Personally I hold no brief for any particular form. I think the main thing to do is to get arresting officers into the habit of writing down their statements at the earliest possible moment -- and if your own form achieves this object, you will, I think, have done all that is required.

3. I certainly agree that we must not give any countenance to the idea that the filling up of a form dispenses with the necessity of attending to give oral evidence. Legal Officers in Region 4 are receiving strict instructions about this, which it will be their duty to bring to the notice both of C.A.O's and police officers. Provided this is clearly understood, I do not think the use of my "Arrest Report" should give rise to any false idea.

4. I shall be interested to hear from you later what experiences you have had with the use of your form.

5. Reference your personal letter of 13 Jan. '44, enclosing copy of Form 8-a, I am extremely obliged for receipt of this, and wholly approve of the proposed form. I am taking steps to introduce it for the use of Summary Courts in Region 4. I am hopeful too that Region 3 will adopt it.

H. G. WILLMER, K.C.,
Colonel,
R.C.L.O., Region 4.

Copy to:-
C. L. O., AMG, HQ., ACMF.

0021

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

HGW/Qd

222

File 209

HEADQUARTERS REGION 4 MAIN
ALLIED MILITARY GOVERNMENT
A.P.O. 394

TO : CLO, AMG, HQAFI

FROM : RCLO, Region 4

SUBJECT : Draft Instructions on Allied Military Courts.

REFERENCE : R4/LE/1

DATE : 21 January, 1944.

188 2

1. Reference your AMG/209/188 of 18 Jan.44, the following comments and suggestions are put forward with regard to the draft instructions.

2. Part Two, Sction A(1).

I doubt whether it is correct to say that an appointment of a Court is valid throughout all occupied territory. I should have thought that an appointment was valid only within territory subject to the jurisdiction of the officer appointing it.

I am not sure that I understand what is meant by the statement that the judges, as individuals, have no lasting judicial powers. The Court is appointed " for the trial of all persons who may be brought before it", and not for a single trial. It is not necessary for the whole Court to sit every time, provided those ~~persons~~ present form a legal quorum, under Rule 10. Within these limits individual members do, in my view, have lasting powers to sit as members of that Court.

3. Part Two, Section A(6)

The last sentence of the first paragraph is not clearly expressed, and should, I suggest, be re-worded.

4. Similarly the first two sentences of the second paragraph are not clear, and I do not think I agree with them. A case may be referred to a Superior Court or a General Court in 2 ways:-

(1) By a Summary Court, under Rule 7 (A)

In this case, if the reference is to a Superior Court, the record is submitted to the S.C.A.O., who may either order it to be tried by the Superior Court, or submit it to the R.C.L.O. for trial by a General Court.

If the reference is to a General Court, the record must be sent to the R.C.L.O.

In both instances, however, the Senior Legal Officer

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(who in the present Regional set-up is interpreted to be equivalent to the Provincial Legal Officer) may act for the S.C.L.O. or the R.C.L.O. within the limits imposed by the directive AMGOT/4033/L of August 1943.

(2) By order of the R.C.L.O., or an Officer Empowered by him, under Rule 5(a)

In this case again the Provincial Legal Officer is regared as being empowered, under AMGOT/4033/L of August 1943, ~~as being authorised~~ to exercise the powers of the R.C.L.O., within the limits therein referred to.

To make the matter clear, I think that the procedure should be set out in detail, as above. The condensation in the draft submitted is, I think, confusing.

5. Part Two, Section C(1)

Reference to Section 5(a) of Article II of Proclamation 4 is a mis-type for Section 3(a).

6. Part Two, Section C(2)

I disagree with the last sentence. In the case of prosecutions under Proclamation 8 I agree that the penalty is in the absolute discretion of the A.M.G. Court. In other cases, however, where Proclamation 2, Art. IV, has to be invoked, the provisions of this Article state in terms that where any person violates any provision of Italian Law he may, on conviction by an A.M.G. Court be punished "as provided by Such Law"-i.e. Italian Law.

7. Part three is wrongly headed "Part Two". Similarly Part Four is wrongly headed "Part Three".

8. Part Three, Paragraph 5

I agree with your insistence on the importance of oral evidence. But I think it is hopeless to insist that in those cases where, for practical reasons, only written evidence, in the form of a statement, is available, such statement must be sworn. It never will be in practice. In any event no provision is made as to who is empowered to administer the oath. I think this paragraph should insist that in every case of arrest an"Arrest Report" must be lodged by the arresting person with the Carabbinieri Barracks or Police Station to which the accused is taken. This Arrest Report should be furnished to the officer or official conducting the prosecution, and in the exceptional case where the arresting person is not available(owing to death,sickness or military exigencies) should be accepted by the Court as prima facie evidence, to the extent that the accused can be required to furnish an explanation. At the same time a caution should be ~~invoked~~ inserted against actually convicting any accused person on a statement contained in an Arrest Report unless either (1) he pleads guilty, or (2) the Report is corroborated by some evidence from another source.

9. Part III, Paragraph 6

Add at end " and will ensure that opportunity for cross-examination is afforded."

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10. Part III, Paragraph 8.
Opportunity should be taken in this paragraph to repeat the directive already given verbally that where a fine is imposed as well as a term of imprisonment in a Summary Court, a further term of imprisonment in default of payment of the fine may be imposed, notwithstanding that the total will exceed one year. This power, however, should not be abused, and doubtful cases should be referred to a Superior Court.

11. Part IV, Paragraph 2
Add at the end "Records of all the cases will be forwarded to the R.C.L.O. for routine examination."

12. The above covers what is already included in the draft submitted. What follows deals with other matters not included, which should, it is suggested, be dealt with in the directive.

13. Use of Summons
In order to avoid unnecessary overcrowding of gaols by arresting offenders on trivial charges, a greater use should be made of the Summons. Authority has already been given verbally for Summonses to be signed in blank in advance by a C.A.O., and issued to Carabinieri, so as to comply with Rule 4(b) of the Rules of Procedure. This should be included in the present directive.

14. Framing of Charges
Reference should be made to this subject, as experience shows that bad drawing of charges is one of the worst faults in the present administration of justice in Summary Courts. It is suggested that the following points should be stressed:-

(a) The charge must in all cases quote the Section and Article of the Proclamation under which it is brought.

(b) Proper particulars must be given of what the accused is alleged to have done, and in particular the time, the date and place of alleged offense must be stated. Where the offense relates to a person, the name, description and address of such person must be given. Where it relates to property, particulars of the property-its nature and quantity must be given. (N.B. The latter is a point constantly arising in connection with charges of stealing and improper possession).

(c) Multiplicity of charges should be avoided. The prosecution should frame the charge under the section under which it appears prima facie that it should fall, without recourse to alternative charges. If the evidence at the trial shows that the charge should more properly have been laid under some other section, the Court has power to amend under Rule 6(E).

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(d) Where a charge is laid under Proclamation 2, Article I, Section 44, full particulars of the alleged order must be given-if it was verbal, by whom it was given, and when and where; if it was in writing, quoting the ~~source~~ reference.

(e) Recourse to Proclamation 2, Article II, Section 45 should be avoided, save in exceptional cases.

15. Release on Bail pending hearing by Superior or General Court.

Where a case is remanded by a Summary Court, any application for release on bail will be made to the Summary Court-See Rule 5(c) of the Rules of Procedure. No provision is made for release on bail where an order is made by the R.C.L.O. directing that a case be brought directly before a higher court. The present directive should create some machinery for this. It is suggested that the application should be made at the office of the nearest C.A.O., with a right of appeal against refusal of bail to the R.C.L.O.

16. Policy regarding Italian Cases

Part Two, Section C(2) deals with machinery for trasnfers of Italian cases to A.M.G. Courts.

It is suggested that a word should be added as to the policy with regard to this-viz. that all violations of Italian Law should be left to be tried by the Italian Courts, unless either (a) this is impossible because the appropriate Italian Court is not functioning, or (b) it is undesirable because the interests of A.M.G. are vitally affected.

17. Policy as to Sentences

The commonest fault, so far as experience in Region 4 goes, is undue leniency of sentence. I consider that this should be dealt with in the present directive. Attention should be drawn to Special Administrative Instruction-Legal No.1, at P.184 in the Manual, where it is pointed out that A.M.G. Courts are interested in punishment only from the point of view of its deterrent aspect, and are not concerned with any reformatory purpose. This is a point which in my experience is often lost sight of by C.A.Os.

18. The above comments are intended to be constructive and not destructive. In whatever way you deal with them I shall do my best to carry out faithfully the policy directed from your H.Q.

H.G. Willmer

H.G. WILLMER, K.C.
Colonel,
R.C.L.O., Region 4

Your draft is returned herewith.

H.G.W.

2-A-1 - Leave out passage concerning territorial validity of appointments - and revise section about non-removal of individual judicial powers.

2-A-6 Reference to higher court - 213

2-C-1 - Sec. 3(a)

2C-2 - Uniform procedures -

3-5 - Written evidence ruled to prior - Witness under former appointment -

3-6 - add clause re cross-exam.

3-8 - Suspension pleas fine problem -

4-2 - add that Record to be sent to RCLO for examination -

GJJ -

Made use of Summaries -

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0026

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

SUBJECT: Legislation on Prostitution

A.P.O.,
U.S. ARMY

A.G.O., WASH ARMY
PROV ARE ADJUTANT GENE
H.Q.I.C. ALLIED FLA
H.Q.Z.C. ZONE IV

AG/209/GEN
22 June 44

1. Consideration has been given to the question whether it would be advisable for a General order to be issued from this H.Q. creating additional sanctions beyond those found in Italian law for the control of prostitution and solicitation.

2. It has been decided that such legislation would be inadvisable and that if the problem in each is a particular locality is to be made A.M.G. legislation necessary it should issue from the Provincial or Regional H.Q. If it is to be dealt with by Provincial legislation the proposed enactment should be submitted to the H.Q. A.C. for his approval prior to promulgation.

3. Your attention is called to the fact that existing Italian law, as found in the books if not in action, contains prohibitions of the sort which we are anxious to have enforced. The proprietor or lessee of any building which is used for unlicensed prostitution is guilty of an offence. (Public Security Law of 18 June 1931, No. 773, Title VII, Art. 190-191). All women employed as prostitutes in licensed houses must be medically examined and certified to be free from disease before exercising their profession. (Ord. 27 July 1943, No. 1268, approving Art. 201-203 of the Sanitary Code). Soliciting is an offence under Italian law (Law of Public Security, Title VII; C.P. Art. 527).

4. Before local legislation is enacted at either the Provincial or Regional level everything possible should be done to see that Italian officials, medical, police, and judicial, properly and vigorously enforce Italian law. If such effort proves fruitless an order imposing the total of violations of any or all of the Italian laws mentioned above may be adopted. In any case, prosecution should not be brought against infected prostitutes under Sec. 45, Sec. 11 of Proclamation No. 2.

Lieut Hour

Major, AUS,
Chief Legal Officer.

SUBJECT: Distribution of Rules of Procedure

A.M.G.,
F. T. A.C.M.F.

R.C.L.O.,
A.M.G. H.Q., ROMICH IV

AMG/209/30
24 Jan 44

1. The D.C.C.A.C. has considered the question raised in your R4/LE/O of 17 Jan 44, and it has been decided that the Rules of Procedure in translation should be made generally available, without restriction, to the Italian bar.

2. The translation of which you have obtained a copy was based upon the First Revised Edition of Sicily. Accordingly before reprints are made certain alterations in the Italian text will be necessary. There are set out below the English versions of the original Sicilian texts which have been changed in the Second Revised Edition. From a comparison of these earlier texts with the corresponding passages in the Rules as printed in the Manual it will be easy to determine at which points new translations are called for.

Rule 2 (a), last sentence: "No officer who has any personal interest in a case being tried or who is an officer in the Civil Police shall sit as a member of the Court."

Rule 2 (c), last sentence: "If an accused is not represented, an officer of the Allied Forces will be appointed to represent him if the nature of the case makes it desirable that the accused be represented.

Rule 2 (i), "Any officer of the Allied Forces may appear and prosecute or defend in any Allied Military Court."

Rule 3 (b), "Every interpreter shall be required to take the following oath:

'I will to the best of my ability truly interpret and translate as I shall be required to do'."

Rule 5 (c), "An interpreter appointed generally by a Court need not be obliged to take an oath at the commencement of every case before such Court."

Rule 5 (e), "All persons arrested for an offence with or without warrant, will be brought as soon as practicable before a Summary Military Court, except that the Chief Legal Officer, or an officer empowered by him, may order that any particular case or classes of cases shall be brought directly before a Superior or General Military Court for trial:"

Rule 7 (b), "If the Court decides at any time during the trial of

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

1. The S.C.,C.A.O. has considered the question raised in your PA/LE/O of 17 Jan 44, and it has been decided that the Rules of Procedure in translation should be made generally available, without restriction, to the Italian bar.

2. The translation of which you have obtained a copy was based upon the first Revised Edition of Sicily. Accordingly before reprints are made certain alterations in the Italian text will be necessary. There are set out below the English versions of the original Sicilian texts which have been changed in the second Revised Edition. From a comparison of these earlier texts with the corresponding passages in the Rules as printed in the Manual it will be easy to determine at which points new translations are called for.

Rule 2 (a), last sentence: "No officer who has any personal interest in a case being tried or who is an officer in the Civil Police shall sit as a member of the Court."

Rule 2 (c), last sentence: "If an accused is not represented, an officer of the Allied Forces will be appointed to represent him if the nature of the case makes it desirable that the accused be represented.

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Rule 5 (a), "All persons arrested for an offence with or without warrant, will be brought as soon as practicable before a Summary Military Court, except that the Chief Legal Officer, or an officer empowered by him, may order that any particular case or classes of cases shall be brought directly before a Superior or General Military Court for trial."

Rule 7 (b), "If the Court decides at any time during the trial of a case that it should be tried by a higher Court, the Court may thereupon commit the accused for trial in accordance with the provisions of the last preceding paragraph."

Rule 7 (c) iii, "make an order directing that the accused be held in custody or released on bail pending trial. Before making such order the Court shall call upon the prosecution for its recommendations and have regard thereto, and the order shall be entered in the record of the case."

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Rule 12, "Two or more persons may be tried jointly for the same offence where the charge arises out of the same set of circumstances."

Rule 16, "An Allied Military Court shall admit such evidence as is relevant and material to the charges before it and shall, in deliberating on the judgment in each charge, take into consideration the nature of the evidence produced and the degree of reliance which can reasonably be placed upon it."

Rule 19 (b) "All fines shall on receipt be transmitted to the Office of the Chief Legal Officer, or as he may direct."

3. In addition to the changes indicated above it should be noted that the exceptions listed in Rule 5 of the earlier text are no longer named. Furthermore, Rule 12 should be printed to include the amendment of 5 Jan 44. That Rule as in force is briefly provided: "A complete record of every case will be kept by each court and will (subject to any other provision of these rules) be sent to the Office of the Chief Legal Officer, or as he may direct, at the conclusion of the proceedings. The record in a General and Superior Military Court shall include all the material evidence of every witness, which shall be recorded in narrative form except when a stenographer is present, in which case a stenographic record will be made. In a Summary Military Court only the essential material evidence need be recorded."

4. It would be very greatly appreciated if you could take care of having the necessary alterations in the translation made and could see to the printing of copies for the whole area of this HQ's responsibility. It is believed that the foreseeable needs will be satisfied if 3000 copies are printed.

Walt Hirt

2 Lt.

Major, AUS,
Chief Legal Officer.

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

310

SUBJECT: Draft Instructions on Allied Military Courts

A.M.G.
H.Q. A.C.M.F.

A.G./20/-
24 Jan 44

M.G.A.U.,
A.M.G. H.Q., Region IV

1. Your exceedingly helpful suggestions concerning the draft Instructions on Military Court procedure have been noted. When the other comments have been received I shall embody the great majority of your suggestions in the final draft.

2. I have much sympathy for your interpretation of Article IV of Proclamation No. 2. It seems to me, however, that the final "may" in that provision is to be read in the literal, permissive sense. If the other interpretation is accepted immediate difficulties arise. A great number of offences against Italian law prescribe a minimum penalty substantially in excess of that we should consider to be appropriate to a particular case. Similarly there might well arise occasions in which the Italian maximum penalty might seem inadequate. If we are bound by Article IV to accept the Italian penalties we should, I suppose, be bound also to follow the exceedingly elaborate and, to us, manifestly bewildering provisions concerning the effects of prior convictions, aggravating circumstances, and extenuating circumstances. (See Articles 56-70, 99, 132). These considerations lead me to feel that every consideration of convenience suggest the adoption of the entirely permissible interpretation of Article IV which I suggested. If we are not liberal in our construction of that Article, I fear that rather than face the problems which the Italian law of punishment will present the attempt will be made to extend the meaning of such Sections of Proclamation 2 as number 45 to entirely unwarranted lengths.

Lord Hall 21/1

Major, AUS,
Chief Legal Officer.

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

SUBJECT: Reference of Cases to Superior Courts

AMG
Dy ACLF
CHF

AMG/209/-
22 Jan 44

RCLO ASC Dy REGION III

1. The notice described in your S/Gen/A of 21 Jan 44 is approved. There is no objection but that an RCLO possesses all the powers possessed by Provincial Senior Legal Officers.

2. You will notice that in the draft of the General Administrative Instruction which was sent to you on 16 January paragraph 7 of Part Two (A) recognises that the RCLO may refer a particular case or class of cases directly to a Superior Court.

Maud Hunt

Major, AUS,
Chief Legal Officer.

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F.R. 4] 209.

2.08

C.L.O.

Herewith Summary of Cases
tried by Allied Military Courts during
December, 1943.

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AREA	Summary Courts		Superior Courts		General Courts		Totals		TOTALS
	NG	G	NG	G	NG	G	NG	G	
5th AREA	0	63	0	0	0	0	0	63	63
6th AREA	9	200	0	0	0	0	9	200	209
REGION III	685	4042	0	5	0	0	685	4047	4732
REGION IV	15	172	0	2	0	0	15	174	189
TOTALS	709	4477	0	7	0	0	709	4484	5193

0034

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AREA	Curfew and Pass Vio.	Theft and Poss of Allied Prop.	Black Market	Looting	Poss of Arms and Ammunition.	Vio. of Its. Penal Code	Other
8th Army	44	45	14	0	8	9	81
5th Army	40	20	3	0	0	0	2
REGION III	1958	1786	119	5	33	18	128
REGION IV	88	42	16	0	0	0	28
TOTALS	2130	1893	152	5	41	27	239

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Theft and Poss of Allied Prop.	Black Market	Looting	Poss of Arms and Ammunition	Vio. of Ita. Penal Code	Others	TOTAL
45	14	0	8	9	81	201
20	3	0	0	0	2	65
1786	119	5	33	18	128	4047
42	16	0	0	0	28	174
1893	152	5	41	27	239	4487

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MEMO

22 JAN 1944

TO: DCCAO

1. I should be grateful for your advice as to the policy which we should pursue in regard to the question raised in the attached letter from Col. WILLMER.

2. It is my inclination to say that the Italian translation of our Rules of Procedure should be made available, without restriction, to all members of the Italian bar. I know, however, that Col. Chanler was reluctant to permit their general distribution, fearing that it would tend to encourage technical obstruction. In my opinion, the advantages of giving the bar full information as to the way in which our courts operate, which is necessarily strange to them, outweighs this possible disadvantage. The virtue of our Rules of Procedure is that their technicalities are of importance to the substantive rights of the accused, and I believe in giving the fullest possible publicity to these rights.

3. Col. WILLMER's suggested compromise strikes me as unsatisfactory. If you agree I propose to see that a large number of the Rules are printed in translation and are distributed to the bar generally.

Major, AUS.,
Chief Legal Officer.

I entirely agree with you. Let him withdraw
letter from the Italian Bar. HC 22/1/44.

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Legal

HGW/Qd

17 JAN 1944

204

HEADQUARTERS REGION 4 MAIN
ALLIED MILITARY GOVERNMENT
A.P.O. 394

204 1

TO : Chief Legal Officer, A.M.G., H.Q.A.F.I.

FROM : R.C.L.O. Region 4

SUBJECT : Italian Translation of Rules of Procedure

REFERENCE : R4/LE/O

DATE : 17 January, 1944.

1. Reference discussion at recent conference with you, a single copy of Italian Translation of Rules of Procedure for A.M.G. Courts has now been obtained.

2. This has been discussed with S.L.O., A.M.G., 5th Army and R.C.L.O., Region 3. It has been agreed that it would be desirable to print a limited number of copies, not for broadcast distribution to the Italian Legal Profession, but only on the scale of one copy for each A.M.G. Court. The suggestion is made that each such copy should be under the control of the judge of the A.M.G. Court, and should be available on loan from him to any advocate appearing in a case before him, so that in the event of a question of procedure arising during the trial, the Italian advocate should have the benefit of a copy of the Rules in his own language. It would have to be understood that the loan of the document would be for the duration of the case only, and that in no circumstances would the document be removed from the Court Room. 21

3. It was not considered desirable to make any general or public issue of an Italian translation of the Rules, but merely the restricted issue to A.MG. Courts, as mentioned above.

4. It was agreed, however, that before proceeding with the printing of the Rules, even on the limited scale contemplated above, authority from your H.Q.would be necessary for their issue on loan to Italian advocates as suggested above. This is because the Rules of Procedure form an integral part of the AMGOT Manual, which is marked on its face "For AMGOT officers only". May authority be granted to waive this provision to the limited extent suggested above?

H.G. Willmer

H.G. WILLMER, K.C.
Colonel,
R.C.L.O. Region 4

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0034

203

ARREST REPORT

Relazione di Arresto

TO: ALLIED MILITARY PERSONNEL
Al: Personale Militare Alleato

THIS FORM MUST BE COMPLETED AND HANDED TO THE ITALIAN POLICE AT THE TIME YOU DELIVER AN ARRESTED CIVILIAN.

Siete incaricato di riempire questo modulo per la Polizia Italiana, ogni qualvolta consegniate ad essa un arrestato civile.

NAME OF PRISONER
Nome dell' arrestato

PLACE OF ARREST
Luogo dell' arresto

DATE
Data

TIME
Ora

DETAILS OF INCIDENT LEADING TO ARREST:
Causa dettagliata dell' arresto:

① Hasn't given any indication to have committed anything.

② Has not say the time & place of offence.

NAME OF MILITARY PERSONNEL MAKING ARREST:
Nome del Militare che eseguì l' arresto:

UNIT
Reparto

ASN
Matricola

OVER
Voltate la pagina

0039

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WITNESSES WITH ADDRESSES:
Testimoni e loro indirizzo:

1.

2.

3.

4.

PROPERTY AVAILABLE AS EVIDENCE:
Refurtiva:

DESCRIPTION:
Descrizione:

WHEREABOUTS:
Dove è adesso la refurtiva:

ITALIAN POLICE TO WHOM PRISONER DELIVERED:
A quale commessariato italiano l'arrestato è stato consegnato:

NAME:
Nome:

ORGANIZATION:
Organizzazione:

STATION:
Commissariato di P. S.:

TIP. A. DE VITO - TEL. 27538

202

INSTRUCTIONS RE ARRESTED CIVILIANS

Civilians arrested for offenses ~~which concern the Allied Forces~~ will be taken immediately before a Civil Affairs Officer, with witnesses, for trial. If postponement is neccessary the CAO will see that charges are drawn and signed and will set the case for hearing the next day or soon after.

If a CAO is not available take accused before M. P. ~~or Carabinieri~~ or any Officer or N. C. O. where accused can be detained and make out statement of facts below, sign and have witnessed by person before whom taken and leave with him.

This does not take the place of testimony unless witnesses become unavailable, so follow the case and have witnesses present to testify at the trial.

IF THESE INSTRUCTIONS NOT FOLLOWED ACCUSED WILL BE RELEASED.

NAME of person arrested _____

ADDRESS of same _____

STATEMENT OF FACTS 203

At about _____ hours on the _____ day of _____ 194_____

at _____ I _____
(place)

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be taken immediately before a Civil Affairs Officer, with witnesses, for trial. If postponement is neccessary the CAO will see that charges are drawn and signed and will set the case for hearing the next day or soon after.

If a CAO is not available take accused before M. P. ~~or Carabinieri~~ or any Officer or N. C. O. where accused can be detained and make out statement of facts below, sign and have witnessed by person before whom taken and leave with him.

This does not take the place of testimony unless witnesses become unavailable, so follow the case and have witnesses present to testify at the trial.

IF THESE INSTRUCTIONS NOT FOLLOWED ACCUSED WILL BE RELEASED.

NAME of person arrested _____

ADDRESS of same _____

STATEMENT OF FACTS 201

At about _____ hours on the _____ day of _____ 194_____

at _____ I _____
(place)

(OVER)

Capt Long.
88.1.(6)

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(Continue statement, use for sketch or for summary of statements of other witnesses)

CROSS EXAMINATION

(If possible accused should be informed as to above statement and asked if there are any questions he wants asked of the accuser. If any additional information is so obtained the gist of it will be writen here by person before whom statement taken).

SIGNED

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CROSS EXAMINATION

(If possible accused should be informed as to above statement and asked if there are any questions he wants asked of the accuser. If any additional information is so obtained the gist of it will be writen here by person before whom statement taken).

SIGNED .....
(Name) (Rank) (No.)

Above statement taken before me

La dichiarazione suddetta fatta innanzi a me.

.....
(Name) (Description)

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

D51

ALLIED MILITARY GOVERNMENT

FORM No. 8 – a.

PROCEEDINGS OF AN ALLIED MILITARY COURT

held at _____ on the _____ day of _____ 194__

Before _____ (Name & rank of Member or members constituting the Court)

REFERENCE No. _____ a _____ Military Court.

ACCUSED

Name: –

Address: –

Occupation: – Age: –

An interpreter was duly Sworn.

ADVOCATE FOR ACCUSED

Name:

CHARGE (S)

Violation of Proclamation No. _____ Article _____ Para. ( ), in that the accused on the _____ day of _____ 194__ at _____

_____

_____

_____

_____ 20.

The Charges were read and explained to accused.

PLEAS OF THE ACCUSED

The Accused	pleads	to the 1st charge
» »	pleads	» » 2nd »
» »	pleads	» » 3rd »

(If not sufficient space on this form for the notes of evidence, other sheets should be attached)

EVIDENCE FOR PROSECUTION

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

EVIDENCE FOR ACCUSED

REMARKS OF COURT

(Comments on evidence, reasons for severity or leniency, etc.)

FINDINGS OF THE COURT

The Accused found guilty / not guilty of the first charge.
» » » guilty / not guilty » » second »
» » » guilty / not guilty » » third »

SENTENCE OF THE COURT

The Court sentences the accused
in respect of all the

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REMARKS OF COURT

(Comments on evidence, reasons for severity or leniency, etc.)

FINDINGS OF THE COURT

The Accused found guilty / not guilty of the first charge.
» » » guilty / not guilty » » second »
» » » guilty / not guilty » » third »

SENTENCE OF THE COURT

The Court sentences the accused
in respect of all the offences charged in the above proceedings of which the said accused has or have been found guilty.

(Signature of Judge of Allied Military Court)

REVIEW

Date 194 Signature

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

ALLIED MILITARY GOVERNMENT - COMMITMENT

Gov[illegible]no Militare Alleato - Mandato di [illegible]attura

200

To: The Officer in Charge of any prison, jail or camp to which the person
All' Ufficiale in Capo di qualsiasi prigione, carcere o campo al quale la
named below (hereinafter called the prisoner) may be delivered or of
persona sotto nominata (d'ora in avanti chiamata il detenuto) possa
any other prison, jail or camp to which the prisoner may be hereafter
essere consegnata o di qualsiasi altra prigione, carcere o campo al
lawfully transferred.
quale il detenuto possa essere d'ora in avanti legittimamente trasferito.

Whereas one _____
Poichè un (Name - Nome)

of _____ has been convicted of an offence aga-
di (Address - Indirizzo) *è stato condannato per contravven-*

inst the Proclamations and orders of the Allied Military Government and
zione dei Proclami e delle Ordinanze del Governo Militare Alleato ed
has been sentenced by an Allied Military Court
è stata pronunciata sentenza da una Corte Militare Alleata
to serve a sentence of _____
a scontare la pena di
and to pay a fine of _____ lire, said sentence
e pagare una multa di *lire, detta sentenza*
to commence on _____
a decorrere da

Now, therefore, you are hereby authorized to receive the said prisoner
Ora, pertanto, voi siete autorizzato a ricevere il detto detenuto in vostra
into your custody and detain him in accordance with the sentence so
custodia e trattenerlo conformemente alla sentenza così pronunciata o
imposed or until further order of this Court or a competent Military Au-
fino ad ulteriore disposizione di questa Corte o di una competente autorità
tority and for so doing this shall be sufficient warrant.
militare e per procedere in tal senso questo sarà sufficiente mandato.

Signed this _____ day of _____ 194____
Firmato questo giorno di

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

persona sotto nominata (d'ora in avanti chiamata il detenuto) possa

any other prison, jail or camp to which the prisoner may be hereafter
essere consegnata o di qualsiasi altra prigione, carcere o campo al
lawfully transferred.
quale il detenuto possa essere d'ora in avanti legittimamente trasferito.

Whereas one _____
Poichè un (Name - Nome)

of _____ has been convicted of an offence aga-
di (Address - Indirizzo) *è stato condannato per contravven-*
inst the Proclamations and orders of the Allied Military Government and
zione dei Proclami e delle Ordinanze del Governo Militare Alleato ed
has been sentenced by an Allied Military Court
è stata pronunciata sentenza da una Corte Militare Alleata

to serve a sentence of _____
a scontare la pena di

and to pay a fine of _____ lire, said sentence
e pagare una multa di *lire, detta sentenza*

to commence on _____
a decorrere da

Now, therefore, you are hereby authorized to receive the said prisoner
Ora, pertanto, voi siete autorizzato a ricevere il detto detenuto in vostra
into your custody and detain him in accordance with the sentence so
custodia e trattenerlo conformemente alla sentenza così pronunciata o
imposed or until further order of this Court or a competent Military Au-
fino ad ulteriore disposizione di questa Corte o di una competente autorità
tority and for so doing this shall be sufficient warrant.
militare e per procedere in tal senso questo sarà sufficiente mandato.

Signed this _____ day of _____ 194 _____
Firmato questo giorno di

_____
Presiding Officier - L'Ufficiale Presidente

_____
Court - La Corte

(The fine imposed must either be paid, or the defendant will receive a
La multa inflitta deve essere pagata, o il detenuto riceverà un cre-
credit on said fine of _____ lire per day each day served in confinement.)
dito su detta multa di *lire al giorno per ogni g.no di reclusione.)*

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

SUBJECT: "Arrest Report"

A.G.H.Q. Eighth Army

R.C.M.P. Region IV

04/13

19 January 1944

1. Prior to receipt of your letter of 22 Dec.43 the form "Instructions re Arrested Civilians" was in process of being printed.

2. This form does not suit undersigned entirely, as it was a compromise growing out of conference with F.S.S."A" Branch of Eighth Army and A.G. However it will be used and results observed.

3. This office does not approve of subject form for the principal reason that it is thought that an implication arises that the responsibility of the arresting person ends with making out the report, whereas undersigned has spent considerable time and energy educating all personnel to bring arrested persons before a Summary Court immediately, where the case will be dealt with by the Court an examining Magistrate and either tried or instructions given as to return of witness, taking of his statement before accused, or such other action as may be indicated.

4. Such procedure is not suited to a city the size of Naples, but it is to Army area outside large cities.

Copy to:-
C.I.O. A.F.H.Q. 15 Army Group

EDWIN J. [illegible], Maj.Grd.,
Senior Legal Officer,
A.G.H.Q. Eighth Army Main.

INSTRUCTIONS RE ARRESTED CIVILIANS

Civilians arrested for proclamation offenses, excluding security arrests, will be taken immediately before a Civil Affairs Officer, with witnesses, for trial. If postponement is neccessary the CAO will see that charges are drawn and signed and will set the case for hearing the next day or soon after.

If a CAO is not available take accused before M. P. or Carabinieri or any Allied Officer or N. C. O. and make out statement of facts below, sign and have witnessed by person before whom taken and leave statement with him.

This statement does not take the place of evidence in court unless witnesses become unavailable, so the witness must hold himself available to be present and testify at the trial.

IF THESE INSTRUCTIONS ARE NOT FOLLOWED ACCUSED WILL BE RELEASED.

NAME of person arrested .....

ADDRESS of same .....

STATEMENT OF FACTS

At about ..... hours on the ..... day of ..... 194 .....

at ..... I .....
(place)

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trial. If postponement is neccessary the CAO will see that charges are withdrawn and signed and will set the case for hearing the next day or soon after.

If a CAO is not available take accused before M. P. or Carabinieri or any Allied Officer or N. C. O. and make out statement of facts below, sign and have witnessed by person before whom taken and leave statement with him.

This statement does not take the place of evidence in court unless witnesses become unavailable, so the witness must hold himself available to be present and testify at the trial.

IF THESE INSTRUCTIONS ARE NOT FOLLOWED ACCUSED WILL BE RELEASED.

NAME of person arrested .....

ADDRESS of same .....

STATEMENT OF FACTS

At about ..... hours on the ..... day of ..... 194 .....

at ..... I .....

(place)

(OVER)

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(Continue statement, use for sketch or for summary of statements of other witnesses)

CROSS EXAMINATION

(If possible accused should be informed of the above statement and asked if there are any questions he wants asked of the accuser. If any additional information is so obtained the gist of it will be written here by person before whom statement taken).

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CROSS EXAMINATION

(If possible accused should be informed of the above statement and asked if there are any questions he wants asked of the accuser. If any additional information is so obtained the gist of it will be written here by person before whom statement taken).

SIGNED _____ (Name) _____ (Rank) _____ (No.)

Above statement taken before me

La dichiarazione suddetta fatta innanzi a me.

_____ (Name) _____ (Description)

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0034

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22 JAN 1944

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HEADQUARTERS
REGION 3, ALLIED MILITARY GOVERNMENT
A.P.O. 394, U.S. Army

RMcC/mo
3/6059/L

21 January 1944

Subject: Authority to order that any particular case or class of cases shall be brought directly before a Superior Military Court for trial.

To : AMG HQAFI .

1. Reference is made to paragraph 5(a), Rules of Procedure for Allied Military Courts, Special Administrative Instruction - Legal No.2, AMGOT Plan, Proclamations and Instructions, authorizing the Chief legal Officer, or an officer empowered by him, to order any particular case or class of cases brought directly before a Superior or General Military Court for trial.

2. It is not clear from the files at this headquarters whether the RCLO,Region III, has been expressly empowered to act for the Chief Legal Officer in ordering any particular case or class of cases arising within the region brought directly before a Superior or General Military Court for trial. The only directive on the subject available at this headquarters is one from Lieutenant Colonel Chanler, Chief Legal Officer, August 1943, Subject: " Instructions to all Senior Legal Officers in reference to referring cases to Superior or General Military Courts" (AMGOT/4033/L). Paragraph 2(a) of the reference directive authorizes the Senior Legal Officer of any province to order that any particular case or class of cases within his province shall be brought directly before a Superior Court .

3. Several cases of rioting have occurred in Avellino Province. These cases are too serious to be

0055

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disposed of by a Summary Military Court. The S.C.A.C. appointed the Provincial Legal Officer a Superior Court and requested the RCLO, Region III to direct that the particular cases be sent directly to that Superior Court for trial. While it was not clear that the R.C.L.C. had the necessary authority in express terms it was believed that it was intended he should have such authority, and an order to bring the specific cases to trial before a Superior Military Court was signed by the RCLO. A copy of the order is inclosed.

For the Regional Civil Affairs Officer:

Douglas N. Batson
DOUGLAS N. BATSON
1st Lt. C.M.P.,
Actg.Asst. Adj.Gen.

1 Incl.
copy of order.

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HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT
LEGAL OFFICE

To the Senior Civil Affairs Officer, Avellino Province.

It appearing that riots have occurred at Serino, Mirabella-Eclano, Morro and Leone, Avellino Province and that cases are pending and are to be tried against those participating in such riots, the charges being violation of Section 21 and/or Section 32 of Proclamation 2; and the Senior Civil Affairs Officer of Avellino Province having requested that such cases of all persons against whom charges are made arising out of such riots, be brought directly before the Superior Court for Avellino Province, for trial;

It is, therefore, ordered, pursuant to par. 5 of Special Administrative Instructions, Legal 2, that the cases of all persons against whom charges are filed for violation of Section 21 and/or Section 32 of Proclamation 2, arising out of riots which have occurred heretofore at said places, namely at Serino Mirabella, Morro and Leone, Avellino Province, shall be brought directly before the Superior Court, Avellino Province, for trial.

Dated 17 January 1944.

RILEY McCLAIN
Lt. Col., J.A.G.D.
R.C.L.O., Region III.

0-457

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AMG/209

Minutes of conversation with SLO, AMG HQ 8th Army, 14 Jan 44. 194

Major Mercer brought with him a large number of records of cases heard in Summary Military Courts in the 8th Army Area. He explained that their obvious formal inadequacy was the result in large part of the fact that when he first reported to 8th Army for duty no cases had been heard by Military Courts, that the proper forms were apparently not in the hands of the officers, and that it seemed to him of the first importance that pending cases should be disposed of immediately. Accordingly he urged all officers to get the cases disposed of as quickly as possible, even if it meant that their records were informal. This was done. At the present time Forms 8 are in the hands of all Summary Courts, they have been instructed to use them from now on in accordance with the provisions of the Rules of Procedure, and in general to observe a higher degree of formality than had been used in the first effort to get the machinery under way.

Lloyd Fredendall

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2637

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20 JAN 1944

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO. 394
Public Safety Division

AMG/14205/PS 18 January, 1944.

SUBJECT : Juvenile Delinquents.

TO : AMG, HQ. AFI.

Reference AMG/209/101 of 14 December, 1943.

1. Region II AMG have been consulted regarding suitable accommodation for juveniles in their area, and a copy of the Regional Superintendent of Prisons' report is attached for your information.

2. Any further information received in this matter will be forwarded to you.

CHARLES H. SPOFFORD
Colonel, GSC.
D.C.C.A.O.

1 Encl:

Copy of Region II Report
dated 10 Jan 44.

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COPY/

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION II

Subject: Juvenile Delinquents. 10 Jan 44

To: Chief, Public Safety Division,
HQ. AMG. (through RCAO)

Delay in reply to your AMG/14205/PS is regretted. A breakdown of transport delayed the return of the Prison Section Officer.

It is regretted that no helpful information can be given at present.

(i) The Reformatory at AVIGLIANO has been requisitioned by British Army. The juveniles are temporarily accommodated at the local Orphanage where accomodation is strained to the uttermost.

(ii) The Reformatory at CATANZARO is badly damaged by bombs, and is unhabitable. The juveniles are housed temporarily in part of local Deaf and Dumb School.

It is not yet known if any other such institution is functioning, but the matter will receive immediate attention.

(Sgd) H.W. ALDEN

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Captain,
Superintendent of Prisons,
A.M.G.

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

SUBJECT: Commitments

HQ AFC
15 ARMY GROUP
G&P

AFC/209/190
18 Jan 44

TO: FIFTH ARMY
EIGHTH ARMY

1. The Commitment Form (No. 6) in use by Allied Military Courts does not call a specification of the date upon which the accused shall be released. That omission creates considerable complication under Italian law.

2. It will be advisable for you to inform all officers sitting as Military Courts that they should always insert at the end of the order of Commitment an explicit statement of the date upon which the accused is to be released from prison.

3. In order that there may be uniformity of practice, the following rule for the computation of the date of termination of all sentences of imprisonment which are put in terms of months shall hereafter be followed:

> In determing the duration of every sentence of imprisonment the date of the commencement of sentence shall be included in the term and the date of release shall be excluded. When the sentence is put in terms of months all months shall be considered to be 30 days in length.

4. Under this rule, if an accused is arrested on 7 January and tried and committed on the 15th, under a sentence of 6 months imprisonment, the commitment form should state that the accused is to be released on 7 July or that he is to be released on 15 July, depending upon whether the Court chooses to have the sentence begin to run from the date of arrest or from the date of judgment.

F/.....

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5. You will soon receive copies of instructions to the Directors of Italian prisons, informing them of the rule which they are to follow in releasing prisoners held under sentences of Allied Military Courts when the date of release has not been specified in the Commitment.

Major, AUS,
Chief Legal Officer.

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0 0 6 2

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11 8 JAN 1944 Legal 209 JR 187

HEADQUARTERS
REGION 3, ALLIED MILITARY GOVERNMENT
A.P.O. 394, U.S. Army

6029
RMcC/em
3/6029/L

11 January 1944

Subject: Delegation by R.C.A.C. of powers to appoint General Military Courts and consider petitions of appeal.

To : A.M.G. Headquarters 15 Army Group, C.M.F.

1. Reference is made to letter your headquarters, 6 January 1944, Subject: " Power of Appoiment- General Military Courts "(A.M.G./209/158).

2. Colonel Kraege has not delegated to any officer any power delegated to him by the D.C.C.A.C. by communication dated 14 December 1943.

3. Your headquarters will be advised if and when Colonel Kraege does delegate to any officer any power covered by the letter of 14 December 1943, referred to in the preceding paragraph.

For The Regional Civil Affairs Officer

Douglas N. Batson
DOUGLAS N. BATSON
1st Lt., CMP
Actg. Asst. Adj. Gen.

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

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SUBJECT: Draft Instructions on Allied Military Courts

TO: AGO
15 AUG 1945
CSGD

FROM: [illegible], AGO FD, EUCOM Adv
[illegible], OUSE FD, Rear Echelon
[illegible], AGO FD, Section A

AGO/202/188
15 Jun 45

1. Enclosed herewith is the draft of instructions concerning the procedure before Allied Military Courts. The [illegible], AGO FD, EUCOM Adv, has already seen the document and has made valuable comments.

2. It would be much appreciated if you would go over the proposed instructions carefully and let me have any concrete which you may care to make concerning their substance or form. I should be particularly grateful for suggestion as to matters which have not been touched upon in this draft.

[signature]

Major, AGD,
Chief Legal Officer

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

D.P.H.

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The attached communications from the Legal Officers with 5th Army and Region 4 express divergent views in response to the inquiries which we sent out on 9 December.

Off hand I am inclined to agree with Col. Shields in so far as the question of legislation is concerned. If the Italian law as written in the books is adequate the problem is merely one of making it effective in action, and I doubt if anything would be gained by the issuance of a General AMG Order. To the extent that our personnel permits, violations of Italian law can be tried in AMG courts if we are not satisfied by the results that the Italian courts are reaching.

I should much appreciate your advice.

C.L.O.

1.1.44

C.L.O.

Noted. Thank you. I am glad to see that you are not in any hurry to issue any regulations on Looting. I am against the whole thing if it may prevent looting.

I do not want AMG to give assistance to any thieves. We must endeavor to put them in Italian jails where they belong.

J. Greenbaum Col.

1.1.44

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CONFIDENTIAL

HEADQUARTERS
AAC 5 ARMY
A.P.O. 464 U.S. ARMY
Legal Division

208/CA/25.
24 December 1943

SUBJECT: Venereal Disease.

TO : Chief Legal Officer.
15 Army Group. A.P.O. 777.

With reference to your letter AAG/209/G1 dated 9 December, 1943, I apologise for my delay in replying thereto but I have been anxious to obtain all the available information on this subject in this Region prior to submitting my proposals with regard to a general order to control the incidence of this disease.

2. At a meeting presided over by the Director of Public Health, AAC HQ, 15 Army Group held in Naples on 19.12.43, this whole question was discussed from a medical, a police and a legal angle and a minute of this meeting will be furnished to you.

3. In view of the comparatively short time during which Military Government may be operated in regions of Italy and the fact that there is already an Italian law sufficient regulations, with two exceptions which I mention in paragraph 8 below, by which prostitution and soliciting are controlled I am not completely satisfied of the necessity or practical value of issuing Allied Government legislation on these matters. Presumably when the ACC takes over territory such regulations would cease to be operative and the position would be governed by the Italian law.

4. The incidence of venereal disease among troops, which I understand is unreasonably high in the Naples area in particular and which results from clandestine prostitution and soliciting, is a consequence of two main factors which will not be cured by legislation. By reason of the economic situation the shortage of food and the high prices at which it can only be obtained many women are driven into the practice of prostitution. There is a great amount of soliciting both by the women for themselves and procurers on their behalf some of the latter of whom disguise their ultimate business by seeking custom for improvised restaurants where a meal serves as an introduction to a prostitute. The police activity against this is rendered difficult. Soldiers will not stand for the arrest of women or in many cases of " pimps " by civilian police, either because they are satisfied they can look after themselves or because they wish to avail themselves of the proferred introductions and will not allow gratuitous interference by Italian police. The military police patrols which operate with the Italian police do make numerous arrests but they are numerically too few to succeed in apprehending more than a small percentage of the offenders. In spite of these difficulties, however, the Prefettura court in Naples has in the past six weeks sentenced about 300 persons under the Italian law for soliciting and prostitution.

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5. Although the foregoing may be rather obvious observations I submit them to justify my opinion that in view of the existing Italian law the solution to this problem does not lie in legislation but in increasing military police personnel and bringing the offenders before the Italian courts for trial under the existing law.

6. With the exception of two subjects, the regulations which in my opinion are necessary to combat the circumstances causing the incidence of venereal disease are already covered by Italian law, But if it is considered that AMG legislation should be issued it is my view that it should contain the following provisions.

(i) An order will be made by the competant authority in each area naming those houses which are licensed for prostitution under Italian law.

(ii) The proprietor or lessee of any building with the exception of those named by the competant authority by written order, used in any manner for the purpose of prostitution shall be guilty of an offence.

(These provisions are set out in Italian law in the Public Security Law of 18 June, 1931 No: 773, Title VII, Art 190 - 191).

(iii) All women employed as prostitutes shall be medically examined and certified as free from disease.

(This is provided for in Italian law by R.D. 27 July, 1934 No: 1265 approving Testo Unico Delle Leggi Sanitarie Articles 291 - 308 inclusive thereof).

(iv) All women suspected of practising prostitution will be obliged to submit to a medical examination.

(v) Any person who in any way solicits any member of the Allied Forces to patronise any licensed house or unlicensed house of prostitution or to be introduced to any women for the purpose of having carnal connexion with them shall be guilty of an offence.

(Soliciting under Italian law is made a general offence by Article 527 of the Italian penal Code and Art. 208 of the law of Public Security of 18th June, 1931 No. 773 Title VII).

7. In interpreting these articles a " competent authority " would be the CAPO responsible for the area and a "prostitute" any woman who has or was willing to have carnal connexion with any man for money or reward.

8. The two important restrictions in connection with prostitution in respect to which there is no Italian law are:-

(i) The making of venereal disease a notifiable disease which must be reported to the Italian medical auhtorities within two days of contracting the disease. Failure to do so would constitute an offence.

(ii) Any woman who is suffering from venereal disease and who exposes herself as a prostitute shall be guilty of an offence.

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9. I am not satisfied that a clause in any order which may be issued making any women who acts as a prostitute per se guilty of an offence, should be introduced. Such a clause might be used abusively in search of imprisonment.

10. If it is decided that it is necessary to issue a general order on prostitution I would suggest that in drafting such an order it would be helpful to have a copy of a proclamation upon Prostitution which was issued in Eritrea and which could be obtained from Civil Affairs Branch, G.H.Q. M.E.F.

J. V. M. Shields. Lt. Col.

J.V.M. SHIELDS.
LT COL. SLO.
AMG FIFTH ARMY.

Distribution: Chief Legal Officer, 15 Army Group.
Regional C.L.O. Region 3.
Public Safety Division.
Public Health & Welfare Division.
Regional C.L.O. Region 4.

JVMS/kR

0068

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

REGION IV

TO : C.L.O., A.M.G., HQ., 15th Army Group.

FROM : R.C.L.O., Region IV

SUBJECT : Venereal Disease

REF : R4/1064

DATE : 23 December 1943

1. Reference your AMG/209/81 of 9 December 1943, forwarding copy of AMG/511/1 dated 5 December 1943 from Director of Public Health.

2. The only area with which this HQ. is for the time being immediately concerned is the Province of Foggia, where the incidence of venereal disease appears to be less serious than in certain other centres, e.g. Naples. At the same time it is agreed that the risks attendant upon venereal disease are undoubtedly sufficiently serious to merit the issuance of a General Order.

3. Opportunity was taken, on the occcasion of my recent visit to Foggia, to attend a meeting held at Foggia, which was also attended by the Director of Public Health, 15th Army Group, the Director of Public Health, Region IV, S.C.A.O. Foggia Province, C.A.P.O. Foggia, and representatives of local hospitals and of the 12th U.S. Air Force. The meeting was not of course competent to take any decisions, but general agreement was reached as to the policy which should be recommended.

4. It appeared that Foggia is at present suffering from a complete breakdown of the previous Italian organization for dealing with the venereal problem. Prior to the occupation it is understood that there were a certain number of licensed "houses", and in addition a number of licensed prostitutes other than those resident in the houses. Regular medical examination was compulsory for both classes of prostitutes. Upon the occupation all licensed " houses " were closed, and have not since been reopened. The licensing system for individual prostitutes appears also to have been discontinued. Owing partly to damage by bombing and partly to requisition of premises by the Army and Air Force, no centres of treatment are now available, and the regular examination of prostitutes has been discontinued. Prostitution has now been driven underground and is clandestine and unregulated.

5. It was generally agreed at the meeting that the best policy would be to resume forthwith the previously ex-

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isting Italian system, i.e. to reopen selected licensed houses, to restore the system of licensing prostitutes and to reintroduce the compulsory medical examination of prostitutes, under AMG supervision. I find myself wholly in agreement with this proposal. Unless and until this has been done it is not considered that the issuance of any General Order is likely to be effective.

6. In my opinion the reinstatement of the previously existing Italian system should be effected by a General Order, which should:

(a) provide for the reopening of licensed houses under AMG supervision, power of licensing to be delegated to S.C.A.O's.
(b) provide for the licensing of all prostitutes by the same authority.
(c) provide for compulsory examination of all licensed prostitutes at regular intervals at centres to be appointed by C.A.O's in every centre of population.
(d) constitute the following offenses:
  (i) Keeping an unlicensed house.
  (ii) Practising as a prostitute when not licensed.
  (iii) Solicitation and pimping.
  (iv) Failure to submit to regular medical examination.
  (v) Sale or gift in the street of bottles of wine, etc. *

7. I am of the opinion, however, that such a General Order can only be expected to be effective, if at the same time a corresponding order is issued to all Service personnel. This will involve the cooperation not only of 15th Army Group, but also of the R.A.F., U.S.A.A.F., and personnel of United Nations' Navies.

8. As at present advised I see no reason why a single General Order, to be applied simultaneously in all parts of occupied territory, should not be effective, and I do not at present forsee any necessity for further provisions being made by way of local legislation.

H. G. Willmer

H. G. WILLMER, K.C.,
Colonel,
R.C.L.O., Region IV

* So far as concerns the sale of wine in the street, it appears that this is already an offence under Italian Law — see Art. 87 of Capo II of Titolo III of Testo Unico delle Leggi di Publica Sicurezza, enacted by Royal Decree of 18 June 1931.

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F.C. 209 173

SUBJECT:- Trial of Italian Spies.

H.Q., A.M.G.,
15 Army Group,
C.M.F.

Colonel E. Hume,
A.M.G.,
Fifth Army.

AMG/411/

9th January 1944.

The Intelligence Section of 15 Army Group are very anxious that the trial of the three Italian spies caught in Fifth Army area should be concluded without delay.

2. I believe the trial is now proceeding and at its conclusion, without in any way prejudicing the interests of the accused, if a conviction is obtained I should like the appeal and the proceedings sent forward with the minimum of delay, so that the case can be reviewed here and sent to the C.in C. for confirmation.

Brigadier,
Deputy Chief Civil Affairs Officer.

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

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Subject:- Amendment to Para 12 - Rules of Procedure.

AMG HQ.,
15 Army Group,
C.M.F.

Ref.AMG/203/172
9 January 44.

S.L.O. Fifth Army.
S.L.O. Eighth Army.
R.C.L.C. Region III.
R.C.L.C. Region IV.

Herewith a copy of the subject amendment.

2. Nothing in this Amendment will affect any directive issued or to be issued by R.C.L.Cs or S.L.Os requiring the submission by Summary Courts under their jurisdiction of a Form 8 in cases in which there is a lesser punishment.

Lord Hawke

Major, A.F.S.,
Chief Legal Officer.

0072

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

Amendment of Para 12 - Rules of Procedure

By virtue of the powers vested in me, I, Maurice Stanley Lush, C.B.E., K.C., Brigadier, Deputy Chief Civil Affairs Officer, hereby direct that the Rules of Procedure for Allied Military Courts (Second Revised Edition) be amended by the deletion of the last sentence in Rule 12 and by the substitution in its place of the following sentence :-

"In every case in a Summary Military Court in which there is entered a plea of "not guilty" the court shall make a record in brief narrative form of all material evidence, and the testimony so recorded shall be sent to the reviewing authority on form 8 in every case in which the verdict is "guilty" and in which the sentence is in excess of 30 days imprisonment or a fine of £ 4,000, and in every one, regardless of the sentence, in which a petition for review is filed."

Brigadier,
Deputy Chief Civil Affairs Officer.

6 January 1946

0073

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

Subject:- Attendance of C.M.F. witnesses at AMG Courts.

170

AMG HQ.,
15 Army Group,
C.M.F.

Ref.AMG/209/170
2 January 44.

D.C.A.C.,
AFHQ. Adv. Admin.Sch.
C.M.F.

154

Referring to your 3092/13/A.1 of 3 Jan 44, we are fully aware of the burden and inconvenience which may be be imposed upon the C.M.F. and S.I.B. by the attendance of their personnel at AMG Courts. We must, nevertheless, conduct the proceedings in accordance with the letter and spirit of the Proclamations of the Military Governor, and we are satisfied that the position of AMG's representative in Region 3, as it is described in your second paragraph, is the only permissible interpretation of those Proclamations.

2. The AMG proposal summarized in your third paragraph recognizes the importance of so administering the business of our courts as to cause the least possible hardship to Military witnesses. At the same time it avoids the unacceptable practice of receiving written evidence against an accused when the witness himself is available to testify. We should not be justified in altering procedures to any greater extent than has been suggested by Region 3.

167

Brigadier,
Deputy Chief Civil Affairs Officer.

Copy to:- R.C.A.C., Region III.

207 — 169

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
A.P.O. 394, U.S. Army

AMG/gv
3/8C/3/L

1 January 1944

Subject: Sentences of Military Courts.

To : Senior Civil Affairs Officer, Provinces of Naples, Avellino, and Benevento.

1. Instructions just received from A.F.H.Q. Headquarters, 15th Army Group, subject as above are republished as follows:-

" A sufficient number of cases have now come before Allied Military Courts in 15 Army Group areas to make certain tendencies evident.

2. All officers who sit as Military Courts must keep in mind the directive of 1 October in which it was stated that suspended sentences will be imposed "only when it is desirable, having regard to the special circumstances of the case, such as the age or other circumstances of the accused, or such as the fact that the accused has acted without bad intent but has still committed a minor offence". The frequency with which Summary Courts are suspending sentences indicates that this directive is not being carried out. It must be remembered that the suspended sentence is a device for the exceptional case. Needless to say it should never be used because the court is in doubt as to defendant's guilt or innocence.

3. When prosecution is brought under Section 44 of Proclamation 2 it is essential that proof be made of the issuance of the order which has not been obeyed. This is as important in the case of the violation of a written order as in that of the disobedience of the type of oral order described in the directive of 11 September (AMG/3/6.3/L). As there stated, "the prosecution should be in

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

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To : Senior Civil Affairs Officer, Provinces of Naples, Avellino, and Benevento.

1. Instructions just received from A.F.H. Headquarters, 15th Army Group, subject as above are republished as follows:-

" A sufficient number of cases have now come before Allied Military Courts in 15 Army Group areas to make certain tendencies evident.

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3. When prosecution is brought under Section 44 of Proclamation # it is essential that proof be made of the issuance of the order which has not been obeyed. This is as important in the case of the violation of a written order as in that of the disobedience of the types of oral order described in the directive of 11 September (Amgot/ acg/1). As there stated, "the prosecution should be in a position to prove that the order was definite and concise and that accused appeared to understand it".

4. Paragraph 3 (c) of the Rules of Procedure states that "in general multiplicity of charges based on the same set of facts will be avoided " . The rule is frequently disregarded with the consequence that essentially simple issues become complicated, technicalities are created, and the record becomes confused. The wide powers of amendment possessed by Military Courts make the type

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

of multiple charges described in Paragraph 4 (h) are entirely unnecessary in any but a very few cases.

5. There appears to be little consistency in the conversion of fines into terms of imprisonment for non-payment of the fine. Although it is in no way controlling for Allied Military Courts the provision of Italian law by which a day's imprisonment is made the equivalent of a £ 10 fine should be kept in mind. The ability of the defendant to pay should be the controlling test, but the earning power of defendants is hardly as variable as recent sentences would indicate.

6. The leniency of [illegible] courts in wire cutting cases has been adversely commented upon. The serious consequences of these offences, no matter how innocently they may be committed, make severe punishment of the very greatest importance. Pecuniary punishment is the best remedy available to meet this increasingly serious situation. In any area where wire cutting is taking place with any frequency it will be available for special notices to be posted, over the signature of the [illegible], reminding the population that the offence is punishable by death."

7. It is directed that the above instructions be put into effect in your respective provinces.

By order of Lieutenant Colonel [illegible]:

[illegible],
1st Lt., [illegible],
Actg Asst Adj Gen.

Copy to [illegible], Eq. 1st Army Group.

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

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

Legal

One copy has been p.i.w. P.S. File 433. and sent over to C.S.O. for D.C.P.A.G to see.

This copy saved to you.

7/6/44 MDK PS

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

To Stacy
? Action

Sir
Is this P/S
or Legal. Both
seem to be concerned
Temporarily on
Investigations file.
7/1/44.

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

CONFIDENTIAL

United States (Europe)

HEADQUARTERS
REGION 3 ALLIED MILITARY GOVERNMENT
APO 394 U. S. Army

1 January 1944

MEMORANDUM TO: CG, AMG, 15th Army Group.

SUBJECT : Poster Affixed in Naples on 30 December 1943.

1. The poster, translated copy of which is attached, was extensively affixed in public thoroughfares on 30 December 1943.

2. Notwithstanding the poster's friendly tone toward the Allies, serious concern was caused to the military authorities and to AMG because of the following points:

a. Mention of the Bari raid and Allied losses sustained.

b. Mention of the recent fire and explosions at Capo di Monte.

c. Open incitement to violence and terroristic action.

3. Major Pepurt, in charge of CIC detachment, PBS, summoned Eugenio Reale, head of the Communist Federation of the Campania, to his office and stressed the reprehensible character of the notice on military security grounds. Reale stated the poster was prepared and disseminated by the Naples City Communist Party but that nevertheless he is willing to assume full responsibility. He expressed his dismay at the possible dangerous consequences of the poster.

4. General Fence, CG, PBS, spoke to the undersigned officer and stated that the Base Section had given up the thought of acting on security grounds because of the recommendation made by his G-2 against creating individual martyrs. He, however, expressed the hope that AMG would take action on the grounds of violation of Proclamation 11 pertaining to distribution of unauthorized publications.

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(Equals British CONFIDENTIAL

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5. Immediately thereafter, at about 1200 hours, the president and secretary of the Neapolitan Committee of National Liberation, Messrs. Arangio Ruiz and Rosalbino Santoro called to extend the committee's heartiest compliments of the season to AMG. On this occasion they were informed of the poster and were shown a copy. The president immediately and officially disavowed this independent action on the part of the Communist Party and expressed the Comitato's deepest regret over this publication which he felt could help the enemy's propaganda. A written statement to the same effect will be sent to this Headquarters.

6. Mr. Arangio Ruiz further stated that the Communist Party had recently attacked the Comitato as a whole for being too subservient to the wishes, requests and desires of the Allied authorities in general and AMG in particular. He further stated the unruly and headstrong attitude of the Communist Party was threatening the existence of the Comitato as a whole. He promised that the poster question would be made the reason for a special meeting of the Comitato, and that the Communist Party would be severely blamed for its action. He went so far as to directly imply that if the Comitato had to disappear as such over this matter it would do so.

7. At 1530 hours the undersigned officer met with Lt. Col. McLain, head of the Legal Section; Lt. Col. Francis, head of the Public Safety Section; Maj. Hanrahan, Public Relations Officer, and Maj. Knight for the purpose of discussing action to be followed.

8. Legal opinion was very definite in that because of the skill with which the poster had been prepared, the only charge which could be brought under the proclamation was for failure to have obtained approval prior to printing and dissemination.

9. Public Safety was instructed to exert every effort to discover the parties directly responsible for printing and posting.

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(Equals British CONFIDENTIAL

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10. It is planned to take action against these persons and at the same time give out information through the public relations officer. The reasons for this action are to be found even more in the contents of this poster than the simple infringement of Proclamation 11.

11. It is felt most important to avoid giving the false impression that any one specific political party is being discriminated against. This is, of course, not the case and it is earnestly desired to avoid causing the otherwise possible press reaction that AMG is reactionary and anti-democratic. Furthermore it is planned to publicize the accord existing between the five other political parties and AMG in this matter.

12. Regardless of the above action it is felt that the most constructive step which could be made towards bringing the local Communist Party in line and harnessing it to the general war effort rather than to its party aspirations would be the intervention of the Advisory Council for Italy on a unanimous basis. Should this be possible it would be essential that it be understood clearly that the USSR member is in complete accord. The admonition would be even more effective if delivered or signed by the USSR member.

CARL A. FRANGE
Lt. Col., Sig. Corps Res.
Regional Civil Affairs Officer

RDK/ed

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(Equals British CONFIDENTIAL

10082

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

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HEADQUARTERS
REGION 3 ALLIED MILITARY GOVERNMENT
AFO 394 U. S. Army

31 December 1943

C O P Y

TO THE WALL THE ENEMIES OF THE PEOPLE

Workers, citizens:

The accomplice of fascism, the government of Brindisi refuses to purge the administrations, the army and the police of fascist agents of Hitler's fifth column. Now, this complicity begins to have serious consequences for our anglo-american allies and tragic consequences to the civil population.

Although already weakened, Hitler's air force has been able to furiously bomb Bari, knowing the right moment thus sinking 17 ships. Two days ago, an important deposit of ammunition has exploded in Naples causing many victims and very serious damages.

Popular sentiment unanimously attributes these deeds to the sabotage working of the fifth column.

Popular sentiment does not err.

We must put to the wall the guilty ones: we must meanwhile paralyse with terror, striking without pity their inspirers, the Sansanelli, the Tilena, the Maglio and the Le Maistre, the Prinsivalli who continue their wicked work today in liberty.

Workers, citizens!

The great indignation that you have spontaneously expressed must sound as a definite warning to the so-called government of Brindisi, which busies itself only to cover the crimes of the fascist king and refuses to take up any steps against the saboteurs and assassins of the fifth column.

Your indignation must sound as a strong friendly advice to our allies who deceived by false and distrustful information against any repressive orientation, underestimate the danger of the fifth column.

If the government of Brindisi does not strike because of honor among thieves, if the allies do not strike because of goodness of heart, the people itself will decide to strike without pity the agents of the enemy, in the interest of the allied armies, for the safety and future of the italians.

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

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C O P Y

Italian Communist Party

Giovanni Roveda, one of the heads of the Italian Proletariat has been arrested in Rome by the Fascists.

In his person they want to strike the whole working class depriving it one of the men that can guide it in the difficult path of national reconstruction.

But let the assassins in the service of Hitler beware, because if they will try to vent their powerless wrath upon Roveda we will not let him go unavenged for long.

Many, too many fascist traitors are still in Italy. If a hair of Giovanni Roveda is touched, ten squadrista will be put to death in every city of Italy.

Translated by: James F. Mormile
Agent C.I.C.

1084

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

FOLIOS 161 + 162

Subject: Report on Military Courts in Region IX for December, 1943.

Removed and filed in A.M.G./223
as Folios 14 + 15.

B.N.B.
15/1/44

1.8

0035

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

Legal JAN 1944

209

160

HEADQUARTERS REGION 4 MAIN
ALLIED MILITARY GOVERNMEN
APO 394

TO : S L O, AMG, HQ., 15th Army Group, C M F.

FROM : R C L O, Region 4.

SUBJECT : Request for Directive.

REF : R4/1064

DATE : 30 December 1943. /132

1. Reference your AMG/209/132 of 23 December 1942, paragraph 3.

2. No copy of the AMGOT directive 4033/L of August 1943, therein referred to, exists in this HQ.

3. Could you please supply one copy thereof for our use.

H. G. Wilmer

H. G. WILMER, K.C.,
Colonel,
R C L O, Region 4

1.7

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

159

Subject:- British Merchant Seamen.

AMG Hq.,
15 Army Group,
C.M.F.

Ref. AMG/209/159
6 January 44.

H.Q No.2 District.

For your information we enclose herewith a copy of an instruction which is being issued to all Legal Officers of AMG in 15th Army Group areas. We understand that it is also being distributed throughout Region 2.

Brigadier,
Deputy Chief Civil Affairs Officer.

0987

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

158

Subject:- Po[illegible] of Appointment - General Milit[illegible] / Courts.

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/209/158
6 January 44.

R.C.L.O.,
Region III.

Reference Delegation of Power to Establish General Military Courts and Power of Review by the D.C.C.A.O. to Lt. Col. Carl A. Kraege, dated 14 December, 1943, please inform this Headquarters whether Col. Kraege has exercized his power of delegation under Par. 3, and if so, to what extent and to whom.

2. If such power has not been exercized up to the present, but is exercized at a future date, this Headquarters should then be furnished with the information called for in paragraph 1.

[illegible]

[illegible] Major, A.U.S.,
Chief Legal Officer.

158

Subject:- British Merchant Seamen.

157

A.C.S.,
A.A. Army Troops,
C.M.F.

Ref. AA/209/17.
7 January 44.

C.C.S., Region II.
C.C.S., Region IV.
C.M.F., Fifth Army.
C.M.F., Eighth Army.

1. C.M.F. are preparing an order to give effect to a new series of Defence Regulations which empower Naval Courts, established under the Merchant Shipping Act 1894, to try British merchant seamen for certain offences committed ashore or afloat in foreign countries.

Pending receipt of this order, the following directive is issued for the guidance of all concerned.

2. No British merchant seaman may be tried for any offence in an Allied Military Court, and any cases referred to an officer of AFHQ will forthwith be referred to the Naval officer in charge of the port concerned.

3. For information, the Defence Regulations in effect confer the following powers :-

(a) By Regulation 44c the Provost Marshal or any officer seaman, marine, soldier or airman exercising authority under or on behalf of the Provost Marshal, may arrest and detain any person who he has reasonable grounds for suspecting has committed an offence for which he may be brought before a Naval Court. The Provost Marshal is responsible for seeing that such person is dealt with speedily.

(b) Under Regulation 47A a Naval Court convened under part VI of the Merchant Shipping Act 1894 may try any British subject who is for the time being employed as master or seaman of the crew of any ship other than a Dominion ship, or whose occupation is master or member of the crew of a ship other than a Dominion ship, for any offence which when committed in England is punishable on summary conviction.

(c) For more serious offences the existing procedure laid down in Sections 263 and 687 of the Merchant Shipping Act 1894 will be followed i.e. a Naval Court will investigate the case and the accused will be sent in safe custody to the United Kingdom or to any British possession (e.g. Malta) which has a suitable Court for trial of the offence.

Major, A.F.C.,
Chief Legal Officer.

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

C.N.S., Navy for N.
C.I.C., Fifth Army.
C.I.C., Eighth Army.

1. C.P.G. are preparing an order to give effect to a new series of Defence Regulations which empower Naval Courts, established under the Merchant Shipping Act 1894, to try British merchant seamen for certain offences committed ashore or afloat in foreign countries.

Pending receipt of this order, the following directive is issued for the guidance of all concerned.

2. No British merchant seamen may be tried for any offence in an Allied Military Court, and any cases referred to an officer of A/M will forthwith be returned to the Naval Officer in charge of the Port concerned.

3. For information, the Defence Regulations in effect confer the following powers :-

(a) By Regulation 45a the Provost Marshal or any officer seaman, marine, soldier or airman exercising authority under or on behalf of the Provost Marshal, may arrest and detain any person whom he has reasonable grounds for suspecting has committed an offence for which he may be brought before a Naval Court. The Provost Marshal is responsible for seeing that such person is dealt with speedily.

(b) Under Regulation 47A(3) a Naval Court convened under Part VI of the Merchant Shipping Act 1894 may try any British subject who is for the time being employed as master or member of the crew of any ship other than a Dominion ship, or whose occupation is master or member of the crew of a ship other than a Dominion ship, for any offence which when committed in England is punishable on summary conviction.

(c) For more serious offences the existing procedure laid down in Sections 685 and 689 of the Merchant Shipping Act 1894 will be followed i.e. a Naval Court will investigate the case and the accused will be sent in safe custody to the United Kingdom or to any British possession (e.g. Malta) which has a suitable Court for trial of the offence.

Deputy Assistant
Chief Legal Officer.

Copy to:- H.Q. No.2 District.

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

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

SUBJECT: Jurisdiction for Review of Allied Military Court Cases.

H.Q.AMG( )
15 Army Group.
C.M.F.

TO: R.C.L.C. HQ.AMG.Region III.
" " " " IV.
C.L.C., HQ. AMG.5th Army.
" HQ. AMG.6th Army.

AMG/209/156.
S. Initials.

The procedure for review of Allied Military Court cases tried in an area subsequently transferred from an Army to a Region shall be as follows :

(a) Routine Examination: If the Record has been forwarded to the Army reviewing authority before the date of transfer that authority will conduct the examination and review. If the record is still in the possession of the Court on the date of transfer it will be forwarded for examination to the R.C.L.C.

(b) Review on Petition: Petitions for review of sentence will be transmitted to the authority having appellate jurisdiction at the time the petition is submitted and that authority will conduct the review; i.e., petitions submitted before the date of transfer will be sent to the C.L.C. of the Army for forwarding to the D.C.C.A.G., and petitions submitted after the date of transfer will be sent to the R.C.L.C. for review by the R.C.A.G.

2. Reversals or modifications on routine examination and decisions on Petition for Review will be communicated to the authority having jurisdiction over the defendant at the time of such decision, and such authority will take necessary action.

Major, AIG.,
Chief Legal Officer.

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

D.C.C.A.O. 5 Jan 44 155

Please see p. 154 of this file.

Appreciating fully the inconvenience and burden which the normal AMG procedure imposes upon the CMP and SIB personnel, I am nevertheless of the opinion that we should not consent to the proposal which is made in paragraph 4. The result of such a procedure would either be the complete elimination of oral testimony by military personnel who would be inconvenienced by testifying in court or the constant postponement of final decision with the defendant remaining in jail during a series of adjournments.

The AMG proposal, described in paragraph 3, seems to me to be eminently fair. My principal concern about the procedure there suggested is that the preliminary hearings called for will retard the final disposition of cases. As a compromise it is, however, worth trying.

Harold Hoyer

Major, AUS
Chief Legal Officer

CLO

I cannot accept written evidence except when plea is Guilty. I think AFG Reg III has put into reasonable conformities. Please draft a sympathetic letter to DCAO on these lines

NS 6/1/44.

cc This minute has taken 5 days to reach me

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

Legal

154

SUBJECT: Attendance of CMP Witnesses at Civil Courts.

8 JAN 1944

AFHQ, Adv Adm Sch, CMF

209

3092/13/A.1

AMG., 15 Army Group

3 Jan 44

1. CMP and SIB personnel in Italy are extremely limited considering the extensive duties they have to perform. At present many of the cases which they investigate affect civilians. When these cases come to trial before the AMG Civil Courts the CMP or SIB personnel who investigated the cases are called as witnesses. Valuable time is often wasted especially as, in some cases, the accused are not before the court until the following day.

2. AFM 57 Area has asked AMG to agree to the acceptance of documentary evidence of CMP witnesses, except in cases where the evidence is disputed by the accused. In such a case the trial could be adjourned to secure the attendance of CMP witnesses (as is the military procedure where cases are dealt with summarily). AMG has replied that the difficulty experienced by the Provost Authorities was appreciated. At the same time one of the salient objectives of AMG is to give the people of occupied territories a form of justice as nearly like the form of justice employed in Great Britain and the United States. This includes confronting the accused with witnesses wherever available and giving him an opportunity to cross-examine. AMG further pointed out that the procedure suggested was applicable under Military Law to cases dealt with summarily, and not when the accused is tried by Court Martial, to which a trial before an Allied Military Court is analogous.

3. To alleviate the present burden on Provost personnel, AMG proposed:-

(a) to see to it that it shall not again happen that military police are summoned to attend on a certain day only to find that the accused is not available in court on that day; and

(b) by arranging for a preliminary appearance of the accused in court to plead guilty or not guilty before summoning any witnesses. In this way, if the plea is guilty, it will be unnecessary for any military police witness to attend.

4. All things considered it seems that if we are to continue getting the valuable cooperation of the CMP we must face the facts and not impose too great a burden on them. I think we shall get more and better results if we normally accept their written evidence in the first case, and only require their attendance (after due notice) in cases where the president of the court decides that justice cannot be given without it. Do you agree?

W. Darley Colonel
for Maj-Gen.,
DCMG.

WGP/FA

Copy to: Pro
AMG, No 3 Region
ADJAG, c/o 57 Area

0095

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

Subject:- Powers under Rules of Procedure.

AAG HQ.,
15 Army Group,
C.M.F.

Ref. AAG/209/153.
3 January 44.

E.I.C.
AAG HQ, Eighth Army.

Reference your G/13 of 26 December 1943, the delegation of power and authority with respect to paragraph 12 does not mean that Military Court records will repose in the office of the D.J.A. Eighth Army Area, but merely that all records from Courts in the area will be forwarded to such office for information and transmission to this Headquarters.

2. Section 2, article VII of Proclamation 4, requiring examination by the D. J.A., still applies except in regions where it is amended by Proclamation 11.

Major, A.A.G.,
Chief Legal Officer.

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

C. L. O.

For comment.

M.S. 4/1/44.

0095

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

Brig
4 JAN 1944 c/o hqs, AFHQ. 151

26th December, 1943

Dear Brigadier,

British Merchant Seamen

Upjohn and I have had a conference here with MGS and the Navy on the above subject. The Navy produced a copy of some new Defence Regulations which cover the whole subject and which provide that all offences by Merchant Seamen shall be tried by naval courts or that the accused be sent to a British possession.

Legally, I suppose, we could say that British legislation does not bind AMG but we must in practice take note of it as it represents the wishes of the British Government.

AFHQ are producing a full directive which will cover all Services, but meanwhile I have agreed with Upjohn a short form directive which he is sending to Regions 1 and 2 and which I suggest you should send out to Regions 3 and 4 and AMG 5th and 8th Armies. A copy is enclosed.

Although we are under no obligation to do so, I think we should let No. 2 District know unofficially of the new Regulations and the powers of arrest which are given to the P.M. I know they are worried at present as they believe they have no such powers. Will you also kindly show this letter to Lord Middleton, as I know he is interested also.

I hope to be away shortly as soon as a battle over the question of whether I need a passport is decided!

Yours very sincerely

Brigadier M.S. Lush, CBE, inc.
HQ, Ausa, 15 Army Group.

Legal

4 JAN 1944

150

ALLIED MILITARY GOVERNMENT
Legal Subcommission

26 December 1943

SUBJECT: British Merchant Seamen.

TO : CLO Region I (thru RCAO)
CLO Region II (" ").

1. A.F.H.Q. are preparing an order to give effect to a new series of Defence Regulations which empower Naval Courts, established under the Merchant Shipping Act 1894, to try BRITISH merchant seamen for certain offences committed ashore or afloat in foreign countries.

Pending receipt of this order, the following Directive is issued for the guidance of all concerned.

2. No British merchant seaman may be tried for any offence in an Allied Military Court, and any cases referred to an officer of AMG will forthwith be referred to the Naval Officer in charge of the Port concerned.

3. For information the Defence Regulations in effect confer the following powers:-

(a) By Regulation 48c the Provost Marshal or any officer seaman, marine, soldier or airman exercising authority under or on behalf of the Provost Marshal, may arrest and detain any person whom he has reasonable grounds for suspecting has committed an offence for which he may be brought before a Naval Court. The Provost Marshal is responsible for seeing that such person is dealt with speedily.

(b) Under Regulation 47AAB a Naval Court convened under Part VI of the Merchant Shipping Act 1894 may try any British subject who is for the time being employed as master or member of the crew of any ship other than a Dominion ship, or whose occupation is master or member of the crew of a ship other than a Dominion ship, for any offence which when committed in England is punishable on summary conviction.

(c) For more serious offences the existing procedure laid down in Sections 983 and 689 of the Merchant Shipping Act 1894 will be followed i.e. a Naval Court will investigate the case and the accused will be sent in safe custody to the United Kingdom or to any British Possession (e.g. Malta) which has a suitable Court for trial of the offence.

G. R. UPJOHN
Colonel

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

SUBJECT: British Merchant Seamen.

TO : CLO Region I (thru RCAO)
CLO Region II (" ").

1. A.F.H.Q. are preparing an order to give effect to a new series of Defence Regulations which empower Naval Courts, established under the Merchant Shipping Act 1894, to try BRITISH merchant seamen for certain offences committed ashore or afloat in foreign countries.

Pending receipt of this order, the following Directive is issued for the guidance of all concerned.

2. No British merchant seaman may be tried for any offence in an Allied Military Court, and any cases referred to an officer of AMG will forthwith be referred to the Naval Officer in charge of the Port concerned.

3. For information the Defence Regulations in effect confer the following powers:-

(a) By Regulation 48c the Provost Marshal or any officer seaman, marine, soldier or airman exercising authority under or on behalf of the Provost Marshal, may arrest and detain any person whom he has reasonable grounds for suspecting has committed an offence for which he may be brought before a Naval Court. The Provost Marshal is responsible for seeing that such person is dealt with speedily.

(b) Under Regulation 47AAB a Naval Court convened under Part VI of the Merchant Shipping Act 1894 may try any British subject who is for the time being employed as master or member of the crew of any ship other than a Dominion ship, or whose occupation is master or member of the crew of a ship other than a Dominion ship, for any offence which when committed in England is punishable on summary conviction.

(c) For more serious offences the existing procedure laid down in Sections 983 and 689 of the Merchant Shipping Act 1894 will be followed i.e. a Naval Court will investigate the case and the accused will be sent in safe custody to the United Kingdom or to any British Possession (e.g. Malta) which has a suitable Court for trial of the offence.

G. R. UPJOHN
Colonel
Chief Legal Officer

Copy to 15 Army Group AMG
AFHQ MGS

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

0093

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

Subject:- Arrest of Provincial S.L.O.s.

149

ADC 81.,
15 Army Group,
C. .F.

Ref.ADG/203/149
1 January 44.

R.C.I.C.C., A.F. Region IV (Adv).

Herewith three copies of AFHQ directive 4013/1 of August 1943 which was referred to in our letter 203/209/132, 23 Dec 43.

2. Major Forrest two copies to S.L.O. Perugia province, who has verbally requested this.

Ward Abell

Major, A.U.S.,
Chief Legal Officer.

By 156

0099

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

148

Subject:- Trial of Refugee Offenders.

A.G.-R.F.S.,
15 Army Group,
C.M.F.

Ref. AG/289/
27 December 43.

S.L.O.,
AFG H.Q., Eighth Army.

The C.C. of the Refugee Field Section, A.G 15th Army Group has called our attention to the administrative desirability of empowering Refugee Officers with Eighth Army to sit as Summary Military Courts for the trial of refugees in transit who violate A.G Proclamations and Orders.

The D.C.C.A.C. has approved the suggestion, and I have been directed to inform you that the S.C.A.C. may feel free to appoint Refugee Officers to sit as Summary Military Courts in cases against refugees in transit when those cases cannot be promptly and expeditiously disposed of by C.M.C.s and Judicial Officers.

Needless to say the proceedings before such courts must be conducted in accordance with the Rules of Procedure, and the methods of review will be similar to that followed in all other types of cases. If the Refugee Officers to be appointed need any preliminary guidance it is hoped that you will be in a position to give it to them.

1.5

Mark Dell. Howe

Mark Dell. Howe, Major, A.U.S.
Chief Legal Officer.

Ltr AG/25.

Copy to:- CO. Refugee Field Service,
A.G 15th Army Group.

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

Legal

30 DEC 1943

209

SUBJECT: Italian Soldiers

A.G. H.Q. Eighth Army

O.A./13

27 December 1943.

C.M.O. A.G. H.Q. 15 Army Group

1. Cases are arising where Italian Soldiers or persons claiming such status, commit an offense cognizable by Allied Military Courts.

2. A strict interpretation of Sec. 2, Art. II, Proclamation No.4 would give such courts jurisdiction over their persons.

3. Recognising that a delicate political situation is involved and that "Italian Soldiers" may fall into many categories, this office has advised that Summary Military Courts will not assume jurisdiction over subject, but will pass such accused back through P.O.W. channels to their organization with a statement of the facts in each case.

4. However in some instances the soldier's organization is North of our lines, or other difficulties arise making such a solution impracticable.

5. Advice is solicited as to disposition of subject when accused of Proclamation offense.

EDWARD J. KERR, Major,
for Officer Commanding,
A.G. H.Q. Eighth Army Main.

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

Legal

20 DEC 1943

209

14½

SUBJECT: Italian Soldiers

A.G. H.Q. Eighth Army.

O.N/13

27 December 1943.

C.L.O. A.G. H.Q. 15 Army Group

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2. A strict interpretation of Sec.2, Art. II, Proclamation No.4 would give such courts jurisdiction over their persons.

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5. Advice is solicited as to disposition of subject when accused of a Proclamation offense.

For Officer Commanding,

HERBERT J. HERCUS, Major,
for Officer Commanding,
A.G. H.Q. Eighth Army Main.

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

U.S. SECRET
Upgrade to: NO SECRET

Legal
23 DEC 1943.

JCH/CF/jw 146

209

ALLIED FORCE HEADQUARTERS

Military Government Section

File No. 319.3

24 December 1943
(Date)

SUBJECT: Transmittal of Document(s).

TO : AMG 15 ARMY GROUP

1. Forwarded herewith are... 1 ...copies of AFHQ Circular: War Criminals, dtd. 27 Nov. '43. Copy No. 54.

2. Please acknowledge receipt on the form below, detach and return immediately to Military Government Section, Allied Force Headquarters A.F.C. #512.

1

For- J. C. HOLMES,
Brigadier General, G.S.C.,
Chief, Military Government Section

0103

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

J Army 15 Years from 145

U. S. SECRET EQUALS BRITISH MOST SECRET

54

ALLIED FORCE HEADQUARTERS
APO 512

: : : : : : : : : : :
: S E C R E T :
: Auth: CINC AFHQ :
: Initials: :
: 27 November 43 :
: : : : : : : : : : :

CIRCULAR: 27 November 1943

WAR CRIMINALS

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

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

3. The following procedure will govern:

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

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

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

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

U. S. SECRET EQUALS BRITISH MOST SECRET

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

AFHQ Circular, dtd 27 Nov '43

3. (Cont'd)

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

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

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

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

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

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

By command of General EISENHOWER:

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

OFFICIAL:

T. J. Davis

T. J. DAVIS, Ex.
Brigadier General, United States Army,
Adjutant General.

DISTRIBUTION:
See attached
page.

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

144

AFHQ Circular: War Criminals, dtd 27 Nov '43

DISTRIBUTION:

1 - C-in-C
1 - C/S, AFHQ
1 - DTC
1 - CAO
4 - 15th Army Group
4 - Fifth Army
4 - Seventh Army
4 - Eighth Army
1 - NAAF
1 - Allied Control Commission
1 - G-1 (US)
1 - G-1 (Br)
1 - G-2 AFHQ
1 - G-2 NATOUSA
1 - G-3 AFHQ
1 - G-4 AFHQ
1 - JAG
1 - Mr. Murphy
1 - British Resident Minister
1 - IBS) THRU: CC
1 - FBS) NATOUSA
1 - PMG
1 - MGS
1 - INC
1 - PWB
1 - PRO
4 - AFHQ Adv Admin Ech
1 - NORTH AFRICA Dist
1 - No. 1 Dist
1 - No. 2 Dist

151

0106

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

29 DEC 1943

Legal

209

143

SUBJECT: Powers under Rules of Procedure

A.G. HQ. Eighth Army

04/13

26 December 1943

- C.G. A.G. HQ. 15 Army Group

1. Reference your AG/209/132 of 23 Dec. 43.

2. Does the delegation of power and authority with respect to para.12 mean that in the future all records of trial in Summary, Superior and General Military Courts, held within 8th Army area, shall come to repose in the office of the S.J.O. 8th Army?

3. Pending reply the undersigned will accumulate all such records in his office.

EDWIN J. MERCER Major,
S.J.O. A.G. H.Q. Eighth Army,
for C.G. A.G. HQ. Eighth Army.

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

142

Dear Mark -

Congratulations on your new job. From every one helped point of view I wouldn't rather have you sitting there than anyone else I know.

I brought along your Affection Vol II from Catania to give to you and have it with me now. Will give it to you as soon as we meet.

It is important that we have a talk as soon as possible, preferably here, but if you can not make it within a short time I will come down there.

Again congratulations

Yours.

J

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

Memo

27 Dec 43

141

AG 209/141

D.C.C.A.O.

Attached to the cover of the file is a draft of a proposed amendment to the Rules of Procedure which I believe would bring about an improvement in the situation in regard to the records of Summary Military Courts.

Mark DeW. Howe

Mark DeW. Howe, Major, AUS,
Chief Legal Officer

1 Cy

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

140

Subject:- Gr[illegible]ing of Bail.

AMG Hq.,
15 Army Group,
C.M.F.

Ref. AG/209/Inc
26 December 43.

R.C.I.O.,
Region III.

139

I have received the copies of the directive of 20 Dec on the Constitution of Cases to Trial before Superior Military Courts, (Amgot 3/5059/1).

2. Paragraph 2 of that directive seems to me to be based upon a misapprehension of the allocation of responsibility for the granting of bail pending transfer of a case to a Superior Military Court. Your attention is called to Rule 7(c) iii. of the Rules of Procedure at page 186 of the Manual, which indicates that the usual practice is for bail to be granted by the Summary Court, not by the higher court to which the case may be referred. Your directive, by suggesting that the other practice is proper in any but a very exceptional case, is misleading and needs, I believe, correction. Even if the application for bail is made after the Summary Court has adjourned it should normally be made to the Judge who presided at the Summary Court hearing.

3. The other aspects of the directive are approved.

Mark De[illegible]. Howe, Major, AUS,
Chief Legal Officer.

Def./23.

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

Sir

209

The 208?)

don't think we have
any relevant letters.

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

ARMY FORM C. **MESSAGE FORM** Register No.

Call.	Srl. No.	Priority	Transmission Instructions
			2-1

140 A

Above this line for Signals use only.

Office Date Stamp.

From *ORIGINATOR.* | *Date-Time of Origin.*

(A) 15 Army Group 29 A

For Action.

Legal

To Fifth Army

(W) For Information (INFO).

Message Instructions **GR**

Rptd: AFHQ

ORIGINATOR's No.

I (b) 408

Please arrange for three Antons to be interrogated earliest by C.S.D.I.C. Naples before trial(.) Ensure C.S.D.I.C. in possession all facts of case and previous interrogation reports(.) C.S.D.I.C. evidence should be made available to A.A.G. legal officer handling case

1 6

This message may be sent AS WRITTEN *by any means except* { WIRELESS

Signed.

If liable to be intercepted or fall into enemy hands this message must be sent IN CIPHER.

Signed.

Originators Instructions. Degree of Priority.

THI or THOR

TIME CLEARED

PSS/NA/4/43/40,000—AFHQP/203.

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT

139

209-

Amgot 3/6059/L
20 December, 1943

Subject: Committing Cases to Trial Before Superior Military Courts.

To : S.C.A.Os.

1. In many instances, papers forwarded to this headquarters which relate to cases committed by Summary Military Courts to trial by a Superior Court consist of nothing more than a Form 8 containing the order committing to trial by a Superior Court and a charge sheet. Hence, when these papers are turned over to the officer who is to prosecute the case before the Superior Court, he does not have the evidence which even the prosecutor before the Summary Military Court had before the original submission of the case. This either throws the burden of preparation upon the prosecutor before the Superior Court, or requires more or less correspondence with the Summary Court, or the prosecutor before that court, in order to obtain the information which the latter has. In order to avoid this, Summary Courts will henceforth be directed to forward, with the record of the proceedings, all the papers relating to the proof of the charges made which the prosecutor has not submitted to the court. This should include names and addresses of all witnesses.

2. In many instances applications for bail are made to a Superior Court after the case has been referred by the Summary Court to the Superior Court, but before receipt by the latter of the Form 8 and accompanying papers, which frequently do not reach the Court until some considerable time later. It is extremely difficult for the Superior Court to dispose of such bail applications without the papers before it, and yet, delay in acting upon these applications in many instances results in the unnecessary detention of the accused persons awaiting trial who might be granted bail. Kindly send instructions to all C.A.Os and other Summary Courts, and advise Provincial Legal Officers to transmit papers relating to trial before a Superior Court as expeditiously as possible.

By order of Lieutenant Colonel RUGGLES:

DOUGLAS N. BATSON,
1st Lt., CIP,
Asst Adj

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

by a Superior Court consist of nothing more than a Form 8 containing the order committing to trial by a Superior Court and a charge sheet. Hence, when these papers are turned over to the officer who is to prosecute the case before the Superior Court, he does not have the evidence which even the prosecutor before the Summary Military Court had before the original submission of the case. This either throws the burden of preparation upon the prosecutor before the Superior Court, or requires more or less correspondence with the Summary Court, or the prosecutor before that court, in order to obtain the information which the latter has. In order to avoid this, Summary Courts will henceforth be directed to forward, with the record of the proceedings, all the papers relating to the proof of the charges made which the prosecuter has not submitted to the court. This should include names and addresses of all witnesses.

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By order of Lieutenant Colonel KEMMERER:

DOUGLAS N. BATSON,
1st Lt., CMP,
Acting Asst A.G.

DISTRIBUTION:

S.C.A.O.	Naples Province	12
"	Naples Town	5
"	Benevento Province	12
"	Avellino "	12
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Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT

Amgot 3/6059/L
20 December, 1943

Subject: Committing Cases to Trial Before Superior Military Courts.

To : S.C.A.Os.

1. In many instances, papers forwarded to this headquarters which relate to cases committed by Summary Military Courts to trial by a Superior Court consist of nothing more than a Form 8 containing the order committing to trial by a Superior Court and a charge sheet. Hence, when these papers are turned over to the officer who is to prosecute the case before the Superior Court, he does not have the evidence which even the prosecutor before the Summary Military Court had before the original submission of the case. This either throws the burden of preparation upon the prosecutor before the Superior Court, or requires more or less correspondence with the Summary Court, or the prosecutor before that court, in order to obtain the information which the latter has. In order to avoid this, Summary Courts will henceforth be directed to forward, with the record of the proceedings, all the papers relating to the proof of the charges made which the prosecutor has not submitted to the court. This should include names and addresses of all witnesses.

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By order of Lieutenant Colonel KRANCE:

DOUGLAS N. BATSON,
1st Lt., CMP,

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

To : S.C.A.Os.

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By order of Lieutenant Colonel KRAMER:

DOUGLAS N. BATSON,
1st Lt., CMP,
Acting Asst A.G.

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"	Naples Town	5
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"	Avellino "	12
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"	VI Corps	12
"	X Corps	12
C.L.O. HQ.	AMG. 15 Army Group	3
S.L.O. HQ.	Region IV	3
Files		2
Spares		3

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

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT

Amgot 3/6059/L
20 December, 1943

Subject: Committing Cases to Trial Before Superior Military Courts.

To : S.C.A.Os.

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By order of Lieutenant Colonel KRAIGE:

DOUGLAS N. BATSON,
1st Lt., CMP,

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

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By order of Lieutenant Colonel KRAIGE:

DOUGLAS N. BATSON,
1st Lt., CMP,
Acting Asst A.G.

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

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

138

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT
LEGAL OFFICE

Amgot 3/6029/L
17 December 1943

Subject: Delegation of Authority to Appoint Courts to S.C.A.C., 5th Army

To : Chief Legal Officer, Headquarters, AMG, 15th Army Group, APO 777, C.M.F.

96

1. This is to acknowledge receipt of your letter of 12 December 1943 (AMG/209/96), advising that the G.O. C-in-C has authorized the Commanding General 5th Army, to delegate to the S.C.A.C., 5th Army, the power to appoint military courts. Your letter states that the form of authority signed by the G.C. C-in-C is inclosed, but it was omitted inadvertently. May a copy be forwarded?

Henry L. Shaw
Capt. JAGD

for J.V.M. Shields, Lt. Col.,
Senior Legal Officer
A.M.G., 5th Army

Copy
96A

12

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

ARMY FORM C. **MESSAGE FORM** Legal Register No. 137

Call.	Srl. No.	Priority	Transmission Instructions
	0		1 DEC 1943

Above this line for Signals use only. *Office Date Stamp.*

From (A) 15 ARMY GROUP

ORIGINATOR.

Date-Time of Origin. 20/1530 A

For Action.

To A.F.H.Q.

(W) For Information (INFO).

FIFTH ARMY

Message Instructions **GR**

ORIGINATOR's No. FD 404

YOUR MIBI 12926 DATED 12 (.) OMS (.) THESE ALLEGED AGENTS HAVE BEEN FULLY INTERROGATED BY FS 10 CORPS AND SIB (.) HAS BEEN DECIDED THEIR CASE BE TRIED BY GS MILITARY COURT AND AMG LEGAL IS NOW HANDLING (.) REQUEST AUTHORITY FOR PUBLICITY IF CONVICTED (.) YOUR MIBI 10850 DATED 7 NOVEMBER (.) TO (.) PLEASE SEND FURTHER DETAILS REGARDING EXIL NICKEL, DI(illegible)CE.

Internal Distribution: AMG HQ 15 Army Group.

This message may be sent AS WRITTEN *by any means except* WIRELESS	*If liable to be intercepted or fall into enemy hands this message must be sent* IN CIPHER.	*Originators Instructions. Degree of Priority.*	THI OR THOR
Signed.	*Signed.*		TIME CLEARED

PSS/NA/4/43/40,000—AFHQP/203.

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

Subject:- Tri of Refugee Offenders.

AMG HQ.,
15 Army Group,
C.M.F.

Ref.AMG/209/136
24 December 43.

136

D.C.C.A.O.

Lt. Col. Rodd, as you know, has suggested the administrative desirability of authorizing Refugee Officers to sit as Summary Military Courts for the trial of refugees in transit who violate A.M.G. Proclamations and Orders.

2. There would appear to be considerable merit in this suggestion. If it does not seem to you to be in any way inappropriate for me to do so I propose to advise the S.C.A.O. with 8th Army that he may feel free to appoint Refugee Officers to sit as Summary Courts in cases against Refugees in transit which cannot be promptly and expeditiously disposed of by C.A.Os and Judicial Officers.

Mark DeW. Howe

Mark DeW.Howe, Major, AUS,
Chief Legal Officer.

MDeWH/ES.

9 cfflson.

MDeWH/27/xii/43.

0121

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

135

Subject:- Med Military Courts.
Charges against Italian Soldiers.

AFG Hq.,
15 Army Group,
G.M.F.

Ref. AG/209/135
23 December 43.

Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission, BRINDISI.

Charges have been made against the undermentioned Italian soldiers of sniping at British troops in d army area.

2. The names and units of the accused are :-

TACCHINI - 84 Regt. Inf. 3 Coy, 2 Bn, FIRENZE.
TACCHRA - 26 Regt.Arty, 2 Bty, RIETI.

3. A.F.H.Q. have been requested to instruct us to action which should be taken and they have asked whether the accused are carried on the rolls of Italian units that have been offered for service with and accepted by the Allied Forces, and, if so, whether the Allied Forces exercise military control over such units.

4. The 15th Army Group has been unable to obtain the required information. It would be greatly appreciated if you would assist us by securing the necessary information from the Italian Authorities or through the Military Mission.

5. Please treat the matter as urgent.

1 1.30

L. de V. Hoar

L. de V. Hoar,
Major, A.U.S.
Chief Legal Officer.

DeH/ES.

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

AHQ Liaison.

22 Dec.

Dear Herbert,

1. Ref att.

2. C-in-C (A) informs me that this information is to be obtained at HQ, 15 Army Gp.

3. I spoke to Tuttle as you suggested, and he will be glad to do all he can in the matter.

4. If you can, please ask MR WOOD to direct the D.R. to call at E.L.O. Dunkerque to take Dave, DS and Stud. Please give him a warning order.

Bon voyage

Yours sincerely

Jimmie Fred Jane

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

133

Subject:- Allied Military Courts -
Charges against Italian Soldiers.

AMG HQ.,
15 Army Group,
C.M.F.

Ref.AMG/209/13
21 December 43.

Chief Legal Officer
Eighth Sub-Commission
ACC, Foggia

AMG Liaison Officer,
HQ. 15 Army Group.

Charges have been made against the undermentioned Italian soldiers of sniping at British troops in 8 Army Area.

2. The names and units of the accused are :-

TAMERINE - 84 Regt. Inf. 8 Coy, 2 Bn, FIRENZE.
LACAPRA - 26 Regt.Arty, 2 Bty, RIMINI.

3. A.F.H.Q. have been requested to instruct as to action which should be taken and they have asked whether the accused are carried on the rolls of Italian Units that have been offered for service with and accepted by the Allied Forces, and, if so, whether the Allied Forces exercise military command over such units.

4. HQ 15th Army Group has been unable to obtain the information. Will you please let me have the necessary information.

5. Please treat the matter as urgent.

M.I.5.W. that would be right

H.E.ROWE,
Lt.Colonel,
Chief Legal Officer.

HER/ES.

137

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

137

Subject:- Courts under Rules of Procedure.

A.G. Br.,
21 Army Group,
C.M.F.

Ref.A.G/209/Gen
23 December 44.

G.L.O. 1) AG, 5 Army.
G.L.O. 2) AG, 8 Army.
H.Q.L.O. 1) AG, Region 3.
H.Q.L.O. 2) AG, Region 4 (Adv.and Main)

Recent delegations of power and recent amendments to Proclamation 4 make it desirable that certain responsibilities conferred on the Chief Legal Officer by the Rules of Procedure be delegated to others.

2. Accordingly, the Senior Legal Officers with 5th and 8th Armies and the Regional Chief Legal Officers are hereby authorized to exercise the authority and power conferred upon the Chief Legal Officer by the following paragraphs of the Rules of Procedure for Allied Military Courts (2nd Revised Edition): Paragraphs 2(c), 5(a), 7(c)ii, 9(a), 11 and 19(a).

3. Your attention is called to ADGE directive A033/1 of August 1943, delegating to Provincial G.L.Os the power to refer certain cases directly to a Superior or General Military Court. This delegation is still in force.

1.30

Hans Dan Lowe, Major, AGD,
Chief Legal Officer.

ADGE/320.

0125

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

13

Subject:- Allied Military Courts -
Charges against Italian Soldiers.

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/209/13
21 December 43.

AMG Liaison Officer,
HQ. 15 Army Group.

Charges have been made against the undermentioned Italian soldiers of sniping at British troops in 8 Army area.

2. The names and units of the accused are :-

TAMBURINI - 8th Regt. Inf. 3 Coy, 2 Pn, FIRENZE.
LACERRA - 26 Regt.Arty, 2 Bty, RIMINI.

3. A.F.H.Q. have been requested to instruct as to action which should be taken and they have asked whether the accused are carried on the rolls of Italian Units that have been offered for service with and accepted by the Allied Forces, and, if so, whether the Allied Forces exercise military command over such units.

4. Will you please let me have the necessary information.

5. Please treat the matter as urgent.

13a

H.R.ROWE,
Lt.Colonel,
Chief Legal Officer.

HRR/EB.

0 1 2 6

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

AFHQ.,
15 Army Group,
C.M.F.

Lt.Colonel Lord Middleton.

British Merchant Seamen.

In my opinion, the law relating to the trial of British Merchant Seamen in occupied enemy territory is as follows :-

(a) The general rule of international law is that a person is subject to the laws of the country in which he is situate.

(b) Members of the Forces occupying an enemy territory are, under International law, exempt from this general rule of law.

(c) British merchant seamen are not subject to the Naval Discipline Act, the Army Act or the Air Force Act, and they are not part of the occupying forces when on shore in occupied enemy territory. They are, therefore, not entitled to exemption from the above general rule of law.

(d) The laws of occupied enemy territory to which British Merchant Seamen are subject are :-

(i) the lex loci; and

(ii) the laws of the Military Governor, (i.e. Proclamations, etc.,

(e) A British merchant seaman can thus legally be tried by the domestic criminal courts of occupied enemy territory for offences against the lex loci or by a Military Court for offences cognizable by such a Court.

(f) In occupied Italy, the Proclamations of the Military Governor provide that any person charged with an offence against Italian law may be tried for that offence by an Allied Military Court on an order made by or under the authority of the Military Governor. In occupied Italy, therefore, a British merchant seaman can be tried for offences against either Italian Law or the laws of the Military Governor by an Allied Military Court.

(g) It could be provided by Proclamation that British Merchant Seamen committing offences, which when committed in England are punishable by the law of England, should be liable, if the offence is committed in occupied enemy territory, to suffer any punishment assigned for a like offence by the law of England. This was provided in Madagascar (which was not "enemy territory") and in Proclamation

(a) The general rule of international law is that a person is subject to the laws of the country in which he is situate.

(b) Members of the Forces occupying an enemy territory are, under International law, exempt from this general rule of law.

(c) British merchant seamen are not subject to the Naval Discipline Act, the Army Act or the Air Force Act, and they are not part of the occupying forces when on shore in occupied enemy territory. They are, therefore, not entitled to exemption from the above general rule of law.

(d) The laws of occupied enemy territory to which British Merchant Seamen are subject are :-

(i) the lex loci; and

(ii) the laws of the military Governor, (i.e. Proclamations, etc.).

(e) A British Merchant Seaman can thus legally be tried by the domestic criminal courts of occupied enemy territory for offences against the lex loci or by a Military Court for offences cognizable by such a Court.

(f) In occupied Italy, the Proclamations of the Military Governor provide that any person charged with an offence against Italian law may be tried for that offence by an Allied Military Court on an order made by or under the authority of the Military Governor. In occupied Italy, therefore, a British Merchant Seaman can be tried for offences against either Italian law or the laws of the Military Governor by an Allied Military Court.

(g) It would be provided by Proclamation that British Merchant Seamen committing offences, which when committed in England are punishable by the law of England, should be liable, if the offence is committed in occupied enemy territory, to suffer any punishment assigned for such offence by the law of England. This was provided in Madagascar (which was not "enemy territory") and in Tripolitania (which was enemy territory). Such a provision is based on Section 42 of the Act and would put British Merchant Seamen on the same status as "persons subject to military law" under the Army Act, with the substitution of a Military Court for a Court-Martial.

(h) In addition to the foregoing methods of trial, under the Merchant Shipping Act, 1894, section 685 (1) (g), a naval court may investigate offences committed by British Merchant Seamen ashore in foreign territory, and, under section 689 of the same Act, may place the offender under restraint and

.....send him for trial....

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

send him for trial to the United Kingdom or to any British possession in which there is a Court capable of taking cognisance of the offence. This is not always practicable as Naval Courts are sometimes not available. Further, the sending of witnesses to distant places in wartime causes service difficulties.

2. In occupied territory, which is not "enemy" territory, the position is the same as in para 1 above. Madagascar is an example.

3. In non-occupied foreign territory, the position depends on whether there are any treaty or other powers enjoyed therein. In Madagascar (after the coming into force of the Agreement with the French National Committee), rights were enjoyed in Military Courts to try British civilian offenders as outlined in para 2 (g) above. In occupied Italy, the matter depends on the Armistice terms. In the absence of any "contract" powers, trial can only be by the Courts of the country or under the Merchant Shipping Act, as above.

4. If a person is convicted by a Military Court and sentenced to a term of imprisonment, he can only serve it in accordance with the law under which he was convicted, e.g. in Italy in an Italian civil gaol. He cannot be sent to a Military or Naval establishment. Military law could be effected by proclamation that persons so sentenced serve their imprisonment in a special establishment set up by the Military Governor, but, owing to accommodation and personnel problems, that is rarely practicable. It would, I think, need legislation to provide that persons sentenced to imprisonment in occupied territory would be sent, on a warrant of a Military Court therein, to serve their terms in prisons in British possessions. The means at my disposal are not adequate to be sure of this and it is possible it could be arranged by other means, e.g. an Order-in-Council.

5. The foregoing represents my personal opinion on the law regarding the trial and imprisonment of British Merchant Seamen in territory as above described.

Lieut. Colonel.

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

2. In occupied territory, which is [illegible]
is the same as in para 1 above. Madagascar is an example.

3. In non-occupied foreign territory, the position depends on whether there are any treaty or other powers enjoyed therein. In Madagascar (after the coming into force of the Agreement with the French National Committee), the same rights were enjoyed in Military Zones to try British civilian offenders as outlined in para 1 (g) above. In occupied Italy, the matter depends on the Armistice terms. In the absence of any "contract" powers, trial can only be by the Courts of the country or under the Merchant Shipping Act, as above.

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5. The foregoing represents my personal opinion on the law regarding the trial and imprisonment of British Merchant Seamen in territory as above described.

Lieut. Colonel.

Mr. Thomas [illegible] of
Your last telegram of the
[illegible]

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

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

21 DEC 1943 Legal

C.C.A.O.
A.M.G. 15 G.
Ref. 103601

A.M.G. Refugee Field Section
A.M.G. 15 A.G.
18 Dec 43

Subject: Penal Sanctions of Refugee Officers

Refugees in transit and in stages must necessarily be subject to some degree of discipline, and there must in consequence be sanctions for breaches of it. It is not always possible or at least convenient, to remand obstreperous persons to courts organized on a territorial basis. It might in certain cases immobilize not only a number of witnesses but the Refugee Officers themselves if this procedure had to be followed. I would urge that all Refugee Officers be empowered to sit as Allied Summary Courts for the immediate and prompt disposal of such cases. There is a precedent for this and I do not think that there was much criticism of the way in which the Officers concerned handled their magisterial functions. Whether Legislation to cover the circumstances is required or not, is a matter for your decision after consulting the Legal Adviser.

Lt.Col.
O.C. A.M.G. R.F.S.

132

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

20 DEC 1943

I phoned Signalmaste. This trouble Legal B.17
with Sig. Sig to keep receipt the message duration.
Sigs the thought phoning Sig keep if the signal was
received. Sig will be transmitted [illegible] 10/12

SECRET

IMPORTANT
BY TELEPRINTER MESSAGE
TO

FOLIO NO 06977
19 DEC 43

FROM: 8 CAO MOGLIA PROVINCE (LEGAL DIV)
TO : AMG 15 ARMY GP AMG 6 ARMY
ORIG NO: FP/1

TOO 0930A/19
TII 1340A/19
TOR 1615A/19

YOUR K/30.

UNITS ITALIAN SOLDIERS CHARGED WITH SHIPING ARE TAMBURINI 84 REGIMENT INFANTRY 6TH COMPANY 2 BATTALION FIRENZE, LACATRA 26 REGIMENT ARTILLERY 2ND BATTERY RECUT. FURTHER DATA REQUESTED UNAVAILABLE THIS HEADQUARTERS.

ADGCT 4 ACTION

SEC 1750A/19
TT 1807A/19 TU

Use Telio 98 pl. 209

ACTION

1 131

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

19 DEC 1943

126

Subject:- Location of an Officer.

HQ.,
15 Army Group,
C.M.F.

209
Army/215/121
17 Dec 43.

Major F.Briggs - Jones.,
A.M.G. Liaison,
to 15 Army Group.

The enclosed letter has been received in this office.

2. Please ascertain the location of this officer.

H.E.JONES,
Lt.Colonel,
Chief Legal Officer.

C.L.O.
1. Have spoken to 5 Div (GA)
2. Location is
5 Div
13 Corps
18 Dec
1845 hrs
Hour of Issue

13

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

Dec. 13th. 1943

125

SUBJECT: La Capra and Tamborini Trial.

TO : Legal Officer
15 th. Army Group
FROM : S.C.A.O. Foggia Province.

1 - In order to determine whether La Capra and Tamborino case should be submitted to general military court, would appreciate your submitting to chief witness, Capt. A.M. Young 303 Bty. 52/A/T K. Regt. R.A. the following questions to be answered and transmitted for C.L.O. here.

1 - Can Capt. Young state whether he saw or believes the accused were shooting at Allied Troops?
2 - Did either or both have rifles, since these not since accounted for?
3 - Were other witnesses present when accused were seized by Capt. Young?
4 - What kind of clothes did the accused wear at time?

An early reply will be appreciated.

LT. COL.
S.C.A.O. FOGGIA PROVINCE

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

SECTION IV

TO : Chief Legal Officer, H.Q., A.M.G., 15th Army Group.

FROM : Chief Legal Officer, Region IV.

SUBJECT : Legal Forms.

REF : R4/1064.

DATE : 1 December 1943.

1. The following suggestions are made in the light of experience gained by legal officers of this Region, while attached to Region III. They have been discussed with C. L. O., Region III, who has expressed general agreement with the proposals.

2. The Court Record Book is considered to be unnecessary. It is cumbrous and laborious to maintain, and in addition it necessitates a large volume of copying work in compiling weekly returns of cases dealt with, for submission to higher authority.

3. The following alternative method of maintaining Court Records is proposed. On the back of the Summons and Charge Sheet (Forms No. 2 and 4) should be printed a pro forma to be completed, showing the disposal of the case. This would cover (1) Nature of Court (whether General, Superior or Summary), (2) Date of Trial, (3) Place of Trial, (4) Plea to each charge, (5) Finding on each charge, (6) Sentence of the Court, and (7) Signature of President and Members. The Summons or Charge Sheet would be issued in triplicate, the original being served on the accused, the duplicate and triplicate being lodged with the Court. On the trial of the case the Court would endorse on the back of the duplicate and triplicate its disposal of the case, using indelible pencil and carbon paper so as to reduce the amount of writing. The duplicate would remain in possession of the Court on a loose-leaf file, so as to constitute the Court's permanent record in place of the Court Record Book (for easy reference in the future they would best be filed alphabetically). The triplicate would be available for forwarding to higher authority; seeing that, with the endorsement on the back, it will already contain all the information required, no further return would be necessary, and no further copying would be required.

4. On the back of the Charge Sheet (Form No. 4) there should also be printed, in the Italian language, a statement of the rights of the accused. This has already been printed on the form of Summons (Form No. 2), but for some reason not understood it has been omitted from Form 4.

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5. Specimen Charge Sheet (Form 4) embodying proposed amendments is attached hereto.

6. If space for endorsing the disposal of the case is to be made available on the back of the Summons (Form 2), it will necessitate these documents being printed on a slightly larger piece of paper than heretofore. This, however, is a simple matter of printing, and need cause no difficulty.

7. The above suggestions are submitted to you, because their adoption would involve an alteration in the procedure laid down in Rule 12 of the Rules of Procedure, and also a variation of the Forms prescribed in the Appendix to the Rules. It is thought, therefore, that the proposed changes should not be made except on the authority of H.Q., A.M.G., 12th Army Group.

8. It is requested that favorable consideration may be given to the above suggestions, and if they are acceptable, that the necessary directive putting them into operation may be issued by you.

H. G. Willmer

H. G. WILLMER, K.C.,
Colonel,
Chief Legal Officer,
Region IV.

Copy to Chief Legal Officer, Region III (for information).

Form No. 4

122

GOVERNO MILITARE ALLEATO

FOGLIO D' ACCUSA

Place . . . . . .
Luogo . . . . . .

Date . . . . . .
Data . . . . . .

. . . .
(Name of Defendant)
(Nome dell' Accusato)

. . . . . .
(Address)
(Indirizzo)

IS HEREBY CHARGED WITH THE FOLLOWING OFFENCES:
E qui accusato delle offese seguenti:

First Charge: . . . . . .
Particulars: . . . . . .

. . . . . .

. . . . . .

Second Charge: . . . . . .

Particulars: . . . . . .

. . . . . .

. . . . . .

TRADUZIONE

Prima Accusa : . . . . . .

Dettagli: . . . . . .

. . . . . .

Seconda Accusa: . . . . . .

Dettagli: . . . . . .

. . . . . .

. . . . . .

(Se non tradotto dall' ufficiale, voi dovete farvelo tradurre da un amico o presso qualsiasi Ufficio di Questura).

Le Suddette accuse sono riferite a processo davanti:

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

Place . . . . . .
Luogo . . . . . .

Date . . . . . .
Date . . . . . .

. . . .
(Name of Defendant) (Address)
(Nome dell' Accusato) (Indirizzo)

IS HEREBY CHARGED WITH THE FOLLOWING OFFENCES:
E qui accusato delle offese seguenti:

First Charge: . . . . . .
Particulars: . . . . . .

. . . . . .

Second Charge: . . . . . .

Particulars: . . . . . .

. . . . . .

. . . . . .

TRADUZIONE

Prima Accusa : . . . . . .

Dettagli: . . . . . .

. . . . . .

Seconda Accusa: . . . . . .

Dettagli: . . . . . .

. . . . . .

. . . . . .

(Se non tradotto dell' ufficiale, voi dovete farvelo tradurre da un amico o presso qualsiasi Ufficio di Questura).

Le Suddette accuse sono riferite a processo davanti:

. . . . . .
(Name and Address of Court)
(Nome e Indirizzo della corte)

Per Ordine.

. . . . . .
(Firma dell'Individuo Autorizzato)

(Turn Over)
(Revoltate la pegina)

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

AVVISO IMPORTANTE

Ogni accusato de f nte ad un Tribunale Milit ha diritto:
(a) Di avere in anticipo una copia delle accuse sotto le quali egli sara processato, se egli cosi desidera;
(b) Di consultare un avvocato prima del processo e di avere un avvocato in sua difesa durante il processo in ogni causa che porta con se la pena di morte il Tribunale Militare Generale, se l'accusato lo richiede, gli assegnera un Ufficiale Addetto alla Giustizia del Governo Militare Alleato per assistere nella difesa della causa oltre a tale altro avvocato che egli potra scegliere.
(c) Di fare richiesta al Tribunale per ottenere un periodo di tempo sifficiente per preparare la sua difesa, richiesta che il Tribunale puo concedere o rigettare a propia discrezione;
(d) Di farsi accompagnare dinanzi al Tribunale da testimoni a sua difesa, se cosi desidera, o fare richiesta di farli comparire per ordine del Tribunale;
(e) Di fornire evidenze a suo vantaggio durante il processo, ma non potra essere costretto a farlo;
(f) Di farsi tradurre i procedimenti per il suo beneficio quando egli non e capace di comprenderli altrimenti.

DISPOSAL OF CHARGE (S)

Nature of Court . . . . . Date of Trial. . . . .
Place of Trial . . . . . .

	Plea	Finding	Sentence
1st Charge			
2nd Charge			

. . . . . President
. . . . . Members

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

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

Subject:- Loca n of an officer.

NAG H.Q.,
15 Army Group,
C.M.F.

AAG/209/121
17 Dec 43.

Major I.Friend - James.,
A.A.G. Liaison,
15 Army Group.

1. The enclosed letter has been received in this office.

2. Please ascertain the lountion of this Officer.

H.W.ROWE,
Lt.Colonel,
Chief legal officer.

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

Dec. 13th. 1943

SUBJECT: La Capra and Tamborini Trial.

TO : Legal Officer
15 th. Army Group
FROM : S.C.A.O. Foggia Province.

1 - In order to determine whether La Capra and Tamborini case should be submitted to general military court, would appreciate your submitting to chief witness, Capt. A.M. Young 303 Bty. 52/A/T K. Regt. R.A. the following questions to be answered and transmitted for C.L.O. here.

1 - Can Capt. Young state whether he saw or believes the accused were shooting at Allied Troops?
2 - Did either or both have rifles, since these not since accounted for?
3 - Were other witnesses present when accused were seized by Capt. Young?
4 - What kind of clothes did the accused wear at time?

An early reply will be appreciated.

LT. COL.
S.C.A.O. FOGGIA PROVINCE

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

Subject:- Allied Military Courts.

120

AMG HQ.,
15 Army Group,
C.M.F.

Ref.AMG/209/1-c
17 December 43.

S.L.O.,
A.M.G. 5 Army.

SAA.

It is understood from G.S.I.(b) that three persons are accused of spying in 5 Army Area, and that the Commanding General may prefer trial by Court-Martial to trial by Allied Military Court.

2. G.S.I.(b) have been informed that in Army Areas persons accused as spies may be tried either by Court-Martial for a war crime or by Allied Military Court under Proclamation provision, by the Commanding General decides.

3. The recent directive on "war crimes" does not apply to persons charged with being spies.

H.E.ROWE,
Lt.Colonel,
Chief Legal Officer.

HER/MS.

123

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

119

AMG H.Q.,
15 Army Group,
C.M.F.

Subject:- Allied Military Courts - Forum.

Ref. AMG/209/119
17 December 45.

Senior Legal Officer,
H.Q. AMG, 8 Army.

Dear

In reply to your letter of 4 December, I see no objection to your new draft form of Record and warrant if it will assist officers in the field to try cases more expeditiously. The chief thing is that C.A.Os must get down to holding Courts and they must keep a record where there is a plea of guilty or prepare one where a petition is sent in after such a plea.

I trust that your move will have enabled you to get a firmer grip on the legal situation in 8 Army area and that you now have the necessary transport to get about and see the work is done. I regard this as of the highest importance.

You may have heard that I am stated to go to the U.S. as soon as my successor arrives. This and the work here have prevented me from coming to see you as I had hoped, and now I do not think I shall have the opportunity. I will, however, ask my successor to come as soon as he can; and, in the meantime, I am trying to arrange for Captain Brown to come and see you.

In case this is the last personal letter I write you, many thanks indeed for your help and co-operation and I sincerely trust that we shall work together again elsewhere - perhaps Berlin!

Yours

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

HER/MB.

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

Legal
17 DEC 1943 JL

118

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT
LEGAL OFFICE

209

Amgot 3/6106/L
5 December, 1943.

Subject: Trial of Merchant Seamen.

To : Chief Legal Officer, AMG. HQ. 15th Army Group C.M.F.

With reference to my letter of even number dated 3rd December, 1943 which enquiring into the question of trial of merchant seamen the letter from the C in C, Mediteranean with the enclosures, copies of which are attached were shown to me.

2. The Naval Offices in this region are well aware of the jurisdiction of Allied Military Government Courts to try British merchant seamen and of the difficulties ~~British~~ attendant thereto but the HQ. in Algiers seem to be pursuing the matter independently.

3. As this question may be taken up with you from Palermo the attached correspondence may be helpful.

J. V. M. Shields. Lt. Col.

J.V.M. Shields, Lt. Col.,
Senior Legal Officer,
A.M.G., 5th Army.

Lieut. Hamilton
17/12

117

Officer of the Commander-in-Chief,
Mediterranean Station,
Allied Force Headquarters,
ALGIERS.

8th November,1943.

No. Med. 927/2/7/

THE MILITARY GOVERNMENT HEADQUARTERS, PALERMO

(copies to: The Flag Officer, Western Italy;
The Flag Officer, Taranto Area;
The Military Government Section, Allied Force Hq.
The Principal Sea Transport Officer, Mediterranean.)

OFFENCES COMMITTED BY MERCHANT SEAMEN ON SHORE IN ITALY.

The attached correspondence regarding the trial of merchant service personnel accused of committing offences on shore in Italy is forwarded for information.

2. British naval authorities are only entitled to try, by Naval Court, offences against the Merchant Shipping Act and Defence regulations 44B, 47A, 47AA and 47AB (other than paragraph (6).) These cover a very limited range of disciplinary offences and naval authorities have no powers to try offences committed on shore or such cases as looting or theft of ships stores, assaulting merchant service petty officers etc.

3. Altough Naval Courts are competent to hold investigations into such matters and take depositions on oath with a view to the trial of offenders on arrival in British possession, this is a lengthy and unsatisfactory process especially as the attendance of the witnesses is usually essential at the subsequent trial. Moreover as the attendance of witnesses cannot, for operational reasons, often be obtained, trial is often impossible.

4. It seems doubtful whether Italian civil courts would prosecute or in fact are entitled to try such cases, and it is obviously undesirable that they should do so.

5. What is desired is some allied tribunal which could try British merchant seamen which could mete out swift and exemplary punishment. It would appear desirable that a British naval officer should be appointed either as a member of the court or as an adviser whenever British merchant seamen are on trial. It is understood that such courts already exist in Sicily and it is re-

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

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5. What is desired is some allied tribunal which could try British merchant seamen which could mete out swift and exemplary punishment. It would appear desirable that a British naval officer should be appointed either as a member of the court or as an adviser whenever British merchant seamen are on trial. It is understood that such courts already exist in Sicily and it is recommended that similar courts be set up on the mainland of Italy at a very early date. Taranto, Brindisi, Bari, Naples, Castellammare and Salerno are the ports at present affected.

A D M I R A L.

Enclosures:
1. Divisional Sea Transport Officer, Southern Italy's letter No. 175/116A of 7th October, 1943.
2. Principal Sea Transport Officer, Mediterranean's letter No. 4081/182/47 of 16th October, 1943.

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

116

Enclosure No. 1 to Commander-in-Chief, Mediterranean's letter No. Med. 927/2/7 of 8th November, 1943.

FROM: DIVISIONAL SEA TRANSPORT OFFICER, SOUTHERN ITALY.

DATE: 7th October, 1943. 175/116A

TO : PRINCIPAL SEA TRANSPORT OFFICER, MEDITERRANEAN.
(Copy to: Allied Force Headquarters, Algiers.
Commander-in-Chief, Mediterranean Station;
H.Q. No. 1 District, Fortbase.
Flag Officer, Italy.
H.Q., A.M.G.O.T.
M.W.T. Representative, Algiers.)

SUBJECT: Merchant Navy Delinquents

Guidance is sought as to the proper procedure to adopt in dealing with Merchant Navy personnel who, commit offences against the Civil Law while a shore in Italian ports.

2. The position before the capitulation of Italy was simple, as A.M.G.O.T. Courts were sitting and cases were dealt with by these courts, the Superintending Sea Transport Officer at the port sitting as an assessor to assist the court and ensure that no action was taken which would delay the ship from sailing. Now that there are no courts set up by A.M.G.O.T., there only remain the Italian Civil Courts or Naval Courts convened by the Senior British Naval Officer. It is not known whether Naval Courts have power to try a delinquent for an offence committed ashore , or if these courts have the power to compel the attendance of civilian witnesses. No copies of Instructions for Naval Courts vide Art. 491 K.R. and A.I. appear to be held by any R.N. Authority with whom I have been in touch, and a supply of this book is urgently required for use in Italian ports.

3. In an endeavour to avoid going wrong on this question the procedure at present being used is based on the principle that Italian ports are to be regarded as operational ports under Military Control. It has therefore been arranged that Merchant [illegible] if arrested by the Civil Power are handed over [illegible] as to how the

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

DATE: 7th October, 1943. 175/116A

TO : PRINCIPAL SEA TRANSPORT OFFICER, MEDITERRANEAN.
(Copy to: Allied Force Headquarters, Algiers.
Commander-in-Chief, Mediterranean Station;
H.Q. No. 1 District, Forthase.
Flag Officer, Italy.
H.Q., A.M.G.O.T.
M.W.T. Representative, Algiers.)

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3. In an endeavour to avoid going wrong on this question the procedure at present being used is based on the principle that Italian ports are to be regarded as operational ports under Military Control. It has therefore been arranged that Merchant Navy delinquents if arrested by the Civil Power are handed over the Military police for custody pending decision as to how the case shall be dealt with. But this is only a measure to prevent any further action by the Italian Civil Authorities and still leaves open the question of how a merchant seaman is to be dealt with who commits a serious crime ashore such as murder.

4. It is requested that this matter may be regarded as urgent as the behaviour of both merchant seamen ashore and certain elements of the civil populace leave much to be desired and serious incidents are liable to occur any day.

(Sgd.).....Cdr.R.N.V.R.
for Captain, R.N.
DIVISIONAL SEA TRANSPORT OFFICER,
S. ITALY.

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

115

Enclosure No. 2 to Commander-in-Chief, Mediterranean's letter
No. Med. 927/2/7/ Of 8th November, 1943.

COPY

From: Principal Sea Transport Officer, Mediterranean.

Date: 16th October, 1943. Ref. No. 4081/182/47.

To : Commander -in-Chief, Mediterranean Station.

With reference to No. 175/116A from Divisional Sea Transport Officer, Southern Italy, addressed to me and copy to you.

It is requested that I may be given guidance as to the procedure to be followed. As the matter is of some urgency and such questions when placed before the legal authorities take months before an answer is obtained, it is suggested that a ruling should be given that such offenders are to be brought before a Naval Court,and instructions given accordingly to Flag Officers and Naval Officers in charge.

The legal question can be considered later - in any case the offender will have been tried and the desired result obtained.

It is further considered that with close-operation with the Italian authorities, civilian witnesses could be compelled to attend the Court.

(Sgd.) C.V. Banby

REAR ADMIRAL
Principal Sea Transport Officer,
Mediterranean.

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

114

Campobasso, 4 Dec. '43

SUBJECT: Report of Proceedings and Commitment.

TO: C L O , A M G Hq., 15 Army Group

1.- Attached hereto is printer's proof of a proposed form upon which I solicit your advice.

2.- It has the faults inherent in a condensation, but is my best effort. I would welcome changes which would improve it and at the same time accomplish my purpose. None will be printed or used until I have your reply.

3.- It was a mistake for us to send the forward officers that Summary Court Record book and galaxy of forms. It aroused in them a secret but firm determination to loose the whole lot - accidently - at their next move, and I don't blame them.

4.- In order to get the courts functioning with the officers ~~and~~ with divisions, corps and army we must divise ways and means of eliminating red tape. Please do not become provoked with my efforts toward this end until you have made a tour of the front, which I trust will be in the near future.

5.- It is my belief that with some sort of form similar to attached, and no others, they could function satisfactorily, tearing off the commitment and sending it with the prisoner and sending the record back with the next batch of papers going to the rear. It is not essential that they keep any record with them, and they will not do so in any event.

6.- It is essential that a commitment go with the prisoner . The present forms are one in English and one in Italian . If the English form is made out it does not help the jailer, and to make out Italian form necessitates ~~the~~ an Italian writing clerk. I think we all have mastered enough Italian to accomplish the attached commitment.

Edwin J. Mercer

EDWIN J. MERCER, Maj. Ord.
SENIOR LEGAL OFFICER, A.M.G., 8TH ARMY

1 Copy to S C A O , A M G Hq., 8th Army.

17

17/12

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

1.- Attached hereto is printer's proof of a proposed form upon which I solicit your advice.

2.- It has the faults inherent in a condensation, but is my best effort. I would welcome changes which would improve it and at the same time accomplish my purpose. None will be printed or used until I have your reply.

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Edwin Mercer

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SENIOR LEGAL OFFICER, A.M.G., 8th ARMY

1 Copy to S C A O , A M G Hq., 8th Army.

117

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

113

ALLIED MILITARY GOVERNMENT FORM No. 8 — a.

PROCEEDINGS OF AN ALLIED MILITARY COURT

held at on the day of 194

Before (Name & rank of Member or members constituting the Court)

REFERENCE No. ACCUSED

Name: -

Address: -

Occupation: - Age: -

An interpreter was duly Sworn.

ADVOCATE FOR ACCUSED

Name:

CHARGE (S)

Violation of Proclamation No. Article Para. ( ), in that the accused

The Charges were read and explained to accused.

PLEAS OF THE ACCUSED

The Accused	pleads	to the 1st charge
» »	pleads	to the 2nd charge
» »	pleads	to the 3rd charge

FINDINGS OF THE COURT

The Accused found guilty / not guilty of the first charge.
The Accused found guilty / not guilty of the second charge.
The Accused found guilty / not guilty of the third charge.

SENTENCE OF THE COURT

The Court sentences the accused

in respect of all the offences charged in the above proceedings of which the said accused has

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

REFERENCE No. ACCUSED

Name: -

Address: -

Occupation: - Age: -

An interpreter was duly Sworn.

ADVOCATE FOR ACCUSED

Name:

CHARGE (S)

Violation of Proclamation No. _____ Article _____ Para. ( ), in that the accused _____

_____

_____

The Charges were read and explained to accused.

PLEAS OF THE ACCUSED

The Accused	pleads	to the 1st charge
» »	pleads	to the 2nd charge
» »	pleads	to the 3rd charge

FINDINGS OF THE COURT

The Accused found guilty / not guilty of the first charge.
The Accused found guilty / not guilty of the second charge.
The Accused found guilty / not guilty of the third charge.

SENTENCE OF THE COURT

The Court sentences the accused

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

(Signature of Judge of Allied Military Court

REVIEW

Date 194 Signature _____

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

(If not sufficient space on this form for the notes of evidence, other sheets should be attached)

EVIDENCE FOR PROSECUTION

EVIDENCE FOR ACCUSED

REMARKS OF COURT

(Comments on evidence, reasons for severity or leniency, etc.)

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

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REMARKS OF COURT

(Comments on evidence, reasons for severity or leniency, etc.)

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

ALLIED MILITARY GOVERNMENT - COMMITMENT

Governo Militare Alleato - Mandato di Cattura

To: The Officer in Charge of any prison, jail or camp to which the person
All' Ufficiale in Capo di qualsiasi prigione, carcere o campo al quale la
named below (hereinafter called the prisoner)
persona sotto nominata (d'ora in avanti chiamata il detenuto)
may be delivered or of any other prison, jail or camp to which the pri-
possa essere consegnata o di qualsiasi altra prigione, carcere o campo
soner may be hereafter lawfully transferred.
al quale il detenuto possa essere d'ora in avanti legittimamente trasferito.

Whereas one _____
Poichè un (Name - Nome)

of _____ has been convicted of an offence aga-
di (Address - Indirizzo) *è stato condannato per contravven-*
inst the Proclamations and orders of the Allied Military Government and
zione dei Proclami e delle Ordinanze del Governo Militare Alleato ed
has been sentenced by an Allied Military Court
è stata pronunciata sentenza da una Corte Militare Alleata
to serve a sentence of _____
a scontare la pena di
and to pay a fine of _____ lire, said sentence
e pagare una multa di *lire, detta sentenza*
to commence on _____
a decorrere da

Now, therefore, you are hereby authorized to receive the said prisoner
Ora, pertanto, voi siete autorizzato a ricevere il detto detenuto in vo-
into your custody and detain him in accordance with the sentence so
stra custodia e trattenerlo conformemente alla sentenza così pronun-
imposed or until further order of this Court or a competent Military Au-
ciata o fino ad ulteriore disposizione di questa Corte o di una competente
tority and for so doing this shall be sufficient warrant.
autorità e per procedere in tal senso questo sarà sufficiente mandato.

Signed this _____ day of _____ 194 ____
Firmato questo giorno di

_____
Presiding Officier - L'Ufficiale Presidente

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

may be delivered or of any other prison, jail or camp to which the prisoner may be hereafter lawfully transferred.
possa essere consegnata o di qualsiasi altra prigione, carcere o campo al quale il detenuto possa essere d'ora in avanti legittimamente trasferito.

Whereas one _____
Poichè un (Name - Nome)

of _____
di (Address - Indirizzo)

has been convicted of an offence against the Proclamations and orders of the Allied Military Government and has been sentenced by an Allied Military Court
è stato condannato per contravvenzione dei Proclami e delle Ordinanze del Governo Militare Alleato ed è stata pronunciata sentenza da una Corte Militare Alleata

to serve a sentence of _____
a scontare la pena di

and to pay a fine of _____ lire, said sentence
e pagare una multa di *lire, detta sentenza*

to commence on _____
a decorrere da

Now, therefore, you are hereby authorized to receive the said prisoner into your custody and detain him in accordance with the sentence so imposed or until further order of this Court or a competent Military Authority and for so doing this shall be sufficient warrant.
Ora, pertanto, voi siete autorizzato a ricevere il detto detenuto in vostra custodia e trattenerlo conformemente alla sentenza così pronunciata o fino ad ulteriore disposizione di questa Corte o di una competente autorità e per procedere in tal senso questo sarà sufficiente mandato.

Signed this _____ day of _____ 194 ____
Firmato questo giorno di

_____
Presiding Officier - L'Ufficiale Presidente

_____
Court - La Corte

(The fine imposed must either be paid, or the defendant will reveive a credit on said fine of _____ lire per day each day served in confinement.)
La multa inflitta deve essere pagata, o il detenuto riceverà un credito su detta multa di *lire al giorno per ogni g.no di reclusione.)*

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

41

209/

Legal
7 DEC 1943 fls.

HEADQUARTERS
REGION V,
ALLIED MILITARY GOVERNMENT

Angot 5/610-/L

SUBJECT: Illegal possession of firearms.

1. A sufficiently serious view is not being taken of the illegal possession by persons of firearms:

2. All persons who are found in possession of arms, ammunition and explosives will be arrested and prosecuted for contravening Sec. 5 of Art.1 of proclamation No. 2.

3. All cases of possession of arms will normally be committed by an Allied Summary Military Court for trial by a higher court. Where however the quantity of explosives possessed is nominal, or the arms are not in proper working order or are out of date or retained merely as souvenirs, it is considered that Summary Military Courts could properly impose an adequate penalty.

For the Commanding Officer:

DOUGLAS N. BARSON,
1st Lt., C.A.P.,
Acting Asst Adj Gen.

DISTRIBUTION:

S.C.A.O.	Naples Province	12
"	Naples Town	5
"	Benevento Province	12
"	Avellino "	12
"	Salerno "	12
"	11 Corps	12
"	X Corps	12
C.L.O., HQ. AMG, 15 Army Group		3
S.L.O., HQ Region IV		3
Files		2
Spares		3

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

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For the Commanding Officer:

DOUGLAS N. BARLOW,
1st Lt., C.M.P.,
Actg Asst Adj Gen.

DISTRIBUTION:

S.C.A.O.	Naples Province	12
"	Naples Town	5
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"	Salerno "	12
"	11 Corps	12
"	X Corps	12
C.L.O., HQ. AMG, 15 Army Group		3
S.L.O., HQ Region IV		3
Files		2
Spares		3

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

Declassified E.O. 12356 Section 3 3/NND No. 785016

SUBJECT: Delegation of Powers.

H.Q., A.[illegible]
15 Army Group,
C.M.F.

AMG/211/35

TO: R.C.A.O.,
H.Q. AMG. Region IV (Adv).

16. Dec. 43.

Allied Military Courts
Delegation of Powers (Region IV)

Herewith delegation to you of powers

(a) To establish General Military Courts in Region IV, and

(b) To deal with petitions in certain cases heard by Allied Military Courts.

2. Please acknowledge receipt.

3. The powers of establishing Superior Military Courts are exercisable by the Senior Civil Affairs Officer of the Province concerned in accordance with General Administrative Instruction No.7 at page 129 of AFG Manual.

/RAC.

Lieut.Colonel,
Chief Legal Officer.
For, D.C.C.A.O.

Copy to: H.Q.L.O., HQ. AMG. Region IV (Main).
(With copy of delegation)
File 209.

0160

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

I, Maurice Stanley Lush, C.B.E., M.C.,
Brigadier, hereby delegate to Carl A. Ramage, Lieutenant-
Colonel, the following powers, subject nevertheless to
the provisions of the Proclamations and Authorities
of the Military Governor, namely :-

(1) Power to establish General Military Courts
within the occupied territory subject to his jurisdiction,
and to appoint members thereof;

(2) Power to consider petitions of appeal in all
cases heard by Allied Military Courts in the occupied
territory subject to his jurisdiction where the sentence
in any such case does not exceed 2 years imprisonment or
a fine of 50,000 lire; and

(3) Power to delegate either of the foregoing powers
to any officer not below the rank of Lieutenant-Colonel.

Dated the 14 day of December 1943.

(M. S. Lush)
Brigadier,
Deputy Chief Civil Affairs Officer.

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

Subject:- Delegation of Powers.

A[illegible] HQ.,
25 Army Group,
C.M.F.

Ref.AMG/211/36
16 December 43.

R.C.A.O.,
HQ. AMG, Region III.

Allied Military Courts.

Delegation of Powers (Region III).

Colonel Gerry took with him this morning original delegation of powers to you.

(a) To establish General Military Courts in Region III, and

(b) To deal with petitions in certain cases heard by Allied Military Courts.

Copy is herewith enclosed.

2. Please acknowledge receipt.

3. The powers of establishing Superior Military Courts are exercisable by the Senior Civil Affairs Officer of the Province in accordance with General Administrative Instruction No. 7 at page 129 of AMG Manual.

H.E. ROWE,
Lieut.Colonel,
Chief Legal Officer,
For, D.C.C.A.O.

HER/ES.

Copy to File 209.

111

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

I, Maurice Stanley Lush, C.B.E., M.C.,

Brigadier, hereby delegate to M Carr,

Brigadier, the following powers, subject nevertheless to the provisions of the proclamations and Authorities of the Military Governor, namely :-

(1) Power to establish General Military Courts within the occupied territory subject to his jurisdiction, and to appoint members thereof;

(2) Power to consider petitions of appeal in all cases heard by Allied Military Courts in the occupied territory subject to his jurisdiction where the sentence in any such case does not exceed 2 years imprisonment or a fine of 50,000 lire; and

(3) Power to delegate either of the foregoing powers to any officer not below the rank of Lieutenant-Colonel.

Dated the 14 day of December 1943.

(S) M.S. Lush

Brigadier,

Deputy Chief Civil Affairs Officer.

0163

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

Arrow note in Book 205

Subject:- Allied Military Courts - British Merchant Seamen. 105

AFHQ, A.A.,
18 Army Group,
C.M.F.

Ref. AG/209/105
16 December 43.

H.Q.I.C. M.A., AMG., 5 Army.
" " " 8 Army.
H.C.L.C. " Region 3.
" " " Region IV, (Main).

Instructions are being obtained by this Headquarters as to the manner in which British merchant seamen who commit offences ashore in occupied territory shall be dealt with.

2. It is possible for British merchant seamen to be dealt with by Naval Courts and a copy of the appropriate sections of the Merchant Shipping Acts is enclosed herewith.

3. In respect of any ordinary criminal offences committed ashore by British merchant seamen, the procedure will be to contact H.Q.I.C. at the port concerned and ascertain whether he will take full charge of the case under the above Act. If H.Q.I.C. will not do this, reference will be made to this Headquarters with full details.

4. In respect of any Occupation offence, an immediate report will be made to this Headquarters, with details of the charges and full particulars, before any trial is held.

5. A further directive will be issued as soon as the instructions mentioned in para 1 above have been received.

6. The definition of "British Merchant Seaman" will be noted in the enclosed Extract from the Merchant Shipping Act, 1894.

R. Ehrman,
Lt.Colonel,
Chief Legal Officer,
for Chief Civil Affairs Officer.

Copy to:- Legal Sub-Commission, Allied Control Commission.

104
1050

THE MERCHANT SHIPPING ACT, 1894.

PART V.

.....

Powers of Naval Courts.

443 - (1) Every naval court may, after hearing and investigating the case, exercise the following powers; (that is to say,)

.....

(g) the court may exercise the same powers with regard to persons charged before them with the commission of offences at sea or abroad as British consular officers can under the Thirteenth Part of this Act:

.....

(2) Adjudgments duly made by a naval court under the powers hereby given to it shall in any subsequent legal proceedings be conclusive as to the rights of the parties.

(3) All orders made by any naval court shall, whenever practicable, be entered in the official log book of the ship to which the parties to the proceedings before the court belong, and signed by the president of the court.

.....

PART XIII.

Conveyance of offenders and witnesses to United Kingdom or British possessions.

685 - (1) Whenever any complaint is made to any British consular officer -

(a) that any offence against property or person has been committed at any place either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or apprentice, who at the time when the offence was committed, or within three months before that time, was employed in any British ship, or

(b) that any offence on the high seas has been committed by any master, seaman, or apprentice belonging to any British ship,

that consular officer may inquire into the case upon oath, and may if the case so requires, take any steps in his power for the purpose of placing the offender under the necessary restraint, and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognizance of the offence in any ship belonging to Her Majesty or to any of her subjects, to be there proceeded against according to

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

consular officers can under the Thirteenth Part of this Act:

.....

.....

(2) Awards duly made by a naval court under the powers hereby given to it shall in any subsequent legal proceedings be conclusive as to the rights of the parties.

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(b) that any offence on the high seas has been committed by any master, seaman, or apprentice belonging to any British ship,

that consular officer may inquire into the case upon oath, and may if the case so requires, take any steps in his power for the purpose of placing the offender under the necessary restraint, and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognizance of the offence in any ship belonging to Her Majesty or to any of Her subjects, to be there proceeded against according to law.

(2) The consular officer may order the master of any ship belonging to any subject of Her Majesty bound to the United Kingdom or to such British possession as aforesaid to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that the master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of that tonnage; and the consular officer shall endorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade require.

(3) Any master of a ship to whose charge an offender has been so committed shall, on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give the offender into the custody of some police

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

police officer or constable, and that officer or constable shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter and the justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas.

(4) If any master of a ship, when required by any British consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford a passage and subsistence to him, or does not deliver any offender committed to his charge into the custody of some police officer or constable as herein-before directed, he shall for each offence be liable to a fine not exceeding fifty pounds.

(5) The expense of imprisoning any such offender and of conveying him and the witness to the United Kingdom or to such British possession as aforesaid, in any manner other than in the ship to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid out of moneys provided by Parliament.

.....

.....

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183

Subject:- British Merchant Seamen.

H.Q. A.M.G.,
15 Army Group,
C.M.F.

Ref.AMG/259/65.
12 December 43.

To:- Military Government Section,
Allied Force Headquarters.

1. Considerable difficulty is being experienced over the question of the trial and imprisonment of British Merchant Seamen. This question arises in occupied territory in Italy and in non-occupied territory, but this Headquarters is only concerned with the former type of territory.

2. A British Merchant Seaman is not subject to the Army Act or the Naval Discipline Act when he is on shore, and he can therefore not be tried by Army or Naval Court Martial, or be imprisoned legally in a military or naval establishment.

3. It is my opinion that a British Merchant Seaman, like all other civilian persons in occupied territory, is subject to the jurisdiction of the Military Governor and, therefore, to his Proclamations and Orders. This was recognised in Madagascar and, since, in Tripolitania and possibly other British occupied territories.

4. Under the Proclamations in Italy at present in force, a British Merchant Seaman could be tried by an Allied Military Court in occupied territory for offences committed therein against the Proclamation and Orders of the Military Governor. He is also, in my opinion, amenable to the ordinary courts of the territory as he is not a member of the Allied Forces and as such enjoys no exempt under International Law.

5. It is recognised that it would be unwise and impracticable to try a British Merchant Seaman in an Italian Court, but an offence against Italian law could properly be tried in an Allied Military Court under a transfer of jurisdiction in accordance with the provisions of Proclamation No.4. An Allied Military Court can also properly try a British Merchant Seaman for an offence created by Proclamation or Order of the Military Government.

6. Since the War Office, London, agreed in occupied territories in the Middle East and elsewhere that British Merchant Seamen are liable to the jurisdiction of British Military Courts, by which they are tried so far as is possible in accordance with English law, I propose, unless I receive instructions to the contrary, to try such offenders by Allied Military Courts, arranging wherever possible that the Court shall in such cases be composed of British Officers.

7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonment which may be imposed. All persons convicted by [illegible]

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

1. Considerable difficulty is being experienced over the question of the trial and imprisonment of British Merchant Seamen. This question arises in occupied territory in Italy and in non-occupied territory, but this Headquarters is only concerned with the former type of territory.

2. A British Merchant Seamen is not subject to the Army Act or the Naval Discipline Act when he is on shore, and he can therefore not be tried by Army or Naval Court Martial, or be imprisoned legally in a military or naval establishment.

3. It is my opinion that a British Merchant Seamen, like all other civilian persons in occupied territory, is subject to the jurisdiction of the Military Governor and, therefore, to his Proclamations and Orders. This was recognised in Madagascar and, since, in Tripolitania and possibly other British occupied territories.

4. Under the Proclamations in Italy at present in force, a British Merchant Seaman could be tried by an Allied Military Court in occupied territory for offences committed therein against the Proclamation and Orders of the Military Governor. He is also, in my opinion, amenable to the ordinary courts of the territory as he is not a member of the Allied Forces and as such exempt under International Law.

5. It is recognised that it would be unwise and impracticable to try a British Merchant Seamen in an Italian Court, but an offence against Italian law could properly be tried in an Allied Military Court under a transfer of jurisdiction in accordance with the provisions of Proclamation No.1. An Allied Military Court can also properly try a British Merchant Seaman for an offence created by Proclamation or Order of the Military Government.

6. Since the War Office, London, agreed in occupied territories in the Middle East and elsewhere that British Merchant Seamen are liable to the jurisdiction of British Military Courts, by which they are tried so far as is possible in accordance with English law, I propose, unless I receive instructions to the contrary, to try such offenders by Allied Military Courts, arranging wherever possible that the Court shall in such cases be composed of British Officers.

7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonment which may be imposed. All persons convicted by Allied Military Courts serve their sentences in Italian Gaols. It is considered that it would be unjust and add to the punishment if a British subject were made to serve a term of imprisonment in the gaol of an occupied country where the language was unknown to him, where gaol conditions were contrary to British conceptions of maintenance and where victimisation might result.

8. It is not possible under existing law for a person sentenced to imprisonment by an Allied Military Court to serve such imprisonment in a Naval or Military establishment. It is also not possible for him to be sent to a gaol in British territory unless the law is amended or directions can be given by the British Government which will allow this to be done. The maintenance of a special prison under the control of the Military Governor is legally possible, but not practicable as personnel would probably not be available and sentences might extend beyond the period of occupation. It is recommended that the law be altered or that directions be given which will enable a British

....Overleaf.....

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

Merchant seamen to serve a sentence in a naval or military establishment or in a civil gaol in British territory (e.g. Malta).

9. The whole matter is very urgent as cases are constantly occurring, and, whilst serious charges like murder can be dealt with under the Merchant Shipping Acts by sending the accused for trial to Malta or some other convenient British territory, this is impracticable in the ordinary day to day cases.

(D) [illegible]

M.S.LUKE,
Brigadier,
D.C.C.A.C.

EE.

Copy to:- Allied Control Commission.
H.Q. AMG 5 Army.

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

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

0176

101

Subject:- Juvenile Delinquents.

AFG HQ.,
15 Army Group,
C.M.F.

Ref. AFC/209/101
14 December 43.

Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission.

Considerable difficulty is being experienced over the treatment of juvenile delinquents in 8 Army area as there is no Reformatory available where they can be sent. Transport difficulties make Naples unsuitable.

2. Can you state whether there is a suitable Reformatory in Appulia or Southern Italy where Juveniles convicted by Allied Military Courts could be sent.

H.E.ROWE,
Lt.Colonel,
Chief Legal Officer.

HER/SD.

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Legal

FP. 3050

8 DEC 1943

6 Dec. 1943

100

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B

SUBJECT: Juvenile Offenders.

TO: A.M.G. 15 th. Army Group

FROM: S.C.A.O. Foggia Province (Legal Division)

Reference A.M.G. 4098 L,4 Nov.43, above subject.

This H.Qs? desires to be informed of the following:

1 - The location of the nearest Public welfare officer of A.M.G., and whether it is desired that the procedure outlined in above directive (para I (a)), be followed in all cases involving juveniles.

2 - The location of a suitable school for juveniles in this area or elsewhere in southern Italy to which juveniles offenders may be committed.

3 - In all cases of commitment to such institution, should the order of commitment provide for detention for an indefinite period, or may the Court order detention for a definite period; and may Summary Court Officers order detention, 1) for a period in excess of one year, or 2) for an indefinite period.

An early reply is requested as this H.Qs. now has pending a serious charge (setting fire to ammunition) against a 14 year old boy.

10.

MAJOR

for LT.COL.

SENIOR CIVIL AFFAIRS OFFICER
FOGGIA PROVINCE

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

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

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D.C.E.A.O.

British Merchant Seamen

Ref pp. 85A & 85b, amended letter for signature by you is at front cover.

2. In my opinion, no local arrangements can legally be made for detention of British merchant seamen in naval or military establishments until the law has been altered or directions have been given by a competent authority as requested in para 8 of the letter to AFHQ.

Lt. Colonel

Chief Legal Officer.

Issue. DWR/14th xii/43

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

SECRET

Subject:- Sniping Charges.

AAG HQ.,
15 Army Group,
C.M.F.

Ref. AAG/209/98.
13 December 43.

HQ. AAG 8 Army (Main).

The question of bringing charges in an Allied Military Court against the two Italian soldiers charged with sniping has been referred to A.F.H.Q. for directions.

2. A.F.H.Q. desire to know whether the accused are carried on the rolls of an Italian Unit that has been offered for service with and accepted by the Allied Forces who exercise command over it.

3. Please reply urgently.

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

HER/ES.

Ref:- FP/052

SUBJECT:- Summary Court Sentences. 7 Dec 43.

TO:- All C.A.Gs. (Copy to:- Legal, Public Safety.)

FROM:- S.C.A.G. FOGGIA PROVINCE. Region IV Adv.

---

1. Sentences recently imposed by Summary Courts in this Province include the following :-

(a) Travelling without a Permit - Fines from 200 Lire up.
(b) Sale of wine outside hours and Minor Black Market offences - Fines from 100-500 Lire.
(c) Curfew offences - Fines from 25 Lire up - 5 days' imprisonment.
(e) Being in possession of U.S. property - Fines from a very small fraction of the value of the property up to merely its value. (In one case - dismissed on account of age; in another case - property valued at perhaps 50,000 Lire - Fine 1,000 Lire.)
(f) In possession of firearms - (30 days only to be served out of 1 years' imprisonment.)
(g) Cutting military telephone wires - 18 months' imprisonment.

2. These and similar sentences are cruel by any quota. It will be impossible for us to administer this Province or to maintain law and order through the Military and Civil Police if the sentences of convicted persons continue at this low level. The Courts will become a laughing stock.

3. War Crimes consist primarily of 3 types (a) Crimes which directly affect operations (sabotage, sniping, espionage etc). (b) Crimes which inadvertently affect operations, (traffic and movement offences pubbing, telephone wires, Curfew etc.) (c) Crimes which, while relatively unimportant in individual cases, may have serious effects on operations if they are allowed to become widespread, (possession of U.S. property, sale of wine, black market offences, etc.)

4. It is the Military duty of members of Summary Courts to punish all such crimes with exceptional severity and to see that persons guilty of them are not allowed to escape through any loop-hole, technicality.

5. If a C.A.G. has insurmountable scruples in imposing a sentence anything from 5 to 50 times as severe as those stated above where circumstances demand it, he should appoint another officer to hold his Court.

Lt.Colonel,
S.C.A.G. FOGGIA PROVINCE.

CFT/pgm.

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

(c) Sale of wine outside hours and minor black market offences - Fines from 100-500 Lire.
(c) Curfew offences - Fines from 25 Lire up - 3 days' imprisonment.
(e) Being in possession of W.D. property - Fines from a very small fraction of the value of the property up to merely its value. (In one case - dismissed on account of age; in another case - property valued at perhaps 50,000 Lire - Fine 1,000 Lire.)
(f) In possession of firearms - (60 days only to be served out of 2 years' imprisonment.)
(g) Cutting military telephone wires - 12 months' imprisonment.

2. These and similar sentences are totally inadequate. It will be impossible for us to administer this Province or to maintain law and order through the Military and Civil Police if the sentences of convicted persons continue at this low level. The Courts will become a laughing stock.

3. War Crimes consist primarily of 3 kinds (a) Crimes which directly affect operations (sabotage, sniping, espionage etc). (b) Crimes which inadvertantly affect operations, (traffic and movement offences pudding, telephone wires, curfew etc.) (c) Crimes which, while relatively unimportant in individual cases, may have serious effects on operations if they are allowed to become widespread, (possession of W.D. property, sale of wine, black market offences, etc.)

4. It is the Military duty of members of Summary Courts to punish all such crimes with exceptional severity and to see that persons guilty of them are not allowed to escape through any legal technicality.

5. If a C.A.O. has insurmountable scruples in imposing a sentence anything from 5 to 50 times as severe as those shown above where circumstances demand it, he should appoint another officer to hold his Court.

A. Rowe
Lt.Colonel,
S.C.A.O. TARVISIO.

CET/EGFH.

Lt Col Rowe.
Please speak.
[illegible] W.O.A.I
[illegible]/43

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

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

AMG HQ.,
15 Army Group,
C.M.F.

97

Ref. AMG/209/97.
12 December 43.

Major Mercer,
HQ AMG.,
8th Army.

Dear

Allied Military Courts.

Thank you for your letter enclosing particulars of Captain Pollard as a suggested officer for a Superior Court. I quite agree the appointment, although you do not need my approval.

Yours

H.E.ROWE.
Lt.Colonel,
Chief Legal Officer.

EE.

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

Subject:- Appointment of Allied Military Courts.

96

AMG Hq.,
15 Army Group,
C.M.F.

Ref.AMG/209/96.
12 December 43.

S.L.O. Hq. AMG 5 Army;
" " " 8 Army.

Herewith copy of form of authority signed by G.O.C-in-C. Originals have been sent direct to 5 and 8 Army Commanders.

2. To enable S.C.A.O. to appoint Military Courts, a form of delegation as attached should be submitted for signature by the Army Commander.

H.Q. [illegible],
Lt.Colonel,
Chief Legal Officer.

1028/15.

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

I,

General Officer Commanding the Fifth / Eighth Army,
hereby delegate to the Senior Civil Affairs
Office of Fifth / Eighth Army Area, or to the Officer
for the time being acting as such, all power
of establishing Allied Military Courts in
Fifth / Eighth Army Area and of appointing members
thereof.

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

AMG 5 Army file 209 Important. 95

Declassified

Reference legal memo AMGOT/3/6006/L
of Dec. 30 Jurisdiction over British merchant
seamen. Discussion thereof and similar
matters with Army authority except that
headquarters is not repeat not in order.
Matters of this delicacy and nature to be
handled with AFHQ only. Representation
must emanate from this country that

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

Conversation reported was entirely unofficial
repeat not official and that proposals
made do not carry support this headquarters.
Considerable complications will ensue if
MVT Leader raises question with
HO as a result of this unofficial
approach.

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File 209. 94

AMGOT 3/6106/2

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT
LEGAL OFFICE

3 December 1943.

TO: Chief Legal Officer, H.Q., A.F.H., 15th Army Group.

1. Reference recent conference between Colonel Willmer, Lt. Col. Rowe and Lt. Col. Shields, the question of the trial and punishment of British Merchant Seamen apprehended for breaches of A.M.G. Proclamations is becoming one of immediate urgency. A case has actually arisen already, in which it is alleged that four seamen were concerned together in stealing foodstuffs, etc., the property of the Allied Military Government. The men concerned were arrested by the Port Military Police, and are being held in custody on board their own ship. They will be tried by a Superior Military Court, and the trial is due to take place today, 3 December 1943.

2. It is considered that in strict law, having regard to the powers of the Military Governor, there can be no doubt that the Military Court has jurisdiction to hear the case, and to impose any sentence within the limits prescribed by the relative proclamation, including a sentence of imprisonment, should the Court consider the case a proper one for such punishment. On the other hand it is realized that, as any sentence of imprisonment could only be served in present circumstances in an Italian prison, it would be most undesirable, on political grounds and for reasons of expediency, to impose a sentence of imprisonment. An intimation to this effect is being given to the Officer who will preside over the Court in this particular case.

3. It is considered most probable that other cases of a similar nature, and perhaps of even greater gravity, will arise in the future, possibly on frequent occasions. It is also thought vital that proper machinery should exist for the due punishment of offenders in proper cases. Otherwise there will be no adequate deterrent to prevent the commission of such offences from becoming a regular abuse. It is therefore considered most necessary that at an early date some general lines of policy should be laid down for the treatment of offenders of this class.

4. In the meantime Colonel Willmer yesterday had an interview with Mr. Ian D. Campbell, Deputy Ministry of War Transport Representative (Mediterranean), whose office is in this City. It was thought desirable that any recommendation made should first be discussed with the local representative of War Transport. It was found that the representatives of the Ministry of War Transport are themselves seriously concerned with the problem of crimes committed by British seamen in

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parts of occupied territory. Mr. Campbell stated that he had already sought instructions from London and was awaiting a reply.

5. Mr. Campbell appeared to be under the impression at the outset that there would be no objection to dealing with British seamen by means of Courts Martial, on the ground that they were "persons accompanying a force on active service." It was pointed out that this was an erroneous view, that British seamen while ashore in occupied territory, were amenable to the jurisdiction of Allied Military Courts, and that the problem was not so much one of jurisdiction as one of punishment. Mr. Campbell's view was asked with regard to the suggestion, made previously by Lt. Col. Rowe, that power should be obtained for Allied Military Courts to order that sentences of imprisonment should be served in prisons situated in any part of H. M. Dominions, e.g., Malta or Gibraltar. He pointed out that there would be practical objections to this course, on the ground that it would be necessary for the ship concerned to put into the port in question, as a result of which she would be detained, possibly for many days, awaiting the next convoy.

6. The alternative suggestion was then made that a British prison under A.M.G. authority should be established with a British superintendant and British officers, on Italian soil. It was considered that premises for such a prison could no doubt be obtained by utilizing one wing of an existing Italian prison. It was also considered that the establishment of such a prison would be within the powers of the Military Governor, at least so far as occupied territory is concerned. It was foreseen, however, that difficulties would arise with regard to (1) provision of the necessary staff, and (2) the provision of British rations for maintaining such a prison, and that authority might have to be obtained from London for this.

7. After discussion it was agreed with Mr. Campbell that the establishment of such a British prison on Italian soil would furnish the most practicable solution of the problem. Mr. Campbell undertook to submit this suggestion to his Ministry forthwith, and Colonel Palmer promised that a similar recommendation would be submitted to H.Q., A.F.H.Q., 15th Army Group, for onward transmission to the War Office, if thought fit.

8. It is requested that urgent consideration may be given to this matter, and if possible that a directive may be issued from H.Q., A.F.H.Q., 15th Army Group, as to the disposal of cases of this character, at least pending the formulation of a permanent policy.

9. It is pointed out that the proposals made above apply only to occupied territory. Different considerations

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would of course arise in territory under control of the Italian Government under A.M.G. supervision

J. M. Hills

Lt. Colonel
Senior Legal Officer
Region 6

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Copies to:
Deputy Military of War Labor Representative (Mediterranean).
Chief Legal Officer, Region IV.

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91

Subject:- Monthly report on work of Allied Military Courts.

( ) HQ Fd.Sq.
15 Army (Info)
C.L.F.O.

Ref. Lrs/309/
M. dated 4d.

C.L.C.O. Hq.Sqn. 5 Army.
" " " 6 Army.
" " " Region III.
" " " Region IV. (Main)

1. A Report in the attached form should be completed and forwarded to this headquarters not later than the 7th of each month in respect of the work of Allied Military Courts in the preceding month.

2. The report will cover the number of cases received at your headquarters during such preceding month. It is desirable, therefore, that you should arrange for records of cases heard by Courts in your territory to be forwarded promptly to you.

3. Section "A" of the report will cover all cases tried, and will show the findings of the Courts. Section "B" will cover only those cases where there has been a conviction. The total of Section "B" will therefore equal the total number of "guilty" cases in Section "A".

4. Only the report is required only in respect of the findings of Allied Military Courts whether after a plea of "guilty" or "not guilty". Cases which are withdrawn by the prosecution before a finding will not be included, and any action taken on review will be ignored.

[signature]
Lt.-Colonel,
Colonel,
Chief Legal Officer,
for Chief Civil Affairs Officer.

Lt/Col.

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REGION NO.....

or

..th ARMY AREA.

REPORT ON ALLIED MILITARY COURTS FOR THE MONTH OF .....194..

A. CASES TRIED AND FINDINGS.

Province of	SUMMARY COURT		SUPERIOR COURT		GENERAL COURT		TOTALS		Total Cases
	Not Guilty	Guilty	Not Guilty	Guilty	Not Guilty	Guilty	Not Guilty	Guilty	
TOTALS									

B. CONVICTIONS.

Province of	Curfew and Pass Violations	Theft and Poss. of Allied Prop.	Black Market	Looting	Poss. of Arms and Ammunition	Violation of Italian Penal Code.	Others	Total

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

TOTALS										

B. CONVICTIONS.

Province of	Curfew and Pass Violations	Theft and Poss. of Allied Prop.	Black Market	Looting.	Poss. of Arms and Ammunition	Violation of Italian Penal Code.	Others	Total
TOTALS.								

.....

Signature. (Rank) (Official Designation)

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

AMG Hq 8th Army

Reg dear Col. Kraus,

Am returning Hq Legal file 3 finds the 2 encls which I do not think were forwarded to you.

Sincerely

EDWIN J. MERCER, Maj. Ord.
SENIOR LEGAL OFFICER, A.M.G., 8th ARMY

To: CLO- AMG Hq 15 Army Group

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

Campobasso, 23 November, 1943.

SUBJECT: Capt. Harry S. Pollard (A) 0-519953

To: S.C.A.O., 8th Army A.M.G. Hq.

1.- Undersigned recommends appointment of subjct officer as Superio Military Court, with territorial jurisdiction to act in 8th Arm area, in addition to his other duties.

2.- Subject officer practised law for 15 years in the U.S., was Prosecuting Attorney, Dallas, Texas for five years and Asst. Attorney General of State of Texas for 4 years.

3.- He is presently ~~as~~ assigned as C.A.O. of City of Campobasso.

Edwin J. Mercer

EDWIN J. MERCER, MAJ. JAGD.
SENIOR LEGAL OFFICER, 8th ARMY

Copy for C.A.O.,
Hq. 8th Army Group.

Recommended
B.C. Talbot Major
S.C.A.O.

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

209. Legal.

Subject: Allied Military Courts. 1 DEC 1943 1

15AG/MA/261.

10 Dec 43.

C.C.A.C.

The letters enclosed in your AAG/209/79 of 9 Dec addressed to CG Fifth Army and COS Eighth Army, authorising the delegation of powers to establish Allied Military Courts in the Army areas, have been signed and despatched as requested.

W.M. CUNNINGHAM
Maj.
MA to COS-in-C.

C. O. 86

The War Office having decided in two Territories that B. M. S. can be tried by B. M. Courts (as far as possible under English Law procedure) which we can safely take it that they can so be tried in occupied territory in Italy, especially if we make the provision, if they so desire, that the court be composed in such cases of British Officers. I should like para 6 thereof to read.

"Since the War Office London has agreed in occupied territories in the Middle East that B. M. S. are liable to the jurisdiction of British Military Courts, by which they are tried so far as is possible ~~under~~ in accordance with English Law, I propose, unless I receive instructions to the contrary, to try such Offenders by A. M. Courts, arranging wherever possible that the court shall in such cases be composed of British Officers."

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

Law (roedure) ...
that they can so be tried in occupied territory
in Italy, especially if we make the provision, if
they so desire, that the court be composed
in such cases of British Officers. I should
like para 6 thereof to read.

"Since the War Office London has agreed in
occupied territories in the Middle East that B.A.S.
are liable to the jurisdiction of British Military
Courts, by which they are tried so far as is possible
~~under~~ in accordance with English Law, I
propose, unless I receive instructions to the contrary,
to try such Offenders by A.R. Courts, arranging
wherever possible that the court shall in such
cases be composed of British Officers."

I should like paras 8 + 9 to be more constructive.
We should include therein the recommendation
that either the convicted persons are sent
to Naval or Military detention barracks by
special arrangement, or that they are sent
to the nearest British gaol - i.e Malta. In the
meantime we should try to make a local

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

agreement with the military authorities whereby they can be accepted therein pending decision.

The matter of urgency should be stressed.

I will sign.

DS 11/12/43.

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C.P.A.O.

SEPA

Please see letter at front cover which I should like to send AFHQ, if it meets with your approval, tho may however, prefer that a letter should go over your own name.

2. May I have your directions, please.

10 Dec 43

H. [illegible]
C.A.O.

SUBJECT: British Merchant Seamen.

85A

DRAFT

H.Q. A.M.G.,
15 Army Group,
C.M.F.

AMG/209/85

9. Dec. 43.

TO: Military Government Section,
Allied Force Headquarters.

1. Considerable difficulty is being experienced over the question of the trial and imprisonment of British Merchant Seamen. This question arises in occupied territory in Italy and in non-occupied territory, but this Headquarters is only concerned with the former type of territory.

2. A British Merchant Seaman is not subject to the Army Act or the Naval Discipline Act when he is on shore, and he can therefore not be tried by Army or Naval court-martial, or be imprisoned legally in a military or naval establishment.

3. It is my opinion that a British Merchant Seamen, like all other civilian persons in occupied territory, is subject to the jurisdiction of the Military Governor and, therefore, to his Proclamations and Orders. This was recognised in Madagascar and, since, in Tripolitania and possibly other British occupied territories.

4. Under the Proclamations in Italy at present in force, a British Merchant Seamen could be tried by an Allied Military Court in occupied territory for offences committed therein against the Proclamations and Orders of the Military Governor. He is also, in my opinion, amenable to the ordinary courts of the territory as he is not a member of the Allied Forces and as such exempt under International Law.

5. It is recognised that it would be unwise and impracticable to try a British Merchant Seaman in an Italian Court, but an offence against Italian Law could properly be tried in an Allied Military Court under a transfer of jurisdiction in accordance with the provisions of Proclamation No.4. An Allied Military Court can also properly try a British Merchant Seaman for an offence created by Proclamation or Order of the Military Government.

6. It is requested that a decision be made on policy as to whether trial of British Merchant Seamen shall be in accordance with para.5 of this letter.

7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonmen which may be imposed. All persons convicted by Allied Military Courts serve their sentences in Italian gaols. It is considered that it would be unjust and add to the punishment if a British subject were made to serve a term of imprisonment in the gaol of an occupied country where the language was unknown to him, where gaol conditions were contrary to British conceptions of maintenance and where victimisation might result.

8. It is not possible under existing law for a person sentenced to

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

1. Considerable difficulty is being experienced over the question of the trial and imprisonment of British Merchant Seamen. This question arises in occupied territory in Italy and in non-occupied territory, but this Headquarters is only concerned with the former type of territory.

2. A British Merchant Seaman is not subject to the Army Act or the Naval Discipline Act when he is on shore, and he can therefore not be tried by Army or Naval court-martial, or be imprisoned legally in a military or naval establishment.

3. It is my opinion that a British Merchant Seaman, like all other civilian persons in occupied territory, is subject to the jurisdiction of the Military Governor and, therefore, to his Proclamations and Orders. This was recognised in Madagascar and, since, in Tripolitania and possibly other British occupied territories.

4. Under the Proclamations in Italy at present in force, a British Merchant Seaman could be tried by an Allied Military Court in occupied territory for offences committed therein against the Proclamations and Orders of the Military Governor. He is also, in my opinion, amenable to the ordinary courts of the territory as he is not a member of the Allied Forces and as such exempt under International Law.

5. It is recognised that it would be unwise and impracticable to try a British Merchant Seaman in an Italian Court, but an offence against Italian Law could properly be tried in an Allied Military Court under a transfer of jurisdiction in accordance with the provisions of Proclamation No.1. An Allied Military Court can also properly try a British Merchant Seaman for an offence created by Proclamation or Order of the Military Government.

6. It is requested that a decision be made on policy as to whether trial of British Merchant Seamen shall be in accordance with para.5 of this letter.

7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonmen which may be imposed. All persons convicted by Allied Military Courts serve their sentences in Italian gaols. It is considered that it would be unjust and add to the punishment if a British subject were made to serve a term of imprisonment in the gaol of an occupied country where the language was unknown to him, where gaol conditions were contrary to British conceptions of maintenance and where victimisation might result.

8. It is not possible under existing law for a person sentenced to imprisonment by an Allied Military Court to serve such such imprisonment in a Naval or Military establishment. It is also not possible for him to be sent to a Gaol in British territory unless the law is amended or directions can be given by the British Government which will allow this to be done. The maintenance of a special prison under the control of the Military Governor is legally possible, but not practicable as personnel would probably not be available and sentences might extend beyond the period of occupation.

9. The whole matter/....

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

9. The whole matter is very urgent as cases are constantly occurring, and, whilst serious charges like murder can be dealt with under the Merchant Shipping Acts by sending the accused for trial to Malta or some other convenient British territory, this is impracticable in the ordinary day to day cases.

Lt.Colonel,
Chief Legal Officer,
For, Chief Civil Affairs Officer.

/RAC.

Copy to: Chief Legal Officer,
Legal Sub-Commission, A.C.C.

Senior Legal Officer,
AMG. 5 Army.

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

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

Subject:- Reports on Arrest.

A.A. M.,
15 Army Group,
C.M.F.

Ref.AMG/202/10
2 December 43.

Colonel H.G.Hillmer., K.C.
Regional Chief Legal Officer,
Region IV (Main).

Dear

I have received copy of Major Mercer's letter to you of 29 November. Reference form J-1 drafted at Palermo, I am very doubtful of its desirability owing to its length, although I think we should have some such form.

2. Will you let me know what you and Shields think of Mercer's form?

3. I have done some work on a comprehensive legal directive but it is not yet finished. I shall be leaving here shortly and I am afraid I shall have to leave it to my successor to complete.

Yours

H.E.ROWE,
Lt.Colonel,
Chief Legal Officer.

HER/ES.

Copy to File 209.

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

TELEGRAM OUT.

TO: PETOX FOR AMG

FROM: PILOT FROM AMG

Orig.No. PA 429 9 Dec

Reference legal memo AMGOT/3/6106/L of 3.Dec (.)

Jurisdiction over British merchant seamen (.) Discussion this and similar matters with any authority except this headquarters is not repeat not in order (.) Matter is one some delicacy and will be handled with AFHQ only (.) Representative MWT must inform his ministry that conversation reported was entirely unofficial repeat not official and that proposals made do not carry support this headquarters (.) Considerable complications will ensue if MWT LONDON raises question with WO as a result of this unorthodox approach

If this message is liable to be intercepted it should be sent in CIPHER

PRIORITY .....

.....Lt.Col.

TOO :
THI :
TOR :

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

Subject:- Venereal Diseases.

SECRET.

HQ H.Q.,
15 Army Group,
C.M.F.

Ref. 337/209/G1
9 December 43.

Senior Legal Officer, AAI 5 Army,
" " " 8 Army,
Regional Chief Legal Officer, ASC Region IV (Main)

Reference para 4 of attached circular AAI/521/1 of 5 Dec, there is at present no adequate legal power under which prosecutions may be brought in Allied Military Courts for keeping unlicensed brothels and for "pimping". The situation regarding venereal disease is serious and it is essential that prosecutions should be possible for these acts particularly.

2. The issuance of a General Order is being considered to deal with the matter and your views are requested as to what provisions are required in your area to deal with the situation.

3. It may be that in some places (e.g. Naples) a general scheme of closer control is being considered and that different provisions to make such scheme effective will be required there. In such case, the matter will have to be dealt with by local legislation, but no such local legislation should be made until it has received prior approval from this Headquarters.

H.B. [illegible],
Lt.Colonel,
Chief Legal Officer.

AAI/521.

SUBJECT:- Venereal Disease.

CONFIDENTIAL.

A.Q., A.M.G.,
15 Army Group,
C.M.F.

87

AMG/5.1/1

A.M.G. Fifth Army	(10)
A.M.G. Eighth Army	(10)
A.M.G. Region III	(10)
A.M.G. Region IV	(10)

5th December 1943

1. At a recent conference on Venereal Diseases in the Armies held at NAPLES and attended by the D.D.H., A.F.H.Q. - the advisor on V.D. A.F.H.Q., A.D.H. Adv. Adm. Echelon A.F.H.Q., and the Director of Public Health A.M.G. 15 Army Group, the possibility of further cooperation between the Armies and A.M.G. was discussed.

2. The problem of V.D. in Naples and other large cities is becoming a very serious one and unless checked by every means possible is likely to increase. The present ratio per 1000 calculated on recent weekly figures is alarming.

3. While it will be essentially the concern of the Army to take every action possible in the way of discipline, education, inspection of men, establishment of P.X.C. and Prophylactic Centres, control of the treatment in forward areas, propaganda of various sorts, there are certain important features in an anti-venereal campaign which are essentially matters for the civil authorities and so A.M.G.

4. Naples has an evil reputation as a Port with a high incidence of V.D. Normal opportunities exist but it is felt that the amount of touting for custom which is now obvious all over the town, calls for action by the police and later by the Legal Division. It is considered that an anti-'pimp' campaign should be launched and that penalties should be severe, and the widest publicity should be given to convictions.

5. There is evidence that many infections come from the unauthorised or unlicensed "House" and irregular, including "door step" prostitution while, on the other hand, the regular house, in which inspection of men and P.X.C. have been instituted by Army authorities, do not appear to be coming out so badly and provide some, though obviously not full protection.

6. Police should be instructed to check up on the Italian medical inspection of the inmates of the houses. While it is impossible to place much faith on these medical inspections, they do appear statistically to diminish the incidence of infection, especially gross infection. They certainly are of great help in dealing with louse and scabies disinfestation and the louse position is important with the arrival of typhus.

7. During my visit I saw many cases of soldiers having bottles of wine thrust into their hands in broad daylight by these harpies or their agents. It is felt that the "sale" or the "gift" of wine in bottles on the streets or even in shops might well be prohibited.

[illegible] of cases of V.D. in the civil population

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

Director of Public Health A.M.G. 15 Army Group, the possibility of further cooperation between the Armies and A.M.G. was discussed.

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8. The question of control of cases of V.D. in the civil population require investigation by the Public Health Division of A.M.G., with special regard to the early re-establishment of V.D. clinics as necessary. I should like a report on this in a month's time. So far as is known there is no scarcity of suitable drugs for the treatment of these diseases.

9. It will be appreciated if these points can receive your consideration and cooperation to effect the desired improvement.

D. GORDON CHEYNE,
Colonel,
Director of Public Health.

DGC/SCH
Copy to: A.C.C.Palermo (6)
DDMS Adv Adm Echn AFHQ (4) DDMS 8 Army (8) Surgeon 5 Army (8)
DDMS No. 2 District (4) Legal Div (8) Public Safety Div (8)

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

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

Subject:- Review of Cases.

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/209/80
2 December 43.

Regional Chief Legal Officer,
AMG, Region IV (Main).

Herewith records of cases received from S.C.A.O. Foggia Province, for examination and Review.

2. Please take action under Proclamation 4 as amended by Proclamation 14.

H.E.ROWE,
Lt.Colonel,
Chief Legal Officer.

HER/ES.

SUBJECT:- Allied Military Courts.

79

H.Q., A.M.G.,
15 Army Group,
C.M.F.

General Officer Commanding in Chief,
15 Army Group.

AMG/209/79
9th December 1943

At the time of the 'Buttress' and 'Avalanche operations you delegated powers to the General Officers Commanding Fifth and Eighth Armies to establish Allied Military Courts in the Army areas and, in particular, to convene Superior and General Courts. The delegation of powers to the General Officers Commanding did not, however, include the power to them to delegate the powers which you gave them.

With the extension of the area under the Army Commanders, it has been found inconvenient to have to secure in each case of the appointment of a General Court the signature of the General Officer Commanding, nor do I regard this as necessary, in view of the sound practice which has been established in the matter of Courts since the first beginning of A.M.G. I therefore submit for your signature a minute to the Commanding General, Fifth Army, and the General Officer Commanding, Eighth Army, empowering them to delegate to Senior Civil Affairs Officers the powers to appoint Courts which you had delegated to these General Officers. I understand from S.C.A.O., Eighth Army that this would be agreeable to the General Officer Commanding, Eighth Army. S.C.A.O., Fifth Army has also discussed the matter with the Commanding General, Fifth Army, who is prepared to delegate his powers in the manner described.

I submit two copies of the authority for your signature, one to go to each of the General Officers.

79

Major General,
Chief Civil Affairs Officer.

/SCA.

Encls.

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

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

H.Q.

C.O.A.O.

Appointment of Military Courts.

Please see page 42 of this file. A copy of the original order signed by C.O.C-in-C has now been received and is at p 61.

2. I have attached at front cover form of authority for signature in duplicate by C.O.C.-in-C giving leave to Army Commanders to delegate powers of appointing Allied Military Courts to S.C.A.Os. I have also attached form of delegation which will go forward to 5th and 8th Armies respectively with C.O.C-in-C's authorities.

H.E. ROWE,
Lt.Colonel,
Chief Legal Officer.

HER/ES.

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

Subject:- General Military Court - Foggia.

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/209/77
7 December 43.

S.C.A.O.,
Foggia Province.

Reference your letter 3030 of 6 Dec, a General Military Court established for the trial of persons generally who may be brought before it or for the trial of specified persons is not dissolved by reason of Foggia Province coming out of 8 Army Area into Region IV.

2. The power of referring cases for trial to a General Military Court is at the moment vested in the Chief Legal Officer, 15 Army Group, but a transfer of this power to Regional Chief Legal Officers is imminent. An instruction will be issued when the change takes place.

H.E. ROWE,
Lt. Colonel,
Chief Legal Officer.

HER/ES.

02061

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

8 DEC 1943

15

MOST SECRET IMPORTANT

FOLIO NO 02293
7TH DEC 43

US
CIPHER MESSAGE
IN

FROM :SEARS FOR FARGO
TO :FREEDOM FOR MGS
RPTD FILPOT FOR AMG FOR ROME
ORIG.NO:CITE FARGO 1968

TOO 1325
THI NIL
TOR 2020A/07

FILPOT SIGNAL FA 373 DATED 4 DECEMBER REFERS.
SOLDIER IN CIVILIAN DRESS NOT ENTITLED TO STATUS AS PRISONER OF WAR AND SHOULD BE TRIED BEFORE ALLIED MILITARY COURT. UNDER FACTS AS STATED IN FILPOT SIGNAL PRIMA FACIE CASE ESTABLISHED FOR TRAIL IN ALLIED MILITARY COURT OF SOLDIER IN PARTIAL UNIFORM WHERE QUESTION OF RIGHT TO BE TRIED AS PRISONER OF WAR CAN BE RAISED. WE HAVE CONSIDERED ONLY QUESTION OF FORM AND HAVE NOT ATTEMPTED TO DETERMINE MATTER OF RIGH POLICY TO BE PURSUED IN SUCH CASES.

AMG 4 ACTION
BGS 1

SMC. 2158A/07
T.T. 2210A/07.JOD.

16

0207

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

Legal

SECRET

IMPORTANT
BR
CIPHER MESSAGE
IN

FOLIO NO 02798
7TH DEC 43

FROM :NATOUSA SIGNED CINC
TO :FILPOT FOR ACTION
ORIG.NO:10592 CITE NAGAP FUGAS NAJAG AND MHMGS

TOO 1000
THI NIL
TOR 1446A/07

FURTHER INFORMATION IS DESIRED REURAD 433 OF 4 DECEMBER FA 376 CITED. ITALIANS AT LARGE ARE NOT CONSIDERED AS PRISONERS OF WAR AND MEMBERS OF THE ITALIAN ARMED FORCES COMING INTO OUR HANDS SUBSEQUENT TO THE ARMISTICE ARE NOT ACCEPTED AS PRISONERS OF WAR IN THE ABSENCE OF OTHER REASONS OF MILITARY NECESSITY. DESIRE TO KNOW IF THE ITALIANS CONCERNED ARE CARRIED ON THE ROLLS OF AN ITALIAN UNIT THAT HAS BEEN OFFERED FOR SERVICES WITH AND ACCEPTED BY THE ALLIED FORCES WHO EXERCISE MILITARY COMMAND THEREOVER. IF PERSONNEL NOT WITHIN THIS CATEGORY REGARD THEIR ACTIVITY AS A VIOLATION OF THE PROCLAMATION OF THE MILITARY GOVERNOR THEREBY SUBJECTING THEM TO TRIAL BY THE COURTS ESTABLISHED BY THE MILITARY GOVERNOR. PLEASE AMPLIFY BASIC CABLE IN ORDER THAT APPROPRIATE INSTRUCTIONS MAY BE GIVEN YOU AS TO DISPOSITION.

AMGOT 4 ACTION

SMC. 1705A/07
T.T. 1720A/07.JGD.

ACTION 75

0208

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

74

Subject:- Superior Military Courts.

A[illegible]Hq.,
13 Army Group,
C.M.F.

Ref.AG/239/74.
7 December 43.

HQ AMG.,
8 Army Main.

165

Reference your GA/13 of 3 Dec, it is correct for you to act in connection with the appointment of Superior Military Courts on the recommendation of your Senior Legal Officer, Major Mercer, and without reference to this Headquarters.

2. The procedure for appointment of Military Courts in Task-force areas laid down in Amgot Manual (General Administrative Instruction No.7) should be followed pending new arrangements which are being made and which will be notified to you in due course.

H.E.[illegible]E,
Lt.Colonel,
Chief Legal Officer.

HER/ES.

74

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

7 DEC 1943

CONFIDENTIAL

US CIPHER MESSAGE
IN 209

FOLIO 02577
4 DEC 43.

FROM; SEARS FOR FARGO
TO; FREEDOM FOR MGS RPTD FILPOT FOR MGS RPTD FATIMA
ORIG NO; CITE FARGO 1042

TOO; 1340A/04
TOR; 1900A/06

EVIDENCE FOR PROSECUTION AGAINST 16 DEFENDANTS IN USTICA CASE COMPLETED SUBJECT TO PRODUCTION OF CERTAIN DOCUMENTS DEFENCE HAVE ANNOUNCED THEY WILL NOT CALL ORAL TESTIMONY. TRANSCRIPT AND REPORT SHOULD BE COMPLETED IN ABOUT 14 DAYS. PROSECUTION AGREES AND PRIMA FACIE CASE AGAINST THREE DEFENDANTS GURRIERI BRANCIAMORE AND GUERZONE. ARE THEY TO BE RELIEVED? APPLICATION FOR BAIL PENDING TRIAL MADE BY ADVOCATED FOR FOUR DEFENDANTS DR FAXIO CASTIGLIONE RANDO AND GIORDANO. EVIDENCE AGAINST THEM IS ▮EAK(WEAK) AND THEY HAVE BEEN IN JAIL MORE THAN THREE MONTHS.
CAN COMMISSIONERS BE GIVEN AUTHORITY TO GRANT BAIL IF THEY THINK FIT ?

AMCOT

4 ACTION

SMC. 2135A/06
T.T. 2152A/06 JJ

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

SECRET

7 DEC 1943

NAVAL MESSAGE
IN

FOLIO NO: 02468
2 DEC 43

FROM: CTF C MED
TO: FITPOT FOR AEG
SEARS FOR WARCO FATIMA FOR TRACKMAN
FREEDOM FOR MCS FOTAIL VAM
NOIC BARI

ORIG NO: 271949

TOO 1217A.2?
FOR MIL

YOUR 103853 ?? OF 30TH NOVEMBER NOT TO FOTAIL
VAM NOIC BARI.

FOLLOWING IS A REPETITION OF MY 271949 NOVEMBER
BEGINS ADDRESSED, NOIC BARI (X) FOTAIL VAM FITPOT
SEARS FOR WARCO FATIMA FOR JOYCE FOR TRACKMAN
FROM CTFC MED:
UNDERSTAND TWO TRYCLOS MERCHANT STAMAN ARRESTED BARI FOR
STABBING ITALIAN WHO IS REPORTED TO DIE; SUBJECT TO
ALLIED CONTROLCOMMISSION CASE SHOULD BE INVESTIGATED
BY MA VAL COURT UNDER SECTION 453 PARAGRAPH (I) C AND
639 OF MERCHANT SHIPPING ACT AND ACCUSED SENT BARI FOR
TRIAL, ACCOMPANIED BY DEPOSITIONS AND TRANSLATIONS.
BARI PASS TO FITPOT PALERMO PASS TO WARCO REPEATED
PASS TO FOTAIL T.O.O. 271949 ENDS.

AMGOT 4 ACTION
NEO 1

ACTION

ENG 1515A.6
T.T.1630A.6 ET

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

SUBJECT: Petition of PACE and CATALANO.

H.Q. A.M.G.,
15 Army Group,
C.M.F.

TO: Chief Legal Officer,
H.Q., A.M.G.,
PALERMO.

AMG/209/

6. Dec. 43.

1. Herewith records of above case together with petition by the above convicted persons, Col. Hill's memo, and minute from C.C.A.O. to G.O.C.-in-C., with reconfirmation of death sentences endorsed.

2. Please acknowledge receipt of above.

HER/RAC.

Colonel,
Chief Staff Officer.

File in Adm 65 - 20C/70

SUBJECT:- Sentence of Death -
Pace and Catalono.

H.Q., A.M.G.,
15 Army Group,
C.M.F.

General Officer Commanding in Chief,
15 Army Group.

AmG/209/
4th December 43

On 11th October 43 you confirmed sentence of death on two Italians, Pace Giovanni and Catalono Domenico, who were convicted of homicide and of possession of firearms, by a General Military Court at Agrigento on 18th September 1943.

A stay of execution was made, pending the receipt of an appeal from the two convicted men.

The appeal has been received. I am advised by the Chief Judicial Officer that the appeal raises no new point which has not been already fully considered, and having read the appeal I recommend that it be dismissed.

Accompanying the appeal, however, is a memorandum dated 4th October 1943 from Lt. Col. Richard H. Hill, A.U.S., who was one of the five members of the Court. I attach the memorandum.

It will be seen from this that Lt. Col. Hill

(a) abstained from voting as to guilt or innocence on the charge of murder, all other members of the Court voting "Guilty";

(b) voted in favour of guilt on the charge of unlawful possession of firearms, the voting being unanimous;

(c) voted alone against the imposition of the death penalty.

Lt. Col. Hill states that he was given permission by the President of the Court to write to the

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

General Officer Commanding in Chief,
15 Army Group.

AMG/209/
4th December 43

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(c) voted alone against the imposition of the death penalty.

Lt. Col. Hill states that he was given permission by the President of the Court to write to the Reviewing Authority and to the Military Governor.

The Rules of Procedure for Allied Military Courts - Special Administrative Instruction Legal No. 2, para 10 - provide that "every question shall be determined by a majority of the opinions of the members of the Court." The convictions and sentences are therefore legally sound and on the record of the case I confirm my own opinion that the two men were justly convicted and condemned to death. It is, however, my duty to point out to you the fact, which was unknown to me when I submitted the case under cover of my letter AL/21/54 of 17th October 43, that there was sufficient element of doubt in the mind of one member of

/the Court...

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

the Court as to make him abstain from agreeing to a sentence of "Guilty" on the charge of homicide and that the same member dissented from the sentence of death.

It was of course the duty of the President of the Court to bring this to my notice, and I much regret that this was not done at the time, and that Lt. Col. Hill's letter was not forwarded before.

In spite of this dissenting opinion I believe that substantial justice will be done, and will only be done, by carrying out the sentence of death imposed by the Court, and I therefore recommend that yourconfirmation of the sentence should stand and that the sentence be carried out without delay.

69

Major General,
Chief Civil Affairs Officer.

/SCH.

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

68

SUBJECT:- Sentence of Death -
Pace and Catalono.

H.Q., A.F.H.Q.,
15 Army Group,
C.M.F.

General Officer Commanding in Chief,
15 Army Group.

A.G/20[illegible]/
4th December 43

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

General Officer Commanding in Chief,
15 Army Group.

AMG/20[illegible]/
4th December 43

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Accompanying the appeal, however, was a memorandum dated th October 1943 from Lt. Col. Richard H. Hill, A.U.S., who was one of the five members of the Court. I attach the memorandum.

It will be seen from this that Lt. Col. Hill

(a) abstained from voting as to guilt or innocence on the charge of murder, all other members of the Court voting "Guilty";

(b) voted in favour of guilt on the charge of unlawful possession of firearms, the voting being unanimous;

(c) voted alone against the imposition of the death penalty.

Lt. Col. Hill states that he was given permission by the President of the Court to write to the Reviewing Authority and to the Military Governor.

The Rules of Procedure for Allied Military Courts - Special Administrative Instruction Legal No. 2, para 10 - provide that "every question shall be determined by a majority of the opinions of the members of the Court." The convictions and sentences are therefore legally sound and on the record of the case I confirm my own opinion that the two men were justly convicted and condemned to death. It is, however, my duty to point out to you the fact, which was unknown to me when I submitted the case under cover of my letter AL/21/54 of 13th October 43, that there was sufficient element of doubt in the mind of one member of

/the Court...

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

67

the Court as to make him abstain from agreeing to a sentence of "Guilty" on the charge of homicide and that the same member dissented from the sentence of death.

It was of course the duty of the President of the Court to bring this to my notice, and I much regret that this was not done at the time, and that Lt. Col. Hill's letter was not forwarded before.

In spite of this dissenting opinion I believe that substantial justice will be done, and will only be done, by carrying out the sentence of death imposed by the Court, and I therefore recommend that your confirmation of the sentence should stand and that the sentence be carried out without delay.

M.

Major General,
Chief Civil Affairs Officer.

/SCH.

67

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

Ref.3050

6 Dec.1943

SUBJECT: General Military Court.

TO: A.M.G. 15th. Army Group (Lt.Col.Rowe,Legal Officer)

FROM:S.C.A.O. Foggia Province (Legal Div.)

This letter is written direct to you with the approval of Brigadier Carr,R.C.A.Q.,Region 4.

On 25 Nov. 43,at the request of this H.Qs,the G.O.C.,8th. Army appointed a General Military Court for the trial of such persons as may be brought before it. Two cases are pendingfor trial in this Province but neither has yet been referred for trial to this General Court.

In view of the fact that this Province is now functioning under the orders of the C.C.A.O.,instructions are requested as to whether these cases may be referred to the above mentioned court,or whether it is necessary that a new court be appointed by the C.C.A.O. If the latter is necessary,it is requested that a General Military Court be appointed as soon as possible. The names of the following officers are submitted as being suitable for appointment to such Court in this Provincial area:

Lt.Colonel	C.E. Temperley,C.B.E.,M.C.
Lt.Colonel	P.S. Andrews,A.U.S.
Major	Wm.H. Levit,A.U.S.
Major	J.D. Scholtz,A.U.S.
Capt.	M.G. Richards,British
Lt.	L.O.Osmond,British

The Legal Officer of this Province has been delegated authority by the Chief Legal Officer,Region 4 to refer cases to General or Superior Military Courts,pursuant to para.5,Special Administrative Instructions Legal N.o 2. In the event that it is not necessary to appoint a new court,is the Provincial Legal Officer authorised to refer cases for trial to the court already appointed;if not,who will exer-

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

Army appointed a General Military Court for the trial of such persons as may be brought before it. Two cases are pending for trial in this Province but neither has yet been referred for trial to this General Court.

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Lt.Colonel	P.S. Andrews, A.U.S.
Major	Wm.H. Levit, A.U.S.
Major	J.D. Scholtz, A.U.S.
Capt.	M.G. Richards, British
Lt.	L.O.Osmond, British

4 66

The Legal Officer of this Province has been delegated authority by the Chief Legal Officer, Region 4 to refer cases to General or Superior Military Courts, pursuant to para.5, Special Administrative Instructions Legal N.o 2. In the event that it is not necessary to appoint a new court, is the Provincial Legal Officer authorised to refer cases for trial to the court already appointed; if not, who will exercise this authority?

Wm. H. Levit

MAJOR
for LT. Col.
SENIOR CIVIL AFFAIRS OFFICER
FOGGIA PROVINCE

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

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

Legal

6 DEC 1943

Subject: Correspondence and Reports from Major Mercer.

H.Q., A.M.G.
Eighth Army Main.

OA/13/
3 Dec 43.

Chief Legal Officer,
H.Q., A.M.G.
15 Army Group.

1. Documents on above subject are attached herewith.

2. Also a copy of a letter addressed to undersigned in regard appointment of Superior Courts.

3. Also copy of references dealing with para 2 of this memorandum.

John D Ames
Major, A.U.S.
H.Q., A.M.G. Eighth Army Main.

1-P74

65

0221

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

SUBJECT: Capt. Pollard as Superior Court Officer.

H.Q., A.M.G.
8th Army.

OA/13/56A.

25 Nov.43.

Senior Legal Officer,
CAMPOBASSO.

1. The Appointment of the subject is ratified. However, no Superior Courts can be actually held until policy is laid down to this H.Q. from Lt.Col. Rowe, 15 Army Group.

2. You will be notified immediately the issue is settled.

(Signed) T.D. Ames,
Major, AUS.
H.Q., A.M.G. 8th Army.

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

COPY.

Campobasso, 23 November, 1943.

SUBJECT: Capt. Ha[illegible] S. Pollard (A) 0-519953

To : S.C.A.O., 8th Army A.M.G. Hq.

1. Undersigned recommends appointment of subject officer as Superior Military Court, with territorial jurisdiction to act in 8th Army area, in addition to his other duties.

2. Subject officer practised law for 15 years in the U.S., was Prosecuting Attorney, Dallas, Texas for five years and Asst. Attorney General of State of Texas for 4 years.

3. He is presently assigned as C.A.O. of City of Campobasso.

(Signed) EDWIN J. MERCER, MAJ. ORD.
Senior Legal Officer, 8th Army.

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

209

DEC 1943

62.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO.512
LEGAL SUB-COMMISSION

AMG/4002/L

1st December, 1943.

SUBJECT: Appointment of General and Superior Military Courts in Army Areas.

TO : AMG. HQ. 15 Army Group.

40

Reference your AMG/209/40 dated 26th November, 1943.

Herewith copy of the authority requested. We do not hold the originals.

Richard H. Wilmer

RICHARD H. WILMER,
Lt.Colonel,
Acting Deputy Chief Legal Officer.

Enc. 1.

67

11

0224

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

61

Headquarters,

15 Army Group.

To: Commanding General Fifth Army.
General Officer Commanding Eighth Army.

I, Harold R.L.G. Alexander, G.C.B., C.S.I., D.S.O., M.C., General, General Officer Commanding the Allied Forces in Italy and Military Governor of the Occupied Territory, hereby authorize and empower you to establish Allied Military Courts, including General, Superior or Summary Courts in accordance with the provisions of Proclamation No. 4, and to appoint members thereof, within the area of the Occupied Territory in which the Allied Military Government is functioning for the time being under your orders. This authority may be delegated by you to any officer commanding a Division or higher unit or formation under your command.

General,
General Officer Commanding
and Military Governor.

61

0225

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

OUTGOING CABLE. Tdu 209

60

To: FLIMSY for MED. Rptd. ROME for PARIS for UNIMED.

From:- FILLET from AFHQ from MAC.

Orig. No. 24. 4 Dec

MOST SECRET (.) Two soldiers Italian Army arrested in 8 Army Area on charges saying at British troops (.) Understand evidence is that one dressed as civilian and other wearing part Italian uniform (.) Defence likely to be that accused were shooting at sheep (.) uestion arises whether accused should be tried by Court Martial as p.o.w. with protecting power present or whether trial should be by Allied Military Court (.) Am of opinion Italian soldiers at large can not repeat not claim benefits Geneva Convention for acts committed after repeat after Armistice (.) Policy may be to allow these benefits (.) Request your direction (.) PRIME please comment to FIELDING and repeat here

61

If liable to interception this message must be sent in CIPHER.

Degree of Priority

.....

T.O.O.....

T.M.I.....

T.O.R.....

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

(209-Legal)

59

4 DEC 194

CONFIDENTIAL

US.CIPHER MESSAGE
IN

FOLIO NO 01297
2ND DTG 43

TOO 13174/02
THT RTL
TOR 1050A/03

FROM :CINC MED
TO :FILPOT, 7TH ARMY AND FATIMA
OSIC.NO:104 3

YOUR FA 335 OF 30 NOVEMBER NOT TO FOTALI NOIC BARI OR VAM.
FOLLOWING IS A REPETITION OF MY 271949 NOVEMBER. BEGINS.

ADDRESSED NOIC BARI REPEATED FOTALI, VAM, FILPOT FOR AMG,
SEARS FOR FARCO, FATIMA FOR JOYCE FOR THACKRAH.
UNDERSTAND TWO BRITISH MERCHANT SEAMEN ARRESTED BARI FOR STABBING
ITALIAN WHO IS EXPECTED TO DIE.
SUBJECT TO CONCURRENCE OF ALLIED CONTROL COMMISSION CASE SHOULD
BE INVESTIGATED BY NAVAL COURT UNDER SECTIONS 458(OTE).(G) AND
680 OF MERCHANT SHIPPING ACT AND ACCUSED SENT TO MALTA FOR
TRIAL ACCOMPANIED BY DISPOSITIONS AND NECESSARY WITNESSES.

AMSG 4 ACTION

SIG. 1313A/03
T.T. 1353A/03.JGD.

59

Sir This is the 3rd time we have this message! Please do not

0227

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

Case No.

From Chief Legal Officer
H.Q. Region III A.M.G.

To Legal Officer ~~15 Army Group C.L.O. AMG HQ C.M.F.~~

Date 30 November, 1943.

Receipt of ~~document in this case~~ is acknowlzdged this date.
letter AMG/209/41, dated 27 Nov.

for Lieut. Col.
Chief Legal Officer
H.Q. Region III A.M.G.

No. 3

N.B. Any letters affecting the case raquiring a special letter will be so dealt with separately.

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

Case No. No.3 58.

To Chief Legal Officer
H.Q. Region III A.M.G.

To Legal Officer 15 Army Group-C.L.O. AMG. HQ. C.M.F.

Date 30 November, 1943.

Receipt of ~~document in this case~~ is acknowlzdged this date.
letter AMG/209/41, dated 27 Nov.

41

for Lieut. Col.
Chief Legal Officer
H.Q. Region III A.M.G.

N.B. Any letters affecting the case requiring a special letter will be so dealt with separately.

57

0229

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

Subject: Powers of Military Courts.
Proclamation 4, Article III and V.

AG 383.6,
HQ Army Group,
A.L.F.

Ref. No/209/57
3 December 45.

H.Q., 6th Army,
8th Army,
Region III,
Region IV.

Certain powers of restitution, compensation and forfeiture are conferred on Allied Military Courts by Section 4 of Article V of Proclamation 4. These powers are additional to the powers of imposing sentences conferred on Allied Military Courts by Article III of the same Proclamation.

2. Whilst, legally, the power of forfeiture is additional to the other powers of punishment possessed by Summary Military Courts, Officers sitting as Summary Military Courts will not in any case make use of the power of forfeiture for the sole purpose of imposing a penalty equal to more than 30,000 lire in amount.

Where a Court orders forfeiture of an article of which the accused is the owner, but in respect of which he has committed an offence, the value of the article should be taken into account by the Court in determining any other penalty to be imposed. If the Court thinks the offence is too serious for a Summary Military Court to deal with, the case will be remitted to a higher Court.

3. It is to be observed that restitution and compensation are not in the same category as forfeiture, as orders for restitution and compensation are [illegible] quasi-civil remedy rather than a punishment.

H.C.Robb,
Lt.Colonel,
Chief Legal Officer.
for Chief Legal Officer.

RHR/HS.

Copy to:- HQ AFHQ, Caserta.
A.V.M.Hq. Malta.

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

0230

209-

V 2.12.43

RESTRICTED

US.CIPHER MESSAGE
IS

FOLIO NO 01124
2ND DEC 42

FRO' :FATIMA SIGNED JOYCE
TO :PILPOT FOR AMC
RPTD FREEDOM MGS SEABS FOR FARGO
ORIG.NO:1233

TOR 1233A/02
TSU NIL
TOR 1533A/02

ALLIED CONTROL COMMISSION CONCURS IN PROCEDURE SET OUT IN
TELEGRAM FROM CTRC MED AS TO TRIAL OF TWO BRITISH MERCHANT
SEAMEN ARRESTED IN BARI FOR SEARCHING ITALIAN UNDER PROVISIONS
OF MERCHANT SHIPPING ACT.
PLEASE ASK HEADQUARTERS NUMBER 2 DISTRICT TO DEAL WITH CASE
IN ACCORDANCE WITH ABOVE MENTIONED TELEGRAM.
SUGGEST YOU CONTACT CAPTAIN COGHAN, CIC BARI WHO HAS BEEN IN
CHARGE OF THE CASE.

AMGOT 4 ACTION

ENC. 1624A/02
T.T. 1550A/02 MOD.

55

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

OUTGOING CABLE.

To:- SEARS (.) PARIS. Rptd. PACIL[illegible] FOR TRACTRAN.

From:- PILPOT FOR AMF FOR ROSE.

Orig. No. FA 367 3 Dec

See 55 v 50.

Ref signal 930 of 1 Dec from PARIS and British seamen (.) Have contacted NOIC (.) Arrangement made that NOIC will take future necessary action

If liable to interception this message must be sent in cipher.

Priority.....

Colonel.....

No Colonel available

T.O.O. 0930

T.H.I.....

T.O.R.....

0232

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

Cnf

54

ALLIED CONTROL COMMISSION TELETYPE MESSAGE

CLASS: NOT GIVEN — W/C NO: M 53/29

PREC: NOT GIVEN — REF NO: NOT GIVEN

FROM: C in C MED — FILED: NOV 271949Z

TO: ROIC BARI (R) ECHATX VAL VELETRI FOR AMG SIENA NOT FANGO PATRIA NOR JUPON NOR TRACKRAN — REC'D: NOV 291229A

Understand two British merchant seamen arrested Bari for stabbing Italian who is expected to die. Subject to concurrence of Allied control commission case should be investigated by Naval Court under section 443 paragraph (1) C and 685 of Merchant Shipping Act and accused sent Malta for trial, accompanied by depositions and necessary witnesses. Bari pass to PILPOT Palermo pass to FANGO Brindisi pass to PATRIA.

55

Action taken Sept 56

54

See also 50

0233

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

legal

-209-

1 DEC 1943

Campobasso, 27 Nov. '43

SUBJECT: Penalties imposed under Proc. NO.4, Art. V, Sec. 4.

TO: C L O , A M G , Hq., 15 Army Group

1.- Undersigned has advised Summary Court Officers that, if the article proposed to be forfeited to A M G exceedes in value 5o,000 lire, the case should be referred to Supreme Military Court.

2.- Please advise if you concur.

EDWIN J. MERCER, Maj. Or.
SENIOR LEGAL OFFICER, A.M.G., 8th ARMY

Sem. Achim Taleen

4/12

Campobasso, 27 Nov. '43

SUBJECT: Confiscation of vehicles

To: CLO, AMG Hq., 15 Army Group.

1.- We have many cases of civilians travelling from Naples for the purpose of accumulating relatives and belongings and transporting them back to Naples.

2.- This travel is forbidden in forward area of 8th Army, but in most cases one of the civilians has some sort of a permit or pass purporting to be signed by an officer, AMGOT or otherwise, but not by a Civil Police Officer.

3.- In the great majority of these cases a jail sentence does not seem appropriate, and if a fine adequate to act as a deterrent is imposed, with jail sentence in alternative, the accused do not have the money to pay and cannot obtain same without going or sending to Naples.

4.- This also leaves the question of disposition of the vehicle or provision for its safe keeping. Recent directives re requisitioning deter the SCAC for the time being from issuing any requisitions.

5.- Undersigned is strongly of the opinion that the appropriate sentence in such cases is confiscation of the vehicle and evacuation of the passengers to Naples via the approved refugee route where they are out from under foot of the Military and can be transported in otherwise empty returning army vehicles.

6.- Such sentence is authorized by Proc. NO. 4, 51 t. V, Sec. 4, but the practice in such cases was disapproved by you at our conference 15 Nov.

7.- It is requested that this question be reconsidered by you and that your disapproval of the practice outlined in para. 5 above be withdrawn.

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

porting them back to Naples.

2.- This travel is forbidden in forward area of 8th Army, but in most cases one of the civilians has some sort of a permit or pass purporting to be signed by an officer, AMGOT or otherwise, but not by a Civil Police Officer.

3.- In the great majority of these cases a jail sentence does not seem appropriate, and if a fine adequate to act as a deterrent is imposed, with jail sentence in alternative, the accused do not have the money to pay and cannot obtain same without going or sending to Naples.

4.- This also leaves the question of disposition of the vehicle or provision for its safe keeping. Recent directives re requisitioning deter the SCAO for the time being from issuing any requisitions.

5.- Undersigned is strongly of the opinion that the appropriate sentence in such cases is confiscation of the vehicle and evacuation of the passengers to Naples via the approved refugee route where they are out from under foot of the Military and can be transported in otherwise empty returning army vehicles.

6.- Such sentence is authorized by Proc. NO. 4, Art. V, Sec. 4, but the practice in such cases was disapproved by you at our conference 15 Nov.

7.- It is requested that this question be reconsidered by you and that your disapproval of the practice outlined in para. 5 above be withdrawn.

8.- It is not suggested that such sentence should be given in all instances, but only in such cases as it may seem to the court to be appropriate.

Forwarded. Matter. Herein.

Edwin J. Mercer

EDWIN J. MERCER, Maj. Ord.
SENIOR LEGAL OFFICER, A.M.G. 8th ARMY

51

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

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

Regal

1 DEC 1947

O f. B.

SECRET

ENTIRELY ORE
US CIPHER M SAGE

FOLIO 00827
1 DEC 48

TOO 011545A
TOR 011748A

FROM:- SEARS FOR FARGO
TO:- TO FATIMA FOR SHUCKBAH (R) FLEPOT
ORIG NO:- S-3494 CITE FANCO 950

BRITISH SEAMEN. REFERENCE 1209 DATED 30 NOVEMBER.
CSO ALLIED CONTROL COMMISSION CONCURS

SMC DISTRIBUTION

AMCOT 4 ACTION

(WILL YOU ACCEPT ACTION PLEASE?)

SMC 011815A
T.T 011825A

ACTION

5

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

109. O : Hagen 1 DEC 1943

For accurate copy see 55.

SECRET
WINDSOR

BY CLEAR MESSAGE
IN
RECEIVED BY C.L.S.

FOLIO 30479
27 NOV 43.

FROM: C IN C MED
TO: MED PAR (O) FOTAL: YOUR FLIGHT SEMS FOR FATIMA.
FATIMA FOR JOYCE FOR TUESDAY

TOO: 15/9/27
TOR: 1530/30

GRID NO: 271560

UNDERSTAND THE BRITISH SERVANT GIRL WHO WAS INJURED WHEN FOR STARTING
FATAL AND IS EXPECTED TO DIE. THE INJURED GIRL SHOULD BE
SUBJECT TO CONDITIONS OF A FIAT AND THE CASE SHOULD BE
INVESTIGATED BY NAVAL COURT WHO SHOULD BE ASSISTED BY CIVIL
LEGAL AUTHORITIES IN ORDER TO ESTABLISH THE EXACT CIRCUMSTANCES
TRIAL ACCORDINGLY IF NECESSARY AT GIBRALTAR. THE CASE
CARI MARE TO FLIGHT/ARRIVED IN PORT.

1 29

action see 56.

ADMIT
LO

Spoke to Macdonald. He was to signal change for approval to above and ask for reply to be expedited to me. I would like Grant despatched and ask for reply to be expedited to me.

If one pending Macdonald being able to get here from Brindisi.

WD 30/11

0230

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

SECRET.

AMG Hq.,
15 Army Group,
C.M.F.

Ref.AG/236/PC.
30 November 45.

Colonel G.Upjohn,
Deputy Chief Legal Officer,
Legal Sub-Commission,
HQ. Allied Military Government, Caserta.

Dear

Naval Court of Appeal.

I duly received your letter of 24 November on the above subject. I have discussed the question of the establishment of a section of the Naval Court of Appeal at Foggia with Major Thackrah and later with C.M.F. HQ. As you no doubt know, the evacuation of civilians from Foggia town is under consideration and until a decision is reached the proposal will have to wait in abeyance. I have a note to bring up the subject again in two weeks' time.

Italian legislation.

2. I was very pleased to note your remarks about the position of fascist and discriminatory legislation. The legal situation at present is obscure and I shall be very interested to receive a copy of the memorandum to which you refer. Meanwhile, I have given instructions that if any objectionable laws come to light in any of our territories, I am to be informed so that I can let you know of them.

Merchant Seamen.

3. I have discussed with Major Thackrah the case of the two seamen under arrest at Bari. He agreed my advice and I told him that I thought (a) it would be very bad policy to allow trial by an Italian Court, (b) that an Allied Military Court had no jurisdiction at present in occupied territory, (c) that the men should be tried for the offence, and (d) that under one of the Merchant Shipping Acts I was fairly certain trial could take place at a British Court outside the territory (e.g. Malta, and that this would probably be the easiest course. The subject of the trial of British Merchant Seamen must be cleared up, and, although I have no doubt that legally an Allied Military Court in occupied territory has power to deal with cases occurring within such territory, Newell tells me that different views were expressed to him when he was last in London. There is also the question of imprisonment which I discussed some time ago with Colonel Pollock and we agreed that instructions ought to be obtained. Major Thackrah is dealing with the Bari case and I told him that whilst the above represented my views, he should get definite instructions from you. (At this stage of writing this letter Major Thackrah has just telephoned and told me that a signal has come to him from C-in-C, Mediterranean, that the seaman should be sent for trial at Malta under Merchant Shipping Act I have mentioned. I have not yet received a copy of the signal but shall do so later as I understand it is repeated here. I have advised Major Thackrah to obtain your concurrence to C-in-C's request

.....by signal

0239

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

by signal repeated to [redacted] and then I will assist him to do the necessary action if he cannot get up here again at once.)

Yours

Copy to file 209.

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

Date 48

OPTIONAL FORM.

To: CHIEF Exp [illegible] Info. PURPOSE FE 452, FACTOR FOR TRANSLAT.

From: PILOT Trsn AGO.

Cable No. FE 335 30 Nov

Tour 680 of 27/11 (*) Letter in hands of Major Thirlwall MCC (*)
There are no reports of Allied military courts in four provinces of
Upolia since no proclamations were issued there (*) However doubts
have been expressed whether Allied military courts have jurisdiction
over British merchant seamen (*) Consult correspondence on subject
yours

[illegible]

It liable to interruption this
message must be sent in cipher.

[illegible] Colonel.

[illegible]

[illegible]

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

0261

Copy 47

29 NOV 1943

2097

G1/B/3222/43

22 NOV 43

Pilfering of W.D. Property - Italians

1	G1(B) A3	M.C.S.	22 Nov	Complaints have been received from Nos. 1 and 2 Districts that Italians who are caught pilfering W.D. property are not dealt with adequately by the Italian civil power. Are you taking any action to set up military courts to deal with such persons? Alternatively will the Italians deal with these matters by Court Martial as the French do? Brigadier, G1(B).
2	MCS	G1(B) A3	24 Nov	1. Allied Military Courts are functioning in both numbers 1 and 2 Districts, and have been from the outset. By Proclamation Number 2 stealing any property of the Allied Forces is penalized: If of an aggregate value of more than 10,000 lire, by death or imprisonment or fine or both; if of a lesser value, by fine or imprisonment or both. 2. Copies of the memorandum have been made and will be forwarded to HQ. AMG at Palermo and to AMG 15th Army Group for their information. JCH/CF/jr J.C.H.

To AMGs with Army Groups V
for information

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

CONFIDENTIAL

28 NOV 1943

US CIPHER MESSAGE

FOLIO 02584
27 NOV 43.

FROM; FATIMA FROM THACKRAH SIGNED JOYCE
TO; FILPOT FOR AMG RPTD FREEDOM FOR MGS
RPTD TO SEARS FOR FARGO

TOD; 1047/27
TOR; 1312

ORIG MO; 1142

PLEASE HOLD DEAMEN IN CUSTODY OF MILITARY POLICE PENDING FURTHER INSTRUCTIONS.
MAJOR THACKRAH INVESTIGATING DETAILS.

AMGOT

4 ACTION

SMC. 1955A/27
I.T. 2050A/27
/JFJ

ACTION

0243

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

RESTRICTED.

US CIPHER MESSAGE

28 NOV. 1943

FOLIO TO 09503
27 NOV 43

TOO 0307
TOR 1357 A/ 27

FROM:
TO:
REIC NO:

SEARS FOR FARGO
EYLPOT RPTD EYESDOM RPTD PASTEA
FARGO 880 (S-3208)

CITE YOUR HR FA 276. 209 39
TWO BRITISH MERCHANT SEAMEN SHOULD BE TRIED BY ALLIED GENERAL MILITARY COURT FOR APPROPRIATE OFFENCE UNDER STANDING LAW.

AMC DISTRIBUTION

AMCOT 4. ACTION

AMO 1640 A/ 27
WE 1710 A/ 27 GH

44

0246

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

file on 200.

44

SUBJECT: Arrest of Civilians on Security Grounds

H.Q. 15 Army Group.
C.M.F.

SECRET DUALS U.S. SECRET

15AG/1400/2/G(I).

22 Oct. 43

TO: Fifth Army
Eighth Army
H.Q. No. 2 District

attached

Reference their HQ. letter of even reference dated 1 Sept. 43, para 3 (a) (iii).

1. Consolidated lists of records of civilian arrests will in future be forwarded as indicated below instead of to AMGOT, HQ. PALERMO:

(a) Eighth Army Records to AMGOT HQ. Eighth Army.

(b) Fifth Army Records to AMGOT HQ. Fifth Army

(c) No. 2 District Records to AMGOT HQ. No. 2 Region. 43

2. It will then be the responsibility of the AMGOT HQ's with armies to hand over such records at the appropriate time to the AMGOT HQ. of the Region covering or taking over the area in which the arrest was made.

3. Copies of such records will continue to be forwarded to this HQ. by armies but not by No. 2 District.

W. D. Gibson Brig

For Major General,
Chief of General Staff,
15 Army Group.

WDG/EB

COPY TO: ...M.I. 3-2 (C.I.)
...AMGOT H.Q. 15 Army Group (6 copies)

43

SUBJECT: Arrest of Civilians on Security Grounds

SECRET

15AG/1400/2/G(Ib)

1 Sept 43

FIFTH ARMY
SEVENTH ARMY
EIGHTH ARMY
FORTBASE

1. The following instructions regarding the arrest of civilians by military personnel on security grounds are issued in amplification of this H.Q. instruction 15AG/1400/2/G(Ib) dated 23 Aug 43.

The procedure set out below will be adopted forthwith in the case of SICILY and will be followed in future operations.

2. Categories of Arrest

It must be clearly understood by all concerned, in particular by security personnel, that there are three categories of civilians who may be arrested on security grounds.

(a) Those who have committed, or are alleged to have committed, in the territory occupied by our forces, a security offence under international law or the provisions of our proclamations. These should be charged with the offence and tried by a military court.

(b) Those who are not chargeable with a security offence, but who appear on reasonable evidence to constitute a threat to the security of our forces, operations or Military Government, by virtue of their position, personality, sentiments or record.

These should be interned.

(c) Those against whom there is insufficient evidence to charge with an offence or to intern, but whom it is desirable in the interests of security to detain pending further investigation.

3. Records and Disposal

(a) General

(i) Whenever a civilian is arrested by military personnel on security grounds, a record of such arrest must be made. This record will include the following items:

Particulars of individual arrested.
Date and place of arrest and by whom arrested.
Where confined.
Reason (in brief) for arrest and classification or category of arrest (ref para 2 above).

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

15AG/1400/2/G(Ib) dated 23 Aug 43.

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Particulars of individual arrested.
Date and place of arrest and by whom arrested.
Where confined.
Reason (in brief) for arrest and classification or category of arrest (ref para 2 above).

(ii) One copy of such record will be handed over with the prisoner to the authority in charge of the prison or cage in which he is confined.

A second copy will be submitted to the local Civil Affairs Officer or Civil Affairs Police Officer.

A third copy will be forwarded to the Army H.Q. concerned, or will be retained to form the basis of a fuller report to Army H.Q. as laid down by Armies.

(iii) Army H.Q. will forward consolidated lists of such records to this H.Q. and to AMGOT H.Q., PALERMO, at not more than fortnightly intervals.

(b) Security Offences

A civilian arrested for the commission of a security offence will be placed

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

in the nearest civil prison or police station approved by AMGOT. If no such establishment is available, they will be placed in the nearest P/W cage.

In addition to the brief arrest records prescribed in (a) above, a full report of the case will be submitted to the local Civil Affairs Officer, who will then arrange for the case to be tried by a military court, and for the subsequent disposal of the prisoner.

(c) Internment

A civilian arrested with a view to internment will be placed in the nearest P/W Cage.

In addition to the records prescribed in (a) above, a fuller report of the case will, where necessary, be forwarded to the Army H.Q. concerned. The Army H.Q. will then consider at once whether internment is justified, the Army Security Staff and AMGOT representative consulting. The Army H.Q. will either authorise continued internment or order release, informing the P/W cage accordingly.

Records of arrest in internment cases, forwarded by Armies to this H.Q. and AMGOT H.Q., PALERMO, will show whether continued internment or release was authorised by the Army H.Q. concerned.

NOTE: Authorisation of internment will be the responsibility of this H.Q. in respect of the area in S.E. SICILY for which this H.Q. is directly responsible as regards security.

(d) Detention pending Investigation

A civilian detained on security grounds pending further investigation will be placed either in the local prison or in the nearest P/W Cage, according to whether investigations are proceeding with a view to internment or to the preferment of a charge for a security offence.

The Chief Legal Officer of AMGOT H.Q. or the Senior Legal Officer of the Province should be informed of any such detention and his agreement obtained.

The investigation of the case must be pursued as rapidly as possible by the security personnel concerned, so that the civilian detained may be either interned, released or charged with an offence with the minimum delay. If the Security Section making the investigation moves to another area before the case is disposed of, the case must be handed over to the incoming security section.

If the detention is to last longer than three months the agreement of the Chief or Senior Legal Officer should again be obtained.

In addition to the records prescribed in (a) above, the ultimate disposal of the case will be reported to those to whom the original record of arrest was sent.

4. Evacuation from P/W Cages

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P/W Cage.

In addition to the records prescribed in (a) above, a fuller report of the case will, where necessary, be forwarded to the Army H.Q. concerned. The Army H.Q. will then consider at once whether internment is justified, the Army Security Staff and AMGOT representative consulting. The Army H.Q. will either authorise continued internment or order release, informing the P/W cage accordingly.

Records of arrest in internment cases, forwarded by Armies to this H.Q. and AMGOT H.Q., PALERMO, will show whether continued internment or release was authorised by the Army H.Q. concerned.

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If the detention is to last longer than three months the agreement of the Chief or Senior Legal Officer should again be obtained.

In addition to the records prescribed in (a) above, the ultimate disposal of the case will be reported to those to whom the original record of arrest was sent.

4. Evacuation from P/W Cages

Where possible, Provost Marshalls and officers in charge of P/W cages will ensure that arrested civilians are not evacuated from the cage in which they are originally placed until:

(a) They are removed by AMGOT for trial or to a civil prison pending trial, in the case of those charged with an offence.

(b) Their internment or release is authorised by Army H.Q., in the case of those arrested with a view to internment.

(c) Their disposal is authorised by the appropriate agency in the case of those detained pending investigation (i.e. by Army H.Q., AMGOT, or the local Security Officer, according to whether the prisoner is to be interned, tried or released).

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5. Security Personnel

The procedure outlined above is based on the principle that security arrests should normally be carried out by Security Personnel (F.S.P. or C.I.C.).

It is realised however, that the arrest of civilians for security reasons may sometimes be initiated by military personnel other than security personnel. In such cases, the civilian arrested should wherever possible be handed over to the nearest F.S. or C.I.C. Section: where this is not practicable, the latter should at least be informed of the particulars of the arrest. The case can then be handled in accordance with the procedure laid down above.

W. D. G. Gen H.Q.

for Major General,
Chief of General Staff,
15 Army Group.

H.Q. 15 Army Group
C. M. F.

Copy to: A.F.H.Q.
AMGOT H.Q., PALERMO
16 T.S. Section
47 F.S. Section
314 F.S. Section
A
Provost Marshall (U.S.)

41

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

0250.1

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

EXTRACT FROM "SECURITY IN NORTH-WEST"

Reference 14AF/12AF/3(Ib) dated 2 June 43

6. (c) Removal of civil suspects and security detainees

(i) When a civilian is detained for security reasons by combat troops, the nearest military security personnel will be informed immediately so that the case can be investigated and the person interrogated.

(ii) In forward areas and in the early stages, civil suspects and security detainees should normally be disposed of through the civil section of Division and Corps prisoner of war cages. At each level the formation Security Officer must decide whether they can be cleared of suspicion and freed at once or whether they should be detained further.

Civil suspects cannot remain at Division or Corps cages pending lengthy investigation, as it is the policy for these cages to be evacuated as quickly as possible.

Task Force Headquarters must, therefore, make arrangements for the removal of those whose continued detention is necessary from Corps cages to special prisons where they can be temporarily accommodated and guarded pending trial or further investigation.

When the situation permits, they will be removed to proper civil prisons or detention establishments by arrangement with AMGOT.

(iii) When a person who has been detained appears, after interrogation and investigation by security personnel, to be an enemy agent, this Headquarters will be informed immediately, and the agent held under the strictest supervision of security personnel.

(iv) When a civil suspect or detainee is passed back to be held for further investigation, a complete case record must accompany him or be forwarded as rapidly as possible for the guidance of higher headquarters.

ALLIED MILITARY GOVERNMENT
HEADQUARTERS
15 Army Group
C. M. F.

23 November, 1943

To General Mark W. Clark, Commanding General
Fifth Army

Subject: Appointment of General and Superior
Military Courts

1. Under the instructions issued by Gen. Sir Harold Alexander, and at present in force, General and Superior Military Courts have to be appointed by you or by an officer commanding a division or higher unit to whom you may delegate the power.

2. Your subordinate commanders, when exercising powers of appointment of General and Superior Military Courts on delegations from you, are performing the duties of an officer of your staff.

3. The foregoing procedure was laid down by General Sir Harold Alexander on my recommendation, but in practice it has been found that it would save delays in justice if the Senior Civil Affairs Officer with 5th Army, namely Col. Hume, could be your staff officer exercise the power of appointing the above courts on a delegation from you.

4. I would like therefore to ask General Sir Harold Alexander for his approval to a change of the procedure as suggested above, but before doing this I should be obliged if you would let me know whether the suggested change would meet with your approval.

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

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Major-General
Chief Civil Affairs Officer

39

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0253

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

Subject:- Appointment of General and Superior Military Courts.

41

AAG H.Q.,
15 Army Group,
S.H.P.

Ref.AAG/209/41.
27 November 43.

H.Q. AAG 5 Army,
" 8 Army.

It has now been agreed in principle that the Senior Civil Affairs Officers with 5th and 8th Armies shall, as staff officers respectively of the Commanding General and General Officer Commanding, appoint General and Superior Military Courts in Army Areas.

2. As soon as possible an authority to that effect will be obtained from C.O.C-in-C replacing the existing authority, which is the basis of the instruction at pp 128 and 129 of the AAG Manual, and a formal instruction will then be issued immediately.

3. Pending the issuance of the instruction mentioned in para 2 above, the procedure laid down in the AAG Manual should be followed.

38

H.B.MOORE,
Lt.Colonel,
Chief Legal Officer,
for Chief Civil Affairs Officer.

HBM/23.

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

Subject:- Appointment of General and Superior Military Courts in Army Areas.

40

AFHQ.,
15 Army Group,
C.M.F.

Ref.AG/209/40.
26 November 43.

Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission,
PALERMO.

It has been decided to alter the mode of appointing Military Courts in Army Areas by giving the powers of appointment to Group Captain Benson and Colonel Howe to exercise on behalf of the respective Army Commanders.

2. I have no copy here of the original authorities signed by General Alexander authorizing Army Commanders to delegate their powers to Corps and Divisional Commanders. Would you please forward the originals or copies by quickest means.

H.R.HOWE, 37
Lt.Colonel,
Chief Legal Officer.

HRH/BS.

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

OUTGOING CABLE.

39

To:- SEARS for FARCO Rptd. FREEDOM for MGS
FATIMA for THACKRAH and CACCIA

From:- FTLFOT from AMG

Origin No. FA 276 25 Nov

Two British merchant seamen arrested BARI charged with stabbing Italian (.) Believed Italian will die (.) Request your immediate instructions (.) Military Police are holding accused

This message must be sent in cipher.

Degree of Priority.....IMMEDIATE

T.O.O....1635....
T.H.I.....
T.O.R.....

.....Colonel.

36

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

Ref.AG/209/38.

SECRET

AFC III,
15 Army Group,
C.M.F.

25 November 43.

38

Senior Legal Officer,
HQ Allied Military Govt,
Region III,
NAPLES.

Dear Shields,

Olivzzo Case.

I found on my return to this Headquarters some further signals which had been received about the above case and that a signal had been despatched drawing Colonel Hume's attention to them. (see FA 252 of 21 Oct.)

2. A certain P.O.W. is suspected of atrocities at Olivzzo, I gather, and the C.O.C in C is very anxious that there be no publicity about a possible trial in case this leads to reprisals. The present directive to 5th Army is to take no action beyond segregating the accused and any witnesses who are also P.O.W. from their fellow P.O.W. and each other. On this directive no action is required by A.F.H.Q. nor must any be taken. Will you see that any C.A.O. and L.O. concerned are instructed accordingly, but give no reasons to them.

Yours

Lt Col
C.M.O.

35

0287

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

37

TELEGRAM OUT.

TO : FIFTH ARMY FOR AGO.

FROM : PILOT FROM AGO.

ORIG'S NO. FA 252. 21 OCT

- -

MOST SECRET (.) FOR HEEB AND HOWE (.) SEE FREEDOM SIGNALS 3405 OF 19 NOV AND 2471 OF 17 NOV REPEATED TO PLAMEO DEALERS WITH WAR CRIMES (.)

35 36

- -

If this message is liable to interception it should be sent IN CIPHER.

.....Colonel.

PRIORITY

.....

TOO :
THI :
TOR :

34

Seen

0258

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

-209-

36

Legal 19

HOST SECRET

IMPORTANT
EYES ONLY / ESSAGE
NIACT

FILE NO: 06776
28 NOV 43

FROM: FRESNO SIGNED CINC CITE: NMGAP AND NMAB TOO NIL
TO: FLAT FLAMEO FARGO FOR NIL
INFO: IRS DISTCOM DISTAG SEVEN ARMY
ORIG NO: 2471

DISREGARD OUR 1751 OF 16 NOVEMBER.
REFERENCE FARGO MESSAGE C-36 OF 15 NOVEMBER.
PRESENT HEARINGS BEING CONDUCTED ON USTICA MATTER MAY CONTINUE BE LIMITED TO BASIS OF COMBINED CHIEFS OF STAFF DIRECTIVE OUTLINED IN MESSAGE 3983 OF 29 OCTOBER. ALTERNATIVE THAT NO PUBLICITY REGARDING NO PUBLICITY BE GIVEN THESE PROCEEDINGS UNDER ANY CIRCUMSTANCES AND THAT NO AWB RECORDINGS BE MADE. ANY HAVING ALREADY BEEN MADE WILL BE DESTROYED. [PENDING FURTHER INSTRUCTIONS TAKE NO ACTION RE CALLING CASE OF SPECIAL INCIDENTS BEYOND SEGREGATING AND HOLDING PRISONERS OF WAR DESIGNATED AS PRINCIPALS OR WITNESSES FROM FELLOW PRISONERS AND MAIL OTHER]

SPECIAL DES
PA TO CGS 1.
PA TO DGS'T) 1.
AIGCA 4. ✓

3 ACTION
PA TO DCGS 1
COL RCE(A/G)2

PA TO BGS 1

A.G 0750/19
A.T.O 555/19 JT

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

209.

35

MOST SECRET

IMMEDIATE
ER OLIVER MESSAGE
IN

FOLIO NO 07329
19 NOVR 43

TOO 1500
TOR 2220 A/ 20

FROM: AFHQ.

TO: ADDRESSEES AS FOR PART ONE.
CMED NO: 3405

THIS HEADQUARTERS WILL DETERMINE WHETHER OR NOT NAMES WILL BE RELEASED AND DATE.
PARA PARAPHRASE OF REFERENCE CABLE FOR INFORMATION ALL ADDRESSEES FOLLOWS
QUOTE HEARINGS (USTICA CIPTK) ?? ARE CONTINUING PUBLICLY WITHOUT ETB PUBLICITY.
REGRETTABLE BECAUSE STAR YUGOSLAV WITNESS TESTIFYING THIS MORNING. POLLOCK
IS DISPATCHING SECOND CABLE TO AFHQ FOR COSFOR ALLIED CONTROL COMMISSION WHICH ALSO
URGES RECONSIDERING MAINTENANCE OF PUBLIC HEARING WITH FULL PRESS PUBLICITY ETC (UNQUOTE)

[illegible] DISTRIBUTION
SPECIAL OPS 5
PA TO CCS 1
PA TO DCSS 1
PA TO EGS 1
PA TO EGS "A" 1

ACTION
CCL ROE(A/Q) 2
AMGOT 4

SMQ 0420A/ 20
TT 0425A/ 20 P.M.

32

MOST SECRET

IMMEDIATE
BR CIPHER MESSAGE
IN

FOLIO 07331
19 NOV 43

TOO 191300A
TOR 202245A

FROM:- SIGNED CINC CITE NAGAP AND FHGAB
TO:- ACTION FILPOT IBS INFO FLAMBO
FARGO DISTONE DISTWO SEVEN ARMY
ORIG NO:- 2405

MATTERS MENTIONED IBS MESSAGE S-2355 WILL NO LONGER BE HANDLED BY MILITARY GOVERNMENT SECTION AND ACC AFTER USTICA CASE. THE USTICA HEARING WILL BE CONTINUED BUT THE PUBLIC WILL BE EXCLUDED. THE CAIZZO CASE WILL BE CONTINUED ALSO IN ACCORDANCE WITH INSTRUCTIONS ISSUED. THE LATTER CASE WILL BE HANDLED BY FIFTH ARMY AND NOT MAS - ACC. CONTINUED ACTIVITY SUCH AS INDICATED IN S-2355 WILL SERVE ONLY TO PROVIDE BASIS FOR REPRISALS BY GERMANY AND JAPAN UPON UNITED NATIONS PERSONNEL NOW CAPTIVE IN THEIR HANDS. IT ALSO HINGES ON VIOLATION OF ARTICLES 60 AND 61 OF THE GENEVA CONVENTION. MILITARY GOVERNMENTS AGENCIES AND COMMISSION REPRESENTATIVES WILL NOT EXERCISE JURISDICTION OVER FURTHER CASES WHICH WILL BE HANDLED BY AGENCIES AND PERSONNEL DESIGNATED FROM AFHQ. REF OURAD 2471 OF 18 NOV.? NO REPEAT NO PUBLICITY WILL BE GIVEN THESE PROCEEDINGS AND NO PWB LINE WILL BE TAKEN REFERENCE SAME. ALL ACTIVITY WILL BE LIMITED TO THAT REQUIRED BY AN INVESTIGATION OF CIRCUMSTANCES AND THE TAKING OF EVIDENCE NECESSARY TO PREPARE A PROPER REPORT FOR FORWARDING THIS HQ. THIS WILL BE BROUGHT IMMEDIATELY TO THE ATTENTION OF ALL APPROPRIATE MILITARY GOVERNMENT CONTROL COMMISSION AND PWB REPRESENTATIVES. WAR CORRESPONDENTS STORIES DEALING WITH WAR CRIMES WILL BE SUBMITTED FOR EXAMINATION TO MILITARY AUTHORITIES AND NO PUBLICITY WILL BE GIVEN TO THE NAME OF ANY INDIVIDUAL ALLEGED TO BE A WAR CRIMINAL

(SECOND AND LAST CIPHER PART FOLLOWS)

FOLIO 07329

THIS HEADQUARTERS WILL DETERMINE WHETHER OR NOT NAMES WILL BE RELEASED AND DATE.
PARAPHRASE OF REFERENCE CABLE FOR INFORMATION ALL ADDRESSEES FOLLOWS -

"HEARINGS (USTICA CITE?) ARE CONTINUING PUBLICLY WITHOUT PWB PUBLICITY. REGRETTABLE BECAUSE STAR YUGOSLAV WITNESS TESTIFYING THIS MORNING. POLLOCK DISPATCHING SECOND CABLE TO AFHQ FOR CCS FOR ALLIED CONTROL COMMISSION WHICH ALSO URGES RECOMMENDING MAINTENANCE OF PUBLIC HEARINGS WITH

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

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36

(SECOND AND LAST CIPHER PART FOLLOWS)

FOLIO 07329 3

THIS HEADQUARTERS WILL DETERMINE WHETHER OR NOT NAMES WILL BE RELEASED AND DATE.
PARAPHRASE OF REFERENCE CABLE FOR INFORMATION ALL ADDRESSEES FOLLOWS -

"HEARINGS (USTICA CIRCK?) ARE CONTINUING PUBLICLY WITHOUT PWB PUBLICITY. REGRETTABLE BECAUSE STAR YUGOSLAV WITNESS TESTIFYING THIS MORNING. POLLOCK DISPATCHING SECOND CABLE TO AFHQ FOR CCS FOR ALLIED CONTROL COMMISSION WHICH ALSO URGES RECOMMENDING MAINTENANCE OF PUBLIC HEARINGS WITH FULL PRESS PUBLICITY RHG"

SMC DISTRIBUTION

SPEC OPS	3 ACTION
PA TO CCS	1
PA TO DCGS	1
PA TO BGS(I)	1
COL RGS (A/C)	2
AMGOT	4
PA TO BGS	1

SMC 210100A
T.T 210120A FWH

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

0262

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

209 rg.

Legal 1 DEC 1945
copy handed Col Rowe

33

SECRET

PRIORITY
US CIPHER MESSAGE
IN

FOLIO 06819
18 NOV 45

FROM; SIGNED EISENHOWER CITE FDGHQ TOO; 19333A/15
TO; FARGO RPTD FILPOT FATIMA FABLE TOR; 07553A/19
ORIG NO; 2722

QUESTION OF WAR CRIMINALS IS BEING REMOVED BY DIRECTIVE THIS MG,
WHICH WILL FOLLOW SOONEST, FROM RESPONSIBILITY OF ACG AND AMG.
CONSEQUENTLY MGS WILL NOT HANDLE SUCH MATTERS.
YOU ARE HOWEVER BEING PERMITTED TO CONTINUE USTICA ENQUIRY,
DIRECTIONS FOR WHICH WILL REACH YOU SEPARATELY.
DIRECTIVE IS BEING PREPARED AND WILL FOLLOW SOONEST.
FURTHER INFORMATION REQUIRED REGARDING YOUR REQUEST FOR PROSECUTING
OFFICERS, AT YOUR 2640 DATED 13TH NOVEMBER.

30

MA TO G O C IN C 2
PA TO C G S 1
AMGOT 4 ACTION
BGS(I) 2

Copy (attached) to Col Rowe for action
& speak to Col Rowe re

SIG. 19270A/15
T.T. 19304A/19 JFD

PRIORITY

ACTION

0263

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

Subject: Juvenile Delinquents. - Welfare

37

AHQ/209/25

Memorandum to: Director of Public Health. 16.Nov.43.

Under the original instructions issued in connection with juveniles it was laid down that persons under the age of 18 years would be treated as juveniles, that they would be dealt with by Juvenile Courts and that a welfare officer would be contacted.

2. It appears that this is not workable, at any rate in the forward areas, and I suggest that ~~no~~ body of 16 years or over should be treated as a juvenile. Do you agree?

3. With regard to delinquents under the age of 16, have you any wishes in the matter as to their treatment in forward areas?

H. E. ROWE,
Lieut. Colonel,
Chief Legal Officer.

HER/JG.

29

2

D.A.A.G.

Seen by Col. Rowe.

Reg. 2. Jacques.

Reg. 3. Jeunes ici pris pour vagabondage ou mauvaise conduite ou autre raison sont mis dans prison ou camp de correction.

Aucune loi qui dit spécifiquement l'âge de majorité.

Sera replacer. 16.11.43. D.C. Gendarmerie. Bush

0264

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

209/1

2. [illegible] CASES.

Major Mercer stated military courts were generally no[t] functioning [illegible] in making up his appointment [illegible] had he had arranged for Germany [illegible] to sit in many places and [illegible] he was extending this policy. He was the only legal officer in the forward parts of the Army Area [illegible] arranging for C.M.'s to sit. He stated that certain C.M.'s [illegible] as Major Allen had previously [illegible] as registrars, although they were not lawyers and I agreed that there was no objection to [illegible] such C.M.'s to sit also as Superior Courts without a judicial officer. (File A/G/209).

3. APPEALS FROM MILITARY COURTS.

Major Mercer stated that he had found in his experience that Se[nior] Italian advocates advised their clients against convictions be put in an appeal as a matter of course. Owing to the unnecessary work that this involved and the delay of the process of the courts which resulted, he had warned Italian advocates who followed this method that they would be likely to be refused appearance before the Military Courts if they advised their clients to put in an appeal where there was no reasonable ground for so doing. This notice was approved by me. (File A/G/209).

4. JUVENILES.

The position with regard to juveniles was not satisfactory. Under present instructions any person under the age of 18 had to be treated as a juvenile, a welfare officer had to be contacted and special arrangements had to be made for dealing with juveniles in a normal court. I stated that I was proposing to reconsider the matter and I thought that nobody above the age of 16 years should be treated as a juvenile. Major Mercer agreed and stated that with regard to persons under the age of 16 he would like it to be left with the officer on the spot as to how the juvenile was dealt with. I said I did not think this was wholly satisfactory but that I would reconsider the matter.

209.

Extract from AMG/202/2 d/d 16. Nov. 42.

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

ALLIED MILITARY GOVERNMENT

30

SUBJECT: Trial of War Criminals. FIL/AMG/209/30.

TO: S. S. O.

AMGOT H.Q., SICILY.

17 November 1943

Has Secto G Army been notified & have he acted, but see Head of Mission SCAO told about Head

Reference para.2 of the signal at Folio 25 and the signal Folio 20 of this file.

It would appear that there is nothing further to be done until instructions are received from A.F.H.Q. consequent upon the directive which they have requested from the C.C.S. Do you agree?

H. E. HOWE,
Lieut. Colonel,
Chief Legal Officer.

HER/JG.

CCAO

yes all agree. No action at present. 17/XI. G.L.

27

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

0266

Segel 29 of 29

16 NOV 1943

FOLIO 10:06116
DAT: 16 NOV 43

SECRET

IN CIPHER
US
CIPHER TRANSMITTED

FROM: APIRI JOHN F H JR G
TO: CG FIFTH AIR FORCE ADVANCE FOR ACTION
FIFTH AIR FORCE ADVANCE FOR INFO:
ORIG NO: 1781 CODE NAME: FEGAD

300 1908A/16
TOR 2237A/16.

IN ACCORDANCE WITH DIRECTIVE OF DEPUTY CHIEF OF STAFF NO PUBLICITY OR ANY ACTION OTHER THAN PROCEDURES INDICATED BY DEPARTMENT OF COMMERCE CENSOR STAFF IMPORTING IN PARAGRAPH 3983 OF 28 OCTOBER WILL BE CONDUCTED BY AGENCY IS HELD IN YOUR CONTROL. 10 x
UNTIL SECRECY HAS BEEN MAINTAINED AND ANY DANGER INHERENT TO PERSONS MATERIAL CLASSIFIED AND HELD AS WAR CRIMINALS WILL BE DISPOSED TO THEIR RECLASSIFICATION AS APPROPRIATE INSTRUCTION.
NO PUBLICITY UNDER ANY CIRCUMSTANCES IS TO BE GIVEN TO THESE MATTERS.
TO THE RECORDINGS WILL BE DELETED AND ANY TAPE WILL BE DESTROYED.
PARTICULAR REFERENCE IS MADE TO CAIRO CASE.
MATERIAL PERTAINING THERETO WILL BE FORWARDED HERE FOR DISPOSITION OR HELD PENDING.

300 2355A/16.
TOR 0015A/17
XX

26

Seen by CHO-

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

D 8 0 2

20 Sept Legal 81 28

FOLIO 05940
18 NOV 45.

SECRET

PRIORITY
US CIPHER MESSAGE
IN

17 NOV 1943

TOO; 1828A/16
TOR; 1438A/16

FROM; WHITELEY SIGNED EISENHOWER
TO; 15TH ARMY GROUP FOR GENERAL ALEXANDER
ORIG NO; 1535

WE HAVE ASKED C C S FOR INSTRUCTIONS ON PROCEDURE FOR DEALING WITH WAR CRIMINALS (YOUR MA473). AND HAVE STOPPED PUBLICITY.

24

MA TO G O C IN C
G1 SPECIAL OPS
AMGOT

2 ACTION
2
4

SMO. 1520A/16
T.T. 1635M/16

25

P R I O R I T Y

Seen by CinC

0268

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

Prop? Legal 8/ 17 NOV 1943 27

CONFIDENTIAL US.G FDSR MESSAGE
IN

FOLIO NO 06108
16EL NOV 43

FROM :HAZELTINE BARNETT SIGNED EISENHOWER
TO :15 ARMY GROUP
ORIG. NO:1641 CITE D-270

TOO 1446A/16
T.I HIL
TOR 2215A/17

THIS ANSWERS YOUR 763 OF NOVEMBER 16TH OUR 498 WAS SOLELY REPLY TO CITE D-262 FWD FROM MEN WHICH SAID FIRST WAR CRIMINALS ACCUSED OF ATROCITIES WERE BEING TRIED. THAT EXECUTION OR VERDICT WAS PLANNED. INFORMATION COPY OF CABLE WAS DIRECTED TO YOU AS WELL AS TUNIS.

SPECIAL DIS
AMCOR.

5 ADVICE
4.

SIG. 0140A/17
T.T. 0250A/17. JGD.

Sent by Cro

24

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

Subject: Juvenile Delinquents. - welfare

AMG/209/28 16

Memorandum to: Director of Public Health. 6.Nov.43.

Under the original instructions issued in connection with juveniles it was laid down that persons under the age of 18 years would be treated as juveniles, that they would be dealt with by Juvenile Courts and that a welfare officer would be contacted.

2. It appears that this is not workable, at any rate in the forward areas, and I suggest that anybody of 16 years or over should be treated as a juvenile. Do you agree?

3. With regard to delinquents under the age of 16, have you any wishes in the matter as to their treatment in forward areas.

H. E. ROWE,
Lieut. Colonel,
Chief Legal Officer.

HER/JG.

23

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

B Legal 16 NOV 1943

SECRET

IMPORTANT
BR CIPHER MESSAGE
IN

FOLIO 05591
15 NOV 43.

FROM : HAZELTINE BARRETT AFHQ SIGNED EISENHOWER
TO : IBS FOR SEARS AND PWB NAPLES FOR COSGROVE AND PWB TUNIS/ 15 ARMY GROUP. TOO.1045B
ORIG NO : 1085 CITE FHPWO 72 AVENUE JULES FERRY TOR.1435A/15

FURTHER OUR 45B NOV 13. → 22
UNDER NO CIRCUMSTANCES SHOULD ANY PUBLICITY WHATSOEVER BE GIVEN TO TRIALS OR PUNISHMENT OF PRISONERS OF WAR? UNLESS SPECIFICALLY DIRECTED BY THIS HQ. IN VIEW PREVIOUS DIRECTIVES ON SUBJECT DO NOT UNDERSTAND ORIGINAL RECOMMENDATION FOR PUBLICIZING TRIALS. PLEASE REPORT FULLY

INC
AMGOT

3 ACTION
4—

SMC.1640A/15
T.T.1655 A/15
SSB.

Seen by CinC

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

ARMY FORM C. **MESSAGE FORM** Register No.

Call.	Srl. No.	Priority	Transmission Instructions
	I		

Above this line for Signals use only.

1 NOV 1943

Office Date Stamp.

From (A) U.S. ARMY GROUP — *ORIGINATOR.* — *Date-Time of Origin.* 1/11/43

For Action.

To _____

(W) For Information (INFO).

Secy Brg Cen

Message Instructions **GR**

ORIGINATOR's No. 223

1 21

Most Secret (.) Personal for General Eisenhower from General Marshall (.) Not to be quoted Rules or Ed Nov (.) I think we must be very careful in how we deal with German prisoners of war held as war criminals (.) My advice is that nothing is done to give the army the means for ill treating our prisoners and that very clear directions are got from London and Washington (.) I note with some sensitiveness the mention of publicity in your message

Copy to: Admiral Cunningham

This message may be sent AS WRITTEN by any means except { WIRELESS

Signed.

If liable to be intercepted or fall into enemy hands this message must be sent IN CIPHER.

Signed. Capt. P.A. to C.G.S.

Originators Instructions. Degree of Priority.

THI or THOR

TIME CLEARED

PSS/NA/4/43/40,000—AFHQP/203.

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

0272

Legal.

FOLIO 05274
14 NOV 43.

SECRET

IMPORTANT
US
CIPHER MESSAGE
IN

TOO.0919A/14
TOR.1255A/14

FROM : AFHQ SIGNED EISENHOWER
TO : 15TH ARMY GROUP
ORIG NO : 596 CITE FWMGS

CIAZZO CASE IN YOUR MSG C/S 5146. PROCEED ACCORDING TO CCS DIRECTIVE IN 3983 OF 29 OCTOBER, REPEATED TO 15 ARMY GROUP. DO NOT TRY ACCUSED, BUT HOLD IN CUSTODY AND COLLECT EVIDENCE. SEGREGATE TO PREVENT EVASION. OBSERVE ARTICLE TWO OF GENEVA CONVENTION.

EVIDENCE OF WAR CRIMES SHOULD BE RECORDED WHETHER ACCUSED ARE NOW P OF W OR NOT, AND FORWARDED HERE. WHEN YOU EXAMINE PRISONERS IN PRESENCE OF ACCUSED, PROTECT WITNESS IN ORDER TO PROCURE FULL TESTIMONY.

IT SHOULD BE ANNOUNCED ALLEGED MURDERERS HAVE BEEN CAPTURED, THEY WILL BE KEPT IN CUSTODY AWAITING THE FULL JUDICIAL PROCEEDINGS WHICH THE UNITED NATIONS WILL EVENTUALLY HOLD IN THE CASE OF ALL PERSONS ACCUSED OF WAR CRIMES.

IN OUR PROPAGANDA WE SHOULD ANNOUNCE THE FOREGOING FIRMLY BUT SERENELY. OUR TONE SHOULD BE ONE THAT WILL EMPHASIZE OUR DETERMINATION, IN THIS AS IN ALL SUCH CASES, TO PUNISH WAR CRIMINALS, BUT TO DO SO ONLY AFTER A FULL AND FAIR TRIAL HAS PROVED THEIR GUILT.

4 ACTION

SMC.1415A/14
T.T.1430A/14
338.

AMGOT

Legal

C. Cos. Law Member S HQ. Read (Signed) Jos
Should note - Jurisdiction can only rec from

15/XI

Secret Cmo

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

Legal

2D

FROM:
TO :
ORIG NO:

PRIORITY
INFORMATION
FOR GENERAL DISTRIBUTION
ZIS

POSTO NO 00475
23 NOV 43

SECRET DIPLOMATIC MESSENGER
15 AREY DROP , TYRE
456 OTTS PRETO

PCC 28004/43
TOR 0956/24

REFERENCE TELEGRAM TO THIS POSTO DATED 22ND.

Ack sent here.

REFERENCE TO THIS POSTO DATED 22ND.

ONE PARAGRAPH OF TEXT SUCH TELEGRAM GIVEN AS BEING AIR MAIL NOT DESPATCHED BUT TO BE DESPATCHED AS THIS TIME. ALSO THAT NO FURTHER REPORTS TO INDEX WERE BEING MADE OF GENERAL OUTBREAK. ORIGINAL CODED MESSAGE ARE ACKNOWLEDGED AND ATTACHED.

C.C.T.T.

PWB: to Germany Europe Kairo Lothian D.Thei. C.O. Head is sending a cable to A.F. HQ asking them to clarify A.M. Telnet W.D. 14/11/43

(S)

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

(extract from ABC/204/3 d/d 14. Nov)

7. TRIAL OF [illegible] DIRECTIVE. (extract from ABC/204/3 d/d 14. Nov) 20.

6.Nov.43, was shown to Lieut.Colonel [illegible] who agreed with its contents having regard to the C.C.S's Directive. 81
It was generally agreed, however, that the C.C.S's directive was unfortunate and that no action could be taken. (File ABC 209).

0275

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

Subject: Trial of persons for War Crimes.

H.Q., A.G.,
15 Army Group,
C.M.F.

Senior Legal Officer,
AAI, 5th Army.
AAI, 8th Army.

AAG/209/20.
10th Nov. 43.

See F10 6- The Combined Chiefs of Staff have issued a directive covering the trial of persons accused of war crimes, including atrocities, and a special tribunal is being established to enquire into all such cases.

2. In view of the foregoing, no person accused of a war crime, including any atrocity, will be tried by an Allied Military Court for such an offence. If any such person is discovered, he will be held in custody and a full report will be submitted immediately to this H.Q. and any material witnesses will be kept available.

3. The term "war crime" for the above purposes does not include any offence against Allied forces committed in occupied territory, although such offences may in true legal sense be a war crimes.

4. Crimes committed by Italians against Italians are also not included in the term "war crime" and all such cases will be heard by Italian Courts unless the previous consent of this H.Q. to trial by an Allied Military Court has been received.

This procedure should ensure all criminals being tried

Sd/- H. E. ROSE,
Lieut.Colonel,
Chief Legal Officer,
for, Major-General,
Chief Civil Affairs Officer.

HER/JG.

0216

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

CAO

Ref p. 17, appointment of Col Thorne shows as a Reviewing Officer is at p. 18.

2. You will note that the form of the appointment does not affect your own powers of review.

Lt Col
C.L.O.

to file 43.

Whereas by Section 3 of Article VII of Proclamation 4, the record of any case heard by an Allied Military Court may, in the events therein mentioned, be reviewed by the Chief Civil Affairs Officer or by an officer of the Allied Military Government not below the rank of Colonel who may be appointed by the Chief Civil Affairs Officer for that purpose, now, therefore, I, FRANCIS RAROM RENNELL of RODD, Major General, Chief Civil Affairs Officer, hereby appoint Colonel RICHARD THOMAS THORNE to be an officer with powers of review within the meaning of the said Section.

Dated the 11th day of November 1943.

Major-General,
Chief Civil Affairs Officer.

15

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

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

Subject: Military Courts in Army Areas.

Ans/209/17.

C. C. A. O. 9. Nov. 43.

Under the existing Proclamations and Instructions, which are contained in the ANGOF Manual, the appointment of General and Superior Military Courts in Army areas is made by the G.O.C. Army or an officer delegated by him. Outside Army areas, such appointments are made by you.

2. Whilst the above procedure has been laid down with regard to the appointment of Courts, no special procedure has been made with regard to review of cases heard by Military Courts in Army areas. It is considered that it will be beneficial if all case records are returned to this Headquarters for review and a decision on this point is desired.

3. If cases are sent back for review, under the terms of Proclamation No.4, such review must be made by yourself or by an officer not below the rank of Colonel to whom the power is delegated by you. In view of possible absences from Headquarters and the consequent delay in justice, it would be appreciated if you would nominate an officer not below the rank of Colonel to exercise the power. I would suggest the Senior Staff Officer, Colonel Thorne Thorne.

H. E. ROWE,
Lieut.Colonel,
Chief Legal Officer.

HER/JG.

14

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

3 November 1943

SEARS FOR ASG - 557

CONFIDENTIAL

ROUTINE

TELEPOT FOR ASG FOR ROWS

WE ARE TAKING NECESSARY ACTION PARAPH FROM SEARS FOR ASG FROM CHARLES TO TELEPOT FOR ASG FOR ROWS REF NUMBER FA ONE-HE ONE HAUSER NINE DATED SECOND NOVEMBER CITE ASG FIVE FIVE ONE PARAS UNDER QUOTING PARAGRAPH OF ADMIRAL THESE MINE STORY UNDER DATE OF TWENTY NINE OCTOBER REGARDING USTICA CASES

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

CONFIDENTIAL

US CIPHER MESSAGE
IN

FOLIO 01793
3 NOV 43.

FROM; SEARS FROM CHANLER
TO; FOR AMG TO FILPOT FOR AMG FOR ROWE
ORIG NO; B-418

TOO; 1525
TOR; 0300/04

WE ARE TAKING NECESSARY ACTION REF NUMBER PA/109 DATED 2ND NOVEMBER CITE AMG551 UNDER CONCLUDING PARAGRAPH OF AFHQ SIGNAL 3983 OF 29TH OCTOBER REGARDING USTICA XXXXX CASES.

AMGOT

4 ACTION

ACTION

SMC. 0345A/04
T.T. 0353A/04 JJ

Target Areas.

209/8.

3 NOV 1943

14

SECRET FOR ARCOR - 527

30th October, 1943.

Confidential

Party

AFAA FOR MED FOR PALMER

[redacted]

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

Sec Adj/ A/-

CLO

R

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

0285

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

Chargé Paris via

209

25 OCT 1943

FROM FOR ARMY - AMS

25 OCTOBER 1943

SECRET

SECRET

AMG FOR MEIC FOR PATTON

MILITIA PRISON OFFICIALS NOT AS CRIMINALS IF ACCEPTED ORDER NOT OBTAIN MEDICINES FOR FINANCIAL GAIN 2. PAGES FREE SEATS FOR ALOT MORE CHARGES TO AMG FOR FREE FOR PARISIAN NEWSPAPERS FOUR NUMBER TWO MARCH FOUR SIX OTHER NIGHT FOUR NINE NINE PAGES 2. FACT A NUMBER OF VICTIMS WERE JUDICIAL INTERNAL NO FINANCIAL ORDER NOT GIVEN OUR COURTS JURISDICTION MINISTRY WHEN ITALIAN CRIME WERE UNDER INVESTIGATE 2. FINANCIAL REPORTAGE OF SPECIAL TRIAL BY AMG CORRESPONDENTS AT PARIS ARE WELL KNOWN HERE AND WE ARE BEING ASKED WHAT WE ARE DOING ABOUT IT BY BOTH LOCAL AND NEWS PRESS 2. OVER SEE STATE HAVING REPRESENTS WILL BE CALLED AND BY ANOTHER WEEK MOST OF THEM ESPECIALLY JOURNALISTS WHO ARE NEEDED TO FIRST WILL BE UNAVAILABLE 2. MY IDEAS WILL HAND THE TRIAL EXPEDITIOUS 2. URGENTLY REQUEST RECONSIDERATION

Secret

10

PA L

Subject: Your Legal Report 3/5034/L2 dated 22. Oct. 43.

Senior Legal Officer,
H.Q., AMG,
Fifth Army.

AMG/201
29. October. 43.

AMG/201 Italy 1.

Reference your above Report, the following instructions are given in connection with the matters which you raise.

2. Paras 1 and 2. Enquiry is being made as to whether AMG, 8th Army needs a further supply of Proclamations, and, therefore, do not have the print broken up in respect of those which you have had reprinted in Naples.

3. It is probable that Proclamations 1 and 11 will be amended to meet the new circumstances following the declaration of war by the Italian Government and directions have already been sought from A.F.H.Q. on this. Do not therefore have these two Proclamations reprinted if you receive this letter in time to stop the printing. A signal has already been sent you to stop printing and posting Proclamation 6 as instructions are also awaited from A.F.H.Q. on this. Such signal cancels instructions referred to in postscript to your above Report.

4. Para 3. A direction as to the Italy Gazette will be sent you as soon as possible.

5. Para 4. Your comments and attached instructions are noted and agreed.

6. Para 5. Summary Courts should be conducted in accordance with the procedure set out in the AMG Manual. This procedure is very simple and rapid and there is no reason why it should not be followed. There is no objection to instructions being issued to explain the authorised procedure so long as this procedure is not altered. Instruction should be given where necessary to officers holding Courts.

7. Para 8. The temporary instructions which were given you by Col. Charler in regard to records of cases need some modification now that a Legal branch of this Headquarters has been established and communications are no longer so difficult. In future, please send here:-

(a) All case records of Superior and General Courts; 9

(b) A general note of the details of any case heard by a Summary Court, where a petition is lodged by the accused; and,

(c) A return of all cases heard by Summary Courts in 5th Army area showing the place of trial, the name of the accused, the charge, the plea, the finding, the sentence and the name of the officer trying the case.

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

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(c) A return of all cases heard by Summary Courts in 5th Army area showing the place of trial, the name of the accused, the charge, the plea, the finding, the sentence and the name of the officer trying the case.

With regard to (c) above, Summary Court Registers with loose leaves on which to make the return, have been printed and a supply is being obtained from Palermo and will be forwarded to you as soon as possible.

8. Para 10. The question of Italian Military Tribunals is one of some difficulty. It is being discussed as a matter of common policy with H.Q. AMG, Palermo, and a directive will be issued as soon as possible.

9. Para 12. In answer to your enquiry, reference imprisonment in default of payment in fines, this imprisonment is NOT included in any term, which is awarded in addition to a fine, for the purpose of calculating the 12 months limit of jurisdiction of a Summary Court.

Para 10...../

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

10. Para 13. It is believed that certain laws of Fascist complexion have already been repealed by the Italian Government and an enquiry as to this is proceeding. Any amending law passed by the Allied Military Government will be the subject of a general order or Proclamation and not of a Regional Order. The laws you mention are noted and your comments are being forwarded to H.Q., AMG, Palermo, for investigation by the Branch of the Legal Division there which deals with Italian laws. It will be further appreciated if you will let this H.Q. know of any further laws of a like nature which come to your notice.

11. Para 14. The action taken by you is approved. It is hoped to issue a directive on the subject of land transactions at an early date.

H. E. ROWE,
Lieut. Colonel,
Chief Legal Officer.

A.M.G.,
15 Army Group,
C. M. F.
HER/JG.

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

0287

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

ARMY FORM C2128. (Pads of 100). **MESSAGE FORM**

CALL AND INSTRUCTIONS		No. of Groups.	Serial No. / Office Date Stamp
	IN 209	GR.	
	OUT		16

(ABOVE THIS LINE IS FOR SIGNALS USE ONLY.)

TO

FROM

Originator's Number: W 209 Date: 30

Reference	AGAM	night	209 / 10	OKEY	WIRES
OF	29	Oct	(*)	Please	confirm
you	will	also	all	necessary	action
under	cancelling	paragraph	~~~~		

THIS MESSAGE MAY BE SENT AS WRITTEN BY ANY MEANS EXCEPT* WIRELESS.

SIGNED [illegible]

THIS MESSAGE MUST BE SENT IN CIPHER IF LIABLE TO INTERCEPTION OR TO FALL INTO ENEMY HANDS.

SIGNED

ORIGINATOR'S INSTRUCTIONS DEGREE OF PRIORITY Routine

TIME OF ORIGIN 1630 A

(BELOW THIS LINE IS FOR SIGNALS USE ONLY.)

SYSTEM IN	TIME IN	READER	SENDER	SYSTEM OUT	TIME OUT	READER	SENDER	SYSTEM OUT	TIME OUT	READER	SENDER

T.H.I.

T.O.R.

*Originator may delete "except" and insert "including."

We. 10598/864. 300M Pads. 6/42. P.I. T. 51-4890.

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

209

30 OCT 1943

SECRET IMPORTANT FOLIO NO:09946
US CIPHER MESSAGE DATE 29,OCT '43
IN

FROM: AFHQ SIGNED EISENHOWER
TO: IBS FOR SEARS FOR AMG FOR CHANTER TOO 09946?
15 ARMY GROUP FOR AMG FOR ROWE THI NIL
ORIG NO: 3983 CITE FHMGS TOR 0245A/30

PROCEDURE UNDER PARA 7,POLITICAL, OF POLICY DIRECTIVE OF JUNE 1ST HAS NOW BEEN ELABORATED BY CCS, AT SAME TIME ANSWERING NAF 476 ON USTICA CASE.
CCS DIRECTIVE AS PARAPHRASED? FOLLOWS.

TRIAL BY MILITARY TRIBUNAL WILL NOT BE HELD IN CASE OF PERSONS SUSPECTED OF WAR CRIMES.
THEY WILL BE HELD IN CUSTODY AWAITING UNITED NATIONS DECISION REGARDING THEIR DISPOSAL.
YOU WILL COLLECT ALL AVAILABLE INFORMATION ABOUT SUSPECTS DETAINED AND ABOUT WAR CRIMES FOR WHICH THEY ARE HELD, AND WILL FORWARD ALL SUCH INFORMATION TO THIS HEADQUARTERS, WHICH WILL TRANSMIT TO CCS.
ALLIED GOVERMENTS IN LONDON ON OCTOBER 20TH DECIDED UPON SETTING UP UNITED NATIONS WAR CRIMES COMMISSION.
PLAN IS THAT THIS COMMISSION WILL REVIEW? AND RECORD ALL INFORMATION SUBMITTED BY GOVERMENTS AS TO WAR CRIMES COMMITTED BY ENEMIES AGAINST UNITED NATIONS NATIONALS, AND WILL REPORT TO GOVERMENT CONCERNED WHAT CASES APPEAR SUPPORTED BY SUFFICIENT EVIDENCE.
COMMISSION ALSO TO CONSIDER MEANS TO REACH COMMON BASIS AS TO TYPE OF TRIAL COURT, APPLICABLE LAW, PROCEDURE FOR CUSTODY AND SURRENDER.
WHERE ITALIAN COMMITS CRIME AGAINST ITALIAN NATIONAL IT WOULD NOT PROPERLY BE REGARDED AS WAR CRIME AND SO WOULD NOT COME WITHIN SCOPE OF THE COMMISSION.
PERSON SO ACCUSED SHOULD BE GIVEN TO ITALIAN COURTS TO BE TRIED.
CRIMES AGAINST MILITARY FORCES DURING PERIOD OF OCCUPATION REMAIN, AS USUAL, TRIAL BY MILITARY TRIBUNAL.
TO EFFECTUATE FOREGOING CCS DIRECTIVE YOU WILL ESTABLISH PROCEDURE FOR TAKING TESTIMONY AS ON COMMISSION, WITH APPROPIATE PROVISION FOR PRESENCE OF ACCUSED, OPPORTUNITY TO HAVE COUNSEL AND TO CROSS EXAMINE, PREPARATION AND AUTHENTICATION OF RECORD.

AMGOT 4 ACTION SMC 0400A/30
WARTT 0500A/30
KW

6

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

FOLIOS 6 - 9
TRANSFERRED
TO FILE 205

21 To Legal 8th Army 15th Army Group

FROM: DIVISIONAL SEA TRANSPORT OFFICER, SOUTHERN ITALY.

DATE: 7th October, 1943. 175/116A

TO : PRINCIPAL SEA TRANSPORT OFFICER, MEDITERRANEAN.
(Copy to:-Allied Force Headquarters, Algiers
Commander-in-Chief, Mediterranean Station.
H.Q. No.1. District, Portbase.
Flag Officer, Italy.
H.Q., A.M.G.O.T.
M.W.T. Representative, Algiers)

Copy

SUBJECT: MERCHANT NAVY DELINQUENTS.

Guidance is sought as to the proper procedure to adopt in dealing with Merchant Navy personnel who commit offences against the Civil Law while ashore in Italian ports.

2. The position before the capitulation of Italy was simple, as A.M.G.O.T., Courts were sitting and cases were dealt with by these courts, the Superintending Sea Transport Officer at the port sitting as an assessor to assist the Court and ensure that no action was taken which would delay the ship from sailing. Now that there are no courts set up by A.M.G.O.T. there only remain the Italian Civil Courts or Naval Courts convened by the Senior British Naval Officer. It is not known whether Naval Courts have power to try a delinquent for an offence committed ashore, or if these Courts have the power to compel the attendance of civilian witnesses. No copies of Instructions for Naval Courts vide Art 491 K.R. and A.I. appear to be held by any R.N. Authority with whom I have been in touch, and a supply of this book is urgently required for use in Italian ports.

3. In an endeavour to avoid going wrong on this question the procedure at present being used is based on the principle that Italian ports are to be regarded as operational ports under Military Control. It has therefore been arranged that Merchant Navy delinquents if arrested by the Civil Power are handed over to Military police for custody pending decision as to how the case shall be dealt with. But this is only a measure to prevent any further action by the Italian Civil Authorities and still leaves open the question of how a merchant seaman is to be dealt with who commits a serious crime ashore such as murder.

4. It is requested that this matter may be regarded as urgent, as the behaviour of both merchant seamen ashore and certain elements of the civil populace leave much to be desired and serious incidents are liable to occur any day. 5

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

Flag Officer, Italy.
H.Q., A.M.G.O.T.
M.W.T. Representative, Algiers)

Copy

SUBJECT: MERCHANT NAVY DELINQUENTS.

Guidance is sought as to the proper procedure to adopt in dealing with Merchant Navy personnel who commit offences against the Civil Law while ashore in Italian ports. 1.

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s/ ?

CAPTAIN, R.N.
DIVISIONAL SEA TRANSPORT OFFICER,
S. ITALY.

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

0292

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

209 ZX

19 OCT 1943

SECRET
PRIORITY

CIPHER MESSAGE

FOLIO ISSUED
19 OCT (43)

FROM: SUPREME EISENHOWER CITE FUMPS
TO: 165 FOR REARS EOT AND FOR ROSHERAY NFT
15TH ARMY GROUP
CR#2 NO: 6054

ROLLBACK RETURNING IN TWENTY-FOUR HOURS, UNLESS OTHERWISE INSTRUCTED

ACTION

AMSOT

0293

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

ARMY FORM C2128. (Pads of 100). **MESSAGE FORM** AMC

CALL AND INSTRUCTIONS	IN 21	No. of Groups GR.	Serial No. / OFFICE DATE STAMP 64
	OUT		

(ABOVE THIS LINE IS FOR SIGNALS USE ONLY.)

TO

AMCIO ETTMH ARMY

FROM

FIT.POT PROJ ARMY

Ltr Hdtrs 2

Originator's Number	Date	In Reply to Number
FA.48	17	3

FOR	CHIEFS	FROM	CHARGE	YOU	ARE
HEREBY	AUTHORIZED	TO	SEED	CARGO	DISCHARGE
BOD	TOTAL	BOD TO	HIGHER	CONTACT	ALSO
TO	EXECUTIVE	HIGH	OTHER	POWER	OF
THE	CHIEF	LOCAL	OFFICER	AS	SAT
BE	DELEGATED	BE	THE	UNDER	ARE
PROCLAMATION	FULL	SUBJECTED	ORDER		

THIS MESSAGE MAY BE SENT **AS WRITTEN** BY ANY MEANS { EXCEPT * / WIRELESS.

THIS MESSAGE MUST BE SENT **IN CIPHER** IF LIABLE TO INTERCEPTION OR TO FALL INTO ENEMY HANDS.

ORIGINATOR'S INSTRUCTIONS DEGREE OF PRIORITY

TIME OF ORIGIN

T.H.I.

SIGNED R. J. P. THORNE THORNE Col

(ABOVE THIS LINE IS FOR SIGNALS USE ONLY.)

SIGNED

SYSTEM IN	TIME IN	READER	SENDER	SYSTEM OUT	TIME OUT	READER	SENDER	SYSTEM OUT	TIME OUT	READER	SENDER

T.O.R. 3

*Originator may delete "except" and insert "including."

Wt. 10598/864. 300M Pads. 6/42. P.I. T.51-4880.

0294

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

AL/21.
209

HEADQUARTERS
REGION 3, ALLIED MILITARY GOVERNMENT
APO 464, U. S. Army

DATE 13 OCTOBER 1943

FROM FIFTH ARMY

TO FIFTEENTH ARMY GROUP FOR AMGOT SICILY

REF NO 5-13-10AMG3

APPROVED: Paul Revere
PAUL REVERE
MAJOR AGD
ADJUTANT GENERAL

FOR CHANDLER FROM SHIELDS WILL YOU EMPOWER ME TO SEND CASES DIRECTLY FOR TRIAL BEFORE HIGHER COURTS UNDER ADMINIST. TWO PARAGRAPH FIVE ~~STOP~~

1 copy sent P 16/10

C.L.O.

Subject: Allied General Military Court.

AL/21/54

G.O.C. in C.,
Headquarters,
15 Army Group.

9. Oct. 43.

This file contains the record of a murder trial in Agrigento Province heard by an Allied General Military Court on 13.September.

The accused parties were two Sicilian farmers who were found by the Court to be guilty of the murder of a Sicilian landlord.

In order to ensure a speedy trial I directed, under the powers conferred under Proclamation No.4 and delegated to me by you, that although the case was one which could be tried by an Italian Court under the Italian Penal Code, the case should be tried by an Allied General Military Court.

There was some evidence that the crime committed by the accused was of typical Maffia criminality. I was anxious in view of the increase of Maffia crime that an example should be given to the population of Sicily of expedition and justice in the handling of a case of this sort.

The two accused were found guilty and condemned to death by shooting.

The case has been reviewed by my Chief Legal Adviser who concurs in the finding of the Court and in the sentence imposed. My Chief Legal Adviser took the opportunity of submitting the record of the case to Colonel G. Pollock for review. Colonel G. Pollock's opinion is attached. Colonel G. Pollock is a leading "junior" at the English Bar and in Sir Norman Birkett's chambers. He was selected for legal duty in Italy by the Lord Chancellor.

I concur in the review of the case with my Chief Legal Adviser and Colonel G. Pollock and I recommend that you, in your capacity as Military Governor, do confirm the sentence.

I have minuted accordingly in the appropriate place where the finding of the Court is recorded. If you concur and confirm the sentence, a place is provided for your concurrence on the page which contains the finding of the Court and my recommendation.

Major-General,
Chief Civil Affairs Officer.

AFHQ,
15 Army Group,
C. M. F.
/JG.

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

Province heard by an Allied General Military Court on 19.September.

The accused parties were two Sicilian farmers who were found by the Court to be guilty of the murder of a Sicilian landlord.

In order to ensure a speedy trial I directed, under the powers conferred under Proclamation No.4 and delegated to me by you, that although the case was one which could be tried by an Italian Court under the Italian Penal Code, the case should be tried by an Allied General Military Court.

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ALGOT,
15 Army Group,
C. M. F.
/JC.

Major-General,
Chief Civil Affairs Officer.

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

0297