

ACC 10000/143/2595

149.01 / cc

CONCINA CESARE

JAN. - FEB. 1945

SUBJECT : CONCINA Cesare.

SECRET

Office of the AG of S, G-2
ROME AREA ALLIED COMMAND
CMF

G/P1363/BR

15 Feb 45

Security Division, ✓
Public Safety Sub-Commission,
Allied Commission.

Regional Legal Officer,
LAZIO-UMBRIA Region, AG.

Copy to:- GSI, 1 District.

1. In view of the difficulties of obtaining sufficient evidence to convict above-mentioned subject, AFHQ have ruled that his case will not be proceeded with.
2. Subject has accordingly been sent to internment.

*Noted.
L.V. Sec. 604*

RD

D.A.D. Young
(D.A.D. YOUNG)
Lt. Col.,
G.S.

Security
Division
Rec'd <i>16/2</i>
Book No <i>5009</i>
File No <i>119.01</i>
Action <i>149.01</i>

CONCINA 149.01

SECRET

HEADQUARTERS ALLIED COMMISSION
C.I.F.
PUBLIC SAFETY SUB COMMISSION
SECURITY DIVISION

31 January 1945

Reference : HQ/149.01

703/4/57/CSL
CSMIG(Main)/2 100

Subject : Prosecution of enemy Agent
COUNCILA Cesare.

To : AG of S C-2
Rome Allied Area Command

1. With reference to attached file - 703/4/57/CSL - handed to me to-day by Major S.B. GILBERT, Acting Regional Legal Officer, Lazio-Umbria Region :-

2. I have examined the papers contained in the above-mentioned file, referring to COUNCILA Cesare, and there appears to be a clear case against him for serving the enemy as a spy.

3. There seems to be little doubt that a conviction would be obtained, provided that testimony of the undermentioned witnesses is made available to the Court :-

- (1) Evidence of a member of 407 F.S. Section relating to the arrest and search of COUNCILA on 21 August 1944 at (Civil Province ARREDO) and the subsequent sentence imposed upon him by an A.M.C. Court there for travelling without a permit.
- (11) Evidence of Sergeant Wilson 407 F.S. Section regarding interrogation of COUNCILA on 10 September 1944.
- (111) Evidence of Captain MATT, No. 2 S.O.I. Unit regarding:
 - (a) signed statement made by COUNCILA on 24 September 1944.
 - (b) Verbal statement made on 26 September 1944 by COUNCILA.
 - (c) Signed statement made on 26 September 1944 by COUNCILA.
- (1iv) Evidence of C.S.D.I.C. officer who interrogated COUNCILA on 12 October 1944.

1. With reference to attached file - 702/1457/031 - handed to me to-day by Major S.B. GILBERT, Acting Regional Legal Officer, Lusitania Region :-
2. I have examined the papers contained in the above-mentioned file, referring to OCHINA Cesare, and there appears to be a clear case against him for serving the enemy as a spy.
3. There seems to be little doubt that a conviction would be obtained, provided that testimony of the undermentioned witnesses is made available to the Court :-
 - (i) Evidence of a member of 407 P.S. Section relating to the arrest and search of OCHINA on 22 August 1944 at Ciovi Province (BRILO) and the subsequent sentence imposed upon him by an A.S.I.C. Court there for travelling without a permit.
 - (ii) Evidence of Sergeant Wilson 407 P.S. Section regarding interrogation of OCHINA on 10 September 1944.
 - (iii) Evidence of Captain WAT, No. 2 A.S.I. Unit regarding:
 - (a) Signed statement made by OCHINA on 24 September 1944.
 - (b) Verbal statement made on 26 September 1944 by OCHINA.
 - (c) Signed statement made on 26 September 1944 by OCHINA.
 - (iv) Evidence of O.S.D.I.C. officer who interrogated OCHINA on 12 October 1944.
4. It is noted that prior to interrogation by O.S.D.I.C., OCHINA told only "cover" stories and even when confronted with facts given by another German agent who had been arrested (MESSIA, Santo) the most which he would admit was that he had undertaken work for the Germans in connection with which he had taken an oath of secrecy. Under O.S.D.I.C. interrogation, however, he admitted that he was on a mission of espionage and gave fuller details of his movements and activities.
5. The evidence of the O.S.D.I.C. interrogator is indispensable to the successful prosecution of this case. No-interrogation of the prisoner would not absolve the appearance at Court of the O.S.D.I.C. witness, as any statement which he might now make would obviously be influenced by what he had already told O.S.D.I.C. It would not be legally proper for the Court to admit such a statement unless the O.S.D.I.C. representative was present to give evidence as to the circumstances under which facts and admissions were made by the prisoner at the O.S.D.I.C. interrogation.
6. In connection with this matter I would draw attention to the case

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of Mario BERNI, whose case I prepared for trial, and who appeared before an Allied General Court held from 8 - 12 May 1944, charged with espionage.

7. It was desired to avoid the necessity of a GADIC witness appearing at Court to give evidence of a statement made by the accused under interrogation. Accordingly, he was re-interrogated and a statement was taken from him and signed by him in which he repeated the facts given to GADIC.

8. At the General Court hearing the statement was admitted in evidence reluctantly, although a conviction was obtained. Subsequently, however, when the case was reviewed by higher legal authority, the conviction was quashed on the grounds that the final statement submitted was improper and inadmissible, not being a voluntary statement made spontaneously but having as its basis a previous interrogation of which no evidence had been offered.

9. It is a matter of legal principle that the Court should be informed through evidence of every process undergone by the accused. Since anything he may say to a particular interrogator will undoubtedly affect any subsequent statement he may make, the absence of the evidence of that interrogator places the Court in the position of being unable to decide whether anything said subsequently by the accused is admissible in evidence. Therefore, it is not practicable or proper from a legal standpoint to have two separate investigations, one for intelligence purposes and the other for the purpose of prosecution. The validity of statements made during the course of one affects the validity of statements made at the other. It would seem desirable that with a view to this an officer concerned with prosecutions should be present at all C. D. I. C. interrogations where there seems a likelihood of the suspect being later charged.

10. In the circumstances, therefore, especially in view of the legal decision quoted above, it seems essential that the appearance of the GADIC witness be pressed for the particular case of GADIC. Further questioning of the prisoner for the purposes of prosecution should not be carried out unless higher legal authority is consulted.

11. The copy statements and reports in the file 702/4/57/GSI, which is returned herewith, afford all the necessary evidence, including that of the GADIC, interrogator.

Lewis. K. G. R.

LAURENCE V. GILES,
ATTORNEY, SECURITY DIVISION,
PUBLIC SAFETY OF CANADA.

he may say to a particular interrogator will undoubtedly affect any subsequent statement he may make, the absence of the evidence of that interrogator places the Court in the position of being unable to decide whether anything said subsequently by the accused is admissible in evidence. Therefore, it is not practicable or proper from a legal standpoint to have two separate investigations, one for intelligence purposes and the other for the purpose of prosecution. The validity of statements made during the course of one affects the validity of statements made at the other. It would seem desirable that with a view to this an officer concerned with prosecutions should be present at all C. O. I. C. interrogations where there seems a likelihood of the suspect being later charged.

10. In the circumstances, therefore, especially in view of the legal decision quoted above, it seems essential that the appearance of the C.O.I.C., witness be pressed for the particular case of OMCILLA. Further questioning of the prisoner for the purposes of prosecution should not be carried out unless higher legal authority is consulted.

11. The copy statements and reports in the file 703/4/57/CSI, which is returned herewith, afford all the necessary evidence, including that of the C.O.I.C., interrogator.

Louis V. Galt

LOUIS V. GALT,
CAPTAIN, SECURITY DIVISION.
PUBLIC SAFETY SUB COMMISSION.

JWC

JOHN W. CHAPMAN,
COLONEL, J.A.C.D.,
DIRECTOR, PUBLIC SAFETY
SUB COMMISSION.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LAZIO-UMBRIA REGION, LGAL DIVISION
APO 394

L/1019

29 January 1945

SUBJECT : CONCINA Cesare
Enemy agent.

TO : Capt L.V.GALE, Security Officer,
A.C.

1. Attached please find complete file on Subject.
For the Regional Commissioner

Sam B. Gilreath
SAM B. GILREATH
Major A.U.S.
Acting Regional Legal Officer

SBG/GG.

Receipt is acknowledged of above file.
This 29 January 1945

L. V. Gale
by

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