Senato della Repubblica

Archivio storico

FONDO : BENTIVEGNA

serie : 1

b. : 3

fasc. : 8

LEGAL

Recd. 29-8-1944

Major Hendrickson

Regional Legal Officer

Region IV

Dear Major Hendrickson.

Lt Col D.H.D. Young has been asked by Brigadier Low for a brief note on the "Bentivenga" case, in which after the accused had been sentenced to 18 months imprisonment, he was released on appeal.

Could you very kindly supply such a note direct to Colonel Young, G-2, R.A.F. as I understand the Brigadier is anxious to get this through tomorrow, if possible.

Kofavia, questo discorso [illegible] perche dimostra la [illegible] della [illegible] Lieut.Col. Pollock

ROME DISTRICT
ALLIED CONTROL COMM. BRCH
A.F.H.Q. No.324, U. S. ARMY
Police Headquarters

24th June,1944.

SUBJECT: Murder of Lieutenant of Finance Guards named Giorgio [illegible].

TO : Col. C. Poletti, Rome.

copies to: General Johnson
Colonel Ames
Major Fielden
Major Hendrickson.

OK
comunicare
generale Scott
Poletti

1. About 3 P.M. 5th June,1944 (the day of our occupation of the City) a police Finance Guard, Lieutenant, was shot dead at Via Tre Camelle, Rome. He was shot in broad daylight through the chest with one bullet, and died almost immediately. There was no clue as to the assailant.

2. Immediate instructions were given to the Questore to proceed with the enquiries in the ordinary way, but I felt the crime was such that immediate investigation was necessary by our Public Safety Division. As you know we had to disarm the overnight partisan police force of 17.000 upwards, and I felt that unless we stamped out this shooting by civilians ruthlessly the position might very soon become out of hand. Moreover, it came to my knowledge from reliable sources that many of the so-called communists and socialists were banding together to wipe up old scores with their fascist and other enemies. In short they were prepared to take the law into their own hands. The same afternoon I saw all the leaders of the various political groups, and warned them in no uncertain terms that we would tolerate no shooting or extreme measures by civilians in this city. They denied that any political parties were involved in the shooting of the Finance Guard, and they were unable to help me in the investigations.

3. I at once withdrew one of my officers from his District of Roma Vecchia, Capt. T. [illegible] GREENHILL (3), who served with me as a detective officer, attached to the Criminal Investigation Branch, New Scotland Yard, London. Knowing his record I felt he was the one man who could handle this murder case. Capt. Greenhill at once took up the enquiries and from 5th June until last night he has been on this case day and night. By a process of elimination he has interviewed well over 200 individuals, dealt with over 150 suspects, and during the last three days narrowed the enquiries down to three or four suspects.

4. By 2 p.m. yesterday, 23rd June,1944, he had obtained sufficient evidence to arrest one Edoardo [illegible], the 22, medical student, of Via Appina 122, one, an avowed member of the

REGION IV CASE N° 7762

Communist Party and self-styled partisan.

5. I was present when Capt. Greenhill handled this individual. Bentivegna was properly cautioned and agreed to make a written statement to Capt. Greenhill. In this written statement to Capt. Greenhill, Bentivegna confessed to the shooting of the Finance Guard, his excuse being that the Finance Guard Lieutenant had attempted to pull down certain wall posters including a poster respecting the "Unita'" newspaper, which is the communist organ. The evidence is clear, the confessions is straight forward, and there is no doubt the evidence will show that Bentivegna shot the Finance Guard in cold blood.

6. In the ordinary way such cases could be tried by the Italian Courts by Italian Judges, but I submit that this case is so serious, the polticial issues involved are so great, that we set up a strong Allied Military Court immediately to deal with this alleged murder. This course, I submit, is highly desirable because of the possibility, in the event of it being tried by an Italian Court, of the influences from political ramifications. Left in our hands, it could not then be said, by opposition parties, that political influence had had any effect upon the result.

7. Capt. Greenhill is having all the statements of witnesses etc. typed out, and will have the case ready for presentation within two days.

8. I strongly recommend that a General Court be set up with General Johnson, Colonel Poletti, and the Senior Civilian Judge of the City to hear the case, that the widest possible publicity be given to the trial so that we can stamp out once and for all such actions of violence on the part of civilians.

9. Fortunately this is the only known case of its kind so we have been very fortunate indeed, but an example must be made at once of this individual if found guilty.

J.R. POLLOCK
Lt. Colonel
Chief, Public Safety,
Rome.

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ALLIED MILITARY GOVERNMENT

HEADQUARTERS
ROME REGION

20th June 1944

TO: :Chief Public Safety Division
FROM :Capt. T.W.M.GREENHILL
SUBJ : Death of Lt of Guardia Finanza

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ALLIED MILITARY GOVERNMENT

HEADQUARTERS

20th June 1944

TO : Chief, Public Safety Division
A.M.G. H.Q.
FROM : Capt. T.W.M.GREENHILL
SUBJECT : Death of Lieutenant of Guardia Finanza
REFERENCE
DATE : 20th June 1944

1; Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia Finanza, 2nd Company, Caserma, via Salaria, Rome.
Home Address : 195, via Salaria, Rome.

2. In consequence, I saw LT.Col. Carlo Perinetti, CC.RR.,upon the matter, but he could not assist other than to inform me that the body was at the Guardia Finanza Caserma, via Regina Elena, Rome.
I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 P.m., 5th June 1944, at via Tre Cannelle, Rome.
He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologic Anatomy, Rome University, who offered his services, free of Charge.
At 2,45 p.m., the same day, Dr.Fontana carried out a post mortem examination of the chest of the dead man.
His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are : 59

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A. Death occurred from 48 to 72 hours before the P.M.

B. Death occurred rapidly from acute Anaemia resultant upon the passage of a bullet which passed through the left half of the thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the Chest corresponding to 1st left intercostal space and passing in a slightly downward direction and leaving the back at the 5th intercostal space on the paravertebral line.

C. Bullet of small calibre, probably not more than 7.m.m.

D. Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at via Tre Cannelle was then visited. Immediatly an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the Assistence of Vice Brigadiere INSACCANEBBIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. Although I have yet to trace a witness of the actual shooting, one has come to light who was on the scene soon after the happening. He is Mr. Alberto CASTELLI, via 20th September, 98 E Rome, a Lieutenant in the Italian Navy. He avers that at about 14,30 hours on 5th June 1944, he was standing at the door of via Pilotta 24, Rome, when he heard shots. He went to the corner of via Tre Cannelle, and upon pushing through a crowd of people in the street, he saw the Lieutenant lying across the roadway on his back, obviously lifeless. Near the body he saw a young man, whom he describes, with a revolver in his hand. He asked the man what had happened and he replied: "I killed him in personal defence", Mr. Castelli pressed him for further information, and the man added: " He was tearing down some communist notices. I asked him to stop and he drew his revolver and he tried to take my pistol away. With that a Guardia Scelta who was with him fired some shots, so I shot him".

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Mr. Castelli says he asked the man who else was present and a girl, whom he describes, standing nearby, replied that she had been. This girl apparently told the same story as the confessed assailant, and drew Mr.Castelli's attention to torn posters on the wall close at hand.

8. Several other witnesses have been interviewed but none can add to the story told by Mr.Castelli, although they could be used to support the latter's evidence.
Neither the Guardia Finanza – alleged to have fired the shots – or the woman have yet been found.
Two interesting points have been disclosed, the finding at the scene of three cartridge cases by Lt.Pietro PASQUA, CC.RR. Ludovisi, and the fact that Barberisi's holster was empty. The revolver, if he had one, has not yet been traced.

9. However, I have succeeded in contacting an informant and he assures me that the assailant was a man, ROSARIO BENTIVEGNA, of via Torino 122, Rome, who left Rome on 7th June 1944 for the Viterbo district with a group of " Italian Patriots " to carry out guerilla warfare in German occupied territory.
Discreet enquiries are in operation, in via Torino district, to bring about the apprehension of the suspect for interrogation, and in any event my informant will advise me should Bentivegna – assuming he is out of Rome– return here.

10. This is an Interim report, and the return of these papers are requested, after passing through Channels, for periodical recording of future developments. Statements, etc., are being retained for translation, etc.

T.W.M. Greenhill

T.W.M. GREENHILL, Capt., C.A.P.O.

In the field.
20.6.44.

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Nothing to do
with administration -
merely a relation
of police investigation

RLS

File
General Courts
RLN.

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8

H.Q. ROAD TRANSPORT A.F.H.Q.

1.

3rd July, 1944.

To: Chief, Public Safety Division, H. . Piazza Venezia.

From: Ca t.T. .H. Greenhill.

Subject: Death of a Lieutenant of the Guardia di Finanza by shooting, and arrest of culprit.

1. Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia di Finanza, 2nd Company, Caserma Via Salaria, Rome.
Home Address: 195, Via salaria, Rome.

2. In consequence, I saw LT.COL. Carlo Perinatti, CC.RR., upon the matter, but he could not assist other than to inform me that the body was at the Guardie di Finanza Caserma, Via Regina Elena, Rome.
I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 p.m., 5th June, 1944, at Via Tre Cannelle, Rome.
He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Patholo_ic Anatomy, Rome University, who offered his services, free of charge.
At 2.45 p.m., the same day, Dr. Fontana carried out a post mortem examination of the chest of the dead man.
His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are:

a) Death occurred from 48 to 72 hours before the P.M.
b) Death occurred rapidly from acute anaemia resultant upon the passage of a bullet which passed through the left thorax, with p rtial injury to the Aorta and the Hemothorax, h vin entered in a region of the Chest corresponding to l. t left Intercostal space and passing in a sl ntly do.nward direction and l vin the body at the 8th int rcostal space on the mid vertebr l line.

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c) Bullet of small calibre, probably not more than m.m.

c) Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at Via Fre Cannelle was then visited. Immediately an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the assistance of Vice Brigadiere INSACCAMBETA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. On 23rd June 1944, in consequence of information received, I learned that the assailant was a young man named Rosario BENTIVEGNA of 122 Via Torino, Rome. I instructed Guardia Panetta to effect the detention of this man and bring him to me at this H.Q. Further he was not to make reference to the word "assassinio".

8. At 2.30 p.m. the same day I saw Bentivegna in the office of the Public Safety Division, having been detained at about 1 p.m. in the Via Nazionale by Guardia Panetta.

9. I told the suspect who I was and that I was making enquiries into the death of Lieut. Barbarisi of the Guardia di Finanza, which took place at about 3 p.m. on 5th June 1944, death resulting from a shot in the left side of the chest. I then asked him whether he could help me in the matter. The suspect replied: "Yes Sir, I did it". I then cautioned him and he replied: "I want to tell you all about it". He then made a statement in writing, under caution. The statement is attached.

In short it is a complete admission that he fired three shots directly at the deceased Lieutenant, one of which brought about the death.

He gives as an explanation for his actions that being a communist he saw the Lieutenant in Via Fre Cannelle pulling down posters from the wall, amongst which were posters of the 'Unita' newspaper, a communist organ. He alleges that he remonstrated with the Lieutenant who thereupon was told not to interfere.

He says that the Lieutenant then drew a revolver, charged it with a cartridge and stuck it in his, Bentivegna's body near the heart.

He also says that he had his right hand in his trouser's pocket holding a loaded Beretta pistol and that at this moment [illegible] in civilian clothes fired two shots. Although they [illegible] he [illegible] but [illegible] shots he [illegible] from

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his trousers pocket and fired three shots at the Lieutenant. He goes so far as to admit that he thought all three bullets struck the officer.

10. He disclosed the name and address of a girl who was with him at the time of the shooting. She is Carla [illegible], aged 24 years, of 1 Foro Traiano. I saw her at this office on 25th June 1944, and obtained a statement, attached, from her. She bears out almost in detail the story told by Bentivegna. I am satisfied, however, that she cannot be cited as an accomplice in the shooting.

11. I also submit statements taken from Anna Romaubi, 15 Via Tre Cannelle and Alberto Castelli, 98 Via 20 Settembre. The former woman alleges she was a witness to the shooting, describes the assailant and the woman who was with the latter. Mr. Castelli, who arrived soon after the shooting, apart from describing the scene, as he saw it, outlines the conversation he had on the spot with a young man, who was holding a pistol in his hand and the fact that the young man admitted the killing. He also speaks of the young lady. Having in mind the statements of the accused and his girl friend, the aforementioned two persons provide necessary corroboration in connecting the facts.

12. Bentivenga, who is Italian, and has lived his life, to date, in Rome, alleges that he was unaware that the Lieutenant was an officer of the Guardie di Finanza. It is difficult to believe him as the uniform of a Guardie di Finanza is generally known to the Italian people. The Force has all the powers of a Police Body apart from being an Arm of the Italian Military Forces.

13. Three pistol cartridge cases of 9.m.m. guage were found at the scene of the crime by Lieutenant Pietro Pasqua of the Nucleo P.S. Ludovisi, Via Quintino Sella. They bear identical stamp markings at the base.

14. I have been unable, to date, to trace the whereabouts of the dead man's pistol. Bentivegna says he subsequently gave his pistol away to an Australian Lieutenant, who is yet unknown.

15. I am in the process of obtaining statements to give an account of the passage of the body from the scene of the crime to its subsequent interment.

16. The charge or charges in this case must arise from the Italian Law. I am advised by Commissario [illegible] that

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of the General Assembly, Sir Don Pitale who is a Graduate of Law, that there is such an offence as wilful murder, with alternative offences of manslaughter down to assault.

17. As against a plea of self defence, I would draw attention to the fact that nobody alleges, not even the prisoner, that the Lieutenant fired a shot. The prisoner admits that he stepped back a few paces before firing. Not one shot but three shots directly at the officer. I wonder whether it could be said that having stepped back a few paces, his obligation was to run away.

18. Another point in issue is the status of the Lieutenant at the time i.e. a member of the Guardie di Finanza and therefore on duty. This point is not yet clear. One must appreciate the unusual conditions existing on 5th June 1944, which has made the enquiry fraught with difficulties..
However, I am endeavouring to produce evidence showing that he was on duty. Statements will be submitted from time to time as they arise.

19. Respectfully submitted for information of legal department.

Thos Greenhill

T.W.M. Greenhill,
Captain
Public Safety Division,
Rome

In the field,

3.7.44.

Major Hendrickson, Senior Legal Officer
(thro' Col. Poletti)

Referred please

J Pollock Lieut.
Rome Regional P.S.O

3/7/44

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[illegible] OF DR. GETZEL

[illegible] HOSPITAL

Dissection Room.

At the request of the Allied Military Government I have today, June 7th, 1944 at 2.45 p.m. made the partial autopsy of the body of Giorgio [illegible]RDI of whose identity nothing further is known.

Queries were made to me by Captain Greenhill of the A.M.G. in regard to:

1) Presumed date of death.
2) Presumed age of deceased.
3) Cause of death.
4) Kind of injuries inflicted and their direction.
5) Type of projectile used.
6) Distance from which shot was fired.

The body of a man of apparently 25 years of age, partially undressed, lies flat on its back on the table of the dissecting room.

On inspecting the corpse green marks of putrefaction are noted on the supra and infra clavicular regions and on the lower regions of the abdomen. There are putrefactive desquamations of large pieces of skin on the limbs and on the back of the body. Rigor mortis has ceased.

On the top part of the left half of the thorax at about 2 centimetres from the sternum, on the 1st intercostal space an oval wound of 8 x 12 mm. with large axis having a perpendicular direction and edges which are clean cut, introflexed, ecchymotic and tattooed for a width of 3 mm. is noted. By testing it with a specillum it is seen that the wound penetrated the thoracic cavity.

On the back, in a position corresponding to the left paravertebral line and the 5th intercostal space there is another oval wound of 1 x 1.5 cm. [illegible] edges that are [illegible]ed, ecchymotic, [illegible] 89 [illegible] here the specillum confirms that the wound penetrated the thoracic cavity. [illegible] the [illegible] [illegible] wounds [illegible] on the body.

-pon/

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Upon opening the thorax an abundant quantity of blood (about 2 litres) is revealed, part being liquid and part coagulated in large red clots.

The examination of the passage of the bullet shows that this made a sort of tunnel and that the following parts were affected.

The skin and subcutaneous tissue of the front paries of the thorax- the aponeurosis and left pectoralis majoris muscle, the muscles of the 1st intercostal space, the front part of the left parietal pleura, the upper anterior mediastinum, the arch of the aorta (concave surface) the upper back plarietal pleura, the muscles of the 5th intercostal space, the muscles of the back, the subcutaneous tissue and the skin of the left paravertebral region.

In answer to the queries made, it may be deducted from the above data that:

1) The death occurred from 48 to 72 hours ago.

2) The deceased appears to be 25 years old.

3) Death occurred rapidly owing to acute aneamia caused by a wound inflicted with a firearm with bore through the left half of the thorax with partial injury to the aorta and hemothorax.

The bullet entered in front in a region corresponding to the 1st left intercostal space and following a slightly oblique downard direction came out on a level with the back section of the 5th intercostal space on the paravertebral line.

4) The bullet was of small calibre, probably of not more than 7 mm.

5) The distance from which the shot was fired was of about 1 to 1½ metres.

THE DIRECTOR
Dr. Mario Fontana
of the Institute of Pathologic Anatomy
at the U. University.

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QUARTIERI GENERALI DEL G.M.A.

IV REGIONE

DIPARTIMENTO LEGALE

16 agosto 1944

Oggetto : Caso Bentivegna Rosario

Per : Ufficio Centrale Avvocati dell'Accusa

Cap. Sam Gilreath

I. Ho qui davanti la decisione ufficiale sulla revisione del suddetto caso.

2. Poiché l'autorità preposta alla revisione ritiene che sia stata pienamente stabilita "la legittima difesa", l'accusato ha diritto ad essere rilasciato immediatamente.

3. Vi allego, quindi, la comunicazione di scarcerazione ufficiale con apposta la mia firma.

4. Vi prego di fare in modo che il prigioniero venga rilasciato senza pubblicità e di adottare quelle misure che vi sembreranno necessarie al fine di prevenire ogni ostentazione pubblica dell'avvenimento sia da parte dell'accusato sia da parte dei suoi seguaci.

Per il Magg. Robert C. Hendrickson

Ufficiale Legale Regionale

~~RESTRICTED~~

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV LEGAL DIVISION
A.P.O. 394

L/C/1000. 16 August 1944

SUBJECT : Case of Bontivegna Rosario.

TO : Central Prosecutors Office,
Capt. Sam. Gilreath.

1. The formal decision on the review of the above cause is now before me.

2. Since the reviewing authority holds that a "legittima difesa" was completely established, the accused is entitled to be released forthwith.

3. Accordingly I enclose herewith the formal release with my signature appended.

4. Please see that the prisoner is released without any publicity and take such steps as may seem necessary to prevent any public display on the fact of either accused or his followers.

ROBERT C. RUDDICK
MAJOR A.U.S.
REGIONAL LEGAL OFFICER.

RCH/GC

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~~CONFIDENTIAL~~

Classification changed to Unclassified by Authority of O.S.D. ltr, dated May 3, 1972. Date: 5/24/74.

DECLASSIFIED
Authority JCS ltr, 1/4/74
BY Lewis NARS, Date 5/20/74

16

MOD. No. 12
(rivedato)

FORM. No. 12
(revised)

COMUNICAZIONE DI SCARCERAZIONE AVVENUTA

Al capo delle carceri di Regina Coeli

Oggi, il Bentivegna Rosario,
dalle Competenti Autorità per la Revisione del Processo

è stato messo in libertà ~~dal Tribunale Militare Alleato~~ perchè

+ { gli è stato conceso la cauzione
  { è stato prosciolto
  { ha pagato la multa inflittagli
  { è stato giudicato ad una pena condizionale

Data: 16 Agosto 194 4

(Presidente del Tribunale Militare Alleato)

TRANSLATION

STATEMENT OF RELEASE FROM PRISON

TO: The Head of the Prison of Regina Coeli

Today Bentivegna Rosario
Reviewing Authority,

has been set free by the ~~Allied Military Court~~ because he has

+ { been granted bail
  { been acquitted
  { paid the fine imposed on him
  { been sentenced to a suspended sentence

Dated 16 August, 194 4

President of Allied Military Court
ROBERT C. HENDRICKSON
MAJOR A.U.S.
REGIONAL LEGAL OFFICER.

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DECLASSIFIED
Authority NND 785014
By NARS, Date

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Rec'd 15 18/44 X ~~SECRET~~ X LEGAL

AUG 1 4 1944

L/1017

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.
14 August 1944.

SUBJECT : Case of BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV

1. The record in the case of BENTIVEGNA Rosario is returned herewith with decision on review endorsed thereon. Please acknowledge receipt.

2. My decision on review, which is made with the approval of the Acting Chief Commissioner, is that the conviction and sentence are quashed.

3. The reasons for this decision are that in my opinion on the facts as found by the court, the defense of "legittima difesa" was completely established. I am satisfied that on this particular day the mere act by a young, excited Italian of drawing and pointing a pistol is sufficient evidence of an intention of shooting to justify immediate action by the accused in self-defense. Beyond this, there was definite evidence that the deceased "placed a round in the chamber." In these circumstances, where a life and death decision has to be taken in a fraction of a second, it is not in my opinion reasonable to expect the accused to deliberate upon the various courses which the court believed to have been open to him; still less is it reasonable to say that the method of defense which he did adopt was not "proporzionata all'offesa."

Richard H Wilmer

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

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

~~SECRET~~

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HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1030

8 August 1944.

SUBJECT : Decision of Court in case of BENTIVEGNA ROSARIO.

TO : "Corriere Giudiziario"
Avv. Lombardi,
Via Montebello N/22.

1. In accordance with your request, I am forwarding herewith the decision of the Court in the famous trial of BENTIVEGNA ROSARIO.

2. I will be only too happy to supplement, at your request, any further information in regard to the case.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

Decisione

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata né dall'uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applidazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 9.

REGION IV CASE N° 7762

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La Corte è convinta che l'imputato,vedendo il deceduto strappare i manifesti,gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato,in seguito a ciò,senza aspettare,tirò fuori ~~xxxxxxxxxx~~ a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte,questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui,senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. ~~In considerazione di ciò~~ Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una"offesa ingiusta"secondo l'art.52 del Codice Penale. Posto ciò,la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette i limiti della difesa proporzionata all' ~~xxx~~ offesa. Come ha detto il Pubblico Ministero, l'imputato,quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione,senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che sieno state scambiate parole dalle quali risulti che il decedato aveva una tale intenzione.In ogni caso,è chiaro che l'imputato aveva a sua disposizione altre vie,oltre a quella estrema da lui scelta.

In tali circostanze,la Corte decide:

1) che la difesa,basata sull'art. 52 del Codice Penale,non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato ~~xxxxxxxx~~

./.

dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e~~x~~ il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente ~~xxxxx~~ prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato fatto rilevare ~~xxxxxxxxxxx~~ alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio ~~xxxxxxxxxxxxxxx~~ nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 N° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62,N°2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuenti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

22

D e c i s i o n e :

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata nè dall'uno nè dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati originarono i fatti increscioni che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.
La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionev ole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato abbia ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa od invoca l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciare guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentament in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto.

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ed ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 Giugno 1944, giorno in cui, senza dubbio, l'atmosfera era carica di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di strappare la pistola non era di tale gravità e coercitiva una "offesa ingiusta" secondo l'art.52 del Codice Penale. Tutto ciò, la Corte

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è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette palesemente i limiti della proporzionata all'offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo quest'altro. Il fatto che il deceduto estraesse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risultò che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.
In tale circostanza, la Corte decide :

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato dall'ultimo paragrafo dell'art 59.

Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art. 589.
Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art 62 del Codice Penale Italiano.

In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie Italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art. 62 comma 2 ; ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato. Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè,-art.575 e 61 N.10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col beneficio dell'art. 62, N.2.

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti o se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere resa in base alle decisioni summenzionate, la Corte

è pronta ad ascoltare tali argomenti. Tuttavia, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'Imputato.

DECLASSIFIED
NND 785024
By NARA, Date

44

Legal

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1030 8 August 1944.

SUBJECT : Decision of Court in case of BENTIVEGNA ROSARIO.

TO : "Corriere Giudiziario"
Avv. Lombardi,
Via Montebello N/22.

1. In accordance with your request, I am forwarding herewith the decision of the Court in the famous trial of BENTIVEGNA ROSARIO.

2. I will be only too happy to supplement, at your request, any further information in regard to the case.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

46

47

DECLASSIFIED
NND 785014
By [illegible] NARA, Date [illegible]

45

D e c i s i o n .

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata nè dall'uno nè dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.
La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionev ole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato abbia ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciare guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentament in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto.

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ed ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 Giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una "offesa in giusta" secondo l'art.52 del Codice Penale. Posto ciò, la Corte

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DECLASSIFIED
NND 780044
By ... NARA, Date ...

è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colposamente i limiti della proporzionata all'offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.
In tale circostanza, la Corte decide :

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato dall'ultimo paragrafo dell'art 59.

Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art. 589.
Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art. 62 del Codice Penale Italiano.

In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie Italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art. 62 comma 2 ; ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato. Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè,-art.575 e 61 N.10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col benificio dell'art. 62, N.2.

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte

DECLASSIFIED
DND 78504
By [illegible] NARA, Date [illegible]

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è pronta ad ascoltare tali argomenti. Ma, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

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Decisione

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata né dall'uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 9.

REGION IV CASE N° 7762

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La Corte è convinta che l'imputato,vedendo il deceduto strappare i manifesti,gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato,in seguito a ciò,senza aspettare,tirò fuori ~~xxxxxxxxxx~~ a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte,questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da condiderare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui,senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati.

~~In considerazione di ciò~~, Pur considerando questo la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una"offesa ingiusta"secondo l'art.52 del Codice Penale. Posto ciò,la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette criminalmente i limiti della difesa proporzionata all' ~~XXX~~ offesa. Come ha detto il Pubblico Ministero, l'imputato,quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione,senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che sieno state scambiate parole dalle quali risulti che il decedato aveva una tale intenzione.In ogni caso,è chiaro che l'imputato aveva a sua disposizione altre vie,oltre a quella estrema da lui scelta.

In tali circostanze,la Corte decide:

1) che la difesa,basata sull'art. 52 del Codice Penale,non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore come contemplato ~~xxxxxxxx~~

./.

dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e~~x~~ il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente ~~xxxxx~~ prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato fatto rilevare ~~xxxxxxxxxxxx~~ alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio ~~xxxxxxxxxxxx~~ nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 N° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62, N° 2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

DECLASSIFIED
Authority NND 765014
By [illegible] NARA, Date [illegible]

48

1029

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.
5 August 1944.

SUBJECT : Petition for Review - BENTIVENGA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV.

1. I return herewith the Petition for Review in the above case and the Remarks of the Court. You will notice that I have written a note on the two last sentences - sentences which affect neither the verdict nor the sentence of the court.

2. No doubt, you will submit the record for review in due course.

I.G.H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

Encl.

REGION IV CASE N° 7762 43

ARCHIVES ASSISTANCE

DECLASSIFIED
DND 78004
By ... NARA, Date ...

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~~SECRET~~

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

L/1007

1 AUGUST 1944.

SUBJECT : Bill for service in BENTIVEGNA case.

TO : Avv. Ruggero di Segni.

1. The bill enclosed in your letter is entirely in order, however it is essential that it be submitted in triplicate to meet our procedural requirements, before it can be approved by the appropriate authorities.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

ENCLOSURES:

Letter from Avv. R. Di Segni to Legal Division dated 27/7/44,
Bill from Avv. R. Di Segni , dated 27/7/44 for Lit.4.000,= Re.
Bentivegna case.

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REGION IV CASE No. 7762

DECLASSIFIED
Authority: JCS 1/4/74 Ltr.
By: Lewis, NARS. Date: 5/24/74.

34

DECLASSIFIED
NND 785014
By NARA, Date

50

JUL 28 1944

AVV. RUGGERO DI SE"NI
ROMA - LUNGOTEVERE ALTO
TELEF. 560-809

Legal

Rome, Jr' : 27, 1944

1004

To: Major Hendrickson
Legal Division
Rome Region

Dear Sir,

I enclose herewith the bill regarding the case of Benti=vegna.

I have changed the figure we spoke about, thinking the importance of the case and the responsability would justify it. But will you please decide as you think better.

I thank you,

yours

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AUG 4 '44

Rec'd Aug 4'44

AVV. RUGGERO DI SE"NI
ROMA - LUNGOTEVERE ALTO
TELEF. 560-809

Legal

August 1944

1007

To : A.M.G.

ROME REGION

LEGAL DIVISION

I enclose the new copies of my bill regarding the Bentivegna case, as requested with your letter dated I August I944.

I return also the previous letter and bill.

Enclosures:
I) Letter and bill dated 27 July I944.
2) Two copies of the bill.

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DECLASSIFIED
NND 783074
By NARS, Date

51

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A.M.G.Superior Cou· Rome Area
Palazzo di Giustiz_a,Rome

July 10'44

Sibly
R.H.
1003

Rome ,July 8th 1944

Major Robert C. Hendrickson
C.M.P.,
Regional Legal Officer,
Roma

SUBJECT: A.M.G.v. BENTIVEGNA ROSARIO di VINCENZO

1. Confirming conversation with Capt.Gazziano the Prosecution is now prepared to proceed with the case on Wednesday July 12th 1944.
2. May arrangements now be made for a Court.
3. Copy charge sheet served on the accused is enclosed herewith.

Howell Jones Capt.
Howell Jones Capt.
Superior Court Prosecuter

Enclosure: Copy charge sheet

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DECLASSIFIED
NND 785014
By NARS, Date

52

Form. No. 4

ALLIED MILITARY GOVERNMENT
(GOVERNO MILITARE ALLEATO)

CHARGE SHEET
(FOGLIO D'ACCUSA)

Place (luogo): Rome

Date (data): 8 July 1944

BENTIVEGNA Rosario di Vincenzo — Name of defendant (nome dell'accusato)

Via Torino 122,Roma — Address (indirizzo)

is hereby charged with the following offenses:
(E' qui accusato delle off se seguenti)

First charge: Responsible of the offence contemplated by Art.575-61 N°10 Penal Code (Italian Law)

Particulars: For having killed in Rome,on June 5th. 1944, by three shots of pistol the Lieutenant Guardia di Finanza Giorgio Barbarisi.

Second charge

Particulars

TRADUZIONE

Prima accusa: Colpevole del reato di cui agli Art. 575 - 61 N.10 del Codice Penale Italiano

Dettagli: Per avere in Roma,il giorno 5 giugno 1944, ucciso con tre colpi di arma da fuoco il Sottotenente della Guardia di Finanza Giorgio Barbarisi.

Seconda accusa

Dettagli

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

The above charges are referred for trial before an A.M.G. GENERAL COURT,Palazzo di Giustizia,Rome,on 12 July 1944,at 0930 hours. (name and address of Court)

(Le suddette accuse sono riferite a processo davanti alla CORTE GENERALE del G.M.A., Palazzo di Giustizia,Roma,il giorno 12 luglio 1944, alle ore 9,30.)

By order
(Per ordine)

Judge, Summary Military Court or other authorized person.
(Giudice Tribunale Militare inferiore o altro individuo autorizzato).

FOR RIGHTS OF DEFENDANT SEE REVERSE SIDE OF THIS SHEET.

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DECLASSIFIED NND 785074 By NARA, Date

D e c i s i o n e

Prima di tutto la Corte desidera dic ara/~~xxx~~ pe che nel giungere alla decisione di questa causa, non è stata ~~xxxxx~~ determinata né dall' uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno ~~xxxx~~ membro di qualsiasi partito politico x o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che ~~x~~ non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in quelle particolari circostanze l'~~xxxxxx~~ uccisione è stata un atto legale o illegale. L'~~xxxxxxxx~~ imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agitoi in propria difesa ed invoca l'applidazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 93

REGION IV CASE N° 7762

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DECLASSIFIED NND 785084 By NARA, Date

La Corte è convinta che l'imputato,vedendo il decedutox strappare i manifesti,gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato,in seguito a ciò,senza aspettare,tirò fuori ~~xxxxxxxxxx~~ a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte,questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui,senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. ~~In considerazione di ciò~~, pur considerando questo la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una"offesa ingiusta"secondo l'art.52 del Codice Penale. Posto ciò,la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colpevolmente i limiti della difesa proporzionata all' ~~xxx~~ offesa. Come ha detto il Pubblico Ministero, l'imputato,quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione,senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risultì che il deceduto aveva una tale intenzione.In ogni caso,è chiaro che l'imputato aveva a sua disposizione altre vie,oltre a quella estrema da lui scelta.

In tali circostanze,la Corte decide:

1) che la difesa,basata sull'art. 52 del Codice Penale,non è stata completamente dimostrata. 98

2) che l'imputato non ha agito sotto qualsiasi errore come contemplato ~~xxxxxxxx~~

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DECLASSIFIED NND 785014 By NARA Date

dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 n° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62 n° 2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne. dell'imputato.

DECLASSIFIED
NND 785024
NARA, Date

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Form No. 8

ALLIED MILITARY GOVERNMENT

PROCEEDINGS OF AN ALLIED MILITARY COURT

Held at The ex Governatorato of Rome.

on the 14th day of July 194 4. and succeeding days.

Before Col. H.G. Willmer. Pres. } Constituting a General Military Court.
Lt Col. Jan Campbell. Member
Maj. R.C. Hendrickson Member.
(Name and rank of President and/ or Magistrate constituting the Court).

REFERENCE No. Avvocato Di Segni Ruggero sat with the Court as an Assessor.

ACCUSED

Name: Bentivegna Roberto di Vincenzo

Address: Via Torino 122. Roma.

Description: Single

Occupation: Medical Student

Age: 22

INTERPRETER

Name Cpl. Hugo Tellonia. is duly sworn

PROSECUTING OFFICER

Name: 2nd Lt. L. A Sabatino.

ADVOCATE FOR ACCUSED

Name and Address Avv. Corrado Perris
Avv. Adelmo Niccolai
Avv. Giulio Bonfi D'Arezzo.

CHARGE (S) 164

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

Charge Sheet attached.

REGION IV CASE No 7762

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DECLASSIFIED
Authority NND 725024
By [illegible] NARA, Date [illegible]

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

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

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14 July 1944.

The Court assembled at 0955 hours.

The Convening Order was read.

The Interpreter was sworn.

The Accused & his Defence Counsel were present throughout the proceedings in this Court.

In answer to questions by the Court Lt. Sabatino submits that a long term of imprisonment would be the maximum sentence.

Accused is arraigned, and pleads "not guilty".

Adv. Corrado objects to the jurisdiction, and applies that the case be heard by an Italian Court. Allied Proclamations had not yet gone into effect at the time of the alleged offence.

Court rules that case must proceed, with liberty to Defence to renew their application at any stage, if at the trial new points appear that there are good grounds for transfer to Italian Court.

Lieut. Sabatino

Prosecution will show that deceased was a member of Guardia di Finanza, and that he was working for the Allies when shot. He wore distinguishing marks on his clothing to show he was working under Allied authority. Deceased attempted to enter certain posters that had been affixed to the walls in this city. Accused became disturbed that deceased was attempting to enter posters. Accused asked him what he was doing. Deceased wanted to know who accused was and why he asked the question. Accused without explanation opened fire and inflicted fatal injuries on deceased. The homicide was unlawful and without justification.

DECLASSIFIED
NND 785014
By NARS, Date

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Rec'd July 13'44

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

SUBJECT : Order convening General Military Court.

In pursuance of the power conferred upon me by the appointment dated 1st. July 1944

I hereby DIRECT that the General Military Court shall meet at the Palace of Justice at 0930 hours on Friday the 14 day of July 1944 and such other days as may be necessary for the trial of the offences brought before it AND that the composition of the Court (in compliance with such order) shall be as follows:

Col. H. G. WILLMER	President
Lt. Col. IAN CAMPBELL	Member
Major ROBERT C. HENDRICKSON	Member

Dated 12 July 1944

Charles Poletti
CHARLES POLETTI
Col. A.U.S.
Regional Commissioner.

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CASELLARIO GIUDIZIARIO

PROCURA DEL RE IMPERATORE DI ROMA

CERTIFICATO GENERALE

Al nome di Bonfiglio Mario

di o fu Vincenzo di o fu

nato il in

Circondario o Stato di

Sulla richiesta della Banca Nazionale Albania

per motivo di ufficio

si attesta che in questo Casellario Giudiziale risulta:

NULLA

ROMA LI 12. LUG. 1944

IL SEGRETARIO

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Stamperia Reale di Roma (365-s)

DECLASSIFIED
NND 765004

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DECLASSIFIED
DOE

Verbale per l'uccisione del sottotenente
avvenuta il 5/6/44 alle ore 14.30 in Via Tre
Cannelle.

Io sottoscritto Ten. Col. Alessandro Virgilio di Cesare e di Giovanna
Aurelia nato a Roma [illegible]/2/91 arruolato nella forza di polizia con
tessera [illegible] del fun[illegible] affermo quanto segue.
Verso le ore 14 mi trovavo in Via Tre Cannelle [illegible]
[illegible] sentii alcuni colpi di arma da fuoco, vidi un [illegible]
[illegible] che si voltava le spalle fuggire il
braccio destro [illegible] sparò
quattro volte. Il militare [illegible] un
sottotenente [illegible] a cui [illegible] sparato
lo ispettore [illegible] dichiarò [illegible]
il suddetto Bentivegna Rosario fu Vincenzo e fu De Simone
Valentina abitante in Via Torino 22 nato il 22/6/922.
Il Bentivegna [illegible] un foglio sulla cassetta contenente
[illegible] sensazione per l'atto il Bentivegna [illegible] fornendo
[illegible] del P.C.I. n° 6577 in servizio presso il Comunale
delle Guardie (Vecchio Lavoro Fascista in Via IV novembre)
affermò di aver sorpreso il sottotenente nell'atto di
staccare i fogli [illegible] del giornale della Città e redarguitolo
[illegible] fu [illegible] e per difesa [illegible] fatto

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DNSD 78004

di avere fatto rinvenire sul luogo del delitto in presenza del
Sotto ten. Cappai Carlo fu Giuseppe e di
Tamburini Maria nata a Roma il 7/12/1920 abitante in Foro
Traiano 1 entrambi qui intervenuti, la seguente rivoltella
mod. 1889 cal. 7,65 con matricola [illegible] con
n. 5 C. I. trovata occultata nell'intercapedine del muro
nella via del detto giardino e precisamente nel punto
n. 1 [illegible] indicato nella planimetria
[illegible] Terenzi Domenico di Giuseppe e di [illegible] nata a
Roma il 17/4/909 abitante in Via Fogliano 15

Note: nella arma suddetta si trovano 6 cartucce cal. 7,65
cadauna marca Fiocchi e una vuota. Il
Ten. Cappai Carlo afferma di aver veduto
il sottotenente [illegible] e il Terenzi
e [illegible] [illegible] [illegible]
[illegible] [illegible]
Devendo in detto luogo [illegible] per
servizio il capo del sottotenente [illegible] un fu
ammazzato dal [illegible] Terenzi Domenico [illegible]
Tolto dalla strada dagli uomini del capo di guardia
del giornale. Fu tenuta di quanto sopra
Sup. Magg. Clemente Virgilio

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COMMISSARIATO P. S.
MARINA NAPOLI

Roma, li 25.6.944

N. 01000.Gab.
Risp. a N.°

OGGETTO FONOGRAMMA INTERNO

AL COMANDO ALLEATO =DIV.DI P.S.
Comando Zona di Roma Tel 67324
e.p.c., ALLA R.QUESTURA
R O M A

In seguito alll'annuncio pubblicato suo quotidiani locali relativo alla uccisione di un Tenente di finanza avvenuto il 5 giugno 944 in via delle Tre Cannelle si è spontaneamente presentato in questo Ufficio il Sig.Alessandri Virgilio di Cesare e di Giovannini Aurelia,nato a Roma il 22.2.910,abit'in via dei Pastini 133,il quale ha dichiarato di essere stato presente alla scena e di poter dare esaurienti ragguagli per il rintraccio dell'uccisore che egli assume essere tal BENTIVEGNA Rosario.

Faccio accompagnare questo codesto Comando l'Allessandri per gli ulteriori incombenti.

IL COMMISSARIO CAPO DI P.S.
(F.Cacace)

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NND 785014

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Report for the killing of a sub-Lieutenant happened on the

5th Juin I944 at I4.30 hours in Via Tre Cannelle.

I undersigned Sergeant Major Allesandri Virgilio,son of Cesare and Giovannini Amelia,born in Roma on 22nd Febr.I9I0,member of the Police Forces vith card and band N°I27I9of the Group Menotti,state the following:

Standing in Via IV Novembre at the corner with Via Tre Cannelle,turning my shoulders to the mentioned street,I heard to quarrel,I turned round and saw a gray dressed man,who was turning his back to me,to point his arm to a military man without jacket and fire three or four times. The military man who later resulted to be a sub-Lieutenant fell immediately on his back.The man who shooted was stopped,he had no documents, he said his name was Bentivegna Rosario,son of Vincenzo (dead) and De Somma Valentina living at Via Torino I22,born on 22nd Juin I922.The Bentivegna is a lithe man with a short and black smal beard. On his defence for the action,the Bentivegna,who wore a band of the P.C.I. (Italian Communist Party) N°6577 on duty at the newspaper L'Unità (previous "Lavoro Fascista" at Via IV Novembre),says of having surprised the sub-Lieutenant in the act of tearing the wall sheets of the newspaper L'Unità and having rebuked him he saw to point the pistol to him and for defence he fired immediately. A witness of the incident was Miss Cappoi Carla,son of Giuseppe (dead) and Tamburri Maria,born in Rome on 7 Dec.I920,living at Foro Traiano 1,she also armed with a pistol.Also this young lady was without documents and a meber of the P.C.I.,on guard of the newspaper L'Unità. They were leaded by me to the editorship of the above mentioned newspaper for their identification,and the Commander of the Guard of the Newspaper Mr.Terenzi Amerigo son of Giuseppe and Olimpia Gori,born in Roma on I7 Apr.I909,living at Via Fogliano 15,guarantied for them.

NOTES : In the hand and the proximity of the fallen sub-Lieutenant no pistol was found by me.Miss Capponi Carla states of having seen the sub-Lieutenant to point the arm to Bentivegna and that he was rebuked because he was tearing the above mentioned wall sheets.

As I had to go away immediately because of my duty,I was told by Mr.Terenzi Amerigo that the body of the sub-Lieutenant would be removed from the street by the men of the guard of the newspaper.

By truth of what above said
Signed:Serg.Magg.Alessandri Virgilio.

- - - - - - - - - - - -

Commissariato P.S.
Magnanapoli
N.OIOOOGab.
Object:Internal Phonogramm

Rome 23 Juin I944

To The Allied Command = P.S.Division
Command Rome Area =
and for knowledge to the R.Questura
R O M A

Following the notices printed in the newspaper concerning the killing of a sub-Lieutenant of the Finance Guard happened on the 5 Juin I944 in Via Tre Cannelle,Mr.Alessandri Virgilio son of Cesare and Giovannini Aurelia,born in Rome on 22 Febr.I9I0,living at Via dei Pastini I33,has willingly come to this Office and stated to have been present to the scene and to be able to give sufficient information for finding the killer whom he says to be Bentivegna Rosario.

I let accompany the Alessandri to this Office for the further proceeding.

The Chief Commissary of P.S.
F.Cacace.

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NND 785034
By ... NARA, Date ...

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Notes by Avv. Di Segni, Assessor

CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indi=cated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indica=ted by the articles 61 and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 61 N°10 : having committed the act against a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administra=tive or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service. 153

If the answers are negative, the aggravating circumstance of the

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art.6I Nº IO does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES.The extenuating circumstances which,hypothetically,might be concerned in this case are the follo= wing :

A)Art.62 Nº1 : having acted for motives which have a special moral or social value.

B) Art.62 Nº2 : having reacted when in a state of anger,caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury.It is also required the necessity of the defence,so that the danger or the damage could not be avoided unless with the defence.Besides that,the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the ne= cessity,it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imp= risonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance,the punishment which would be imposed for the committed crime is increased as far as a third.In no case,the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is dimi= nished of a period not exceeding a third (Art.65).Existing more than one extenuating circumstance,the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum=

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By NARS, Date

stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69).

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By NARA, Date

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Evidence for the Prosecution

First witness (Sworn)

Lieut. Filippi Silvestro, officer of the Guardia di Finanza. About 1.0 p.m. on 5 June I was at our officer's mess, in via Regina Elena, Rome. Some other officers were with me. I remember 2/Lt. Labue was there, also 2/Lt. Iannotta, also Lieut. Icalzi. There were others, but I don't remember who. 2/Lieut. Barbarisi was also there. I had known him since October 1943. He was in uniform, without a blouse; he had on his belt, and a white band on his arm with words in English written on it - except that I saw "A.M.G." on it. I spoke with 2/Lt. Barbarisi. I saw him again that afternoon. About 1600 hours I was on duty when I was informed by a Maresciallo that a 2/Lieut. had been killed. At 1630 I saw Barbarisi in Via Tiè Camillo. He was lying on the ground dead and covered with a blanket. My colleagues had ascertained he was dead. I [redacted] did not move the cover myself. I never saw his face. When they raised the body to take it away, I recognised who it was by the uniform and by the colour of his hair.

No xxxxx

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Second witness (Sworn)

Fontana Mario Luigi, Assistant at the Pathological Institute. I am a police medical practitioner. I saw the body the day I was authorised by Capt. Greenhill to carry out an autopsy. I was told it was the body of Lt. Barbarisi. It was a man of 25-26 years old. It was the attendants who told me who it was, and also the Captain, I believe. I carried out an autopsy. Death had taken place about 48 hours before. The autopsy was on 7 June about 1500 hours. Death was caused by acute anaemia caused by a bullet which penetrated on the top part of the left lung

1.

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By [illegible] NARA, Date [illegible]

of the thorax at mid 2 cm. from the sternum on the first intercostal space, an oval wound of 8 x 12 mm., on the left side. Death was caused by the bullet, which perforated the aorta, causing loss of about 3 litres of blood. Death must have been very rapid, because of heavy internal haemorrhage, within about 15 minutes. After a maximum of 5 minutes he would lose consciousness, because of the brain not being fed with blood. The shot must have been fired at a short distance. This is shown by the fact that it caused a large wound, and by the distance the bullet travelled in the body. The range must have been ½ to 1 metre.

XXd

I found one bullet only. I should say that the bullet came from slightly above, and obliquely, from front to rear. The inclination may be due to the fact that the bullet struck a bone in the thorax. The body was partially undressed, the upper part wholly. The autopsy was limited to the thorax and the abdomen, because what I found there fully explained the cause of death. We stopped the body completely upon examination.

No Rexton.

~~Lobat~~
By the Court

I did not find a bullet — the bullet had passed right through the body. I merely found a hole. I found no other wounds in the body at all.

Rexd (with leave)

There was a wound of entrance, and a wound of exit.

(Adjourned 1200 - 1350 hours).

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By dlw NARA, Date

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Third Witness. (Sworn)

Lieut. Jannotta Aldo, of the Guardia Finanza. About 1.0 p.m. on 5 June I was at the Officers' Mess in Via Regina Elena, Rome. Lt. Filippi, Lt. Calzi and Lt. Barbisi were with me. I saw Barbisi again that afternoon. He was dead. I saw him about 1615 hours in Via Tre Cannelle. His body was on the ground. I saw his face and recognised it as that of Lt. Barbisi. The body was covered by a blanket - I removed the blanket, saw the body was rigid, and that all appearances he was dead. I had talked to Lt. Barbisi that afternoon. When I saw his body in the street, he had boots, Trousers, shirt, belt and a band on his left sleeve. He had the band on in Mess at 1.0 o'clock. I was able to read some words - "Civil Police" - I am not certain. He had the same band when I saw him dead.

XXd

He did not wear a blouse in Mess. He had no blouse when I saw the body. I don't remember whether he was carrying a blouse over his arm in Mess. The blouse must have been there near the body, because when they removed the body one of them picked up a blouse. When I saw him in Mess he had his shirt sleeves rolled up. When I saw the body, the shirt sleeves were still rolled up. The white band was on the upper part of the arm, and the sleeve was rolled up to the elbow. He brought Lieut. Barbisi to the station, and with a colleague I made an inventory of that which belonged to the deceased. The list has been given, together with the articles, to the authorities of our organisation, and I believe that everything mentioned was to the deceased's mother. I heard that letter from deceased's mother. I don't know for certain if all the articles and letters have been returned to her. You can find out from the Carabinieri who took

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By NARA, Date

delivery, a few in Ricordi's workers. We were not a band in the shelter of Lt. Barbisio's House. I examined the House in the hospital where we took the body, and I found in the pockets. If there were a band in the shelter I should have noticed it. There were other words besides "Civil Police", but I don't remember what. When I saw Lt. Barbisio he was wearing his belt and holster, but I did not notice whether there was a pistol in the holster. I believe that the uniform was buried with the shirt; I heard that his uniform was looking for his bracelet and pursued it unsuccessfully in the pockets of the shirt.

No Revision

Fourth Witness (Sworn)

Castelli Alberto, commander of the Patriot's Group. I live at Via XX Settembre 98. About 2:30 p.m. on 5 June I was in front of the door of my H.Q. in Via Pilotta. A civilian passed me (I think is was a civilian), who said "They have killed a Finance Guard". I called two of my men and said "Let's go and see what has happened." I went to Via Tre Cannelli. Before arriving I saw an assembly of people standing around. I advanced with my men and went through. I saw the accused there. I was coming from Via IV Novembre and accused was coming away from me — the body between us. When I arrived there was confusion. I don't remember exactly how accused was dressed. He had a pistol in his hand. I asked him first "What has happened?" I asked "What has happened, who is killed?" The accused answered "I have killed". I don't know the accused's name — I spoke of the accused as I recognised him today as the man I spoke to. I also asked the accused "Why?" He replied "Per Legittima Difesa."

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I asked him to give me the pistol. He refused, because he said he had acted in self defence. He said he had acted in self-defence, because the Lieutenant had drawn his pistol. He told me when the accused had taken out his pistol, there was another civilian there who would have fired. He told me he told the Lieutenant to stop taking down certain notices. The posters which the Lieutenant was trying to take down are in glass boxes in Via Tre' Cannelle: they are glass cases, but the glass is missing. I don't remember what was on the posters that accused showed me. There was with the accused a girl who, the deponent said, could testify in his favour. I saw the Lieutenants' body on the ground. I don't think I knew him. I noticed he was dressed. He was not wearing his blouse — it was thrown on his shoulders, as it he had taken it off with my. I noticed a tear in the left sleeve of his shirt at the level of the wrist with some writing in indelible ink on it. I did not read what the had said — but I have since seen it. It was like this. I did see part of the hand which said "Police". The accused did not say how many times he had fired — I did not see him. When I arrived there was with the accused, besides the girl, a third man with the P.Scott's Evidence continued. I asked him what he was doing, and he said "I am waiting for my captain, whom I have sent for." I said "Yes, we will wait"; as I did not wish to be dealt with smoking that had been reported to another officer. As the deceased lay on the ground, his arm had moved slightly upwards. I did not see his sleeves were rolled up. But he had a blouse which he was carrying which covered part of his body. Only a small piece of the arm-band could be seen. The arm was obscured partly by the blouse, and partly by the position of the arm.

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xxd

I don't remember if the accused said anything else. I do not believe he said anything else. He had already said "I killed him", and I thought my task was completed, as the Captain had been already informed. Accused did not state was a "Volontario della Libertà", but I said that he was by his own hand. I believe it was a red band, with the letters VL. I was not too interested in that part. evidence — what interested me was that he should remain there. I did not recognise him as a Volontario della Libertà, so I simply asked him if the documents he had on that night were a hand. He had no documents, nor did the young girl with him.

No Question.

By the Court

I believe the posters were in Italian, but I am not sure, because I did not observe them. Rome was full of posters at the time and I took no notice of them closely.

Fifth Witness (Sworn)

Signora Rosati Anna, Via Tè Cenelli 15. I am a doorkeeper. On afternoon of 5 June I was in my kitchen, when I heard a conversation. I was in the front of my house. I saw a young man talking. I could not understand what they said. As I watched I heard a shot, and one of the two fell to the ground. I did not understand, as I was excited, being a woman, and I thought my son might be there. I got excited as soon as I saw the boy fall to the ground. I did not understand, because they were a bit distant, and I could not hear well. I did not recognise who it was. One of the men was military — the other I cannot swear.

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The one who was shot was the military man. I didn't see what he did before he was shot. I was inside, it came over only when the thing happened. I was in my kitchen when I heard the shot. I heard only the one shot. Afterwards I saw nothing, because I felt bad, & they asked me to close the door & my house. A young girl lived me, but I would not recognize her. I was at the door when I heard the two men talking. I was still in the same place when I heard the shot. Before that I was in the kitchen. I was in my house when I first heard the conversation. When I was frightened I went up stairs & in the second floor where I was asleep.

The military man who was shot was in grey uniform. I saw afterwards he had a blouse, but he was not wearing it. I did not see whether he had it on at the time of the firing, but it was on the ground afterwards.

xxd

I did not see anything. Only at night I saw the fences on the side of the body.

No Redirect

By the Court

The body remained on the ground till about 6.0 p.m. When I heard the conversation there were only - two people in the street. The conversation I heard was the second or fear, and I also heard people shouting. I did hear the two men talking, but I did not understand what they said. They were standing still near each other. I didn't see anybody but the two men. They were speaking calmly.

(A thoroughly unreliable witness)

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Sixth Witness (Sworn)

Signora Caterina Castellana Verzini, Via Tè Cannelli 15.
I am a property owner. I was at the window giving house on the afternoon of 5 June, about 3.0 p.m., on the third floor. I saw the officer walk across the street. It was the window of the hall, opposite to the door. It looks out on to Via Tè Cannelli. I saw the officer walk from my side to the other side of the street, and I saw him turn from the house on the other side three persons, on which were written "Viva l'Unità". All three persons were exactly the same. The officer had a blouse over his arm, his shirt sleeves rolled up, sleeves on, and a cap in his hand. He had no distinguishing features. I did not see any distinguishing marks on his arm. I did see the blouse over his left arm. I am sure there was no mark on the right sleeve. He succeeded in pushing down the persons. Then as he went down Via Tè Cannelli, ~~from~~ a young man appeared coming from Via IV November. The young man was accompanied by a young girl. He approached the officer and fraternised - placed to the upper part of his body near the head. I believe the young man asked why the officer had taken down the persons, but I did not hear with. They were close to each other almost body to body. Then I saw the officer begin to pull his pistol out, and then I heard a shot. I saw the pistol which was fired in my direction, but he was not in time, as the young man fired. After he was shot, someone, I do not know who, took the pistol away from him. It was a young man wearing a beard, not too long. I saw him from above. He had a beard. On his left sleeve there was an arm-band. I believe accused is the man, but I cannot swear. He had a beard and I could identify him better.

8.

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I don't know if the two men talked to each other - it was just an instant. The young man waited for the lieutenant after the shooting, walked in front, & did not move away. Previously I saw him moving towards the lieutenant, pistol in hand, and he had only time to say a few words before he fired. He did not move back before he fired. He doesn't long enough only to say a word or two before he fired. They were near each other when the officer got his pistol out. I saw the officer fall, who fell with his head pointing towards the middle of the road, feet towards the opposite side. Afterwards the young man stayed there with the body, pistol in hand, talked to one or two people. As soon as I heard the first shot I put my hands to my head, where I was from the window. I believe I heard another, not perhaps 2 other shots. I am certain I heard a second shot. They came one right after the other. I cannot say precisely how long.

XXd

I saw the Lieutenant take the pistol from his holster. I noticed that the officer was wearing - tied on his arm. It was a white band, I believe, with certain signs on it. The lieutenant had his jacket over his left arm. He had his shirt sleeves rolled up, and the jacket was over the upper part of the arm. I cannot be sure if the Lieutenant was wearing a cap. I did see a cap, either before or afterwards. He did wear glasses. Fig 13 Lieutenant was alone, and the other man had a girl with him. After the first shots, the people in the street approached the scene. I was about a half hour near the street in the archives in this Court. I was at the window to see the Americans pass by in the street. There were some vehicles passing along Via Quattro Novembre - which is close to Via Tre Cannelli. I saw an American

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time a photograph the 2nd Lieutenant. This was sometime later. I had been at the window already about 20 minutes when the shot was fired.

Re-d

I have attended here to-day because I was summoned.

By the Court

There were people on the corner of Via IV Novembre. That is within a few feet of my house, and of the place where the shooting took place. People were behaving normally, there was no shooting. Before the shot was fired there had been no disturbance in my street — there was complete calm. The three postmen were in three windows, one in each window. They were the only postmen in those three windows. There were other postmen in the vicinity, but the limousine only took down three mails. They were new postmen — four or either four running on the day before. I did see the limousine as the shot was fired and of the windows, when the shot was fired. I can only say I saw him leaning out — I cannot say what he did or if. I did not see if he was able to point it.

Further Re-d

I cannot say whether the limousine followed the shot.

Seventh Witness (Sworn)

Major A. Battaglia, Deputy Chief Public Safety Officer, Rome. We have employed many Italian officers to work for us. There was one called Giorgio Barbarisi. On the morning of my arrival, this officer was me, by order of Col. Pollock, to conduct me to Col. Pollock. That was at 4:30 a.m. on the 5th. He took me to Col. Pollock, and remained with me till mid-day. In the meantime I had proposed to this officer that he should

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remain
[temporarily, my personal assistant. He accepted, & I addressed a letter to his C.O., asking for him to be delegated for this service. He left me at mid-day for his meal, and I never saw him again. It was within my competence to ask for this officer, & I am responsible for the Carabinieri, Guardia di Finanza, Vice Questo etc. I entrusted the accused officer to carry the arm load, which is the same matter involved in civil parties to-day. I never told him what it — but he was issued with me authorised to wear it.

XXd

It was not necessary for me to wait for the reply of the C.O., before employing this officer. I wrote a a matter of courtesy.

No Re-cross

By the Court

The accused officer was ~~duty~~ due to return on duty at 2.30 p.m. He would have been on duty ~~my~~ personal assistant in the office. Till 2.30 p.m. when he was due back, he had authority to perform, in respect of any office — but of course a police officer is always on duty.

(Adjourned 1700 hours)

15 July 1944
Court re-assembled at 0920 hours.

Eighth witness (Sworn)

Carla Capponi, Foro Traiano 1. I am a student. On 5 June about 2.0 p.m. I was at the office of the newspaper L'Unità, together with my newspaper colleagues. About 3.0 p.m. I left, accompanied by Romolo Bustreppa, the accused. I had gone to drink water at a fountain in Via Tre Cannelle.

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Accused accompanied me - I don't know his - had any other motives. In Via Tè Cornuti I saw a man in uniform, who with his right hand was removing posters of L'Unità from the wall. He had a grey-green shirt with rolled up sleeves, a jacket thrown over his left arm, with no head covering. He had no distinctive sign on his arms. I did not see any. Accused said "Halt" to the man. He stopped. Accused asked the reason for his act. The military man did not answer, but asked who accused was. Accused produced hurriedly or a hand of the newspaper L'Unità - an armed hand. Then accused invited the military man to follow him to the questura. It was in the nature of a hand, not a civil conversation. They did not go to the office. The military man put his hand to his pistol - took it out, placed a round in the chamber, and pointed the weapon at Bentivegna. Bentivegna was armed, but he had no gun in his hand. His right hand was in his right trouser pocket - not the hip pocket. I suppose he had his gun in the right pocket. When Bentivegna saw the pistol, I looked round and noticed about 5 metres behind him an individual in civilian clothes with a pistol in his hand. I saw Bentivegna point the pistol to the left side of the head of the accused. When I saw the individual behind Bentivegna I threw myself aside and cried "watch out". I heard shots immediately following my crying out. Accused did not remove himself from Bentivegna - he just took one step back. Shots and fired, I believe 3 times. I cannot say if the lieutenant fired. I know there were several shots, but I don't know who fired. The lieutenant fell to the ground. Then he raised his upper half of the body and pointed the gun as accused. Accused was leaning down on him trying to help him. The lieutenant did

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not [illegible] the sitting position. He just raised the upper part of his body, raised his hands to his head, and then fell back again. He did not say anything. I thought his gestures were contractions of death. Accused only leaned down towards the Lieutenant. He still had the pistol in his hand – I believe in the same hand. I then ran and accused said "Look for help, look for someone". He said nothing else. I moved towards the entrance, but on the way I met a civilian with a police band coming towards us. There was not a sound. This civilian was the first person I saw. I think that those who had been there had left the place. I entered the Lieutenant the first time when I reached the point where I could see Via Tito Condotta and Via Condotta, and I then saw him [illegible] down the entire [illegible] the third window. I was in company with accused. When I saw pastore being wounded, I don't remember if I said anything to accused. I don't think accused said anything. In any case it was a gesture that we were in reply considered offensive. Accused showed this by saying "Halt" to the Lieutenant. He said it in a loud voice in an intimidating tone. The Lieutenant was already wounded. I noticed when he was wounding the pastore he made a gesture – if to wipe away in a hurry. I noticed he was surprised by the "Halt". I believe accused's gun was a 9 calibre Beretta. I have transported arms in Rome for some time, & became familiar with arms. This pastore Australian was shot by an Officer. I believe it was at the time of the detention that I ascertained the calibre. I think the detention was the day after the shooting. It was then accused told me it. The Australian officer said the Beretta was a good pistol, after we had the question of calibre came up. The conversation was between accused & the officer, but I was present. Accused said it was a 9 calibre. Before that time I did

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was discuss the time with accused. previous time I did not know what the calibre of the pistol was. I believe the policeman who took me knew the calibre. It was an Italian civilian wearing a police band. I believe his name was Alessandrini, but I don't remember exactly. (Penetta Giorgio is brought into Court) This is not the man.

XxD

Accused was wearing the arm band of Volunteer of Liberty. He showed it to the policeman, just as he had shown it to Barbarisi. Barbarisi did not say anything when he was shown the band. Accused had a document, but not a regular one — he had a false identity document. He had a false document, because he was being looked for by German police, + he had taken part in partisan activities. He told the policeman that the document was false, and that his name was Rosario Bentivegna. Policeman did not ask accused for his pistol. He said accused had the right to have it, since he had the band. Accused was connected with the paper or the newspaper office. He was of the Directorate of Central Liberation. I don't know what happened to the civilian that I had seen present. I think he ran away as the car. The Carabinieri which were only to the right. I don't know of other incidents that day that I witnessed myself. I know we feared that the Fascists might perpetrate acts of reprisals, we knew that were still fascists in Rome. We thought that were still some Germans in Rome. When I went away for help, the accused remained 2 or 3 metres from the body.

No Redirect

By the Court

Both the accused and the Second officer had pistols.

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I don't ... if they both fired. The accused officer was carrying his pistol in a holster. I saw him take his pistol out of the holster. As I have already said, he took his pistol out, put a shell in the chamber, and pointed the gun at accused. Accused already had his hand in his pocket, possibly it was a matter of habit. I saw accused take out his pistol. The lieutenant took out his pistol first and pointed it at accused, before accused had taken out his pistol. It is not correct that the accused pointed his pistol at the lieutenant first, and that the lieutenant then took out his pistol out of the holster. I don't know who the other civilian was who was standing a few metres away. I don't know, but I think he too fired, as I heard shots from close to me. When accused fired, the lieutenant had his gun in his hand. When the lieutenant fell, his pistol was on the ground on the right of his head. As lieutenant partly raised his body and his head. As lieutenant partly raised his body and his arms, the fingers of his hands opened, and the pistol fell to the ground. The hand is in his right hand. I cannot say I saw accused fire - it was my impression that he did. I had already withdrawn to the right. I cannot say I saw him withdraw his pistol from his pocket. I saw him take a step back, but he did not then have the pistol in his hand. Before accused took the step back, the lieutenant had already pointed the pistol at him - at his left side at the height of a man's body raised - arm. In the position while accused took a step back. The Australian officer has difficulty came to counter. I met him at the newspaper, because he presented himself as an Australian communist. The arm-bands, such as worn by accused, were distributed at the office

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of the United to all the patriots, but I don't know by whom. It was an official and by the National Committee of Liberation, not a band of one particular party. Access was in command of a band, composed of patriots who had entered Rome with the Allies. This was a band for the newspapers. I do not know who ordered the band. When I left the office with access I did not know he was armed, but I assumed so. That morning I had gone to the office to greet colleagues returned from God, and I stayed on to help the band. When I left the office with the access I was going for a drink. I have known access since the end of September. We are quite good friends. I see him often for reasons of work. I learnt the calibre of access's pistol when it passed from him to the Australian officer. The access had been at Palestrina or Valmontone, where he was operating. I was in Rome up to early May, or later than I left. I returned again about 3 or 4 days before the Allies entered. I think the access came to Rome a little time before the Allies came. I only saw the access's gun afterwards - immediately afterwards. It was a pistol - the same type as the one I have given to the Australian. From the command "Halt" to the shooting the lapse of time was just sufficient for him to say the words I have described. I cannot say how long exactly, as I was excited at the time. It was a minute perhaps - I cannot say.

(A good witness).

Ninth witness (Sworn)

Captain Greenhill, Capt. G.S., attached A.M.G. Rome Police. Lt. Col. Pollock delegated to me the investigation of this case, and to ascertain who was responsible for the shooting. I took statements. I took a statement from access, after cautioning him in accordance with the procedure in

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English la I saw accused at H.Q., Adm.G. Police, in Palazzo Venezia. I told him I was - Captain Pirzio and that I was investigating death of Lieutenant Guardia di Finanza, which occurred about 3.0 p.m. on 5 June. He replied - "Yes, I did it". I cautioned him, and he said "I want to tell you all about it". I said to him that I wanted him to understand that because we say anything further unless he wanted to; that if he did say anything it would be taken down in writing and might be used in evidence. I did that through an interpreter. I identify and produce statement made by prisoner after caution, taken down - my own hand, which prisoner signed in each page by accused. Accused signed the alterations and also the mistakes in spelling that I had made. I made no promises and no threats to accused before taking the statement. I did not offer any advantage if he made a statement. (Statement accepted and marked Exhibit 1). I produce and identify 3 cartridge cases in an envelope, which were handed to me by Lieutenant of the Guardia Finanza - I believe his name is Pasqua. They have been kept by myself safely. I actually received the cartridges from an Agente di Pubblica Sicurezza called Panetta. (Envelope containing cartridge cases marked Exhibit 2). I myself arrived in Rome on the very early morning of 5 June, about 4.30 a.m. I personally posted proclamations in Rome at 6.15 a.m. on morning of 5 June, particularly Proclamations 1 and 2; I posted them in Piazza San Lorenzo in Lucina, just off Corso Umberto. At 11.30 a.m. on 7 June I visited the mortuary at the building Hospital in Rome. I saw the dead body of Lieutenant of the Guardia Finanza, dressed in the uniform, which is well known to me.

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At 2.45 p.m. I was present at the hearing when Dr. Fontana Marcio carried out a post-mortem examination. I saw a wound in the front of the chest, and also a wound in the lower part of the back. The doctor examined the whole body, and there was no other injury apart from these two wounds. Later that afternoon I visited Via Tre Cannelle.

No XXIIIa

By the Court

From my previous experience as London police officer, I thought that the hole was probably a hole of exit. It was smaller than the hole of entrance. I saw the doctor ascertain that there was a clear hole right through the body. He did this with a probe. There was only the one wound in the body. I examined the deceased's clothes. He had his jacket on, his breeches, jack boots, shirt, collar and tie. I could see no sign of injury on the jacket, so I undid the jacket and examined the shirt, which showed a hole in front and another in rear. I did not then know the facts of the finding of the body, but I came to the conclusion that the deceased was not wearing his jacket. The shirt was slightly singed and blood-stained round the hole of entrance. The hole in the back was hardly singed at all.

XXd (with leave)

There were four tears in stitching round the hole in the shirt, indicating the shirt was pulled close to. It may have been so.

Tenth Witness (Sworn)

Pericle Giorgio, Avvista di Pubblica Sicurezza.

I received orders from Apt. G. in this case to make inquiries, and to collect signed statements. In the

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cause of the shots I came into possession of 3 shells. I identify Exhibit 2, as shells which I received from an officer of the Carabinieri some 10 days after the shooting. I passed them to Capt. Greenhill. I don't remember the name of the officer of the Carabinieri. From the time I received the shells till I turned them over to Capt. Greenhill was only half an hour.

Cross-examined

I took statements from all the witnesses, except Signora Vergilli whose statement I signed. At 1500 hours on 5 June I went to Via Tiè Cannelli. I was going to the office. At the corner of Via Tiè Cannelli, standing about 100 ft. away, I saw a body on the ground covered with a sheet. I enquired of the body and on receiving a reply from the body I uncovered the face. I recognised an officer of the Guardia di Finanza and one of the men of the Guardia di Finanza were standing near the body. I asked the Officer if he needed my help. He said No. I raised the Officer, and saw that the deceased was Lt. Barbisi, whom I had seen in the office that morning. A little distance from the body was the jacket of Barbisi folded. Near the window of the police boxes I saw the cap of Barbisi, also folded. I moved away and joined a group of persons who were present.

[Case for the Prosecution subject to calling Lt. Pasqua to give formal proof of the custody of the shells (Exhibits 2) .]

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The Court explained the rights of the accused.

(Adjourned 1245 hours.)

17 July 1944

Court re-assembled at 0910 hours.

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Aw. Addino opens.

The prosecution have not proved accused's act illegal. But the defence can prove his innocence quite clearly. We shall prove, first, that the incidents took place in an atmosphere of war, ~~and~~ that Bentivegna, under orders of Committee of Liberation, had to be in a state of anxiety & unrest. Secondly we shall prove that accused was a volunteer of liberty on Italy, charged with the task of guarding the Sacro of L'Urbe and adjacent premises against possible attack by Nazis or Fascists. Thirdly we shall prove that accused was authorised to carry arms. Fourthly we shall prove that the patriots were bound by orders received, and at the material time it was not yet known that the Allies were taking over all police duties. Fifthly Bentivegna and the other participants, removing the posters, was doing a thing that appeared to be hostile to the principles of the patriots — and apparently hostile to the Allies themselves. Sixthly the verbal exchange was principal objectively and subjectively. Seventhly Bentivegna reacted in a most hostile manner to accused's words, and has the right to use force and arms.

Eighthly accused had no other possible escape from danger, which was actual, immediate, except in the way he did act. Ninthly, in a true view of the facts, the act of accused was, from a psychological point of view, no more than a natural act of self-preservation. Tenthly the act is not punishable by Italian law because the act of defence of the accused was proportionate to the degree of offence offered.

Evidence for the Defence

Accused elects to give evidence on his own behalf and is duly sworn.

Rosario Bentivegna — age 22, unmarried, medical student. From 8th Sept. 1943 I have been engaged in partisan activities, in Rome and the surrounding area. Since 1939 I have engaged in political activities, and in September 1941 I was arrested by the Fascist police on

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security ... ends. I was called up, military service in January 1943, and discharged for my studies in May 1943. In November 1943, I became a member of one of the partisan groups (GAP) under auspices of National Committee of Liberation. I was a member of GAP Pisacane. The GAP are very light squads organized by the partisans for action in the city streets. I was the commander of the GAP Pisacane. In January, following the Allied landing, the National Committee ordered me to take charge of the Castrocielo partisans. I returned to Rome in March, when the arrival of the Allies was no longer near, and resumed command of GAP Pisacane. I left to leave Rome to go to partisan zone in early May. I returned to Rome on 2 June to bring a report to my superiors. My command was the military organizing of the Committee of National Liberation, working in concert with Allied military authorities. I was sent to Cassino and Frosinone by GAP commander, and I have carried out activities for liaising information. On 4 June, the arrival of the Allies was not considered imminent, my command sent me to the Partisan zone. I left at 7.30 p.m. Towards 11.00 a.m. on Via Tiburtina, I saw Allied formations, accordingly returned, considering that my mission was no longer valid. Returning to Rome, I got in touch with my H.Q., I made contact with my colleagues of San Lorenzo District. On the night of 4-5 I was ordered to stay out of activities for security and hide in the District. On morning of 5 June I left my companions of San Lorenzo, and went to search for my commander, that I knew I could find at the seat of my party. I did not notice Allied Proclamations during the morning of the 5th June. I went directly from San Lorenzo to the seat of the newspaper

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L'Unità, which was also the H.Q. group, and remained there for 2 days and nights. I did not move from Via Quattro Novembre and its surroundings, except that I went a few metres down that. I did not see Allied Proclamation posted in that area. On 5 June I was commander of the guard group surrounding the building of L'Unità. One group superiors gave me this mission. The building is on the corner of Via Quattro Novembre and Via Tre Cannelle, and stretches on to Via Della Cordonata. There were several posters around the building, hailing the arrival of the Allies, the liberation of Rome, the Allied Forces, the newspaper and the Communist party. Posters were of regular intervals — "Viva L'Italia Libera", "Viva gli Eserciti Alleati," "Viva il Partito Comunista Italiano", and "Viva l'Unità". There were no Nazi or Fascist posters on the building.

In the afternoon I was dressed as usual, with my shirt collar open and over my coat. I was wearing this hat. I had a very narrow band on my chin and moustaches which ended down to the neck. I had a red, white and green armband, inscribed VL (= Volontari della Libertà), with serial number and the stamp of the party. It had been given to me in San Lorenzo by my companions, from whom I departed on that occasion. The bands were given by the National Committee of Liberation, the numbers were known by the leaders of the Committee.

In the afternoon of the 5th I made frequent visits of inspection around the premises, but did not leave the vicinity.

At 3.0 p.m. I made a round of inspection. I went out through the main entrance on Via Quattro Novembre and directed myself towards Via Tre Cannelle. Carlo Capponi was with me. I did not know at the time why he accompanied me. When I arrived Via Tre Cannelle I saw beyond the "door" of the stairs

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an individual who, in keeping with another, was leaving
some posters on the last shop window on the building.
They are on the part of the wall which faces Via Tè
Cannelli (marked by crosses on attached sketch plan).
I also mark with a □ the door of the building from
which I came out. (Sketch plan attached to Record
and marked Exhibit 3). I did not recognise the two
individuals. One individual, slightly at the back of
the other was removing posters. He seemed to be in uniform,
or rather in parts of a uniform. The other was a little
in front of the first individual, a metre or so perhaps,
and I got the impression that they were together.
I don't think he was removing posters. There were no
posters in the shop windows. The second man was dressed
in civilian clothes. When I saw them, I approached
them telling them to stop doing what they were doing.
I addressed them both, but only one of them answered
directly to my "Halt". It was the military man who
answered. He was without a hat, with a coat
over his arm, his sleeves rolled up, and I cannot
say whether he wore any signs or not. I did not
recognise him as an officer, nor as an officer of any
particular branch. Many people in Rome had to
wear uniform, because they had no civilian clothes.
He was wearing black boots, breeches, a grey green
shirt, and a coat over his left arm. I know the
same uniform was worn for sometime by Italian
officers and officers of the militia — officers and
non-commissioned officers. His coat was folded and
had been tossed over the top part of the arm, and
covered the upper part completely. I don't know
which side of the coat was folded. The
military man was very excited. He seemed surprised

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or my "Left" as I turned to move off. He turned and addressed me in a most arrogant manner. He said he could do what he liked - in my case I should say who I was. I replied rather angrily that I was a volunteer of Liberty, and I showed him my badge. Both my gun were somewhat excited. As I answered him, the military man put his hand on his pistol in his holster (which was attached to his belt, rather towards the back), drew the pistol out, put a bullet into the chamber by cocking the pistol. He pressed the safety catch and pointed the pistol to the left side in the middle of my body. The pistol evidently had a clip in place, but presumably there was no bullet in the chamber. I had my pistol in my right side trousers pocket. I believe it was while he was pulling his pistol I was telling him I was a VL, and that he should follow me to the office of the newspaper. I told him of my intention of ~~arresting~~ escorting him to the Grand Hotel. He rested his pistol on the knight of my heart, with a very threatening air. I had my pistol in my trousers pocket, with my hand on it. My pistol had a bullet in the chamber, with the safety catch, and the percussion pin ~~loaded~~ cocked. In that position all that was needed was a slight pressure of the muscles between my fingers to put the percussion pin in a firing position. While the military man was drawing his pistol I had already done what I have described, in order to be prepared for the unexpected. All this must have happened in a very short time - I don't know if seconds, or whether they were fractions of my

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action. T. Lieutenant placed his hand to my head - I heard a woman scream - I took it my pistol - I saw the Lieutenant shoot - even before that I struck a blow with my left hand against the Lieutenant's right, depressing it slightly - I jumped back one step and fired 3 shots. I intended to replace the Lieutenant's pistol sideways. The pistol stayed in the hand of the Lieutenant till I saw him dying. I don't remember why I fired 3 shots, but I remember that I did. This was ascertained by the expert when he examined my pistol. I cannot be sure that the Lieutenant did not fire - I believe not. I am sure there were other shots besides my three. I heard more than 3 shots - I believe 5. I don't know who fired them, or from where. I got the impression from the whole thing that they were fired by the other man who was with the Lieutenant. My conviction is that Carlo Capponi was somewhere around from me, a little behind me, and to my left. When I fired, the Lieutenant fell, but the Lieutenant in that have already been disarmed, and then had the pistol, which was found to the right of the body of this head. I sent Carlo Capponi to go to help, because it did not seem that the Lieutenant was dead, but after a few minutes he died. At the moment of the shots there were four people in that part of the street, and none of them ran off. After the fall of the Lieutenant, people began to gather and look around. I began, as was my duty, to keep order. I did not recognise the Patriot Carlo (Costelli Alberto) when he started to give evidence, but I recognised him later when he gave evidence about the conversation. His account of the conversation was correct but omitted one thing. I told him, as he said, that I had acted in Self-Defence, and I told him that this was not the only reason that I did not hand

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him to come. In fact I told him that I had given
account for that case to my superiors at the news-
paper office. It was after going that the officer who
questioned me told the Commandant that I could keep the
case, as I was telling the truth. I remember that some
officers of the Allied forces came to the scene, saying that
they had seen — I don't remember exactly. The members
of the Allied Forces came first. I remained on the spot
about 20 minutes or half an hour. The officer asked me
for documents, and I told him that I had only false
documents. I showed them to him, and also gave him
my false particulars. (Brigadier Colantonio Ovidio
is known in the Court). I believe I recognise this officer
as one who came up immediately afterwards, but he was
dressed in civilian clothes. The Brigadiere came at the
same time as the Americans. I left Rome on 7 June
for reasons of too much delicate. In the Fascist Army
I served only as a enlisted soldier, therefore knows
nothing about me. I tried to bring help to Barbarisi
if this was possible.

XXd

Antonello Trombadore was the person who gave me the order to
found this building. He had been my young commander
when I was with the GAP, and when I was sent to Command
the Partisans. He was one of the members of the Rome
military Committee. I think he was the vice-
Commander of the Roman National Front, of which I was
a member under the National Committee of Liberation.
I am not ashamed to talk with him because of his
official position I am not sure. At that critical time
we all had to keep our personalities disguised. In that
clandestine period, Antonello Trombadore was sought for
by the Nazi-Fascist police, and written for the first time

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that I was a big real name. He I had been one young commander in the Partisan period. Also at the time he gave the order he was in company with Giacomo Pellegrini, one of the leaders of the Italian Communist party. Before I was put me there had been a panel, which was not too distinct, — people gathered in front of the building and there was confusion, and I was told to take charge. Miss Capuci did not come to call me. She had come to L'Unità to greet her colleagues, and among them she found me. I had seen her during the morning, at dinner in another place, and several times during the day. I don't know precisely myself what she was doing when she came up with me. It was probably as I was going up the door that I got into her company, but I cannot remember. Nobody told me that someone was trying from position — I saw it with my own eyes. I saw the two as I have described. The military man was the master of the two I saw. The military man was the slave of the two & the position — the other was a little behind to the right. I could not see or note how many positions he had been down — I saw later three were dead. The military man wore blue boots, but I did not see if he had spurs. He was wearing grey-green breeches. He had a shirt of about the same colour. He did have a belt, but not the cartridge belt that goes over the shoulder — or possibly I did not see it because of his coat. The coat was thrown over the top part of the left arm, and perhaps covered part of the shoulder. I don't know over which shoulder the cartridge belt goes. I did not see any other particulars in their manners, & don't believe anyone else would. When I called "Halt", the military man turned round, after giving a glance to the other man, and came towards me. He pivoted on his heels & then came towards me. At a certain point we met.

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After a little time he said he could do what he liked, & could see I was. After I spoke to him — with his pistol, put a bullet in the chamber, & pointed the pistol towards my heart. When he did that I believe I said nothing. He said nothing - he had already said something before. When he pointed the gun at my heart I, since things were happening around me which were of importance, put my hand in my pocket & put my pistol. With the movement between the first two fingers I raised the percussion cap, and kept my grip ready for the unexpected. I was doing this while he drew his pistol. The instrument he put his pistol pointed to my body, hoping I took mine out completely. I believe I took mine out at the moment when he actually rested his pistol against my body. At that moment we did not speak to each other. I cannot say how long elapsed from the time the 2 shots were fired from elsewhere. I did not allow his time to fire because I knocked his hand away — as for this reason I cannot say whether it was the instrument which fired the two shots or not. I gave the blow with my left hand. If the instrument had been I was armed, perhaps he would have had time to shoot. He had time to take his pistol. After he pointed the gun I gave the blow which deflected it. Possibly I was more ready than he, and thought quicker than he did. In other times it might have been possible to talk away, but we were in an excited atmosphere on that day. I knew something & was about me: I saw they were acting together, and I thought my life was in peril. I was told that the [illegible] Nazi-Fascist element in Turin, and that me & my companions had been wounded. I was informed that in Piazza Venezia a negro soldier

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had been attached and wounded in the hand, and later in the day I saw him from my office window - bandaged. My Command had ordered me to be specially alert against acts of sabotage against the Committee of Liberation and the Allies. All the things I had heard and seen made me more puzzled and particularly in being my duty in a good. My own person was exposed to danger. All the patriots were as excited as they could be. The things that happened did, however, disturb the general feeling of happiness amongst the general people of Rome. I have always been anti-Fascist. The Guardia Finanza was not a Fascist organisation, any more than the Carabinieri or the Army. I agree this is strange - but in fact during the last 7 months the Guardia Finanza has done many things to help us - though of course many of the officers were against us. I did not know the officers were against us. I knew there were officers hostile to us in all the organisations. I had no sympathy against any one. I joined a party that was for me and my principles and my organisation - i.e. against the Nazis & Fascists. When I saw the Lieutenant tearing down posters, it was an indication that I suspected with a Nazi or Fascist. During the last 9 months I have myself torn down many Nazi & Fascist posters. Seeing is made me angry. I did not see the uniform. Seeing military dress meant nothing. Patriots were always our friends and supplies & food to those whatever we could lay hands on. The Lieutenant did not tell me who he was or M. I. does know what I should have done if it had been an old man. I only fired at the Lieutenant because he pointed the weapon at me, this hand fired, and not because he was tearing down the posters. When the pistol was against

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my hand I stepped myself against the ... district Surgeon. I agree it is possible that the third man fired with the air just to frighten me. In fact both my ears were injured, and I fell. To tell the truth I did not aim at all.

(Adjourned 1245 - 1420 hrs.)

As I said before I should had my hand in my pocket when the lieutenant was preparing his pistol, and with the membrane between my two fingers I pulled back the percussion cap. Meanwhile the lieutenant drew his pistol and cocked it. The action of the lieutenant and myself were simultaneous and I cannot give the exact sequence of time as to these acts which succeeded each other with such amazing speed. I extracted the pistol, gave a blow to the lieutenant's arm, took a step backwards, and immediately afterwards fired. I cannot say exactly when it was the lieutenant pointed his pistol at me. I have no point of reference. All I can say is that he did it. Perhaps the blow of my hand was more rapid than his pulling the trigger. I cannot say whether my blow was heavy or light, it was sufficient to displace the pistol. My jump back was - I should say back, and I should say I fell before my backward movement stopped. I only tried to displace the arm - I did not try to take his pistol. I agree that a certain point both our pistols were out. The lieutenant's pistol I should hardly have pointed towards chest when I gave the blow. The lieutenant said nothing. I heard 5 shots altogether - I cannot give the sequence of the shots. I did not say I heard 3 shots followed by 2. (When witness said "the pistol fired") After moment I don't know that I should have noticed the flame of the lieutenant had fired. I fired 3 shots, and I heard them clearly. I cannot say if the other 2 sounded lighter or lower - I was too excited at the time. I have never said the lieutenant fired the two shots. I said that I believe he did not fire. Even if he had fired I should not have been able to note the fact, I was so excited.

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I did not see the lieutenant because he had fired, but because his thumb was the most immediate to my left 2 shots were fired by someone else. The enemy further away has less possibility of doing injury than the nearer one. The lieutenant's coat covered his left arm from elbow to shoulder. Even when the lieutenant withdrew his pistol replacing the holster in the chamber, the coat remained in the same place. He was exerting pressure to keep the coat in the same place, and still had the arm in the same position when he fell. I have myself, when firing the German, fired a rifle while holding 2 or 3 other cartridges in the other hand.

(Witness gives a demonstration in Court with a borrowed Czechoslovak coat and pistol).

If you could see my upper arm then, it was because you had special reason for looking. I had no special reason for looking at the lieutenant's arm. I don't remember on which side the lieutenant carried his holster. I had the impression it was on the right and to the back. If I did not see the hand, I may suppose it was not there. I guarantee that I did not see it. If my statement say that I took a few paces back, it may be due to a mistake on the part of the interpreter.

No Reaction

By the Court

My job was to supervise the discipline of the guard on the building. Generally the duties of the guard were to keep order, to drive crowds, remove loiterers, and to keep the street clear. We feared armed attack on the part of armed Nazi & U Fascist elements. It was thought that these elements might show themselves openly. We stayed up all night that night, awake, because we had received news of an attack on Torpigotana. There was never an attack against our building. I did not regard the lieutenant's presence as an indication of an attack - merely as a demonstration. When I made my tour of

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inspection I was at looking for sighting : rifle. I had been on the move all day. It was not strictly a time of inspection. I was simply going from one place to another. I had no particular destination. My weapon had been given to me by a companion. I had received no specific instructions as to opening fire. I was just invited Barbara to accompany me to the newspaper office. I think the time was about 3.0, perhaps 2.45. I don't think it can have been before 2.30. I thought the crowd I had did give me special authority. I mean authority to maintain public order. The band was in the nature of a unipform. They orders were to maintain public order, if other were disturbed by any one whatsoever. I thought I had authority to fire in case of necessity. In case of disturbance my duty was to quell it peacefully — if it was an armed attack we would have answered with arms. Five or six, or perhaps ten, minutes after the shooting I moved away a short distance to carry out my duty to preserve order. Up to that time the lieutenant's pistol had been lying in the same place. I do not know whether the witness Alberto Castelli arrived before or after I moved away. During the time I moved away from the body the lieutenant's pistol disappeared. I immediately looked for it. At that moment an agent of P.S. had arrived and I handed over to him. He is not in Court. I should know him again. I asked those present where the pistol had gone — no notice was taken, but with no success. I agree it was a serious matter — but I was alone, and I was surrounded by a fairly large crowd. I believe I have been asked about this pistol before. The leaving down of the posters was not a cause of my firing. It is true it is an indirect cause, and I should not have interfered if the Lieutenant had not touched the posters. I got the impression that the lieutenant was unhappy at the

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hand up [illegible], and then he was a big in - hostile way because of it. At his moment - was unable to control my emotions, and I don't know what effect it would have had on me if I had seen that the Lieutenant had an arm band. If I had seen an arm band I might have asked him more calmly why he was wearing posters. I don't think people employed by the Allied Forces would be likely to tear down our Communist Party notices. If I had known the Lieutenant was employed by the Allied Forces I should have addressed him in a calmer way. Actually I did address myself to him in a hostile way. I did not think of the effect of doing so at the time, because I was very incensed. I would agree that the way things happened we both lost our tempers. I do not agree with the evidence given by Signora Vergini. I do not know her, and she has no reason to concoct a lie against me. I think her observation was bad. I did tell the police that I had knocked away the Lieutenant's pistol with my left hand. I cannot explain why it is not in the written statement, as I regard it as most important. My pistol is a gift from a Companion, and I gave it to an Australian. Arms were not issued by our superiors, we had to use them for ourselves. I had the right to carry pistols - we were fighting and risking our lives. My band was sufficient authority to carry arms, or least according to the Allied Radio. I speak of bands issued by the Committee of National Liberation. I did not think the band gave me the right to defy the law. I was defending the law. It was after I entered Via Tè Cannella that I first saw the Lieutenant. He was about 10 metres away - I cannot say exactly. I in fact started work for the Brigata Partisana without any training in

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arms. I fired 2 pistol shots in combat since then I have had a lot of experience in the last years.

Second witness (Simon)

Colantonio Ovidio, Centro Raccolta dei CC.RR. I am a Brigadiere of CC.RR. Before 8th September last I was in the Internal Camp of the CC.RR in Rome. Since 8 Sept. I have not been on duty in Rome with the Fascist Police. I was part of the Patrizi museum's band. The band operated in Rome and outside. On 5 June about 3.0 o'clock I was in an American jeep, with an American Captain, a Sergeant and a driver — also an American prisoner who had been my guest for some time. At 3.0 o'clock we were in the corner of Via IV Novembre with Via Tè Cavalli. The American prisoner left a statement with me.

(Statement produced and read by the Court. It contains nothing but an unbiased testimonial to the character of this witness, and after proof is handed back to the witness).

We were visiting various allied offices trying to find a uniform for my prisoner. We were in Via Quattro Novembre ready to turn into Via Tè Cavalli — we were stopped by traffic waiting to cross the turn. I was sitting beside the driver looking into Via Tè Cavalli. I saw a man in uniform with sleeves rolled up, jacket folded over his arm, running down pavement. The partisans said Viva L'Unità, Viva l'Esercito Alleato, etc. I did not notice any particular sign on the sleeve. Later I recognised him as an officer. I did not notice if there was a band on the jacket. Our disciplinary regulations absolutely prohibit appearing without a coat, whether on duty or not. This is a general application to the police forces. Military discipline prohibits it. The band is supposed to be worn on the left arm on the

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blouse, and a shirt. After the officer had taken from 3 paces he continued to walk along via Tre Cannelli towards the Stairs. He and we were nearest the Stairs. On the lower via Quattro Novembre a young man and a young woman appeared, going in the same direction. I recognised them both here in Court (witness points to accused and to Carla opposite). But the young man then had a light hand. Accused said something aloud — but I could not hear what because of the noise of traffic — and the officer then made half a turn. There was a brief exchange of angry words, which I could not understand, but could see. The officer then took out a pistol from the holster. I saw him load the pistol, cock it and point it against the accused.

(Court adjourned at 1700 hours).

18 July 1944.

Court re-assembled at 0915 hours.

I saw accused put his hand in his right hand pocket, take out his pistol, [with a lunging gesture] shielded himself with his left hand, draw back a step, and I heard some shots. By a "lunge forward" I mean a rapid gesture. I followed Bentivegna as he was approaching the officer. He did not have a weapon in his hand — he was arm in arm with the young woman. I can definitely exclude that he had a weapon in his hand. The young woman was — the left, the accused was on the right. By "shielded himself with his left hand" I mean he tried to deflect the weapon. I don't think accused stepped back more than one pace, because they were very near each other. I heard 3 or 4 shots — then there was an echo, and I [138] say positively two only I heard altogether. When the shooting took place the military men fell backwards. Then he made a gesture — as to rise, and took gestures with his hands. He made contractions with his hands, still trying to rise; then he fell back again, and the pistol fell from his hand, and remained on the ground level with his right shoulder.

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I did not notice how the officer was armed. I saw the Fire and Guard. I saw the officer take down 3 posters. I only saw one particularly, which said L apostrophe Something - I assumed it was L'Unita. When I saw the posters being taken down I saw 2 or 3 other persons near the officer, walking by. I saw someone near him, behind officer. I did not notice who was the closest person to the officer. Accused and the officer were the persons closest to me. I could not precisely say how many shots were fired. I do know who fired the shots, or if the same person fired them all. I was dressed in riding breeches and a light coloured jersey — civilian clothes. I had a brassard with the word "Police", and a rectangular piece of cloth, with a star, showing Section Commander and Squad Leader, on my left breast. I was with 3 Americans. I walked towards the wounded man to see if I could help. When I arrived near him he died. Accused approached me and said "I have not killed him to commit a murder; I did it in self-defence". He also said "Sergeant, Lieutenant, I put myself at your disposal, in order that Light may be shed on all the facts". I imagine he called me Lieutenant because he saw the star and the band. The Americans with me said that having seen what happened they would have taken care of it all. When the Americans left the scene, they left accused on the spot. They did not speak to accused at all. The Americans spoke amongst themselves in English. I did not see that the officer was acting under the authority of the Allies. On the 5 June I myself surprised some false partisans with bands on their arms who were pillaging a villa. I arrested a member of the German S.S. who wore a band and had regular documents. That was about 9.0 a.m. on the 5th.

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About 13 : 00 I was present at the pitching of the villa.
I am sure because on Saturday evening I saw a newspaper article about this case. I read that the witness Castellani had been unable to indicate the point where this took place and had contradicted himself. That was in the "Ricostruzione".
I reported the fact to my superior officer, Maresciallo Maggiore, De Angelis, and I was invited by him to come here to testify. I went to the Maresciallo commanding the Station at the Palace of Justice. He accompanied me to the Printing Office — this was about 12.0 noon on Saturday.
I found there 2 civilians, one at the table and one at the typewriter. I did see armed patriots in Rome on the 5th.

xxd

I have been 12 years in the CC.RR. I first met accused on 5 June, after the incident. I had never seen him before. I do not know what party accused belongs to. To go without a blouse is not permitted. Badges of rank, by the rules, must be worn on the blouse. I don't know the names of the American captain and the American sergeant-major.
They were just visiting — following the 5th Army. The prisoner said he was leaving for Foggia. I told the story to my Superiors last Saturday. Previously I told it only to my family. It did not occur to me to get the names of the American Captain and Sergeant. I was convinced that the Americans would have taken care of it all. I don't know the nationality of the accused.
I spoke to him in Italian. The accused was in Italian. On 5 June I had not yet resumed duty with the CC.RR. I am now with the Centro Raccolta. That is a Company part of Disbanded CC.RR. He should be despatched from there and given the necessary documents. I don't really know my status at present.

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We were going out in the jeep to the different Allied commands in order to find a witness for the prisoner. I left the Americans right after the incident, about 1530 hrs. I went to the Band H.Q. We were going from Via Cesare Battista towards Via Nazionale. We were in front of the L'Unità Building. To turn into Via Tre Cannelle the jeep had to turn left. We had to stop because the traffic go past. I saw the Lieutenant turn down 3 persons. He was dead when I arrived on the spot. I got out into the street, walked to the Lieutenant, and found he was dead. When I saw him turning from the Augustus persons, we were in the jeep, stopped - via Nocelle Cannelle We were still there when the shots were fired. We had to wait for many cars. They were military vehicles. In spite of the traffic I could see all I have stated. I do not know who fired the shots. I left word - before they wanted to see the Prosecutor. I did not say when I was coming back. Immediately afterwards I saw an employee of the Lawyer, and said I could give evidence, & left my name and address. Immediately afterwards I was told by Avv. Nicolai to be here on Monday. I do not say that witness Castellani gave wrong evidence - all I say is that what I read in the newspaper was wrong, and the contradicted himself. The American Captain took down the name of the street. I did not tell the accused who I was.

NO Re-xtn

By the Court

There were 5 persons in the Jeep. I was at the back of the Jeep on the left. In front alongside the driver was the Sergeant-Major. The Captain and the prisoner were in the back. The Captain was on the right, and

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the prisoner was on the left side behind me. I was sitting with my feet hanging outside the vehicle. The Captain was a Captain of the Military police, and the Sgt. Major was also Military Police. I only know that they belonged to the 5th Army. They were wearing hands, and the prisoner told me he was a Captain, because I could not distinguish ranks. Only the Sergeant Major was wearing a hand - the Captain had a field jacket. They came to find me in the via dei Gracchi, where the prisoner knew that I lived. I was in the office of the hotel, and they asked me to go in their accompany them, because me as a guide to show them where the different stations were. When the traffic cleared, the car turned left into via Tè Cannella. In Via Tè Cannella is stopped, and we got off. I got off first. In the car remained only the driver. I went immediately over to the wounded man, and then I spoke to accused. The Americans remained at the back of me. They were there in the street for everyone to see. I could do nothing because the hand had been handed and I could not be seen. I don't know what the Americans were thinking. Immediately afterwards we went to the Bar at the corner of via Tè Cannella. As soon as accused said he was staying and wanted to give an explanation, we all went away to the Bar and left accused there. It seemed to me that the Americans did not attach too much importance to the incident - they invited me to the Bar. I agree that I thought their action in doing so was most extraordinary. I also declared that the body had to be removed to hospital. The Captain and the prisoner said they would take care of that. I don't know what steps they took. After we came out of the Bar, accused was still there - and then a civilian came who began to manoeuvre around over the body. He said an Italian police captain would have come.

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I did not attach any more importance to the matter, because I knew the Americans would take care of it. That is why I did not speak till Saturday. Until Saturday I never saw anything about this case in the newspapers. We had nothing else to do on that day except look for a suitable prisoner. When we came out of the Bar, we went to the place where the incident took place. We stayed a few minutes. Benvivegna was still there. Since I had to go to the office of the Band, for the handing in of arms, I asked him to accompany me, leaving the others on the scene. I first met the Americans about 1430 hours. As long as I was with them they did not find a suitable, because the stations we went to had none. The first place was Pincio, Villa Borghesi, and we found some there. Then we went to the Station of Central Petrio. At these places we found military personnel but no suitable. I don't know the units who were at those two places. At the second place we found some American soldiers, but they told us H.Q. had not arrived yet. We also went to Piazza Venezia, but we learned at H.Q. We were told there was a H.Q. there, but before going to it the Captain wanted to go to the Bar. So we turned back to the Bar. At the time of the incident we were going to the Bar. I saw the lieutenant point his pistol at accused. I saw him fall to the ground. When I arrived there was only accused and the lieutenant. I saw the lieutenant's pistol in his hand and on the ground. I did not touch the pistol. It was still there when I left. It was still there on the ground after we came from the Bar.

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he were any in the Bar for a drink. I believe the
pilot was a Beretta, but I did not examine it. I was
wearing a star and an armband. They took the usual
steps then we had received from the Board. The Allied
Command had already ordered the Board to be dissolved.
I did not think I was on duty. I don't know whether
organisation allowed belonged. He was wearing an armband -
also a tie-clasp, but I did not notice the writing on it.
The first time we both were summoned since we had
been active patriots. I did not think accused was in danger
of being tried as an assassin. That is my personal opinion,
as I saw that he only signed himself. Accused told
me his name. I did not know if it was true or false.
He did not show me any identity card. The young lady
confirmed that he was Beretta. I made no inquiries.
I have not seen the American Captain or Sgt. Major since.
I saw my friend the prisoner about 2200 hrs. After dinner
evening. He left my house, not coming by light. I have not heard
from him since. I did not make any written notes.
I made no note of the names or addresses of the officers.

Further xxd (with leave)

I did not discuss this case with my prisoner friend
after night. I did not return to the scene of the crime.
I did not take any further interest in the case, because the
American Captain said he would take charge of it. I
had no contacts with my prisoner for some days. 135

Further Read (with leave)

The name of the American Prisoner is Lt Sergeant John B.
(it is
a false name) and according to the letter in my possession
his serial no. is 1907607.

(Adjourned 1215-1330).

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Third Witness (Rosen)

Mario Cevolotto, Avvocato, Via Valadier 35, Roma. I am not a communist. I belong to the Democratic Party of Labour. I am the General Political Secretary of the Party. The political directives of the party depend on its organisation and tradition. The tactical direction depend on me. During the 9 months of Nazi domination the Federal Secretary, Bardi, came to meet me, but I was able to hide and carry on my activities under cover. They arrested my wife and kept her for 3 days. I was a member of the National Committee of Liberation, being second member in my committee, under Marcello Luini who was first member, and being also a member of the Military Detachment. This constituted the Command of the different bands, and was composed of a member of each of the 6 parties, for the deliberation of military problems. The Military Detachment had contact with Marshal Kesselring's H.Q. It was commanded by Col. Montezemolo at, after he was arrested and shot, by General Odone. We had our contacts with General Odone, until he was arrested by the Nazis some 7 or 8 days before the Allies entered. General Odone was in direct contact with the Marshal Kesselring, I suppose through radio. On the 5th June the patriots were armed with what arms they could be found during the period of clandestine activities. I have known many cases of patriots losing their positions of the parties. I have known accused for many years - his father practised before his papers for promotion in my office. The family have always come to me for advice since. (Avvocato was duly warned of the consequences of speaking the truth of the accused in court). The character of the accused I have always held that accused is intelligent, quick and vivacious, at the same time good and obstinate. I, in my relations with him, have judged him to be a very vivacious young man, but fundamentally a sentimentalist

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and moment

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I don't ever remember seeing accused angry or irritated. I had never any cause to see him annoyed or disquieted. I don't know how he would react when angry – only to difference in age, our relations were rather those of superior and inferior.

Fourth witness (Sworn)

Celeste Carlo Negarville, Piazza di Spagna 51, journalist. I belong to the Communist party. On 5 June I was a member of the Board of the Party and Director of "L'Unità". I knew the accused. At 3.0 p.m. on June 5 I believe I was at the typographical department of "Il Messaggero". I returned to L'Unità office about 3.30 p.m. I noticed in Via Tre Cannelle the body of Bentivegni still covered with a sheet. I questioned the men on guard and learnt what happened. I met the accused. He told me that help on some hope he saw a man – (stopped by the Court, on the ground that we cannot give effect to hearsay evidence when the best evidence is available). Accused was a member of the GAP. He did not depend on me – he depended on my companions who dealt with military matters, particularly Antonello Trombadori and Giacomo Pellegrini. On 5 June accused received his instructions from the Military Department of the National Committee of Liberation, of which I was a member. The instructions were to keep order, in case of abandonment of the city by the Germans, and attack the Germans and Fascists in case of resistance. If the Germans had not left, it would have been the duty of the accused to fight them. These dispositions were in accordance with orders of General Oxilia, who was believed to be in contact with the

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Allies – at least arguments were used upon the court by General Oddone, but they were valid after his arrest. (Objection on part of the prosecution on the ground, that Defence is not producing the "Best Evidence").
I can produce a statement by the President of the Council, Bonomi. I don't know anything in writing as to the relation between the Committee and the Allies. You can ask Gen. Oddone about this. (Advocate for the Defence indicates that Gen. Oddone will be called). A few days before Gen. Oddone's arrest we were all informed of certain communications, which were broadcast over the Radio from Italy and London. On 5 June I know personally was wearing the arm band of the Volunteers of Liberty, with the letters C L N, and with the stamp of the party. The bands were distributed under the care of the military detachment. Those depending on military detachment directly wore a tricolour band, those depending on the parties wore a white band. There were then two bands which were known to the military command, but there were also various other types of band which are closely controlled. Up to the 6th the patriots were armed, up to which date they were on duty. Bentivegna is a sentimental young man, and I believe that for his military efforts he had to receive his own inspiration, but he has succeeded in doing so. This activity was not in accordance with his character. I don't say he is impulsive and sentimental. I know he valued human life, and that life should not be taken except in a superior cause.

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I have been Director of L'Unità since the clandestine period, which began after 8 September. I shall be in the next few days to be published and executed by the party – this was what we got from our reporters. It was afterwards found to be incorrect and a correction was published 2 or 3 days later. We published the correction because we had learned the truth. Our earlier report was based on hearsay of the streets. We believed the original story because there were armed attacks by Fascist bands during the night of 4-5 June, and there were losses to the Fascist side on the 5th. We might quite possibly have thought anybody leaving town on posting was a Fascist. There were no instructions to file – people engaged in tearing down posters. I don't remember receiving any communication from Lt. Barbuti's H.Q. with reference to the article on 6 June. Possibly such letter would not come to me personally. Since then we have changed our location 3 times. [Copy of the newspaper L'Unità for 9 June shown to witness] Seeing this, I remember now that we did receive a communication from the H.Q. of the Finance Guard. I did not receive it personally. I saw the draft of the original article the night before. I have the last word in to why the article should be published. It was based on rumors collected in the streets. I did not specify where the reporters were when the information from. "Giustizia" in the article means that "justice has been done".

Rexd

I don't know who was the reporter who compiled the report. It was evidently a reporter's account, and did not go through the Editor's office. I can explain the error by the compositor that was in the office on 5 June.

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he was first conv. of the characteristic. the period. It is obvious that my impression was not proper.

By the Court

[This is not noted – as the question was directed solely to the conduct of the newspaper in publishing without verification such a misleading article].

Fifth Witness (Sworn)

Sig. Sig. Signora Bastianina Martini Lanza, Via Orazio 31, Roma – housewife. About 3.0 p.m. on 5 June I was coming down towards La Sediata della Concordia, accompanied by my husband, as we were very close to office nearby, I noticed a car that had just stopped that morning. I noticed a person going in the direction of Via dei Cavalli, and as he went along the side he was tearing strips of paper from the wall. After a certain point a person intervened and stopped – by calling him – but I did not hear the words. Then the first person turned, and they started conversing in a way that seemed angry. I did not exactly hear the first person was dressed. He had military boots, trousers, shirt, carrying something in his arm, otherwise was bare-headed. He was not dressed as a civilian – but he was not dressed completely in military clothes. The strips of paper were in a kind of window – in the street on the wall of a house, at the normal height of a person. The other man was in civilian clothes, with long trousers. I had never seen either of them before. I could not distinguish them very well at the distance I was. I was distant a little more than the length of this hall. I was at the time going down the steps. There was another person standing by the man stripping the posters, and there was a woman near that second person. The second man approached

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and stopped to see [illegible] the position I was. The latter turned and they exchanged words of hostility. I could not hear what they said, but they behaved like two angry roosters. I saw in the hand of the second man an arm pointed — then I became frightened and precipitately climbed the stairs. As I was gaining the first steps I heard shots. In a hurry I continued home. It was the man in the military or semi-military clothes that I saw with the pistol. He made some very rapid motions and extended his arm again to often. During that I turned around and climbed the stairs. My husband accompanied me. I cannot say exactly how many shots I heard — it was more than one, and more than 4 or 5. I thought the man who had his arm extended had fired, and that the other had responded. The first shots were clearer and more sharp, the others were a deeper bark. After that I stayed at home, as I had had enough after day.

xxd

The distance I was away was not much more than the length of this hall. The military man was standing with his back to the center of the street. He pointed his pistol at the other man whose head I did not see on which side. The first shots were clearer than the later ones. The distance from the bottom of the steps to the corner of Via IV Novembre is about the length of this hall, or a little less. I was about half way down the steps when I saw all this. It was the first person, the military man, who pointed the gun. He was [illegible] something on his arm, perhaps a jacket — I did not see exactly. It was on the left arm. He had his sleeves rolled up, and I saw nothing else on his arm. It was when he was turning the position that I noticed the coat on his arm. I cannot say later I saw the coat afterwards. The civilian was dressed in grey, and he had a tricolor

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heard subtitle they were in their Boys. I was noticing anything else special. I could not say how the third man was dressed — I could not say whether he was military or civilian. The military men had a belt on, but I could not say if there was a holster on the belt. I remember the armband of the civilian, which was red, white and green. It caught the eye. I did not see any beard. I did not notice the third man's clothes, because he was not doing anything. They did not give me the impression of being together — the military men and the third person I thought they just happened to be near each other. I did not report what I saw to the police. I am here because I voluntarily happened to come to our house in connection with another matter, viz the transpired there I could testify in this case. That was 10-15 days ago. After the scene I ran up the steps very quickly and I did not look round again.

Cross Examination

By the Court

I think I recognise the accused, but I think perhaps he was not clean shaved as he is now. I think I recognise Carlo Cappai as the girl I saw, but I am not absolutely sure. I recognise the accused as the man who was with the girl. I don't recognise anybody else present — my attention was not concentrated on the others, but only on them. I am sure I did not see after the second man (the accused) had a weapon. I assume he did, because he had the armband — but I turned round too quickly to see his reaction, when I first saw the military man he was coming towards us, she turned when he was called. Then the two men had

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this angry talk. I cannot say I saw the military men produce the arm. As he had his back turned to I could not exactly see where he was pointing. He was not wholly back to me and we could see the extended arm. I could see the whole of the civilian's body, but only a third of the military man's body — by that I mean he was partially turned round. The third person was some two steps from the military men, slightly to the back of him. I could not see the front of this body, only the shoulders. I did not notice if he was armed.

(Adjourned 1730 hours)

19 July 1944
Court re-assembled at 0915 hours.

Sixth witness (Sworn)

General Odone Angelo, Via Montevideo 22, Rome. I am a regular officer of the Italian army. My rank is Generale di Brigata. I had contacts with the military detachments of the parties. The parties had representative members in the military detachment, for the purpose of establishing the behaviour to be maintained in the military front, both during the Nazi occupation and during the time after the Nazis left. At the time when General Ambrosio was Supreme Commander of the Italian army (in agreement with the Allies) I was second in command, and then when General Berardi succeeded him I was his Chief of Staff. Ambrosio was in command from January to March, and Berardi after that till 29 May. On that date I was arrested by the Germans and brought to Via Tasso. Precise agreements were made as to what was to be done with these military [illegible] in the common interest. The agreements were between me representing the military front and the representatives of the parties in the military detachments. The agreement covered the policy in the event of the Germans evacuating Rome without a struggle, in which case the agreements provided for the employment of an attempt against the Germans. In this case this did

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no come clear, & agreements provided for the maintenance of public order during the period of change from one occupier to another. When I say Germans, I include also the Republican-Fascist armed forces with aggressive purposes against us. By passive public order I mean ensuring maintenance of normal life against any disturbance. During the period of entry of the Allies I was under arrest, and had no contact with the Military post. I can give you a general idea of the order in the event of a German evacuation. There was nothing in writing, for reasons of security — only such notes were exchanged between me and the various parties. Of my own knowledge I don't know what happened to the military detachments after my arrest. I was arrested on 29 May. I was released, or rather came out, or down on 5 June — simply because the guards had abandoned their post. Our relations with the parties were excellent. The military clandestine post acted on the orders of the Italian command. I have reason to believe that the Italian command informed the Allied command of what was going on and what was being prepared in Rome. I have reason to believe that the communications of Generals Ambrosio and Roatta were not with the agreement of the Allies. I don't of my own knowledge know of the existence of agreed passwords. I did not have charge of radio communications — so I don't know of passwords save one item of Radio Algiers or Radio London. In normal times I have never seen — France Soir or Daily Mirror or Times — but it might happen in abnormal times as these were. I don't know the political orders well.

XXd

The military detachments were formed with the object of fighting the Nazis and Fascists, not for the purpose of fighting other enemies of the parties unless they were Nazis or Fascists. It was formed for military purposes, and for public order, and not for carrying out petty

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vestothes. I military detachment we had any one person. but headquarters — it held its meetings anywhere. I don't know where H.Q. was on 5 June. If I saw a man dressed in officer's clothes, but carrying his jacket, and in his shirt sleeves, with his Sam Browne belt on his shirt, I should regard him as an officer.

Re-x-d

The first time I am saying an officer helps me to recognise another officer in such case. But I believe that the public can recognise any officer by his boots, belt and shirt. An officer without any blouse or cap might be taken for an N.C.O. Before 5 June an officer of the Finance guard could be distinguished from an officer of the militia, because the latter wore a black shirt. But an officer without a blouse could be mistaken for an officer in the Republican Fascist army.

Seventh Witness (Sworn)

De Tuddo Italo, Via Flaminia 19, Rome. I am a journalist. On 5 June about 1500 hours I was coming from the Piazza Sant' Apostoli in Via Quattro Novembre. Because of the heat I was walking and pushing my bicycle. Reaching corner of a shoe shop (called Bafferini) I heard some shouts. From the direction of the shouts I saw two persons fighting each other. I was surprised especially to see a military man without a blouse and with sleeves rolled up. My attention was attracted by this. The other person was a civilian — I cannot precisely say how he was dressed. I vaguely remember that he was dressed in something grey. I did not notice whether he had any distinctive marks — many people were wearing khaki grey. I did not know the civilian. He had his back to me. I did not know the military man. It was a very brief scene. I saw the two men grappling. I saw the military man produce a pistol,

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for a bullet in - thunder and lightning is. " it was passing more or less in my direction, I thought it was time to get out of the way. I turned my bicycle and went back the way I had come. I could not see what type of weapon it was. I did not see if the civilian was armed or not. It seemed to me that he had his hands motionless, perhaps at his sides - or any rate he was not waving them. I was in a hurry to get out of the way. I jumped on my bicycle and rode off. As I rode down the hill I heard shots - I cannot say exactly how many, but they were numerous, perhaps 5 or 6. I cannot say if they all came from the same weapon. There were a few people in the street. I believe there was a woman there, but I cannot specify who was there. I could not recognise the man or the woman.

xxd

The military man was with not a horse. That was something strange to me - because in the Italian army we are very formal. I did not see the civilian do anything while the military man touched his pistol, but I do not exclude the possibility that he did. A few days ago I started working for "Il Tempo". Previously to 5 June I had been unemployed for 9 months. I do not belong to any political party.

No Rexkin

By the Court

I was pushing my bicycle in the street, on the left side, in order to have the traffic facing me. There was normal traffic. I don't remember the traffic particularly - it was normal. I don't remember any stationary vehicle. I don't remember if there was a stationary jeep at the corner - it would have been no novelty. There was nothing on the first corner where I was. If there was a vehicle waiting to turn left into Via Tre Cannelli it would not have interested me because I was stopped.

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from certain win on on the work. I saw a young man come up and I had the impression that he addressed the one in grey-green. I thought the man in grey-green was a military man, but he had no blouse. I did not know him — but I know now his name was Barbuisi. The other young man I recognise as the accused, although at the time he seemed darker and more sun-burned. Barbuisi was in shirt sleeves. I did not notice if he wore any distinguishing marks. Near Barbuisi I believe there was a civilian. Accused was followed by Sciortino. I saw accused and Barbuisi talking animatedly. At a certain moment Barbuisi took out a pistol and pointed it at accused. I don't know if accused was armed, because at that moment my wife, who was very frightened, invited me to turn back — she had already begun to go up. I did not notice what accused was doing with his hands. As soon as I turned towards the stairs I heard shooting. I heard some 5 or 6 shots. I did feel that the shots had a different tone. My wife and I went up again + returned home.

XXd

I could not tell where the two men were standing. I saw the military man point his pistol at the accused. I then turned round and descended the steps. During the conversation the accused was gesticulating with his hands. I believe the accused was dressed in dark clothes, as I think his shirt collar was open. The young woman was in a light dress. I cannot say exactly how the other civilian was dressed. There appeared to be two groups 2 shots. I believe the first was the louder group. I did not report what I saw to anyone. I first told the story to the Avvocato when I met him. I never reported to the police. I met the Avvocato about 15 days ago & discussed certain matters about my ho-

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Section XXI. (4th Issue)

The two men I saw were near the place where the Street makes a big-bag, and becomes narrower.

Eighth Witness (Sworn).

Giuseppe [illegible] Carnia, Salita Santa Maria de Torrentino, Rome. I am a professor in the University of Rome, in the Faculty of Contagious Diseases. I belong to the Democratic Christian Party — now called the Popular Party. I am Rector of the University of Rome, appointed by Col. Poletti. I have known accused many years. I am on friendly relations with his family and parents. I first saw accused 5 or 6 years ago when he was ill. I have always had the impression that he was a young man of conscience, fine character. Since his illness I have known him to be a medical student, and have had occasion to observe that he was a young man of much discipline, studious, generous, enthusiastic, both in his medical studies and in his political movements. His enthusiasm sometimes revealed a notable spirit of sacrifice. He was always ready to cooperate kindly with my daughter. During the Nazi occupation I frequently saw him. Often he was pursued by Nazis, and at times he would come to my clinic to see by his daughter.

No Section

Ninth Witness (Sworn)

Ignazio Domenico, Via Orazio 31. I am Director of the National Institute Del Infortunio — a state insurance organization for insurance of labour accidents. I am husband of the fifth witness. On 5 June about 1500 hours I was going down the stairway of Via Condotta, with my wife, on my way to my office in Via Quattro Novembre 144. While descending the steps I noticed a young man in Fascist uniform who was talking with some young girls of European

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situation. I was taking him [illegible] had happened on 5th June, and I mentioned this case. I met the Advocate (Adv. Peris) for the first time that day – he was dictated to me. I knew him by name before that.

No Reaction

By the Court

I did not look back till I reached the summit of the stairs. I turned round hastily and saw a group of people who had already gathered at the spot. He was about half way down the steps, when we decided to go home. He was up the stairs as fast as we could. He had about 25-30 stairs to climb. It would take more than half a minute. By the time we got to the top I noticed there was already a group of people. On via IV Novembre vehicles were going by. I cannot say whether there was one standing still. The accused arrived from Via Quattro Novembre, coming from my right side. The [illegible] was at his side – I cannot say on which side. I noticed that too because there were very few people in the street. I don't think accused had anything in his hand before he addressed Barbisio. While the two were having their argument I could see only part of the body of the accused, especially the left part of his body. I did not see anything in the accused's hands during the argument – I saw him gesticulating during the first part of the argument. The Advocate came to see me about the Institute. The conversation about this case was incidental. The Advocate came to me for information, which he had to obtain for a newspaper. It was 15-20 days ago. I could only see part of the body of the accused, because the rest was hidden by the military men. I think the incident happened about 3.0, perhaps a little later. It could not possibly have been earlier than 2.30.

(Adjourned 1245 – 1430)

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Tenth witness (sworn)

Somaino Camillo, Via Nazionale 181, Rome — merchant.
On 5 June about 3.0 p.m. I was in a school near the Via Tè Cenaldi, where I had been hiding for nine months to escape the Germans, as I am a Jew. That afternoon we were having a dinner in honour of the liberators. We heard some shots, about 3.0 p.m., I cannot say exactly. The school is in Via Tre Cannelli, and from the terrace I could see part of what happened. It is below the crossing of Via IV Novembre, and is looking towards the window of L'Unità and the beginning of Via Cenaldi. The pistol shots came from outside. I got up and ran to the terrace and looked out. I cannot say exactly how many shots I heard, as I got up soon after and I was unable to count. There were definitely more than 3 shots. When I looked out I saw an officer in the German uniform, in a shirt with rolled up sleeves, his legs a bit spread out: I did not notice a cap. I also noticed a soldier of the Finanza and a civilian. The soldier had a long coat in his hand, and with the other he was putting the officer's pistol into the holster. The terrace I was on is immediately over a cinema — it is about 5-6 metres high. The civilian disappeared from my sight, because he crossed the street.

(After discussion it is agreed to admit, for what it is worth, the evidence of this witness as to the effect of conversation he had with the guardia di Finanza — see R.16).

I asked the Finanza guard what had happened. He answered that an officer of the Finanza had been killed. I asked him why he did not bring aid, because it seemed strange that he did not. I did not know whether the officer was alive or dead. He did not answer, as at that moment a priest came out stopped to speak with him. The Finanza guard was about a step in front of the civilian. The civilian then turned back around the Finanza guard and his-

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appeared from my sight. I saw the Finance Guard was putting
back the pistol into the holster. I was the first to look at it,
then after a few seconds my Father joined me.

xxd

The School faces three Streets, Via IV Novembre, Via Tè Cannelli,
and Via Carducci. It is a High School, and I had been for
9 months — my Father who was living there. The Terrace
faces Via Tè Cannelli immediately above the Cinema Magini-
ale. The first thing I saw when I looked out was the
officer on the ground. I didn't see the second — because
I did not know him. There were people there. I saw
no one with a pistol in his hand. The officer lying in
the street did not have a pistol in his hand — but I
cannot be positive about the distance did not permit
me to see if the officer had anything in his hand.
The Finance Guard was putting the pistol into his own holster,
not the holster of the officer. I did not report to the police
what I had seen. After walked down the officer was dead
he had his sleeves rolled up, and coat on his arm,
but I saw nothing resembling an arm band.

No Reaction

By the Court

When I saw the Finance Guard he was in Via Tè Cannelli
outside a tailor's shop where he had been working. He was
going up the Via Tè Cannelli. I don't know where he
got the pistol from — for all I know it was his own.
When I first saw him he was walking away from where
the officer was lying. He was then some 6-10 metres
from the officer. I was there in the terrace roughly in
the time it takes to go twice the length of this room. The
shots ended whilst I was on the way. I did not see anybody
else with a weapon, and I saw no weapon lying about. I
looked at the dead officer, but my attention was distracted by
the Finance Guard. I did not see a pistol lying in the

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street close to the " d office's head. There may have been one
there but I did not notice me. I stayed there for some time,
I cannot say how many minutes. I cannot remember a jeep
driving up. I did see an officer — I think he was British
by his hat — who approached the body and took photographs.
He arrived in a car — I think a Jeep, but am not sure.
I only saw the Officer — I did not see any soldiers with him.
It was 5-10 minutes later, maybe 13-14 minutes.

(Case for the Defence).

Prosecuting Officer applies to call a fresh witness who has
been discovered since prosecution's case was closed.

Court rules that witness cannot be called in rebuttal
under Rule 9. Court invites Defence to state whether
they object to witness being called by the Court under
Rule 9(E).

Advocate for Defence objects.

Court rules that witness be heard and examined by
Court.

Witness called by the Court (Sworn)

To Maccione Antonio, Guardia di Finanza, Via Labicana
9, Rome. I am a member of the Finance Guard. I was
serving as such on 5 June, though I was not on duty.
On the afternoon of 5 June I was walking in Via Tè
Carnelli when the incident of later. Barbarisi happened.
I had never seen him before, and did not know him.
I cannot say the exact time, but it must have been about
1430. I was walking along Via Tè Carnelli going to
the Barracks. I was going up the hill in the direction of
S. Maria Maggiore. I was coming from Piazza Venezia. I
was in the part of Via Tè Carnelli that goes up towards
the Stairs. At the moment I was passing I saw an un-
known officer, with trousers striped with yellow, leaving

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some poster. The officer was in V. Tè Cannelle. The posters were exposed in certain open windows, on Via Tè Cannelle. I was on the right side, and the posters were on the left side. The officer was 8-10 paces away from me — just across the road. I don't know what corps the officer belonged to, but he had an armband, a white band with black lettering, on his left arm. I thought he was a police officer. He wore a yellow band on his forearm, and I imagined he was an officer of the Finance Guard. He had a pistol in a holster on the left side of the breast. He had no hat. He had a jacket rolled with the lining inside out, which he was carrying rolled over his left arm — the lower part of the arm. The arm band was on the other part. His appearance seemed strange, and I was surprised that he was not wearing a hat. I don't think he had been drinking. While I was going on my way I heard a shot. Hearing this I turned round and saw the officer falling half towards the ground, armed with extended pistol continuing to fire. I had seen Bentivegna when I was passing the door of L'Unità. The next time I saw him was when I turned round on hearing the shot. I was just about the turn of the street when I saw this. Before hearing the shot I heard no shots. After I turned round on the first shot, I heard 3 or 4 more shots. Bentivegna fired them all — he was the only person who fired. I am sure of that. There were 2 or 3 other people there — civilians — but I saw no arms. I [illegible] heard whether the Lieutenant got his pistol out, because on the ground I saw no pistol. Seeing the [illegible] of Bentivegna I went to report to my superiors, continuing round towards S. Maria Maggiore. I did not render assistance to the officer, because he was still there, pistol in hand, until such time as I disappeared. That prevented my going to help — also

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because I was disarmed. I had no pistol on my belt. I don't remember if there was a Jeep with Americans in it. I did not say anything, Bentivegna said nothing to me. The pistol was pointed at the dead man, and I was in that direction too. I could not approach him to see him anything. When I saw Bentivegna at the door of L'Unità he was standing there looking into the street. He was alone at that time. I did not see anything in his hands. I could not see if he was armed. I was walking along the street, minding my own business. I said the dressed ~~was~~ looked like a "camouflaged" officer, because I could not distinguish whether he was an officer. He had the trousers, perhaps shorts of an officer. The fact that he was leaving the portone was the thing that made me suspicious.

(Adjourned 1730 hours)

20 July 1944.
Court re-assembled at 0920 hours.

xxd Lt. Salvatino

When I saw the man was leaving the portone I was directly across the street from him. I just turned my head to look at him and continued walking slowly. I did not look at him again till I heard the shots. When I heard the shots I looked round again. I turned back a few steps and I saw him fall back to the ground. I saw a civilian with a gun in his hand. Before I heard the shots I did not hear anything else - I was absent-minded at the time. I did not say anything to the civilian. I was a little frightened as Bentivegna looked so threatening. I thought it would be impossible to approach and identify the wounded man and Bentivegna. I was alarmed and I thought I too might be killed. I made for my barracks, hoping that on the way I should meet an agent, who could help in the identification. Being unable to find my agent in the street, I had to go right to the barracks where I reported the facts to my superiors.

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I was near that day, because that morning I met a fellow countryman on Piazza Vittoria. I was approached by 5 soldiers who asked me to show them my pistol. I showed it to them, and they for it in their power and ran off. That is why I was arrested that day.

xxd Avv. Peris

That day I came out of hospital and went to a house of friend. Then I ate and went slowly to my barracks. I came from Corso Vittoria, by Piazza Virgilio, along Via Quattro Novembre to Via Tè Cannella. Arrested After la scena I met no one else on Via Tè Cannella. I was walking alone. It took about 30 seconds to get out of Via Tè Cannella. I was walking fast. At some points I ran, but I was stopping because if I could find anyone to bring aid. It is 30-40 metres from the scene of the shooting to Via Tè Cannella. I covered that in about 30 seconds, but there was traffic and I could not cross. The rest of the street was deserted. The other people I saw were behind. There were 3 people in the direction where Barbarisi fell - I am speaking after the incident. I did not approach there then, because I did not know them and did not know their intentions. I did not speak to anyone, and no one spoke to me in Via Tè Cannella. I was dressed that day as I am now - with nothing in my hand. I was wearing a beret, and not the helmet that day. Immediately after I was disarmed I took a urgent long journey. My legion is at Santa Maria Maggiore. It is about 1 - 1½ Km. from Via Tè Cannella to there. In that distance I met no police agent. It was about 10.0 a.m. when I was disarmed. I was then coming from my barracks. I reported immediately to my superiors. They did not give me another weapon. I had no weapon in the afternoon. It would have been useful to have me, as I could have acted in the case of the

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incident of Bench again. If I had found him on the ground and would have handed it in to my command. I went to the hospital in the morning for treatment, after I had reported to my superiors about the loss of the weapon. I was being treated for tuberculosis. The hospital is in Viale del Re. After leaving the hospital I went to my sister's house, in Via Cremona, to eat. I went there about 11.45. I stayed there about half an hour. I was without my weapon then. Leaving my sister's I stopped for a while in Piazza Navona. I then went to Palazzo Braschi. Then I went through L'Arco Argentina and to Piazza Venezia, and then on to Via IV November.

I was 7-8 paces from Barbisi when the incident happened. Barbisi was carrying his jacket rolled on his left arm. I remember it was the left arm, because I saw the hand - wrist, which is worn on the left arm. He was wearing a shirt with long sleeves. I noticed the hand on the shirt. At first I was surprised, but then noticing the yellow stripes - his trousers, I concluded Barbisi was an officer in the Finance Guards. Before 5 June officers were authorised to wear shirt-sleeves, in public and on duty. I was going to my barracks for dinner & duty. The hospital is called Gallicano.

Lt. Tamotta Aldo (received by Court)

There was a ~~coat~~ holster on Lt. Barbisi's belt. When I saw Barbisi's body afterwards, I did not see his pistol. I looked around on the ground but found nothing. I only arrived some 2 hours after the incident. I am sure by description that the pistol was not in the holster, which I saw was open and empty.

Castella Alberto (received by Court)

As soon as I heard the news I hastened to the scene, on foot. My H.Q. is about 200 yards away. I cannot exactly know how long it took, or how long after the incident I got

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there. I - met the deceased was armed, because he had a belt. I did not see if he had a holster. Where the holster should have been was covered by a coat, and I cannot say either whether there was a holster or, if so, whether there was anything in it. There was no pistol beside the body, either in his hand or on the ground. I did not look for one, but if there was one lying there I should have noticed it, as I walked around the body. When the incident happened there was no crowd, but there was a crowd in the vicinity. I did see a man on the scene who had a pistol, but I cannot say if it was his own or the deceased's. He was a civilian, but he had an armband, a red one with the letters VL. That was the accused. With the accused was a blond young lady who had a pistol, but not in her hand - inside the belt. I cannot say if it could have been the pistol of the deceased, as I did not examine it. The pistol was just tucked into her belt. There was a third armed person, but he had a rifle and I don't know if he also had a pistol. So far as I know those were the only armed people on the spot. I saw nothing of a Jeep in the neighborhood. I saw no American officers on the spot. But there was a group of people on the corner of Ulrich Building, and another group on the opposite corner. There was one member of the Allied forces in the group at the corner. I saw no marks of rank. He raised to his eye something that looked like a camera and took a picture. I had never seen Colantonio Ovidio before he was dragged here. He certainly was not on the scene when I was there - but he may have been in one of the groups at the corner. I don't know if there is a Bar in Via Tè Cannelli. I did not see a Jeep standing anywhere in Via Tè Cannelli. I was on the scene for about 20 minutes approximately.

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xxd Avv. Nicoli.

There might be a Beretta in the upper part of via Tre Cannelle, and there might have been a pistol there — but I never went beyond the corner where the road makes its sharp turn.

xxd Lt. Sabatino

I think the pistol the lady had was a Beretta — an Ordnance type, large size. It is the type normally issued by the Italian Army.

Carla Capponi (recalled by Court)

I remained on the scene of the shooting for about 20 minutes. When the Lieutenant fell, the pistol was in his hand. Then he raised his hand a bit, thrust his arm forward — then he brought his arm to the height of his head, opened the palm, and the pistol fell to the right side of his head, near his hair. It remained on the side of his body for some time — 5 or 10 minutes. Then I went away from the spot for a bit, by order of the Finance Guards who had arrived on the scene to keep public order. These Finance Guards had not been witnesses in this case. I returned later, in the time it took to go up the stairs to via Rasella and return. When I returned the pistol was gone. I cannot say who had taken the pistol. I asked the 3 Finance Guards and a policeman in civilian clothes with an arm band, and none of the four could tell me anything about it. There were many civilians there, especially many soldiers. I did not have an arm tie immediately after the incident. But then 3 young men who had mounted guard over the munitions came to the spot. He and told them to go back to duty, but one of the three gave me a pistol. I have already described what this is. Capt. Gueli did. It was a Beretta 9. It is not right that I had a pistol at the time of the incident. (Carlotti Alberto is brought into Court). I first remember seeing this man Lupo.

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I do not see, in Court. Nobody in a official position under the Patrick's Organisation came on the scene and questioned me shortly afterwards. NO – (question misunderstood)
A civilian with an armband did come up – I took particulars. It was not Capitolo Alberto, but a policeman in civilian clothes who arrived immediately after the incident. I did not take his name. He has not been here to give evidence. I am surprised at that. I should know him again.
It was not Colantonio Ovidio, the Brigadiere who gave evidence here. I recognised him in Court, recognised him as one of the first who arrived on the spot. I don't remember what he did when he arrived. I don't remember if he arrived alone or with anybody. When I remember seeing him he was on foot. Right away I did not notice if there was a car. After a little I did notice a Station Car, from which an officer got off, who took some photographs. He was Allied, but I don't know whether American or British. I cannot remember exactly where it was, but it was very near the ~~incident~~ scene of the incident. The vehicle was a Jeep. I only saw the officer when he took the photographs. I do not say he came out of the Jeep. I only saw him when he tried to take photographs. I approached, and he told me he was a police officer, and I let him take pictures. I did not notice if anyone was in the Jeep. I spoke a little English. I spoke to the officer in English. I don't think the Brigadiere of Carabinieri was dressed in Battledress. I think he was in civilian clothes.

Xxd Avv. Persio

(Statement of Witness called for, which admissible by the Court, and put in marked Exhibit 4).

No other questions.

Xxd Lt. Sabatino.

I remember that Colantonio Ovidio was in civilian clothes.

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Had he been in my own I should have said more. But I cannot tell you any more as to how he was dressed.

By the Court

The Statement was taken in Italian by means of an interpreter. The English was retranslated by the interpreter into Italian. I corrected one or two words and then I signed. It was the English translation. I was questioned. I did not recount the story. My answers were reduced to writing. I am satisfied that the Statement does represent what I want to say. I was called before Captain Grunfeld on 24th or 25th. I was not arrested. I was invited to go there, and I accepted the invitation.

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By ... NARA, Date ...

The Court directed that it would not give argument from the Defence on the first three points enumerated by the Defence in opening, but that the argument should be directed to the remaining seven points. It was agreed that the Advocate for the Defence should address the Court in Italian, the Court calling for interpretation only where any member failed to follow the thread of the argument. An application by the Defence for permission to have the last word was refused. At the request of the Defence the Court adjourned till 0930 hours tomorrow morning.

(Adjourned 1230 hours).

21 July 1944.
Court re-assembled at 0920 hours.

Lieut. Sabatino
Within the last half hour a new witness has reported to me, who claims to have been an eye-witness.
Court, after hearing the Defence, rules that the witness shall be called & examined by the Court.

Alessandro Virgilio di Cesare (Sworn)
I reside at Via Di Pastini 133, Rome. I am a florist.
I came to Court this morning, because I read in the newspaper that you were looking for a photograph taken by an Allied officer, which showed me with a rifle at the scene of the incident. I have no such photograph, but I know that an officer took me at two places. I don't know who the officer was, but he was an Allied officer - I cannot say if he was British or American. On 5 June ~~[illegible]~~ at 2.35 I was at corner of Via Tre Cannelle 122 and Via IV novembre, just beside shoe-shop of Raffaelini - that is the same as L'Unità building. I was on duty waiting for my Captain who had ~~[illegible]~~ gone to see another Captain in a nearby building. I belonged to General Berardi's forces. I was a Surgeon Major. I was dressed in civilian clothes with an armband - ~~[illegible]~~ a white band with a black border, marked "Polizia".

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It was issued by Capt Cain on the afternoon of 4th June. I belonged to a different organisation from the accused. I don't know Costelli Alberto. My organisation did not belong to any one political party. It was composed of elements of the Army. I was mostly in the Army. Our job was to seize the Barracks here — by Capt Cain with 8 men was to seize it on afternoon of 4th and hold it until the Allies arrived. On 5th an Allied officer arrived and took over, & we went away. At 2.35 p.m. I was not on any particular job - I was just waiting for my Capt in the street corner. I was standing with my back to Via Tre Cannelli. I heard 2 or 3 people talking in an agitated way, behind me some 15 metres away. I could not hear what they were talking about - they were men. I turned immediately. When I turned I saw - young man dressed in grey, with his back to me, who was pointing a pistol and firing. As soon as I turned he began to fire. He fired 3 or 4 rounds. He was shooting at a military man with not a coat. The military man was facing the civilian with his front facing me. He was 1 - 1½ metres from the civilian. I did not know who either of them were. I would know them again. I recognise Benti as one in Court - he was the one who fired. I recognise him because afterwards I stopped him. I believe the military man was without a cap. I could not tell what regiment he belonged to. At that moment when I ran to the spot I did not see any arms. I did not see any later. I looked around & did not see any arms. I did not notice if he was wearing a belt with a holster. I did not look - I only looked round the body. I did not see any arms on the ground round the body. He had no arms in his hand. He appeared to me to be a completely unarmed man. There was

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By [illegible] NARA, Date [illegible]

Some people ran, we ran, but my attention was fixed on these two. I cannot say whether any of the others were firing guns. Nobody else fired. Buttigieg was alone. I recognise Carlo Cappai – she came to me when I was with Buttigieg, as soon as I stopped him. She was coming down from Via Tè Cannelli. I cannot say if she was there at the time of the shooting, nor whether she was with Buttigieg at that time. To me Buttigieg seemed alone. I was a little perplexed, but then I began to turn towards the scene, and I stopped Buttigieg. He was coming towards me with weapon in hand. He was coming away from the scene. I stopped him by asking if he had gone crazy. He said "He was leaving from the position of L'Unità". He made a gesture to give me the weapon, and then drew back and said "No, I will not let myself be disarmed". I said "That's quite all right – put it back in your pocket". As soon as he put it back Signora Cappai approached us. She was armed with a pistol, carried in a belt. I asked him Buttigieg and then Signora Cappai for their documents. Buttigieg told me his documents were false, because he was being searched for. Signora Cappai had no document. I asked what duties they were performing, & Buttigieg told me he was doing duty for L'Unità, and I took the No. of his card, 6577. Signora Cappai had no card. Then I accompanied them to the newspaper L'Unità. Before going, I saw there a [illegible] 12 bore gun with two barrels similar to mine, and I had the people drawn back from the scene. 2 or 3 companions of Buttigieg participated in this. As soon as I stopped Buttigieg I went towards the body, and at that moment the man died. It was then that I took to see if he had an arm. I don't think anybody reached the body before me. I did not see a pistol near

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his head. If the had been me there I think I should have noticed it. Before I went to the newspaper office a jeep arrived, and an officer got out and took some pictures. It was some minutes after the shooting, say 1 - 1½ minutes. After taking the pictures the officer went away. I don't think he took any further interest. There were 2 or 3 other people in the jeep. A priest came and knelt beside the body. On the way to the newspaper office I ⟶ met a Maresciallo of Carabinieri in uniform, and I asked him to take an interest, but he said he had to report for duty. When I was near the body had been covered by a sheet. I did not meet Bentivegna since I did not know the circumstances, Bentivegna was wearing an armband, and in any case I am not on agent of P.S. When I got to L'Unità office, I asked who was in charge, and a Partisan called Tenagi presented himself. I made a report to him on what had happened. Tenagi did not put him under arrest. I left them there and came away.

xxd Lt. Salvatico.

Bentivegna came towards me, fired in front, and he said "~~Cadi~~ Romano (or Italiano), so die traitors to their country." He said this to the world at large. I did not hear any shots before I turned round. They seemed to be a succession of shots. I cannot say how far up Via Tre Cannelle Signorina Cappai was. I did not see anything to say anything military was. He did not appear to try to say anything to me. When he fell he tried to get up, but fell back to the same position. I saw him fall in the first instance. I did not notice anything in his hand. He blew his last breath before my sight. I made a report to the Allied Command after I had seen. I first went to

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Comunicazione, Ambasciata Napoli, and I with an accompanying letter from the Consul to whom Pizzo is Vice-Consul. I was told by an Allied Sergeant it was too late to enter tonight and I was told to come there at 1430. He was there from 4 Sept. to 1 Oct. Consular Agent Napoli is also District Hd. Qr. Public Security. When I said into Piazza Vittoria, I found Battaglia. I also found 2 plain clothes Italian police agents, and I started [illegible] and he asked for a typed copy. The girl typist said she would not type it as she had no orders. Then the Captain & Battaglia were in conference. Battaglia & the P.S. agent came in & the Captain took the P.S. agent aside and talked to him. I gave him my statement. He took it into the Captain, & said he would be returned. I asked for a copy & a receipt for it - but the agent said the Captain said they were unnecessary. I still have the passport letter. I waited in the hall for the return & then in the letter room to interpreter called him to them in the letter room to Captain while I was to wait & he returned Captain asked me to sit down & I sat down. Captain asked me what I was going to do & I said I would like to see Bari & Brindisi & then go to Rome & report to the Allied Commission.

xxd Avv. Perri

On S Tues, at 2.30 - 3.0 p.m., I was in front of Via Tre Cannelli & Via Quattro Novembre. I was standing still and alone, waiting for my Captain. I was alone for about 10 minutes. I was standing still on the same point, moving a little and turning, looking more or less in the same direction after Captain, waiting for Allied troops in Via Quattro Novembre. I saw the nearest people going to the Carabinieri Station, & Battaglia [illegible]

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NND 765004
By dlw NARA, Date

I heard an initial commotion - yelling, - & cursing. I heard 2 or 3 people, hostile voices. I am a Zionist, not a philhellene. After firing Buttigieg stepped to the entrance with a pistol in hand, and immediately afterwards came towards me. He came towards me spontaneously. I was about 10-15 metres from the scene of the incident. He did not aim towards me. I was going a - four step towards him. I saw him at my left with the body. As soon as we met we spoke. The first thing that came to my mind was to stop Buttigieg. Then he came with me to the body.

I was wearing a white hat with a tricolour strip in the middle. Buttigieg said that was why tricolour. I was visibly armed. I had an automatic rifle. Perhaps Buttigieg considered me a fascist, perhaps not. I asked him for his weapon. He was then that time Coppini came up. I could not order him to I was alone. The machine-gun of Buttigieg fell down. I did not release Buttigieg to the police station, or in a state of "fermo". If it were possible I should have killed him. I did not see him put his Coppini to their names. Afterwards I was shown his false documents, but he told me about them. He still had on him to the body of Buttigieg. It was 35-40 seconds from the shooting to the time when I actually met Buttigieg. From then till I was on the body was 20-25 seconds. It might be more, I don't think it was much more. Along the street there was people and I cannot remember well how long it was. It was for about 1½-2 minutes. Buttigieg was wearing a grey-green shirt - I did not notice anything in the pockets of his trousers when I saw him. I did not recognise him as an officer. I don't remember if he was wearing belt when I approached the body, it

REGION IV CASE # 1185

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NND 765014
By [illegible] NARA, Date [illegible]

scene. — Then I arrive, I see ambulances, but
[illegible] I did not see one
notice the Battisti was wounded. I did not see one.
I did not examine Bentivegna's head. I did not take
it in my hands, I [illegible] whether it was wounded or not
me. I [illegible] whether it bled or the wounds.
I [illegible] the pieces of the skull from the ground. I
did not touch the body, nor is it still. I [illegible] down
slightly on the body. I did not think [illegible] examining the
body. I did not notice if Battisti had a helmet — or a hat.
I did not check up on the pockets. There were few people
when Bentivegna and I arrived on the body. On arrival we
cleared them away. No one was on the scene before me.
I did not see anybody approach the body before me — it is
possible that someone did. I did not see my Finance
Guards approach the body. When Battisti was hit he
turned [illegible] — his [illegible] back. He was lying
on his right side [illegible] the street. The gun was pointing
towards L'Unità building, in the road away. It was
[illegible] when we [illegible] him wounded. Before the shots
I saw nothing. [illegible] Kunde [illegible] appeared on the
[illegible] after the officer took the photographs. I did not
see if the Jeep came back. I [illegible] the officer
[illegible] Kunde to Jeep, but I did not notice if he
got in. I reported to the Commissione Mapos
Napoli in the [illegible] after I went to A.M.G. I
[illegible] saw the Captain [illegible]. My
Captain is Pallastrelli Filippo. He was [illegible] Captain
2 years ago. He was not present at the incident.
He came down just after I accompanied Bentivegna to
the newspaper office. I [illegible] it was only a
23 [illegible] I reported to the P.S. at A.M.G. [illegible]
to him I had reported only to my Captain. I made

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a written report of [illegible] copy in 3-4-5 days afterwards. I came here to-day because I read in the "Avanti" this morning that there was a photographer containing a letter with an instruction with, and I am the only person concerned. I thought I had better come here. But for that article I should not have come.

Avvocato Persi applies for permission to have Accused, Carla Capponi, and Colantonio recalled, also for permission to call Terenzi.

Lt. Schutze

I object to the case being reopened. But if I am told what they are to be asked, and the inquiry is limited to that I shall not object. I do not make any distinction between my client and the others. But I insist that we should know beforehand what is to be asked.

(Adjourned 1230 - 1400 hours)

Court rules that at the present stage of this trial it cannot hear further evidence from Carla Capponi or Colantonio. But leave is granted to call the witness Terenzi, to be examined by the Court. Accused will have the right to go back into the witness box and make a statement, restricted however to those matters which are dealt with in the evidence of the last witness.

Antonio Terenzi, called by the Court, sworn, and examined by the Court.

I live at via Doplino 15, Rome. I am in the commercial side of the newspaper L'Unità. I know the accused. I was in the office of the newspaper working that afternoon. I said the accused that afternoon. I said hello and shook hands. An incident took place outside our office that afternoon. I was not a witness myself. But the incident was reported.

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I was a way in the office when I heard three shots. I went
down stairs & saw people going towards Via Teatro Marcello,
and I myself went outside and went in that direction.
I saw a young man in shirt sleeves on the ground. I did
not see the accused in the confusion. I did see the accused
later that afternoon, about 20 - 25 minutes after the incident.
I saw him in the office. There were several people there,
including a Volunteer Liberty who was acting for his identi-
fication. I recognize the last witness as the Volunteer of
Liberty. I had encountered specially who also was present.
It was agreed between me because I was alone in the office,
and it was agreed between me that accused had removed pistol
The Volunteer of Liberty brought Accused to me to identify
him, and I was able to identify him. The accused
told me that in the street he had seen a man coming down
pointing from the north; that having noticed this person to
stop, the latter had removed from an automatic weapon and
turned on his pistol; that in order to defend him-
self he fired him - that is what I remember. The
Volunteer of Liberty was present when accused told this
story. I am quite sure the accused told me this story
that day. The V.L. asked me if I knew accused, and
if I would say that accused was guilty or not. I was
able to identify the accused. The V.L. told me that
he was passing by the dead man & saw the pistol
shots; he told me that he saw ~~and~~ that he saw
a person on the ground and after ~~that~~ that happened;
that he asked accused for his identity, and seeing that
he had false papers, brought him to the office to confirm
his identity. I remember that he did not tell me he
had himself seen the incident. What he said was that
he was passing at some distance.

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By NARA, Date

xxd Lt. Sabatino

The V.L. when he came to my office was not particularly excited. I don't think he came in for any purpose other than to identify record. So far as I could see there was no contradiction between the record and the V.L. I don't exclude the possibility that the story might have been told in greater detail. This did not appear to me any material omission. There was no particular reason why he should have given me a full, detailed account.

No xxtion by Defense

By the Court

I was not in Court here this morning, nor at any time during this trial.

Capt. Greenhill recalled (xd by Court)

I have not seen Alessandrini Virgilio here this morning. His name conveys nothing to me. So far as I remember nobody came to my office or left a statement on 23 June. If a statement was left in my office relating to this case, it must come to me. I have searched the office to-day, and can find no such statement. I cannot of course exclude the possibility that such a statement is somewhere in the office — possibly in the wrong file — but I don't remember seeing such a statement, and I should certainly have been glad to receive one in this case. I believe there was a military police office in the same building on 23 June. It is of course possible that the person bringing the document may perhaps have taken it to the military police office. It is not a thing that

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his [illegible] in my experience. I have not made my investigations to see if this procedure is for the military police officer. Normally a person who has a statement to make will be shown into a room, and not left with the police officer. But this man came with an Italian staff officer, and I should have had him shown in alone, and would have taken my own statement in English. (Evidence of Alessandrini and Sommers) That does not bring out any accidental incidents like that.

xxd Lt. Sabatino

She do have an Italian P.S. agent in my office - called Rodrigues. I don't think I should take a statement like that normally in a case like this. No other Allied Captain took any active part in this case.

xxd Asst. Procedure

I know the above Pantera. He was introduced to this case, after my investigations. He was present at the interrogation of the accused. Pantera may have seen this man come with a statement, but I have not asked him. I have understood the Commissario knows Napoli. I do not remember seeing other persons there.

Accused recalled to make statement

I did not immediately move towards Alessandri, having to telephone, but after a little time when the witnesses were already on the ground. I went to meet Alessandri, because nothing an armed civilian I wanted to see another specialista to telephone to. I [illegible] on it I was there. When I saw that had with "Polizia" on it I put myself at his complete disposal. He took my pistol in his hands, he examined how many rounds were missing from the clip, and he checked that 3 were missing.

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As already stated, we told no [redacted] but 5 shots. When my companion did not return with guard, I ordered them back to their post. I and Carlo Lapucci took care of closing iron doors. Alessandri gave me Chief's pistol, which I then kept in my hands. I remember perfectly that on the 24 I was at the Allied Command, waiting to begin with Capt. Gumbrill, Alessandri did bring in a statement, which was read by Pinetta. I believe it was presented to Captain Gumbrill. If I remember right, the typed Pinetta or the interpreter brought the statement in to Capt. Gumbrill; it was on half sheets, folded and written on both sides.

2nd Visit Sabatino

I don't think I said "Italians, this is low treason die!" I don't remember doing so, and am almost sure I did not. I remember that to the two guns, after a minute or two, began a second fusillade for the guard. Many people were near the body, and I with others were trying to keep order and keep the people away. Alessandri was not the first person to go near the body. I don't know who was. Alessandri handed me a - a composition. I had not seen him before that afternoon. I don't know what party he belongs to.

Road

Alessandri and I went together by automobile into the L'Unità Building, and I remember talking to Terenzi. There were quite a lot of people there already.

DECLASSIFIED
NND 785014
By [illegible] NARA, Date

Atw. Nice raj. sums up for the De ce.

You have to resolve any doubt in favour of the accused.
The Jury per this case proceed in an inadvertent frame of mind - but I believe it is done in an atmosphere of fear, & the effects the reluctance of the evidence of the parties.

Although the Allies had entered Rome, nonetheless had not yet returned to Rome, and it was not even certain that the last German had left.

It is a tragedy why Barbuisi should in this day be guilty of an act so hostile to liberty as to have slain these persons. Accused's motive was justified morally, politically, judicially. I dare say that this alone would justify acquittal, but it justify acquittal in this offended, and even in inspiring attack.

But it is necessary to examine the motive of Barbuisi. This is a question on which there is a conflict of witnesses. You should accept the evidence of Carla Coppini. You should accept De Tuddo, who was completely independent, who has. and has. himself; whose spontaneous motive was so clear. Also the evidence of Colonel Majo. It is not for Prisoner to [illegible] could not support his evidence with that of his prisoner friend. Maybe there are curious features in his story - but no more curious than other things in this case which are generally admitted. There is no [illegible] doubt Colonel's sincerity. There is plenty of corroboration that he was [illegible] with the American officer [illegible]. The evidence against no case is not acceptable.

(Captain Greenhill enters bearing the missing statement, which he states has been found in the office, in the wrong file. Counsel asks that this be shown to the Defence, who says he is in sufficient to this stage so.

Defence after seeing the document does not object it in evidence. Document received and marked Exhibit S).

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Avv. Nicolaj continues

The witness Castellana was evidently lying for some reason. You cannot believe her story. For one thing — her story of three visits would have Lt Barbarisi. Even the evidence of this witness, however, supports my defence of legitimate Difesa.

You must believe that Barbarisi had a weapon and was using it — otherwise there was no possible motive for the killing.

There is some mystery behind the evidence of Alessandri. Why did he appear so late in the second? If his present story is true, he would have been found by the police when they interviewed Tassoni immediately afterwards. The original report was produced, & contains the name of the accused was that he acted in self defence.

It was quite likely that accused would be shot, from the dress of the deceased; whether he was killed or fled — his actions would suggest the latter. I dare say that he intended no harm by drawing his pistol.

(Adjourned 1900 hours)

22 July 1944.

Court re-assembled at 0910 hours.

Avv. Nicolaj continues

The experiences carried out by accused in Court show the extreme rapidity with which the events took place.

Homicide is dealt with in Arts. 575 and 584 of the Code.

There are 2 forms of homicide, intentional and preterintentional.

The idea of self defence negatives the notion of intentionally killing but considers acting only to provide a danger.

Homicide may be (1) voluntary
(2) Preterintentional (intending harm)
(3) Colposo (negligence or imprudence)

Legitimate self defence does not apply to homicide alone, but to all acts which might otherwise be criminal.

Aggravating and extenuating circumstances (Arts. 61 & 62) apply to all forms of crime.

BOOT

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Sinibaldi e Zanzotto p. 149 – which again – one sees is
meant by "partisan" self-defence. I also refer to an Article
by Prof. Stalloni in "Il Progetto Rocco nel Pensiero
Giuridico Contemporaneo", at p. 77.

In order to see the relevance you must first ascertain
his place in the structure. Nobody could have acted differ-
ently.

I ask you to remember the part played in
assisting the Allies in the Partisan movement.
(In answer to a question by the Court as to what would
be the position if Bentivegna had killed him and
killed Bentivegna). That might be a case of "Reciprocated"
Self-Defence, as envisaged by the Italian Penal.

Lieut. Schlüter sums up.

This case must be decided on the facts, not on the brilliance
of the Advocate's defence. There is considerable conflict of
evidence in detail – though the general effect is the same.
I shall say how any of the witnesses we have – this is the
familiar case of a number of people seeing the same thing
happen but getting different impressions of the details.
There are 3 possibilities:-
(1) Accused engaged Deceased and killed him in
the circumstances alleged:
(2) Deceased pursued Accused or Appellant, who killed
in self-defence:
(3) Deceased pursued Accused, and the latter
killed him in the self-defence.
Accused acted from Deceased was firing from positions,
and he thinks himself threatened – decided in a
moment's notice. He thinks he would have acted in a
certain way if he had seen Deceased. The evidence
that he relied was mis-leading, and that the
Deceased was in hiding. The fact that the positions were

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(In answer to a question by the Court the Prosecuting Officer stated that he does not intend to press "aggravating circumstances" under Art. 61 (10)).

As to extenuating circumstances - I submit that accused is wholly faultless, not actuated in any way - Art. 62 (1) and (2). My defence is based on s. 52 - I indicate s. 55 as a possibility. s. 52 is designed to deal with emergencies, not to extend physical danger, and the reaction must be immediate. I rather hope I can rely on s. 52 that must be actual necessity. This needs very delicate weighing, and must be viewed subjectively, as it appears to the accused at the time in the light of surrounding circumstances, and not objectively in the cold atmosphere of the law Courts - see Art. 59. Art. 52 would provide a good defence, as it stands, for the Court considered the accused acted subjectively, in the circumstances that presented themselves to him - the error principle. In addition Legittima difesa - it is covered by Art. 59 (last paragraph). But the accused's error must be a reasonable error, if he is guilty of unreasonable error, then it is a case of "colpa", to which we turn to Art. 55. This is considered by the Code specifically in relation to Self-defence, under Art. 55. Art. 55 only applies in cases of excessive Self-defence, but this case the misunderstanding is dealt by Art. 59. The application is limited by the limits set in the section - but in certain cases there is a power to suspend sentence (see Arts. 163 and 164).

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Art. 55 is wrongly, because I rely on reasonable self-defence, and not on "colpa". Legittima difesa is "lawful" I am. But Manzini, Vol. II, p. 320 (2nd Edn.), which contains a lengthy ruling particularly on "Legittima difesa putativa". I also rely on "Giurisprudenza Penale" by

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[illegible] communist party is not important because it is a party that had the second personality. It does not follow that the man [illegible] down a communist parties is a fascist. Assuming the truth of the accused's statement does his action amount to self-defence. Self-defence under the law there is a peril which there is no other way of avoiding, and then the force used is no more than is necessary for the purpose. Because the deceased pointed a pistol it does not follow he was going to fire. In any case the accused had other ways of dealing with the situation, e.g. running with him, seizing his pistol, if necessary firing at his legs. I fully appreciate the atmosphere in Rome on 5 June. Accused had no ground for thinking that deceased was actually going to shoot. Deceased had had an opportunity of shooting already, and had not shot.

As to Italian law, the only extenuating circumstance the accused could possibly rely on are those in ss. (1) and (2) of Article 62. I say the written of those sections do apply on those facts. The putting out of the pistol by the deceased was not an "unjust act" in the circumstances, since being in uniform he was in authority. I think Art. 59 does not apply - this applies only to an act which is prima facie lawful, e.g. one person giving another a push which inadvertently results in death.

In answer to Court's last question to the Deputy, I think that you cannot possibly have legitimate self-defence on both sides. One must always be the aggressor.

By the principles of all civilised states the unlawful taking of human life is a thing that must be punished. If you think no other course was open to accused, you will acquit him - otherwise you must convict.

(The Court adjourned at 1230 hours to consider its judgment).

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By NARA, Date

Cattedrale
H. Li Causi

Am G/ACC.
H.Q.
Piazza Venezia,
Rome,
23rd. June 1944

Statement of BENTIVEGNA, Rosario, fu Vincenzo, age 22yrs. Medical Student, of Via Torino, No 122, (Apartment on second floor). Rome, who says:.

I have been cautioned that I need not say anything unless I wish, but anything I do say will be taken down in writing and may be used in evidence.

Bentivegna Rosario -

I was a partisan in Roma and in the Country as from 8th September, 1943, when the Armistice was signed. At that time I was a Communist, in fact, I still am. I was arrested on 20th September 1941, in Rome by the Fascist Police on Security grounds. I was taken to the Questura in Collegio Romano

Bentivegna Rosario

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By [illegible] NARA, Date [illegible]

and was interrogated because they fou
out that I ordered on 5th may. 194
in distributing Anti-Fascist pamph
They kept me for four or five days and
released on the condition that if I w
caught again circulating this propaga
within three years I would be
imprisoned. After about eighteen months
again started my Communist activi
During the eighteen months I ~~and I stopped again~~ took up m
medical studies. In February 194
because of my age, I was call
up for the Army and was put into
Sanitary Company, No 8. and remain
in Rome in the military Hospital a
Celio. I was there until May 1943,
I was released for an indefinite
period. I was still interested in the
Fascist and in July 1943, I again
[illegible] Communist Contac

RB.

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Rome. my area was in the Center of Rome and I was the person in Command. I held the position until 15th november 1943, when I became involved in the G.A.P. which means Gruppo Azione ~~Patriotica~~ Patriotica, a IRR group of the Communist Party, and was the Commander of the "Pisacane Squadr On 22nd January 1944, when the All landed at Anzio I was sent to Centocelle in charge of the Partisan there. In March I was recalled Rome and again took up my previo Command, and have been here ever s In may, 1944, I was sent out of Rome in charge of the Partisan between Rome and the Cassino fro

M. Gr. Capt

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By [illegible] NARA, Date

4 to classify from R.B

was on my return when I was ob
by Ftlan. troops near the Pe t
Mammolo about 10 kilometers
outside of Rome on Via Tiburti
and owing to the fighting I ret
to Rome, and took up service
my patriots in the San Lorenzo
district. On the morning of 5th Ju
1944, I was sent to guard th
building of the Stella newspa
in Via 4th November, Rome RB Rome, n
Via Tre Cannelle. I arrived there
about 10.30 am. at about 3 pm
I walked into Via Tre Cannelle a
a tour of inspection and saw
men, one in civilian clothes and o
in uniform, who was carrying
Capt

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By [illegible] NARA, Date

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tearing down posters from the
wall near the steps leading from Via
Sta Carnelle to Via 24th May,
including posters of the Unità
newspaper. I was with a friend
named Carla Capponi, a lady, who
lives in Via del Foro Traiano, 1, Rome.
Carla and I went up to men and
I asked them why they were tearing
down the posters. The man in uniform
answered arrogantly, "I can do as
I please. Who are you?" I replied,
"I am a member of the Committee of
Liberation" and showed him my
armband, which I was wearing
on my left arm. The one I hand
you is the one I was wearing. At
this moment the man in uniform
pulled his revolver from the back
of his belt a cartridge in the

Medaglia d'Oro

RB

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struck the revolver in my body near the heart. I had my right hand in my trousers pocket, holding a loaded "Barretta" pistol, calibre 9 mm. (short). At the time the Uniformed man put the pistol to my body, the man in civilian clothes fired two shots. I thought they were at me. I was not struck by them. I stepped back a few paces, drew out my pistol and fired three shot at the Uniformed man. I thought all shots struck him in the body. The uniformed man then fell to the ground. The man in civilian clothes then ran away I cannot remember which way he went. As I saw the man on the ground I then noticed he was a Lieutenant of the Guardia Nazionale. My girl friend was killed.

RB

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and she saw all that happened.
There were people also at the windows
of surrounding houses. I did not
know the informed man or the man
in civilian clothes. The girl and I
kept the public back. Shortly afterwards
a man, who I assumed knew again
wearing a white armband (red, white and green in center) with "Police"
on it, came up and asked me (me R.B.) what
happened. I told him and he asked
me for my name and documents. I
showed him the Identity card and
Military license and told him they
were false. However, I gave the man
my real name and address. I (twenty) remained there for about ~~four~~ ten minutes, and returned to the
Questa building with the girl, Carla,
and the man who had taken
particulars from, and he verified
my identity. I left Rome on 9th

R.B.

Statement of Captain

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By ... NARA, Date ...

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June 1944 and went to the Viterbo District I stopped there until 19th June 1944, doing Communist work, and then returned to Rome. I hand you the false identity card and military licence. I gave my pistol, as a present, to an Australian Lieutenant who called at the Unità offices on 6th June 1944. I think his name was "PETTER". He was with the Fifth Army. They all know him at the Unità office. I last saw him about 19th June 1944. Carla had a pistol on her at the time. I do not know whether she still has it or not. I shot the Lieutenant because he had held his pistol to my body. At that

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RB

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9.

I thought the Lieutenant was going to shoot me because he appeared very aggressive. At the moment I thought he was a Fascist, but I have since been told he was a patriot so I am sorry that it happened. Carla had nothing to do with the shooting. I carried the false identity cards and military licence because the Fascists were looking for me because of my Anti-Fascist activities and for no other reason. I have a good character. This statement has been read to me in Italian by Cpl Conti, 267th Regiment, Coy 'L' and it is the truth. Rosario Bent 105

Witness: Wm Wellenhall. Capt
22/6/44

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NND 785024
By NARA Date

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A.M.G. H.Q.
Piazza Venezia

25th June, 1944.

Statement of Carla CAPPONI, aged 24 years, single, of Foro Traino, 1, Flat No.12, Rome, who says:-

I live with my mother at the above address. My father died four years ago. I have not been employed since last December because the Fascists and Germans were looking for me.

For the past seven months I have been a Communist and anti-fascist. In fact, I have always been anti-fascist.

I have known Rosario Bentivegna, who lives in Via Torino, Rome, for the past year. He has, so far as I am aware, always been anti-fascist and connected with the communist party. I am engaged to Bentivegna, but not officially because I have not known him long enough.

At about 2 p.m. on 5th June, 1944, I was at the offices of the Unita' newspaper a Communist organ, in Via 4 Novembre, Rome, when I was asked to remain and help to guard the building because we were afraid that Fascist elements might enter the place. Rosario Bentivegna was there in charge of the Guard.

At about 3 p.m. that day, Rosario, asked me to accompany him on a walk round the building. I agreed to. Rosario had a revolver in his right trouser pocket, but I was not armed. The two of us walked into Via Tre Cannelle, nearby, and when we turned into the street, I saw a man in Army uniform, with his coat over his left arm. I do not recollect whether he had a hat on. With him was a man in plain clothes. The man in uniform, I did not know what arm of the Italian services he belonged, was pulling down "patriot" posters, including those of the Unita' newspaper from the wall near where the steps lead up to Via 24 Maggio. I do not know whether the man in Civilian clothes was with the uniformed man, but I formed the impression he was. Rosario and I went up to the two men. Rosario asked the uniformed man to stop pulling down the poster and asked why he was doing it. The uniformed man replied "who are you to ask me questions". Rosario was wearing a "national Liberation" arm band on his left arm. Rosario pointed to his arm band and said " I am in charge of the Unita' newspaper guard, and told the man what the arm band stood for. Please come to my office and explain the reason". Both became very excited and shouted at each other. With that the uniformed man took a revolver from his holster, charged the revolver with a cartridge and stuck it at the left side of Rosario. No words passed at that moment between the uniformed man and Rosario.

The other man who was in civilian clothes stood at the back of the uniformed man. I stepped aside having seen the man in civilian clothes who was standing 4 or 5 meters away draw a revolver from his right hand trouser pocket. At the same time I called out "Attention" and moved quickly over to the wall opposite because I thought this man was going to fire. A few seconds I saw Rosario took a step back from the uniformed man and fire three shots at the uniformed man. Almost at the same time the man in civilian clothes fired two shots. I don't know whether he fired at us or in the air, but I had the feeling that one shot passed close to me. I then saw the uniformed man spin round and fall to the ground on his back. In the death spasms the uniformed

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dropped his revolver by his head. At that moment the civilian ran away in the direction of Via Nazionale. With that a man in civilian clothes wearing a police arm band came on the scene from the direction of Via 4 Novembre. He told Rosario that he had seen everything and asked Rosario for his name and address and other particulars. Rosario produced an identity card and said "this is false". Rosario still held the revoler in his hand. However Rosario did give the policeman his proper name and address. The policeman lifted the dead man's coat and then said that the dead man was a Lieutemant of the Guardie di Finanze. A crowd began to gather and persons from the Unita' newspaper were coming to the spot. Rosario told the latter persons to return to the Unita' building.

One of these men, I don't know his name, but they would know it at the Newspaper's office, handed me a revolver and I helped to keep the crowd back. At that time members of the Guardie di Finanze arrived on the scene. I recognised them as such because of their headware. They then took charge and Rosario and I went with the policeman to the "Unita'" newspaper office. I then handed the revolver I had back to the man who had given it to me. A man at the newspaper offices vouched for us to the policeman.

I cannot help you as to the whereabouts of the dead man's revolver because I looked away on the occasion to keep the crowd back and upon looking again at the dead body I saw that the revolver had siappeared. I asked the policeman and later the Guardie di Finanze whether they had picked up and they all replied "no".

I had no hand in the shooting of the Tenente of the Guardie di Finanze, neither did I, at any time, urge Rosario to fire at him. I was more or less an innocent bystander. I had never seen the dead man or the other civilian before in my life. I do not know even now the identity of the civilian.

This statement has been read to me in Italian by Gabriella Barbati and it is the truth.

Carla CAPPONI

T.W.M. Greenhill, Capt.

25.6.44.

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Esclusione 3
H. L. Leitmeier
Colonia

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Judgment.

The Court desires to say at the outset that in arriving at its decision in this case it has not been affected one way or the other by any political considerations. It makes no difference in the mind of the Court that the accused happened to be a member of any political party or that the parties, the tearing down of which was the original cause of the unhappy events which followed, were those of any particular political party or organ. The deceased man was a human being & the accused is to be judged by this Court as a human being.

It has already been stated in this Court that unless the Court is satisfied beyond reasonable doubt that the accused is guilty he must be acquitted. In the present case there is no doubt that the accused killed the deceased: he himself has admitted it. The only question which remains, therefore, is whether in the particular circumstances the killing of the deceased was a lawful or an unlawful act. The accused claims that it was a lawful act on the ground that he was acting in his own defence & he invokes Art 52 of the Italian P.C.

In assessing the validity of this claim by the accused, the Court must be guided solely by the evidence given during this trial. This evidence has been extremely lengthy & voluminous & the Court has attended very carefully to the whole of it. As has already been pointed out, there has been considerable conflict of testimony between the various witnesses with regard to many details of greater or lesser importance. The Court does not propose to set out here in detail its judgment on the accuracy or otherwise of each witness. Having heard all and weighed

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the evidence, it has been possible to form a fairly clear view ^ the main issues ^ what happened. The Court is satisfied that the accused, seeing the deceased tearing down the posters, addressed him in an arrogant & hostile manner: that the deceased replied in an equally hostile manner; pulled out his pistol & pointed it at the accused: that accused thereupon, without waiting, pulled out his own pistol in turn & shot the deceased. In the view of the Court, this is a case in which two excitable & impulsive young men lost their tempers & resorted precipitately & unnecessarily to extreme & the use of firearms.

It remains, therefore, to consider the legal consequences of these events: and action taken by two parties. In doing this we do not forget that the events took place on the 5th June - a day, doubtless, when the atmosphere was fraught with electricity & feelings ran high.

Allowing for this, the Court is satisfied that the action of the deceased in drawing his pistol was unwarranted & amounted to an "offence unjustifiable" within Art 52 (2) & to an "offesa ingiusta" with art. 52 of the P.C. Having said this, however, the Court is equally satisfied that the re-action of the accused was also unwarranted and exceeded the bounds of defence proportionate to the "offesa". As was said by the Prosecuting Officer, when confronted by the pistol of the deceased, the accused had other means of dealing with the situation without shooting to kill straight away. It does not appear to the Court to follow that, because the deceased drew his pistol, he had any intention of shooting. There is no evidence to show that he had any such intention & the

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and no witness has suggested that any words were spoken to show that the deceased had any such intention. In any case, it is clear that a number of other courses were open to the accused beside the extreme course which he took.

In these circumstances, the Court rules (i) that the defence put forward under Art 52 of the P.C. has not been fully made out: (ii) that the accused did not act under any such error as is envisaged in the last paragraph of Art 59.

Therefore, the case falls to be dealt with under Art 55 and as such is punishable under Art 589.

At the conclusion of the evidence, it was admitted by the prosecution that there was no evidence of aggravating circumstances as alleged in the charge sheet. The Court has, therefore, to consider only whether there are any extenuating circumstances under Art 62 of the Italian Penal Code. On all the evidence, the Court rules that the accused is entitled to the benefit of the extenuating circumstances specified in Art 62 (2). In relation to this point, it has been pointed out to the Court that conflicting opinions have been expressed by high judicial authority in Italy as to whether an accused who is found guilty under Art 55 can properly claim the benefit of Art 62 (2): but the Court decides that in view of this conflict of opinions any doubt must, here in this case, be resolved in favour of the accused.

For the above reasons, the Court finds the accused guilty not of the offence charged

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in the charge sheet (namely arts 575 & 61 (1) of the P.C.) but of the lesser - Hence contemplated punishable in accordance with art. 589 by Art 55 / with the benefit of Art 62(2).

If the Defence desires that, before imposing sentence, the Court should take into consideration other extenuating circumstances or wishes to make any observations on the proper sentence to be imposed on the basis of the above rulings, the Court will be pleased to hear their submissions. But, before hearing any such submissions by the defence, ~~the Court~~ the Court must ask the Prosecutor if he has any evidence of previous convictions to adduce.

4.

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By [illegible] NARA, Date

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Registry Dept
6/3/58/5
Box 33

77622

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Return to archives
SEP 2 3 1947

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[1943-1947], [(8 3/4 8)]

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NND 765084
By [illegible] NARA, Date

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DEPARTMENT OF THE ARMY
THE ADJUTANT GENERAL CENTER
WASHINGTON, D.C. 20314

21 MAY 1973

DAAG-ASR-S (73031)

Mr. Daniel T. Goggin
Director, General Archives Division
Washington National Records Center, GSA
Washington, D. C. 20409

Dear Mr. Goggin:

I am returning the Allied Military Government court case involving Rosario Bentivegna, which you forwarded for review on 12 April 1973, on behalf of representatives of the Italian newspaper Il Messaggero in New York.

It has been determined that this document was properly declassified by OSD under the 2 May 1972 guidelines.

Also, there is no basis to withhold this document from release to the public under the provisions of the Freedom of Information Act.

Sincerely,

Cyrus H. Froke

for S. J. POMRENZE
Chief, Office Management Division
TAGO

Inclosure
RG 331, Allied Commission
Allied Military Government,
Region IV, Legal Section,
Legal Case, 1944, #7762

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Authority NND 725074
By NARS, Date

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[redacted] DIVISION

L/C/ROT

30 August 1944

SUBJECT : Rosario BENTIVEGNA case.

TO : Major T. W. Battersbey
Deputy Chief Public Safety Officer.

1. This is to assure you of immediate compliance with your request of 27 August 1944, in respect to the above.

2. I am grateful for the opportunity to be of assistance in this matter.

Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

RCH/fp.

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Authority JCS ltr 1/4/74
BY Lewis NARS, Date 5/28/74

~~CONFIDENTIAL~~

Classification changed to Unclassified by Authority of JCS ltr dated ...

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NND 785014
By NARA, Date

Rec'd Aug 1,44

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GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

Provincia di Roma - Corte Generale Alleata

Nome dell'accusato: Rosario Bentivegna
Indirizzo dell'accusato: Via Torino 128, Roma
Data di arresto: 23 giugno 1944
Imputazione: omicidio
Data del dibattimento: 14 luglio 1944 e seguenti.
Data della sentenza: 22 luglio 1944
Condanna: 18 mesi di reclusione per il reato previsto dagli artt. 55- 589 - 62 n.2 cod.pen. italiano.

MOTIVI PER LA ISTANZA

1) doveva essere applicato l'art.52 del codice penale italiano. In base a tale articolo, il Bentivegna doveva essere assoluto.

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna, vedendo il Barbarisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barbarisi rispose in maniera ugualmente ostile ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accadde il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur considerando questo, la Corte è convinta che l'atto del decaduto di estrarre la pistola, non era giustificato e costituiva una offesa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere l'esattezza dell'argomentazione della Corte, salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giubba su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di uffi-

REGION IV CASE N° 776285

DECLASSIFIED NND 785014 NARS, Date

ciale di Polizia;
b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito Comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione Nazionale;
c) il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua arbitraria azione, spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto del Barbarisi,che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna doveva necessariamente ritenere di essere in presenza di un elemento ostile della quinta colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici ~~axxik~~ e di un partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 giugno era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Na=

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zionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata, eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato, quando si trovò dinanzi alla pistola del Barbarisi, poteva fronteggiare con altri mezzi la situazione, Secondo la Corte il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è, a nostro avviso, contraddetto dalle circostanze di causa e dallo spirito della legge italiana. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi - e aveva perciò diritto di difendersi -, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell' avversario, se non quella di reagire rapidamente con violenza.

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il Bentivegna riuscì a prevenirlo facendo fuoco prima di lui. Del resto, questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto del Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi, invece, non si limitò all'estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei seguenti termini:

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" La Corte è convinta che (il Barbarisi) tirò fuori la pistola e "la puntò contro l'imputato". Un simile contegno non può essere spiegato che con l'intenzione di usare effettivamente l'arma contro il Bentivegna, il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco; e ciò è tanto vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma, a prescindere da tale osservazione, si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna, il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia, che si palesava estremamente grave ed immediata.

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del Codice penale.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minacciato nella propria integrità fisica e costretto a reagire senza perdere 184
tempo per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima difesa altrimenti detto legittima difesa putativa, ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni

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di fatto, che l'uomo normale apprezzerebbe in tal senso.-

Ora, chiunque si fosse trovato il 5 giugno, nelle condizioni in cui si trovò il Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale pericolo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso.-

Per queste considerazioni, riteniamo che il verdetto della Corte Generale debba ritenersi viziato da una intima contraddizione logica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.-

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze, applicando l'art.52 ed assolvendo il Bentivegna.-

2) La Corte Generale con il suo verdetto ha dichiarato che il Bentivegna ha agito in istato di legittima difesa, valutando però in modo inesatto, e perciò colposamente, la proporzione fra la reazione e l'offesa ed ha aggiunto doversi riconoscere che vi fu azione provocatoria da parte del Barbarisi.-

In conformità della legge italiana ha perciò ritenuto responsabile il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli artt. 589 e 62 n.2 del cod.pen. italiano.-

La Corte ha anche dichiarato nel suo verdetto di voler fare astrazione completa da considerazioni politiche e di volere giudicare l'imputato come un essere umano e considerare il deceduto come un essere umano.-

Con la sentenza, però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appare del tutto sproporzionata alla natura dell'episodio.-

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Nel determinare la pena e nel rispondere all'istanza di sospensione della sua esecuzione ai sensi dell'art.163 del codice penale italiano, la Corte doveva attenersi ai criteri fissati nell'art.133 dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato, ma ha acceduto alle richieste del P.M. proprio per quei motivi politici che aveva dichiarato di voler trascurare nella prima frase della motivazione della sua decisione.-

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Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il benefi - cio della provocazione; ciò che fa notevolmenre ridurre la gravità del reato stesso e la misura della colpa, essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò, fino quasi all'annullamento, la sua entità.-

Detto ciò, si riconosce implicitamente la nessuna pericolosità del l'imputato, il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto l'azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.-

Non sembra perciò giusto attribuire, come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.-

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della pro - vocazione, è chiaro che il delitto colposo attribuito al Bentivegna non solo non può apparire tanto grave in sè da richiedere esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.-

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Il criterio dell'esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa della decisione della Corte, premessa nella quale si afferma di voler giudicare umanamente un essere umano.-

Ma, anche accettando il criterio dell'esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica, ecc.-

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati devono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.-

Ma noi vogliamo aggiungere un'ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena, attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.-

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.-

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire.-

Rosario Bentivegna è un incensurato; appartiene ad un'onesta e patriottica famiglia. E' un giovane studioso del quale il 173
Prof. Caronia, Pro-Rettore dell'Università di Roma, ha tessuto il più invidiabile elogio, sia dal punto di vista intellettuale che dal punto di vista morale.-

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati, egli fu uno di quei valorosi partigiani, ai quali ogni giorno si rivolge il Comando Supremo delle

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Forze Alleate per suscitarne la combattività ed elogiarne il contributo di azione.-

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericoloso per l'ordine sociale e politico del suo Paese.-

Vogliamo perciò sperare che la sentenza della Corte Generale, che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del cod.penale (condanna condizionale), che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.-

Roma, 1° agosto 1944 -

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REMARKS BY THE COUR

Having read carefully through the attached Petition we see no reason to alter our view that the Accused was rightly convicted and that the sentence was certainly not excessive.

With regard to the conviction, we are of opinion that the question whether or not the Accused exceeded the bounds of legitimate self-defence was a question of fact, as to which the Court (which heard the evidence and saw the witnesses) was the best judge. We are satisfied on the evidence, to which we listened with great attention, that the Accused did exceed the bounds of legitimate self-defence, in the sense that the action which he took was unnecessarily violent, i.e. was out of proportion to the degree of offence offered. We adhere to the view expressed in our judgment that the mere fact that the deceased drew his pistol and pointed it at the Accused did not of itself indicate any immediate intention to fire, still less to kill. The evidence in fact points to the contrary conclusion, since the deceased did not in fact fire, although he clearly had the opportunity to do so, if his pistol was loaded (as to which there was no evidence), while it was pointed at the Accused. It is idle to assert that the Accused could not have reacted in any other way. For one thing, he could have spoken, and explained who he was and the reason for his interference. If shooting was necessary (which we, having heard the evidence, do not believe), he could have shot to wound and not to kill. For the above reasons we are of opinion that the Petition discloses no grounds for setting aside the conviction.

As to the sentence, the factors referred to in the Petition were all carefully considered and given their full weight. But for the mitigating circumstances, the good character of the Accused, and the part that he had played as an active partisan, we should have thought it right to impose a much heavier sentence. The Petition discloses no point of law which has not already been fully considered, and consequently we are of opinion that there is no legal ground for interfering with the sentence. We are not blind to the fact that there may be political reasons, of which we are not the appropriate judges, which might render a reduction of sentence desirable. As to this, it is suggested that before modifying the sentence on political grounds it would be wise to seek the views of the Regional Commissioner, who is responsible for the future maintenance of law and order in Rome, and who is in the best position to judge the probable political repercussions of any such action.

H.C. Lothian Colonel — President.

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Members.

Note by Lt.Col. I.G.H. CAMPBELL, Member of the Court

I concur with all the above remarks except the two concluding sentences, which I consider out of place in "Remarks by the Court". As they

(over)

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have been inserted I wish to make the following comments thereon :-

a) These sentences may create the impression that the sentence of the Court was imposed with an idea, or hope, in the mind of the Court that it would be reduced on political grounds. Such an impression would be false- at least, so far as I am concerned.

b) If the reviewing authority is considering reduction on political grounds, I do not think it would be wise to seek the view of the Regional Commissioner responsible for the future maintainance of law and order in ROME. This case has had widespread publicity : presumably any reduction would receive equal publicity. It is necessary, therefore, to judge "the probable political repercussions" not merely in ROME but throughout Italy now liberated and yet to be liberated.

I. Campbell Lt Col

I. G. H. CAMPBELL,
Lt. Colonel,
Member.

Supplemental Remarks of Major ROBERT C. HENDRICKSON.
Member of the Court.

Since it is quite clear from the Note appended to the remarks of the Court, by Lt. Col. CAMPBELL, that the two concluding sentences to which I subscribed as a member of the Court, are subject to conflicting interpretation, I feel constrained to add that , in my considered opinion, there is no factor involved in this issue which would justify a modification or reduction of the sentence; in fact, I hold strongly to the view that the sentence imposed was exceedingly, if not excessively mild.

R. C. Hendrickson

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
Member.

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Rec'd July 1, 44

FORM. N° 1

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

(In uso per la revisione delle cause giudicate davanti i Tribunali Militari o Corti Italiane)

NOTA: Questo stampato deve essere presentato nel termine di 30 giorni dalla sentenza.

PROVINCIA DI Roma

~~XXXXXXXXX~~ Corte Generale Alleata

Nome dell'accusato Rosario Bentivegna

Indirizzo dell'accusato Via Torino 128, Roma

Data di arresto 23 giugno 194

Imputazione omicidio

Data del dibattimento 14 luglio 1944 e seguenti Data della sentenza 22 luglio 1944

Condanna per il reato previsto dagli art.5-576 n.2 cod.pen.it. a 18 mesi di reclusione

Nome del Giudice del Tribunale

Motivi per la istanza 1) doveva essere applicato l'art.52 del cod.pen. In a tale articolo, il Bentivegna doveva essere assolto. - _____

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna vedendo il Barberisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barberisi rispose in maniera ugualmente ostile

(vedere foglio allegati)

Data I agosto 194

(Firma dell'accusato o del suo Procuratore)

OSSERVAZIONI DEL GIUDICE CHE HA PRESIEDUTO AL PROCESSO, O DELL'UFFICIALE SUPERIORE ADDETTO ALLA GIUSTIZIA DELLA PROVINCIA, OPPURE DEL PROCURATORE, SE NECESSARIO

See Remarks of the Court on separate sheet.

R. G. Littauer
Colonel
President.

Data 4 August 1944

DECISIONE DELL'UFFICIALE CAPO DEGLI AFFARI CIVILI

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Data

NOTA: Questo stampato dovrà essere sottoposto all'approvazione dell'Ufficiale Superiore addetto alla Giustizia della Provincia.

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ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accade il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur "considerando questo, la Corte è convinta che l'atto del deceduto "di estrarre la pistola, non era giustificato e costituiva una offe="sa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere la esattezza della argomentazione della Corte salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giacca su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di ufficiale di Polizia.

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione nazionale.

c) Il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua azione arbitraria spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto

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del Barbarisi, che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna Rosario doveva necessariamente ritenere di essere in presenza di un elemento ostile della V colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici e di un Partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Nazionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato quando si trovò dinanzi alla pistola del Barbarisi poteva fronteggiare con altri mezzi la situazione senza far fuoco uccidendo senz'altro l'avversario. Secondo la Corte non il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è a nostro avviso contraddetto dalle circostanze di causa e dallo spirito della legge italiana applicata nel caso Bentivegna. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi e aveva perciò diritto di difendersi, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell'avversario, se non quella di reagire rapidamente con violenza.

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Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il

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Bentivegna Rosario riuscì a prevenirlo facendo fuoco prima di lui. Del resto questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto di Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi non si limitò alla estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei termini seguenti:

"La Corte è convinta che (Barbarisi) tirò fuori la pistola e la "puntò contro l'imputato." Un simile contegno non può essere spiegato che con la intenzione di usare effettivamente l'arma contro il Bentivegna il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco ; tanto è vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma a prescindere da tale osservazione si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia che si palesava estremamente grave ed immediata. 173

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del cod.pen.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minaccia-

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to nella propria integrità fisica e costretto a reagire senza perde= re tempo per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima dife= sa altrimenti detto legittima difesa putativa; ponendo solo la condi= zione che la convinzione soggettiva sia basata su condizioni di fat= to che l'uomo normale apprezzerebbe in tal senso.

Ora,chiunque si fosse trovato il 5 giugno , nelle condizioni in cui si trovò Rosario Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale perico= lo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso

Per queste considerazioni riteniamo che il verdetto della Cor= te Generale debba ritenersi viziato da una intima contraddizione lo= gica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze applicando l'art.52 ed assolvendo il Bentivegna.

2) La Corte Generale con il suo verdetto ha dichiarato che il Benti= vegna ha agito in istato di legittima difesa valutando però in modo inesatto e perciò colposamente, la proporzione fra la reazione e l'of= fesa ed ha aggiunto doversi riconoscere che vi fu azione provoca= toria da parte del Barbarisi.

In conformità della legge italiana ha perciò ritenuto responsabi= le il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli art.589 e 62 n.2 del cod.pen.ita= liano.

La Corte ha anche dichiarato nel suo verdetto di volere fare astrazione completa da considerazioni politiche e di volere giudica= re l'imputato come un essere umano e considerare il deceduto come un essere umano.

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Con la sentenza però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appa= re del tutto sproporzionata alla natura dell'episodio.

Nel determinare la pena e nel rispondere alla istanza di sospen= sione della sua esecuzione a termini dell'art.163 del codice penale italiano; la Corte doveva attenersi ai criteri fissati nell'art.133

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dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato ma ha acceduto alla richiesta del P.M. proprio per quei motivi politici che aveva dichiarato di volere trascurare nella prima frase della motivazione del suo verdetto.

Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il beneficio della provocazione; ciò che fa notevolmente ridurre la gravità del reato stesso e la misura della colpa essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò fino quasi all'annullamento, la sua entità.

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto la azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.

Non sembra perciò giusto attribuire come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte. 171

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della provocazione, è chiaro che il delitto colposo attribuito al Bentivegna

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non solo non può apparire tanto grave in sè da richied re esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.

Il criterio della esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa del verdetto della Corte, premessa nella quale si afferma di volere giudicare umanamente un essere umano. Ma anche accettando il criterio della esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica ecc.

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati debbono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.

Ma noi vogliamo aggiungere una ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena; attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire. 121

Rosario Bentivegna è un incensurato; appartiene ad una onesta e patriottica famiglia. E' un giovane studioso del quale il Prof. Caronia Pro Rettore della Università di Roma ha tessuto il più invidiabile elogio sia dal punto di vista intellettuale che dal punto di vista morale.

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche

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che non dovevano essere trascurate perchè dei nove mesi che precedettero l'arrivo degli Alleati egli fu uno di quei valorosi partigiani ai quali ogni giorno si rivolge il Comando Supremo delle Forze Alleato per suscitarne la combattività ed elogiarne il contributo di azione.

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericolo per l'ordine sociale e politico del suo paese.

Vogliamo perciò sperare che la sentenza della Corte Generale che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del codice penale (condanna condizionale) che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.

Roma, I agosto 1944

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FORM No. 11

ALLIED MILITARY GOVERNMENT

APPLICATION FOR REVIEW OF SENTENCE

(To be used for Review of Cases tried in either Allied Military or Italian Courts)

NOTE: This form must be filed within 30 days of Sentence.

PROVINCE OF .....

..... COURT OF .....

Name of Accused .....

Address of Accused .....

Date of Arrest .....

Charge .....

.....

Date of Trial ..... Date of Sentence .....

Sentence .....

Name of Judge and Court .....

.....

Reasons for Application .....

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Date ..... 194....

.....
(Signature of Accused or of his Attorney)

REMARKS BY TRIAL JUDGE, PROVINCIAL SENIOR LEGAL OFFICER, OR PROCURATORE, IF APPLICABLE.

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Date ..... 194....

.....
(Signature and Description)

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DECISION OF CHIEF CIVIL AFFAIRS OFFICER

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Date ..... 194....

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NOTE: This form will be submitted to the Senior Legal Officer of the Province.

1943 — Napoli, R. Tip. Giannini

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(File)

Al
Ministero Grazia e Giustizia
Roma.

Il sottoscritto, Rosario BENTIVEGNA, fu Vincenzo, ~~domiciliato~~ a di de Somma Valentina, nato a Roma il 22-6-1922, domiciliato a Roccaraso in Piazza Foro Traiano, 1 a Chiede copia della sentenza emanata nel l'agosto del 1964 dall' Alta Corte Militare Alleata, ed in cui, in seguito a revisione del processo, veniva assolto dall' imputazione di omicidio preterintenzionale nello persona del Ten. Giorgio Barbarini, con la formula piena della legittima difesa. 165
Si richiede per uso di concorso
Con osservanza.
Roma, 10 settembre 1967

Rosario Bentivegna

CASD RECORD

Si trasmette l'unita richiesta con preghiera di volere inviare urgentemente detta copia di sentenza

10-9-67

L' Ufficiale di collegamento
Thomas

ACC

10400/142/197 [1 of 2]

Legal Cases, 7762
[June - Aug. 1944?];
[Folder, Dated, No Dates]; [1943 - 1947]

ASSR

NW 22004

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ACC 10400/142/197 [1 of 2] Legal Cases, 7762
[June - Aug. 1944?];
[Folder, Dated, No Dates]; [1943 - 1947]

NW 76004

ASSR

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ACC 10400/142/197 [2 of 2] Legal Cases 7762
[Jubie - Aug. 1944?];
[Folder, Data, No Dates]; [1943 - 1947]

NAVPERS

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PROMEMORIA per

ROSARIO BENTIVEGNA

INCIDENTE DEL 5 GIUGNO 1944.

Il giorno 5 giugno 1944, verso le ore 15, Rosario Bentivegna accompagnato dalla studentessa Carla Capponi, mentre prestava servizio di vigilanza nei pressi del giornale "L'Unità", a Via 4 Novembre, e recava sul braccio la fascia tricolore del Comitato di Liberazione Nazionale, incontrava presso l'imboccatura della Via Tre Cannelle un militare, senza berretto e che portava la giacca sul braccio, che andava strappando con impeto alcuni manifesti del giornale "L'Unità", nonchè altri manifesti inneggianti alla liberazione di Roma e all'Italia libera.

Il Bentivegna intimò l'alt al militare, il quale, con aria sprezzante lo investì domandandogli con quale diritto egli intervenisse. Allora il Bentivegna mostrò il bracciale tricolore del Comitato di Liberazione Nazionale e si qualificò per "volontario della libertà", di guardia al giornale, ed invitò il militare a seguirlo alla sede del giornale.

Ma il militare, anzichè ottemperare all'invito, estraeva la rivoltella, metteva un colpo in canna e la puntava al petto del Bentivegna.

In quella, un uomo in abito civile, che era accanto al militare nel momento in cui questi fu fermato dal Bentivegna, e che era alquanto distante da lui, mentre il militare faceva il gesto di puntare la rivoltella contro il Bentivegna, sparò alcuni colpi in direzione del gruppo. Nello stesso

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REGION IV CASE No 7762

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istante il Bentivegna, sentendosi minacciato così gravemente dal militare, fece un passo indietro, e, estratta la propria pistola tirò fulmineamente tre colpi contro il militare, il quale cadde immediatamente a terra, e decedette poco dopo.

Qualche minuto dopo accorse un agente di polizia in borghese, al quale il Bentivegna, immediatamente, riferì le circostanze dell'accaduto, e dette le proprie esatte generalità, nonostante che in quel momento egli fosse sprovvisto di documenti di identità, possedendone alcuni falsi che gli erano serviti per sottrarsi alle ricerche della polizia nazi-fascista durante i nove mesi dell'occupazione tedesca di Roma. E' da notare che le autorità nazi fasciste avevano posto sul capo del Bentivegna una taglia di un milione e mezzo.

Si è saputo poi che l'ucciso era un tenente della Guardia di Finanza, Barbarisi, che il Bentivegna non aveva mai veduto prima di quell'occasione.

Per dichiarazioni fatte da alcuni compagni che spontaneamente si presentarono all'"L'Unità", si credette in un primo momento che il Barbarisi fosse una nota spia fascista, che aveva preso parte a vari plotoni di esecuzione contro patrioti italiani, ma successivamente si è chiarito che questa identificazione del Barbarisi era erronea, e pare che l'equivoco sia stato ingenerato da una comunicazione della radio alleata di Anzio che aveva indicato, prima della liberazione di Roma, un individuo dal nome simile a Barbarisi, come nota e pericolosa spia.

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Che l'incidente si sia svolto nel modo sopra descritto è comprovato:

1°) dalle dichiarazioni di Bentivegna Rosario, che per le sue qualità di carattere, di educazione, è assolutamente credibile. E' comprovato altresì dal comportamento stesso del Bentivegna, il quale, anzichè sottrarsi alle indagini dell'autorità si mise a disposizione di questa, dando in un primo momento le sue vere generalità, che avrebbe invece potuto facilmente occultare, e in un secondo momento presentandosi spontaneamente all'autorità di polizia alleata per fornire tutti i chiarimenti opportuni.

2°) Dalle dichiarazioni fatte dalla teste, signorina Carla Capponi, la quale accompagnava il Bentivegna, e che fu presente allo svolgimento del fatto. La Capponi è teste assolutamente insospettabile, sia per le sue altre qualità morali, [illegible]

3°) Dalla dichiarazione scritta, allegata al processo inviata dalla N.D. Isabella Galletti, la quale mentre si trovava nella sua casa, intenta a leggere un libro udì voci di un alterco che si svolgeva nella sottostante Piazzetta delle Tre Cannelle; avvicinatasi alla finestra essa vide due uomini, di cui uno vestito da militare, e l'altro con il braccialo dei patrioti, che si scambiavano parole violente, e vide poi che il militare aveva puntato la rivoltella sul petto dell'altro: udì poi delle esplosioni, ma si ritirò impaurita dalla finestra, e quando si riaffacciò vide che il militare era stramazzato a terra.

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La signora Galletti afferma egualmente che ha notato che i manifesti del giornale "L'Unità" erano stati strappati, e che il militare non portava nè il berretto nè la giacca, che teneva sul braccio.

4°) Altri testi che possono chiarire in pieno le circostanze del fatto, e la cui audizione venne chiesta verbalmente, dall'difensore del Bentivegna, Avv. Corrado Perris, all'ufficiale della polizia alleata che ha proceduto all'inchiesta e agli interrogatori, sono: 1°) Italo De Tuddo, di Aurelio, di anni 28, residente in Roma Via Flaminia 19, che fu presente al fatto, sino al momento in cui Barbarisi impugnata la rivoltella fece l'atto di mettere il colpo in canna, dopo di che egli si allontanò in bicicletta temendo di poter essere colpito da qualche colpo andato a vuoto; 2°) signor Musu Domenico, e miglie; [illegible] Via Orazio 31, Roma: i coniugi Musu [illegible] passando per le scale di Via delle Cordonate videro il militare, accompagnato da un borghese, che strappava i manifesti; subito dopo videro sopraggiungere un giovane, che rimproverò il Barbarisi; videro poi il Barbarisi trarre dalla fondina la rivoltella, e con questa minacciare il giovane che gli veniva incontro.

La difesa del Musu potrebbe indicare altri testi sulle circostanze del fatto, ma si riserva di addurli in caso di necessità.

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Così ricostruiti i fatti, non vi è dubbio che nella specie non sussista alcuna responsabilità a carico di Bentivegna, il quale ha agito per legittima difesa. Si tratta, invero, di un caso tipico di legittima difesa, in cui chiunque si fosse trovato al posto del Bentivegna, avrebbe agito nello stesso modo.

A ciò si aggiunga che alle ore 8 del 5 giugno il Bentivegna poteva e doveva legittimamente andare armato, in quanto , non solo non era stato emanato ancora il bando che imponeva la consegna delle armi, e che scioglieva le squadre armate dei vari Partiti, ma, i gruppi armati dei singoli partiti erano investiti di funzioni di ordine pubblico.

PERSONALITA' DI BENTIVEGNA ROSARIO

Non esitiamo a definire Bentivegna Rosario un combattente eroico della guerra di liberazione nazionale italiana, perchè il contributo che egli ha dato alla lotta contro i nazi-fascisti, a Roma e nelle vie limanze di Roma, è veramente cospicuo, anzi eccezionale.

Il Bentivegna, studente in medicina del 5° anno, dopo l'8 settembre ha sentito che il suo dovere del momento attuale, al di sopra di qualsiasi interesse personale, era quello di lottare contro i tedeschi oppressori, e i loro manutengoli fascisti.

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Ha dimostrato sempre nella sua attività di partigiano, di componente dei Gruppi di Azione Patriottica, di volontario della libertà, doti di mente e di cuore assolutamente superiori a qualsiasi elogio.

Ecco, alcune delle più importanti azioni compiute dal Bentivegna:

Nella sua attività di partigiano, egli nel maggio del '44 organizzò a Palestrina bande armate che dirigeva nella lotta contro i tedeschi, distrusse le liste di leva al Municipio di Palestrina, operò più più azioni armate contro gruppi di tedeschi, (in complesso sei azioni), in cui oltre ad uccidere vari tedeschi, appatturare 28 prigionieri, che riuscirono poi a fuggire nell'imminenza dell'entrata a Roma delle truppe alleate, avendo egli ed alcuni suoi compagni allontanarsi dal luogo dov'erano i detenuti, egli tolse al nemico due radio trasmittenti e riceventi, due motori Diesel, provviste alimentari per 500 persone per la durata di cinque giorni.

Nella sua attività di componente di un gruppo di azione patriottica a Roma, egli, fra l'altro compì le seguenti gesta, che sono veramente eccezionali:

danneggiò un camion tedesco innanzi al Teatro dell'Opera; insieme con il suo gruppo tese un'imboscata e uccise un tedesco in Via XXIII Marzo; eseguì un lancio di bombe a Piazza Barberini; eseguì un attacco alle truppe SS autotrasportate presso le carceri di Regina Coeli; eseguì l'attacco al comando germanico al Corso d'Italia; eseguì un attacco notturno sulla Via Casilina distruggendo un camion tedesco; eseguì un altro attacco notturno a Via Tiburtina distruggendo un altro camion tedesco; eseguì

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un altro attacco a un gruppo tedesco, sulla Via Prenestina, danneggiando un camion; distrusse un centralino telefonico tedesco; distrusse un camion tedesco presso il Muro Torto; eseguì un attentato contro il Pizzirani, capo dei fascisti repubblicani di Roma; insieme con il suo gruppo giustiziò tre fascisti (che avevano ucciso una donna, che era andata a protestare per aver avuto razziato un figlio, al Viale Giulio Cesare, presso la caserma dell'ex fanteria; eseguì l'attacco alla colonna fascista che si muoveva per Via Tomacelli; incendiò un camion carico di benzina a Via Claudia (distrusse un altro camion tedesco a Via Cavour); eseguì personalmente l'attacco alla colonna tedesca di SS in Via Rasella, in cui trovarono la morte 32 tedeschi e furono feriti più di una diecina.

Di questa azioni del Bentivegna, la maggior parte delle quali è stata comunicata dai giornali clandestini del Tempo, ed in particolare dall'"Unità", il Bentivegna può assumere la piena responsabilità, ed il Partito Comunista Italiano le approva incondizionamente come veri e propri atti di guerra compiuti contro i nazi-fascisti. Lo stesso deve dirsi anche dell'attentato a Via Rasella, che il Bentivegna ha compiuto con assoluto disprezzo del pericolo a cui si esponeva, contro una colonna di SS armata in pieno assetto di guerra.

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8)

Data la personalità eccezionale del Bentivegna, e le modalità tutte del tragico incidente, in cui doveva trovar la morte il tenente Barbarisi, [redacted] confidiamo in una sollecita scarcerazione di lui.

Roma, 5 luglio 1944

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CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indicated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indicated by the articles 61 and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 61 N°10 : having committed the act against a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administrative or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

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art.61 Nº10 does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES.The extenuating circumstances which,hypothetically,might be concerned in this case are the following :

A)Art.62 Nº1 : having acted for motives which have a special moral or social value.

B) Art.62 Nº2 : having reacted when in a state of anger,caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury.It is also required the necessity of the defence,so that the danger or the damage could not be avoided unless with the defence.Besides that,the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the necessity,it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imprisonment not inferior to 21 years (Art.575).

If there is an aggravating circumstance,the punishment which would be imposed for the committed crime is increased as far as a third.In no case,the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is diminished of a period not exceeding a third (Art.65).Existing more than one extenuating circumstance,the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum-

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stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69)

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5°) Che il Tenente Barbarisi, e forse anche un'altra persona non individuata, con lo stracciare i manifesti patriottici che si trovavano nelle edicole infisse all'esterno del fabbricato dove ha sede "L'Unità" ha compiuto un fatto che è apparso obbiettivamente ostile ai patrioti del movimento italiano di liberazione ed agli stessi Alleati;

6°) Che la reazione verbale e l'intervento del Bentivegna erano quindi pienamente giustificati, dal punto di vista oggettivo e soggettivo.-

7°) Che il Barbarisi ha reagito a tale intervento in modo violento, prendendo per primo l'iniziativa di passare alle armi.-

8°) Che il Bentivegna non aveva altra possibilità di scampo al pericolo grave, attuale, immediato che minacciava la sua integrità fisica, che non in una reazione altrettanto rigida ed immediata.-

9°) Stabiliti così i fatti, la difesa intende dimostrare, che anche dal punto di vista psicologico, il doloroso episodio può esser spiegato solo come dovuto ad un gesto di naturale difesa, imposto dall'istinto di conservazione.-

10°) Pertanto la difesa vuol provare che secondo la legge italiana, il fatto non è punibile, perchè la reazione del Bentivegna è stata necessaria e propor-

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zionata all'azione offensiva del Barbarisi, e che è applicabile nel caso in esame l'istituto della le - gittima difesa nei suoi vari aspetti, che esime da qualsiasi responsabilità.-

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U.S. 17 Luglio

Nota B. Sergardi
A.S.N. 1907260?
Teste/Sgt. A.C.
Army Air Force

Io ritiene che il Pubblico Accusatore non è riuscito a dimostrare l'illegittimità del fatto compiuto da Rosario Bentivegna, e la responsabilità dell'accusato. - Perciò potremmo pregare la Corte di emettere sin d'ora la Sua decisione. Ma noi vogliamo dare la prova completa, inequivoca, positiva dell'innocenza di Bentivegna Rosario.

Ci proponiamo, pertanto, di provare:

1°) che il fatto è avvenuto in un'atmosfera di guerra guerreggiata; che il Bentivegna, come tutti i patrioti italiani, secondo gli ordini e le disposizioni impartite dal Comitato di Liberazione Nazionale, attraverso le organizzazioni militari, collegate con il Comando Alleato, doveva essere in istato di allarme e di difesa;

2°) che Rosario Bentivegna, il 5 giugno, alle ore 3 pomeridiane, era un volontario dell'Esercito in attività di servizio e che egli era stato incaricato di proteggere la sede del giornale "Unità" e le immediate adiacenze, contro eventuali attacchi ed offese di elementi nazifascisti;

3°) che Rosario Bentivegna era autorizzato a portare le armi;

4°) che i Patrioti erano vincolati agli ordini ricevuti,

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1.

MEMORANDUM
for
ROSARIO BENTIVEGNA
INCIDENT OF THE 5th JUNE 1944.

On the 5th June, at about 3 o'clock in the afternoon, Rosario Bentivegna, accompanied by the student Miss Carla Capponi, while on guard outside the building of the newspaper "Unità", in Via Quattro Novembre, and wearing the three-colour arm band of the committee of National Liberation, ~~he~~ met a soldier at the entrance to Via Tre Cannelle, without his military cap and carrying his jacket on his arm, who was impetuously tearing down the advertisements of the newspaper "L'Unità", and also other advertisements relating to the liberation of Rome and free Italy.

Bentivegna told the soldier to halt, but the latter disdainfully turned on him demanding him what right he had to interfere. So Bentivegna showed his three-coloured arm-band of the Committee of National Liberation and he stated himself to be a "volunteer of liberty" on guard for the newspaper, and he invited the soldier to follow him to the newspaper's offices.

But the soldier, instead of accepting the invitation, drew out his revolver, loaded it, and pointed it at Bentivegna.

At that moment, a man in civil clothes, who was beside the soldier in the moment the latter was stopped by Bentivegna, and who was at the same distance from him, on seeing the soldier point his revolver at Bentivegna, shot several times in the direction of the group. In the same instant, Bentivegna, realising that he was seriously threatened by the soldier, stepped back and drawing his own pistol rapidly shot three times at the soldier, who immediately fell to the

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ground and died ~~immediately~~ shortly after.

Some minutes later a police agent arrived, to whom Bentivegna immediately raccounted the facts of the incident, also giving his own exact generalities, despite the fact that at that moment he was without identity documents, only possessing several false ones which he had used in order to hide from the Nazi-Fascist police who had been looking for him during the nine months of German occupation in Rome. It is worth noting that the Nazi-Fascist authorities had placed a reward of one million and a half ~~for~~ on the head of Bentivegna.

Afterwards it was learnt that the dead soldier was a Lieutenant of the "Guardia di Finanza" by the name of Barbarisi, whom Bentivegna had never seen before that occasion -

From statements made by certain companions who spontaneously presented themselves to the "Unità", it was at first believed that Barbarisi was a well-known Fascist spy who had taken part in various ~~executive~~ firing-squads for the execution of Italian patriots, but later it was found out that this identification of Barbarisi was ~~false~~ incorrect, and it appears that the idea had been taken from an Allied Radio communication from Anzio which had given indication, before the liberation of Rome, about a certain individual with a name similar to Barbarisi, a well-known and dangerous spy.

That the incident occurred in the way described above can be proved: -

1) from the statements of Rosario Bentivegna who for his qualities of character and education is absolutely to be relied upon. This is shown also by the attitude of Bentivegna who, instead of trying to avoid to avoid investigation put himself at the disposal of the

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Authorities, giving as soon as possible his real identity, which he would easily ~~be~~ have been able to conceal, and afterwards presenting himself spontaneously to the Allied police authorities to supply all necessary explanations.

2) From statements made by witnesses:— Miss Carla Capponi, who accompanied Bentivegna and who was present at the development of the episode. Miss Capponi is a completely reliable witness for reason of her high moral qualities.

3) From a written statement, adjoined to the deed here forwarded, made by N.D. Isabella Galletti, who, while in her own home reading a book, heard some voices quarelling down below in Piazzetta delle Tre Cannelle; going to the window she saw two men, one dressed as a soldier and the other wearing the patriotic arm-band, who were having a heated argument, and then she saw that the soldier had pointed his revolver at the other's chest. Then she heard some explosions, but being frightened she left the window, and when she looked out again she saw that the soldier was lying on the ground.

Mrs. Galletti also states that she noticed the advertisements of the newspaper "L'Unità" had been torn down and that the soldier was not wearing either his military cap or jacket which he was carrying on his arm.

4) Other witnesses who can fully explain the circumstances of the fact and whose audition was verbally asked for by Bentivegna's defender, Avv. Corrado Perna, to the officer of Allied police who proceeded to the ~~eng~~ carrying out of enquiries and interrogations, are: 1) Italo De Tuddo, son of Amelio, aged 28, resident in Via Flaminia 19, Rome, who

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was present at the incident ~~until~~ the moment that Barbarisi had drawn his revolver and loaded it, after which he went away on his bicycle being frightened of being hit by a badly-aimed shot;
2) Mrs. Domenico Musso and his wife, Via Orazio 31, Rome: the Musso couple, going up the steps of Via delle Cordonate, saw the soldier accompanied by a civilian, tearing down the advertisements; immediately afterwards they saw a young man arrive, who reproached Barbarisi; they then saw Barbarisi draw his revolver from its case and with this, threaten the young man who was coming towards him.

The defending party could indicate other witnesses able to describe the circumstances of the fact, but he reserves these in case of necessity.

Having learnt the facts of the case it is obvious that no responsibility exists against Bentivegna, who acted for legitimate defence. In fact, one is dealing with a typical case of legitimate defence, in which anybody who might have been in Bentivegna's place would have acted in the same way.

Added to this Bentivegna, on the 5th June at 3. o'clock p.m. could be and had to be legitimately armed as, not only had the proclamation imposing consignment of arms and dissolution of armed squadrons of the various Parties not yet been issued, but armed groups of single parties had been charged with duties of public order.

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ROSARIO BENTIVEGNA'S PERSONALITY.

We will not hesitate to define Rosario Bentivegna as a heroic fighter in the war of Italian-national liberation, because his contribution to the struggle against the Nazi-Fascists, in Rome and its vicinity, is really conspicuous – even exceptional.

Bentivegna, medical student of the 5th. year, after the 8th. September 1943, felt (that above every other personal interest) was his duty of the moment to fight against the German oppressors and their Fascist accomplices.

He always showed in his activity of partisan, as a member of the Groups of Patriotic Action, of volunteer for liberty, mental and spiritual gifts completely above praise.

Here are some of Bentivegna's most important actions:-

In his activity of partisan, in May 1944, he organised at Palestrina armed groups to leave in the fight against the Germans, he destroyed the enrollment lists at the Municipio of Palestrina, organised several armed actions against groups of Germans (in all six actions), in which besides killing various Germans and capturing 28 prisoners, who succeeded later in escaping owing to the imminence of the entry of allied troops in Rome, he and several of his companions having left the place where the prisoners were, took away from the enemy two Radio transmitting and receiving sets, two Diesel motors, food supplies for 500 persons to last for five days.

In his activity as a member of a group of patriotic actions in Rome, amongst other things he carried out the following truly exceptional deeds:-

He damaged a German lorry in front of the Royal Opera House,

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together with his group he organised an ambush and killed a German in Via XXIII Marzo; he carried out a bomb dropping in Piazza Barberini; ~~and~~ an attack against S.S. troops outside Regina Coeli prison; an attack against the German Command in Corso d'Italia; a night attack on Via Cassiina destroying a German lorry, another night attack on Via Tiburtina destroying another German lorry, another attack against a group of Germans on Via Prenestina damaging a lorry; he destroyed a German telephone switchboard; he destroyed a German lorry at Monte Torto; he made an attempt on the life of Pizzirani, head of the repubblican fascists in Rome; together with his group he killed three fascists (~~they had~~ these fascists had killed a woman, who had gone to the Caserma of the 81st Infantry in Viale Giulio Cesare, to protest that her Son had been taken away); he carried out the attack against the fascist column that was going up Via Tomacelli; he set fire to a lorry ~~loaded with~~ petrol in Via Flaminia (he destroyed another German lorry in Via Cavour); he ~~took part~~ personally in the attack against the German column of S.S. in Via Rasella, in which 32 Germans were killed and more than ten others were wounded.

Bentivegna can assume full responsibility of these actions, the larger part of which were communicated by the clandestine newspapers "Tempo" and particularly "Unità", and the Italian Communist party approves them unconditionally as real and true acts of war against the Nazi-Fascists. The same must be said also about the ambush of Via Rasella, that Bentivegna accomplished with absolute disregard of the danger he was exposed to against a column of armed S.S. in full war order.

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Owing to the exceptional personality of Bentivegna and all the modalities of the tragic incident in which Lt. Barbarisi was to meet with his death, we are confident in an early ~~resale~~ release of Bentivegna from prison.

Roma. 5 July 1944.

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94

3404

Records Dept
6/3/58/5
Box 33

7762

730314

LEGAL

CASE

10400 | 142 | 197

[c. 8/1944?]

Return to archives
SEP 29 1947

[Folder, Date, No. p (L.T.) - 197
Date.]

187 Jessup

[1943-1947] [(8S/#8)]

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[redacted] DIVISION

L/C/LOC

30 August 1944

[redacted] Records BRITIVIGEN cases.

TO : Major C. W. Battersbey
Deputy Chief Public Safety Officer.

1. This is to assure you of immediate compliance with your request of 27 August 1944, in respect to the above.

2. I am grateful for the opportunity to be of assistance to myself on this matter.

Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

LC/P.

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By Lewis NARS, Date 5/29/74

[redacted]

Classification changed to Declassified by Authority of [redacted]

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DEPARTMENT OF THE ARMY
THE ADJUTANT GENERAL CENTER
WASHINGTON, D.C. 20314

21 MAY 1973

DAAG-ASR-S (73031)

Mr. Daniel T. Goggin
Director, General Archives Division
Washington National Records Center, GSA
Washington, D. C. 20409

Dear Mr. Goggin:

I am returning the Allied Military Government court case involving Rosario Bentivegna, which you forwarded for review on 12 April 1973, on behalf of representatives of the Italian newspaper Il Messaggero in New York.

It has been determined that this document was properly declassified by OSD under the 2 May 1972 guidelines.

Also, there is no basis to withhold this document from release to the public under the provisions of the Freedom of Information Act.

Sincerely,

Cyrus H. Froker

for S. J. POMRENZE
Chief, Office Management Division
TAGO

Inclosure
RG 331, Allied Commission
Allied Military Government,
Region IV, Legal Section,
Legal Case, 1944, #7762

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Rec'd Aug 1, 44

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GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

Provincia di Roma - Corte Generale Alleata

Nome dell'accusato: Rosario Bentivegna
Indirizzo dell'accusato: Via Torino 128, Roma
Data di arresto: 23 giugno 1944
Imputazione: omicidio
Data del dibattimento: 14 luglio 1944 e seguenti.
Data della sentenza: 22 luglio 1944
Condanna: 18 mesi di reclusione per il reato previsto dagli artt. 55- 589 - 62 n.2 cod.pen. italiano.

MOTIVI PER LA ISTANZA

1) doveva essere applicato l'art.52 del codice penale italiano. In base a tale articolo, il Bentivegna doveva essere assoluto.

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna, vedendo il Barbarisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barbarisi rispose in maniera ugualmente ostile ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accadde il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur considerando questo, la Corte è convinta che l'atto del dece- "duto di estrarre la pistola, non era giustificato e costituiva una "offesa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere l'esattezza dell'argomentazione della Corte, salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giubba su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di uf-

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ciale di Polizia;

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito Comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione Nazionale;

c) il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua arbitraria azione, spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto del Barbarisi,che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna doveva necessariamente ritenere di essere in presenza di un elemento ostile della quinta colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici ~~exix~~ e di un partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 giugno era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Na=

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zionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata, eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato, quando si trovò dinanzi alla pistola del Barbarisi, poteva fronteggiare con altri mezzi la situazione, Secondo la Corte il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è, a nostro avviso, contraddetto dalle circostanze di causa e dallo spirito della legge italiana. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi - e aveva perciò diritto di difendersi -, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell' avversario, se non quella di reagire rapidamente con violenza.

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il Bentivegna riuscì a prevenirlo facendo fuoco prima di lui. Del resto, questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla. 183

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto del Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi, invece, non si limitò all'estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei seguenti termini:

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" La Corte è convinta che (il Barbarisi) tirò fuori la pistola e "la puntò contro l'imputato". Un simile contegno non può essere spie= gato che con l'intenzione di usare effettivamente l'arma contro il Bentivegna, il quale, se avesse atteso un attimo, avrebbe potuto ca= dere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco; e ciò è tanto vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo immi= nente e mortale. Nè la legge positiva italiana, nè il nostro costu= me morale impongono la fuga di fronte al pericolo; ma, a prescinde= re da tale osservazione, si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di ucci= dere da parte del Bentivegna, il quale ebbe una sola intenzione: quel= la generica di rispondere con adeguatezza di mezzi ad una minaccia, che si palesava estremamente grave ed immediata.

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragione= volmente nelle condizioni previste dall'art.52 del Codice penale.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovreb= be sempre riconoscere che il Bentivegna doveva ritenersi minacciato nella propria integrità fisica e costretto a reagire senza perdere tempo per non soccombere di fronte all'avversario. 108

La nostra legge riconosce lo stato soggettivo di legittima di= fesa altrimenti detto legittima difesa putativa, ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni

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di fatto, che l'uomo normale apprezzerebbe in tal senso.-

Ora, chiunque si fosse trovato il 5 giugno, nelle condizioni in cui si trovò il Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale pericolo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso.-

Per queste considerazioni, riteniamo che il verdetto della Corte Generale debba ritenersi viziato da una intima contraddizione logica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.-

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze, applicando l'art.52 ed assolvendo il Bentivegna.-

2) La Corte Generale con il suo verdetto ha dichiarato che il Bentivegna ha agito in istato di legittima difesa, valutando però in modo inesatto, e perciò colposamente, la proporzione fra la reazione e l'offesa ed ha aggiunto doversi riconoscere che vi fu azione provocatoria da parte del Barbarisi.-

In conformità della legge italiana ha perciò ritenuto responsabile il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli artt. 589 e 62 n.2 del cod.pen. italiano.-

La Corte ha anche dichiarato nel suo verdetto di voler fare astrazione completa da considerazioni politiche e di volere giudicare l'imputato come un essere umano e considerare il deceduto come un essere umano.-

Con la sentenza, però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appare del tutto sproporzionata alla natura dell'episodio.-

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Nel determinare la pena e nel rispondere all'istanza di sospensione della sua esecuzione ai sensi dell'art.163 del codice penale italiano, la Corte doveva attenersi ai criteri fissati nell'art.133 del lo stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato, ma ha acceduto alle richieste del P.M. proprio per quei motivi politici che aveva dichiarato di voler trascurare nella prima frase della motivazione della sua decisione.-

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Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il beneficio della provocazione; ciò che fa notevolmenre ridurre la gravità del reato stesso e la misura della colpa, essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò, fino quasi all'annullamento, la sua entità.-

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato, il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto l'azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.-

Non sembra perciò giusto attribuire, come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.-

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della provocazione, è chiaro che il delitto colposo attribuito al Bentivegna non solo non può apparire tanto grave in sè da richiedere esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.-

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By ... NARA, Date ...

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Il criterio dell'esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa della decisione della Corte, premessa nella quale si afferma di voler giudicare umanamente un essere umano.-

Ma, anche accettando il criterio dell'esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica, ecc.-

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati devono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.-

Ma noi vogliamo aggiungere un'ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena, attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.-

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.-

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire.-

Rosario Bentivegna è un incensurato; appartiene ad un'onesta e patriottica famiglia. E' un giovane studioso del quale il 173
Prof. Caronia, Pro-Rettore dell'Università di Roma, ha tessuto il più invidiabile elogio, sia dal punto di vista intellettuale che dal punto di vista morale.-

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati, egli fu uno di quei valorosi partigiani, ai quali ogni giorno si rivolge il Comando Supremo delle

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Forze Alleate per suscitarne la combattività ed elogiarne il contributo di azione.-

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericoloso per l'ordine sociale e politico del suo Paese.-

Vogliamo perciò sperare che la sentenza della Corte Generale, che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del cod.penale (condanna condizionale), che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.-

Roma, 1° agosto 1944 -

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ASSR

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By NARS, Date

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REMARKS BY THE COUR

Having read carefully through the attached Petition we see no reason to alter our view that the Accused was rightly convicted and that the sentence was certainly not excessive.

With regard to the conviction, we are of opinion that the question whether or not the Accused exceeded the bounds of legitimate self-defence was a question of fact, as to which the Court (which heard the evidence and saw the witnesses) was the best judge. We are satisfied on the evidence, to which we listened with great attention, that the Accused did exceed the bounds of legitimate self-defence, in the sense that the action which he took was unnecessarily violent, i.e. was out of proportion to the degree of offence offered. We adhere to the view expressed in our judgment that the mere fact that the deceased drew his pistol and pointed it at the Accused did not of itself indicate any immediate intention to fire, still less to kill. The evidence in fact points to the contrary conclusion, since the deceased did not in fact fire, although he clearly had the opportunity to do so, if his pistol was loaded (as to which there was no evidence), while it was pointed at the Accused. It is idle to assert that the Accused could not have reacted in any other way. For one thing, he could have spoken, and explained who he was and the reason for his interference. If shooting was necessary (which we, having heard the evidence, do not believe), he could have shot to wound and not to kill. For the above reasons we are of opinion that the Petition discloses no grounds for setting aside the conviction.

As to the sentence, the factors referred to in the Petition were all carefully considered and given their full weight. But for the mitigating circumstances, the good character of the Accused, and the part that he had played as an active partisan, we should have thought it right to impose a much heavier sentence. The Petition discloses no point of law which has not already been fully considered, and consequently we are of opinion that there is no legal ground for interfering with the sentence. We are not blind to the fact that there may be political reasons, of which we are not the appropriate judges, which might render a reduction of sentence desirable. As to this, it is suggested that before modifying the sentence on political grounds it would be wise to seek the views of the Regional Commissioner, who is responsible for the future maintenance of law and order in Rome, and who is in the best position to judge the probable political repercussions of any such action.

H.C. Lickfold Colonel
President.

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Members.

Note by Lt.Col. I.G.H. CAMPBELL, Member of the Court

I concur with all the above remarks except the two concluding sentences, which I consider out of place in "Remarks by the Court". As they

(over)

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have been inserted I wish to make the following comments thereon :-

a) These sentences may create the impression that the sentence of the Court was imposed with an idea, or hope, in the mind of the Court that it would be reduced on political grounds. Such an impression would be false- at least, so far as I am concerned.

b) If the reviewing authority is considering reduction on political grounds, I do not think it would be wise to seek the view of the Regional Commissioner responsible for the future maintainance of law and order in ROME. This case has had widespread publicity : presumably any reduction would receive equal publicity. It is necessary, therefore, to judge "the probable political repercussions" not merely in ROME but throughout Italy now liberated and yet to be liberated.

I. Campbell Lt Col

I. G. H. CAMPBELL,
Lt. Colonel,
Member.

Supplemental Remarks of Major ROBERT C. HENDRICKSON.
Member of the Court.

Since it is quite clear from the Note appended to the remarks of the Court, by Lt. Col. CAMPBELL, that the two concluding sentences to which I subscribed as a member of the Court, are subject to conflicting interpretation, I feel constrained to add that , in my considered opinion, there is no factor involved in this issue which would justify a modification or reduction of the sentence; in fact, I hold strongly to the view that the sentence imposed was exceedingly, if not excessively mild.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
Member.

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Rec'd Gulfport Aug 1, 44

FORM. N.° 11

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

(In uso per la revisione delle cause giudicate davanti i Tribunali Militari o Corti Italiane)

NOTA: Questo stampato deve essere presentato nel termine di 30 giorni dalla sentenza.

PROVINCIA DI Roma

~~Tribunale~~ Corte Generale Alleata

Nome dell'accusato Rosario Bentivegna

Indirizzo dell'accusato Via Torino 128, Roma

Data di arresto 23 giugno 194

Imputazione omicidio

Data del dibattimento 14 luglio 1944 e seguenti Data della sentenza 22 luglio 1944

Condanna per il reato previsto dagli art.5[illegible] n.2 cod.pen.it. a 18 mesi di reclusione

Nome del Giudice del Tribunale

Motivi per la istanza 1, doveva essere applicato l'art.52 del cod.pen. In base a tale articolo, il Bentivegna doveva essere assoluto. - _____

La Corte Generale,con il suo verdetto,ha dichiarato che il Bentivegna vedendo il Barbarisi strappare i manifesti,gli si rivolse in maniera"arrogante"ed"ostile";che il Barbarisi rispose in maniera ugualmente ostile

(vedere fogli allegati)

Data 1 agosto 194

(Firma dell'accusato o del suo avvocato)

OSSERVAZIONI DEL GIUDICE CHE HA PRESIEDUTO AL PROCESSO, O DELL'UFFICIALE SUPERIORE ADDETTO ALLA GIUSTIZIA DELLA PROVINCIA, OPPURE DEL PROCURATORE, SE NECESSARIO

See Remarks of the Court on separate sheet.

Data 4 August 1944

K. L. Littler
Colonel
President.

(Firma e qualifica)

DECISIONE DELL'UFFICIALE CAPO DEGLI AFFARI CIVILI

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Data h

NOTA: Questo stampato-ricevuta deve essere sottoscritto dall'ufficiale Superiore addetto alla Giustizia della Provincia.

REGION IV CASE N° 7762

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DECLASSIFIED NND 765014 By NARA, Date

ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accade il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur "considerando questo, la Corte è convinta che l'atto del deceduto "di estrarre la pistola, non era giustificato e costituiva una offe="sa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere la esattezza della argomentazione della Corte salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giacca su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di ufficiale di Polizia.

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione nazionale.

c) Il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua azione arbitraria spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto

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del Barbarisi, che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna Rosario doveva necessariamente ritenere di essere in presenza di un elemento ostile della V colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici e di un Partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Nazionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato quando si trovò dinanzi alla pistola del Barbarisi poteva fronteggiare con altri mezzi la situazione senza far fuoco uccidendo senz'altro l'avversario. Secondo la Corte era il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è a nostro avviso contraddetto dalle circostanze di causa e dallo spirito della legge italiana applicata nel caso Bentivegna. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi e aveva perciò diritto di difendersi, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell'avversario, se non quella di reagire rapidamente con violenza. 174

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il

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Bentivegna Rosario riuscì a prevenirlo facendo fuoco prima di lui. Del resto questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto di Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi non si limitò alla estrazione dell'arma; ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei termini seguenti:

"La Corte è convinta che (Barbarisi) tirò fuori la pistola e la "puntò contro l'imputato." Un simile contegno non può essere spiegato che con la intenzione di usare effettivamente l'arma contro il Bentivegna il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco ; tanto è vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma a prescindere da tale osservazione si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia che si palesava estremamente grave ed immediata. 173

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del cod.pen.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minaccia=

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to nella propria integrità fisica e costretto a reagire senza perde= re tempo per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima dife= sa altrimenti detto legittima difesa putativa; ponendo solo la condi= zione che la convinzione soggettiva sia basata su condizioni di fat= to che l'uomo normale apprezzerebbe in tal senso.

Ora,chiunque si fosse trovato il 5 giugno , nelle condizioni in cui si trovò Rosario Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale perico= lo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso

Per queste considerazioni riteniamo che il verdetto della Cor= te Generale debba ritenersi viziato da una intima contraddizione lo= gica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze applicando l'art.52 ed assolvendo il Bentivegna.

2) La Corte Generale con il suo verdetto ha dichiarato che il Benti= vegna ha agito in istato di legittima difesa valutando però in modo inesatto e perciò colposamente, la proporzione fra la reazione e l'of= fesa ed ha aggiunto doversi riconoscere che vi fu azione provoca= toria da parte del Barbarisi.

In conformità della legge italiana ha perciò ritenuto responsabi= le il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli art.589 e 62 n.2 del cod.pen.ita= liano.

La Corte ha anche dichiarato nel suo verdetto di volere fare astrazione completa da considerazioni politiche e di volere giudica= re l'imputato come un essere umano e considerare il deceduto come un essere umano. 172

Con la sentenza però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appa= re del tutto sproporzionata alla natura dell'episodio.

Nel determinare la pena e nel rispondere alla istanza di sospen= sione della sua esecuzione a termini dell'art.163 del codice penale italiano; la Corte doveva attenersi ai criteri fissati nell'art.133

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dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato ma ha acceduto alla richiesta del P.M. proprio per quei motivi politici che aveva dichiarato di volere trascurare nella prima frase della motivazione del suo verdetto.

Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il beneficio della provocazione; ciò che fa notevolmente ridurre la gravità del reato stesso e la misura della colpa essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò fino quasi all'annullamento, la sua entità.

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto la azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.

Non sembra perciò giusto attribuire come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della provocazione, è chiaro che il delitto colposo attribuito al Bentivegna

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non solo non può apparire tanto grave in sè da richied re esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.

Il criterio della esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa del verdetto della Corte, premessa nella quale si afferma di volere giudicare umanamente un essere umano. Ma anche accettando il criterio della esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica ecc.

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati debbono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.

Ma noi vogliamo aggiungere una ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena; attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire.

Rosario Bentivegna è un incensurato; appartiene ad una onesta e patriottica famiglia. E' un giovane studioso del quale il Prof. Caronia (Pro Rettore della Università di Roma ha tessuto il più invidiabile elogio sia dal punto di vista intellettuale che dal punto di vista morale.

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche

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che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati egli fu uno di quei valorosi partigiani ai quali ogni giorno si rivolge il Comando Supremo delle Forze Alleato per suscitarne la combattività ed elogiarne il contributo di azione.

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericolo per l'ordine sociale e politico del suo paese.

Vogliamo perciò sperare che la sentenza della Corte Generale che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del codice penale (condanna condizionale) che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.

Roma, I agosto 1944

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NND 765074
By ... NARA, Date ...

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FORM No. 11

ALLIED MILITARY GOVERNMENT

APPLICATION FOR REVIEW OF SENTENCE

(To be used for Review of Cases tried in either Allied Military or Italian Courts)

NOTE: This form must be filed within 30 days of Sentence.

PROVINCE OF .....

..... COURT OF .....

Name of Accused .....

Address of Accused .....

Date of Arrest .....

Charge .....

.....

Date of Trial ..... Date of Sentence .....

Sentence .....

Name of Judge and Court .....

.....

Reasons for Application .....

.....

.....

.....

Date ..... 194....

(Signature of Accused or of his Attorney)

REMARKS BY TRIAL JUDGE, PROVINCIAL SENIOR LEGAL OFFICER, OR PROCURATORE, IF APPLICABLE.

.....

.....

.....

Date ..... 194....

(Signature and Description)

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DECISION OF CHIEF CIVIL AFFAIRS OFFICER

.....

.....

.....

Date ..... 194....

NOTE: This form will be submitted to the Senior Legal Officer of the Province.

1943 — Napoli, R. Tip. Ulaanini

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(file)

al
Ministero Grazia e Giustizia
Roma -

Il sottoscritto, Rosario BENTIVEGNA, fu Vincenzo, ~~domiciliato~~ di de Iaconna Valentina, nato a Roma il 22-6-1922, domiciliato a Roccaraso in Piazza Foro Traiano, 1 a chiede copia della sentenza emanata nel l'agosto del 1964 dall' Alta Corte Militare d'Appello, ed in cui, in seguito a revisione del processo, veniva assolto dall' imputazione di omicidio preterintenzionale nella persona del Ten. Giorgio Barbarini, con la formula piena della legittima difesa. Si richiede per uso di concorso
Con osservanza
Roma, 10 settembre 1967

Rosario Bentivegna

CASE RECORD

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Si trasmette l'unita richiesta con preghiera di volere inviare urgentemente detta copia di sentenza

10-9-67

L' Ufficiale di collegamento
Thomas

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By NARA, Date

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Form No. 8

ALLIED MILITARY GOVERNMENT

PROCEEDINGS OF AN ALLIED MILITARY COURT

Held at the ex Governatorato of Rome.

on the 14 Th day of July 194 4. and succeeding days.

Before Col. H.G. Willmer. Pres. } Constituting a General Military Court.
Lt Col. Jon Campbell. Member
Maj. R.C. Hendrickson Member. (Name and rank of President and/ or Magistrate constituting the Court).

REFERENCE No. Avvocato Di Segni Ruggero sat with the Court as an Assessor.

ACCUSED

Name: Bentivegna Roberto di Vincenzo

Address: Via Torino 122. Roma.

Description: Single

Occupation: Medical Student

Age: 22

INTERPRETER

Name Cpl. Hugo Tellone. is duly sworn

PROSECUTING OFFICER

Name: 2nd Lt. L. A Sabatino.

ADVOCATE FOR ACCUSED

Name and Address Avv. Corrado Perris
Avv. Adelmo Niccolai
Avv. Giulio Bruti D'Ascanio.

CHARGE (S) 164

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

Charge Sheet attached.

REGION IV CASE N° 7762

DECLASSIFIED
NND 785014
By NARS, Date

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

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

---

14 July 1944.

The Court assembled at 0955 hours.

The Convening Order was read.

The Interpreter was sworn.

The Accused & his Defence Counsel were present throughout the trial in this Court.

In answer to questions by the Court Lt. Sabatino stated that a long term of imprisonment would be the maximum sentence.

Accused is arraigned, and pleads "not guilty".

Adv. Corrado objects to the jurisdiction, and applies that the case be heard by an Italian Court. Allied Proclamations had not yet gone into effect at the time of the alleged offence.

Court rules that case must proceed, with liberty to Defence to renew this application at any stage, if at the trial new points appear that there are good grounds for transfer to Italian Court.

Lieut. Sabatino

Prosecution will show that deceased was a member of Guardia di Finanza, and that he was working for the Allies when shot. He wore distinguishing marks on his clothing to show he was working under Allied authority. Deceased attempted to remove certain posters that had been affixed to the walls in this city. Accused became disturbed that deceased was attempting to remove posters. Accused asked him what he was doing. Deceased wanted to know who accused was and why he asked the question. Accused without explanation opened fire and inflicted fatal injuries on deceased. The homicide was unlawful and without justification.

DECLASSIFIED
NND 785084
By NARS, Date

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Rec'd July 13'44

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

SUBJECT : Order convening General Military Court.

In pursuance of the power conferred upon me by the appointment dated 1st. July 1944

I hereby DIRECT that the General Military Court shall meet at the Palace of Justice at 0930 hours on Friday the 14 day of July 1944 and such other days as may be necessary for the trial of the offences brought before it AND that the composition of the Court (in compliance with such order) shall be as follows:

Col. H. G. WILLMER	President
Lt. Col. IAN CAMPBELL	Member
Major ROBERT C. HENDRICKSON	Member

Dated 12 July 1944

Charles Poletti
CHARLES POLETTI
Col. A.U.S.
Regional Commissioner.

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Esibito in 6 H. Tr. I. Corte

CASELLARIO GIUDIZIARIO

PROCURA DEL RE IMPERATORE DI ROMA

CERTIFICATO GENERALE

Al nome di Bonfiglio Mariano

detto fu Vincenzo *di e fu* ...

nato il ... *in* ...

Circondario o Stato di ...

Sulla richiesta della Corte Generale Militare

per motivo di ufficio

si attesta che in questo Casellario Giudiziale risulta:

NULLA

ROMA, LI 12 LUG. 1944

IL SEGRETARIO

162

Stamperia Reale di Roma (365-s)

DECLASSIFIED NND 76502

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DECLASSIFIED
NND 750027

Verbale per l'uccisione di un sottotenente

avvenuta il 15/6/44 alle ore 24,30 in via Tre Cannelle.

Il Sergente Magg. Alessandri Virgilio di Cesare e di Pierantonini Amelia nato a Roccasecca (Frosinone) il 22/2/1913 arruolato nella Forza Repressione Banditismo, Stazione Carabinieri di Frosinone, matricola n. 113788 dell'Arma dei Carabinieri, effettivo presso detta Stazione.

Ferino in via IV novembre angolo via Tre Cannelle, vedendo sbucare dalla detta via, udii allontanarsi velocemente dei passi. Mi portai subito sul posto da dove provenivano detti passi e vidi un individuo di sesso maschile che mi voltava le spalle fuggendo. Il predetto individuo, dopo essersi allontanato di circa 50 metri, si fermò e, puntata la rivoltella contro di me, esplose un colpo. Io, subito, feci fuoco contro il predetto individuo, esplodendo tutti i colpi della mia rivoltella. Il predetto individuo, dopo aver esplosi i colpi, si dileguò per via IV novembre.

Il Brigadiere Bertipaglia Rosario fu Vincenzo e fu De Simone, nato a Frosinone il 22/6/1922, ivi residente alla via Torino n. 122, arruolato nella Forza Repressione Banditismo, Stazione Carabinieri di Frosinone, matricola n. 113788 dell'Arma dei Carabinieri, effettivo presso detta Stazione.

Dichiara: Mi trovavo in via IV novembre angolo via Tre Cannelle, quando udii alcuni colpi di arma da fuoco. Mi portai subito sul posto da dove provenivano detti colpi e vidi un individuo di sesso maschile che mi voltava le spalle fuggendo. Il predetto individuo, dopo essersi allontanato di circa 50 metri, si fermò e, puntata la rivoltella contro di me, esplose un colpo. Io, subito, feci fuoco contro il predetto individuo, esplodendo tutti i colpi della mia rivoltella. Il predetto individuo, dopo aver esplosi i colpi, si dileguò per via IV novembre.

Il Carabiniere Scelto Di Cesare Vincenzo fu Vincenzo e fu De Simone, nato a Frosinone il 6/5/1922, ivi residente alla via Torino n. 122, arruolato nella Forza Repressione Banditismo, Stazione Carabinieri di Frosinone, matricola n. 113788 dell'Arma dei Carabinieri, effettivo presso detta Stazione.

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Il Carabiniere Scelto Di Cesare Vincenzo fu Vincenzo e fu De Simone, nato a Frosinone il 6/5/1922, ivi residente alla via Torino n. 122, arruolato nella Forza Repressione Banditismo, Stazione Carabinieri di Frosinone, matricola n. 113788 dell'Arma dei Carabinieri, effettivo presso detta Stazione.

Dichiara: Mi trovavo in via IV novembre angolo via Tre Cannelle, quando udii alcuni colpi di arma da fuoco. Mi portai subito sul posto da dove provenivano detti colpi e vidi un individuo di sesso maschile che mi voltava le spalle fuggendo. Il predetto individuo, dopo essersi allontanato di circa 50 metri, si fermò e, puntata la rivoltella contro di me, esplose un colpo. Io, subito, feci fuoco contro il predetto individuo, esplodendo tutti i colpi della mia rivoltella. Il predetto individuo, dopo aver esplosi i colpi, si dileguò per via IV novembre.

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DECLASSIFIED
NND 785014
By NARA, Date

di aver fatto rinvenire immediatamente la persona del
fatto con la sig.ra Cappai Carla fu [illegible] e di
Tamburini Maria nata a Roma il 7/12/1920 abitante in Foro
Traiano [illegible]
[illegible] C. [illegible]
nella via [illegible] Terenzi Umberto di Giuseppe e di [illegible] nata a
Roma il 17/4/909 abitante in via Fogliano 15.

Note: nella denuncia [illegible] fatto
[illegible] la sig.ra Cappai Carla affermò di aver veduto
[illegible] fuggire [illegible]
[illegible] Deponendo il detto [illegible] fu
[illegible] il [illegible] Terenzi Umberto, [illegible]
[illegible] dalla strada dagli uomini del [illegible] di guardia
del Comune. Fu [illegible] di quanto sopra

Resp. Mapp. Alessandri Virgilio

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COMMISSARIATO P. S.
MAGDALENAPOLI

Roma, li 25.6.944

N. 01000.Gab.

Risp. a N.°

OGGETTO FONOGRAMMA INTERNO

AL COMANDO ALLEATO =DIV.DI P.S.
Comando Zona di Roma Tel 67324
e.p.c., ALLA R.QUESTURA
R O M A

In seguito alll'annuncio pubblicato suo quotidiani locali relativo alla uccisione di un Tenente di finanza avvenuto il 5 giugno 944 in via delle Tre Cannelle si è spontaneamente presentato in questo Ufficio il Sig.Alessandri Virgilio di Cesare e di Giovannini Aurelia, nato a Roma il 22.2.910, abit'in via dei Pastini 133, il quale ha dichiarato di essere stato presente alla scena e di poter dare esaurienti ragguagli per il rintraccio dell'uccisore che egli assume essere tal BENTIVEGNA Rosario.

Faccio accompagnare questo codesto Comando l'Allessandri per gli ulteriori incombenti.

IL COMMISSARIO CAPO DI P.S.
(F.Cacace)

DECLASSIFICATO
NW 2250

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DECLASSIFIED
NND 785021
By NARA, Date

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Report for the killing of a sub-Lieutenant happened on the

5th Juin I944 at I4.30 hours in Via Tre Cannelle.

I undersigned Sergeant Major Allesandri Virgilio,son of Cesare and Giovannini Amelia,born in Roma on 22nd Febr.I9I0,member of the Police Forces vith card and band N°I27I9of the Group Menotti,state the following:

Standing in Via IV Novembre at the corner with Via Tre Cannelle,turning my shoulders to the mentioned street,I heard to quarrel,I turned round and saw a gray dressed man,who was turning his back to me,to point his arm to a military man without jacket and fire three or four times. The military man who later resulted to be a sub-Lieutenant fell immediately on his back.The man who shooted was stopped,he had no documents, he said his name was Bentivegna Rosario,son of Vincenzo (dead) and De Somma Valentina living at Via Torino I22,born on 22nd Juin I922.The Bentivegna is a lithe man with a short and black smal beard. On his defence for the action,the Bentivegna,who wore a band of the P.C.I. (Italian Communist Party) N°6577 on duty at the newspaper L'Unità (previous "Lavoro Fascista" at Via IV Novembre),says of having surprised the sub-Lieutenant in the act of tearing the wall sheets of the newspaper L'Unità and having rebuked him he saw to point the pistol to him and for defence he fired immediately. A witness of the incident was Miss Capponi Carla,son of Giuseppe (dead) and Tamburri Maria,born in Rome on 7 Dec.I920,living at Foro Traiano 1,she also armed with a pistol.Also this young lady was without documents and a meber of the P.C.I.,on guard of the newspaper L'Unità. They were leaded by me to the editorship of the above mentioned newspaper for their identification,and the Commander of the Guard of the Newspaper Mr.Terenzi Amerigo son of Giuseppe and Olimpia Gori,born in Roma on I7 Apr.I909,living at Via Fogliano 15,guarantied for them.

NOTES : In the hand and the proximity of the fallen sub-Lieutenant no pistol was found by me.Miss Capponi Carla states of having seen the sub-Lieutenant to point the arm to Bentivegna and that he was rebuked because he was tearing the above mentioned wall sheets.

As I had to go away immediately because of my duty,I was told by Mr.Terenzi Amerigo that the body of the sub-Lieutenant would be removed from the street by the men of the guard of the newspaper.

By truth of what above said

Signed:Serg.Magg.Alessandri Virgilio.

- - - - - - - - - - - -

Commissariato P.S.
Magnanapoli
N.OIOOOGab.
Object:Internal Phonogramm

Rome 23 Juin I944

To The Allied Command = P.S.Division
Command Rome Area =
and for knowledge to the R.Questura
R O M A

Following the notices printed in the newspaper concerning the killing of a subLieutenant of the Finance Guard happened on the 5 Juin I944 in Via Tre Cannelle,Mr.Alessandri Virgilio son of Cesare and Giovannini Aurelia,born in Rome on 22 Febr.I9I0,living at Via dei Pastini I33,has willingly come to this Office and stated to have been present to the scene and to be able to give sufficient information for finding the killer whom he says to be Bentivegna Rosario.

I let accompany the Alessandri to this Office for the further proceeding.

The Chief Commissary of P.S.
F.Cacace.

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NND 765021
By NARA, Date

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Notes by Avv. Di Segni, Assessor

CASE OF RENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indi=cated by the art.576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indica=ted by the articles 61 and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art.61 N°10 : having committed the act against a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administra=tive or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

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art.6I Nº10 does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES.The extenuating circumstances which,hypothetically,might be concerned in this case are the follo=wing :

A)Art.62 Nº1 : having acted for motives which have a special moral or social value.

B) Art.62 Nº2 : having reacted when in a state of anger,caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury.It is also required the necessity of the defence,so that the danger or the damage could noh be avoided unless with the defence.Besides that,the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the ne=cessity,it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imp=risonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance,the punishment which would be imposed for the committed crime is increased as far as a third.In no case,the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is dimi=nished of a period not exceeding a third (Art.65).Existing more than one extenuating circumstance,the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum=

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stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69).

DECLASSIFIED
Authority NND 760024
By [illegible] NARA, Date

Evidence for the Prosecution

First witness (Sworn)

Lieut. Filippi Silvestro, officer of the Guardia di Finanza. About 1.0 p.m. on 5 June I was at our officers' mess, in via Regina Elena, Rome. Some other officers were with me. I remember 2/Lt. Lebro was there, also 2/Lt. Iamotta, also Lieut. Icalzi. There were others, but I don't remember who. 2/Lieut. Barbarisi was also there. I had known him since October 1943. He was in uniform, without a blouse; he had on his belt, and a white band on his arm with words in English written on it - except that I saw "A.M.G." on it. I spoke with 2/Lt. Barbarisi. I saw him again that afternoon. About 1600 hours I was on duty when I was informed by a Maresciallo that a 2/Lieut. had been killed. At 1630 I saw Barbarisi in Via Tre Cannelle. He was lying on the ground dead and covered with a blanket. My colleagues had ascertained he was dead. I ~~[illegible]~~ did not remove the cover myself. I never saw his face. When they raised the body to take it away, I recognised who it was by the uniform and by the colour of his hair.

No xxExamination

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Second witness (Sworn)

Fontana Mario Luigi, Assistant at the Pathological Institute. I am a qualified medical practitioner. I saw the body the day I was authorised by Capt. Grenfell to carry out an autopsy. I was told it was the body of Lt. Barbarisi. It was a man of 25-26 years old. It was the attendant who told me who it was, and also the Captain, I believe. I carried out an autopsy. Death had taken place about 48 hours before. The autopsy was on 7 June about 1500 hours. Death was caused by acute anaemia caused by a bullet which penetrated on the top part of the left lung

1.

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of the thorax at about 2 cm. from the sternum on the first intercostal space, an oval wound of 8 x 12 mm., on the left side. Death was caused by the bullet, which perforated the aorta, causing loss of about 3 litres of blood. Death must have been very rapid, because of heavy internal haemorrhage, within about 15 minutes. After a maximum of 5 minutes he would lose consciousness, because of the brain not being fed with blood. The shot must have been fired at a short distance. This is shown by the fact that it caused a large wound, and by the distance the bullet travelled in the body. The range must have been 1/2 to 1 metre.

XXd

I found one bullet only. I should say that the bullet came from slightly above, and obliquely, from front to rear. The inclination may be due to the fact that the bullet struck a bone in the thorax. The body was partially undressed, the upper part wholly. The autopsy was limited to the thorax and the abdomen, because what I found there fully explained the cause of death. We stopped the body completely after examination.

No Rexton.

~~Lobet~~

By the Court

I did not find a bullet – the bullet had passed right through the body. I merely found a hole. I found no other wounds in the body of M.

Rexd (with leave)

There was a wound of entrance, and a wound of exit.

(Adjourned 1200 – 1330 hours).

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By [illegible] NARA, Date

Third Witness. (Sworn)

Lieut. Tamaccia Aldo, of the Guardia di Finanza. About 1.0 p.m. on 5 June I was at the Officers' Mess in Via Regina Elena, Rome. Lt. Filippi, Lt. Calzi and Lt. Barbarisi were with me. I saw Barbarisi again that afternoon. He was dead. I saw him about 1615 hours in Via Tre Cannelle. His body was on the ground. I saw his face and recognised it as that of Lt. Barbarisi. The body was covered by a blanket - I cannot the blanket, save the body was rigid, and to all appearances he was dead. I had talked to Lt. Barbarisi that afternoon. When I saw his body in the street, he had boots, Trousers, shirt, belt and a band on his left sleeve. He had the band on in Mess at 1.0 o'clock. I was able to read some words - "Civil Police" - I am not certain. He had the same band when I saw him dead.

xxd

He did not wear a blouse in Mess. He had no blouse when I saw the body. I don't remember whether he was carrying a blouse over his arm in Mess. The blouse must have been there near the body, because when they removed the body one of those present picked up a blouse. When I saw him in Mess he had his shirt sleeves rolled up. When I saw the body, the shirt sleeves were still rolled up. The white band was on the upper part of the arm, and the sleeve was rolled up to the elbow. Lt. Angelo Luigi Barbarisi is the deceased, and with a colleague I made an inventory of that which belonged to the deceased. The list has been given, together with the articles, to the authorities of your organisation, and I believe that everything was then handed over to the deceased's mother. I heard that later from deceased's mother. I don't know for certain if all the articles & clothes have been returned to her. You can find out from the Carabinieri who took

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delivery, a few to Ferrucci's workers. We were not a band in the shelter of Lt. Barbisi's House. I examined the House in the hospital where we took the body, and I looked in the pockets. If there were a band in the shelter I should have noticed it. There were other words besides "Civil Police", but I don't remember what. When I saw Lt. Barbisi he was wearing his belt and holster, but I did not notice whether there was a pistol in the holster. I believe that the body was buried with the shirt; I heard that his mother was looking for his bracelet and guessed it was probably in the pocket of the shirt.

No Reation

Fourth Witness (Sworn)

Castelli Alberto, commander of the Patriot's Group. I live at Via XX Settembre 98. About 2.30 p.m. on 5 June I was in front of the door going H.Q. in Via Pilotta. A civilian passed me (I think it was a civilian), who said "They have killed a Finance Guard". I called to my men and said "Let's go and see what has happened." I went to Via Tre Cannelli. Before arriving I saw an assembly of people standing around. I advanced with my men and sent the crowd away, and made my way through. I saw the accused there. I was coming from Via IV Novembre and accused was coming away from me — the body between us. When I arrived there was confusion. I don't remember exactly how accused was dressed. He had a pistol in his hand. I asked him first "What has happened?" I asked "What has happened, who has killed?" The accused answered "I have killed". I don't know the accused's name — I spoke of the accused as I recognised him by — the men I spoke to. I also asked the accused "Why?" He replied "Per Legittima Difesa."

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By [illegible] NARA, Date

I asked him to give me the pistol. He refused, because he said he had acted in self defence. He said he had acted in self-defence, because the Lieutenant had drawn his pistol. He told me that when the deceased had taken out his pistol, there was another civilian there who would have fired. He told me he told the Lieutenant to stop taking down certain notices. The posters which the Lieutenant was trying to take down are in glass boxes in Via Tè Cannetti: they are glass cases, but the glass is missing. I don't remember what was on the posters that aroused the deceased. There was with the deceased a girl who, the defendant said, could testify in his favour. I saw the Lieutenant's body on the ground. I don't think I knew him. I noticed how he was dressed. He was not wearing his blouse — it was known as his shirt-tails, as it had not fallen over his belt. I noticed a tear in the left sleeve of his shirt and had with some writing in indelible ink on it. I did not read what the text said — but I have since seen others like it. I did see part of the text which said "Police". The accused did not say how many times he had fired — I did not ask him. When I arrived there was with the accused, besides the girl, a third man with the Public Executioner's armband. I asked him what he was doing, and he said "I am waiting for my captain, whom I have sent for". I said "Yes, we will wait", as I did not wish to be involved with speaking that had been reported to another officer. As the deceased lay on the ground, his arm had not fully covered. I did not see his sleeves were rolled up. But he had a blouse which he was carrying which covered part of his body. Only a small piece of the arm-band could be seen. The text was obscured partly by the blouse, and partly by the position of the arm.

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xxd

I do not remember if the accused said anything else. I do not believe he said anything else. He had already said "I killed him", and I thought my task was completed, as the Captain had been already disposed. Accused did not say he was a "Volontario della Libertà", but I said that he was by his armband. I believe it was a red band, with the letters VL. I was not too interested in these points. I was interested in was that he should remain there. I did not recognise him as a Volontario della Libertà, so I simply asked him for the documents before he left the night before a band. He had no documents, nor did the young girl with him.

No Question.

By the Court

I believe the posters were in Italian, but I am not sure, because I did not observe them. Rome was full of posters at the time.

Fifth Witness (Sworn)

Signora Rocchi Anna, Via Tè Cannelli 15. I am a housekeeper. On afternoon of 5 June I was in my kitchen, when I heard a conversation. I went to the door of my house. I saw a young man talking. I could not understand what they said. As I watched I heard a shot, and one of the two fell to the ground. I did not understand, as I was excited, being a woman, and I thought my son might be there. I got excited so soon as I saw the boy fall to the ground. I did not understand, because they were a bit distant, and I could not hear well. I did not recognise who it was. One of the men was military — the other I cannot swear.

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The one who was shot was the military man. I did not see what he did before he was shot. I was inside, I came out only when the thing happened. I was in my kitchen when I heard the shot. I heard only the one shot. Afterwards I saw nothing, because I felt sad, & they asked me to close the front door of my house. A young girl called me, but I would not recognise her. I was at the front door when I heard the two men talking. I was still in the same place when I heard the shot. Before that I was in the kitchen. I was in my house when I first heard the conversation. When I was frightened I went up to my friend on the second floor where we coffee. The military man who was shot was in grey uniform. I saw afterwards he had a blanket, but he was not wearing it. I did not see whether he had it on at the time of the firing, but it was on the ground afterwards.

xxd

I did not see anything. Only at night I saw the pieces on the side of the body.

No Rexton

By the Court

The body remained on the ground till about 6.0 p.m. When I heard the conversation there were only - two people in the street. The conversation I heard was the sound of feet, and I also heard people shouting. I did hear the two men talking, but I did not understand what they said. They were standing still near each other. I didn't see anybody near the two men. They were speaking calmly.

(A thoroughly unreliable witness)

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Sixth Witness (Sworn)

Signora Caterina Castellana Verzini, Via Tè Cannelli 15.
I am a property owner. I was at the window giving house on the afternoon of 5 June, about 3.0 p.m., on the third floor. I saw the officer walk across the street. It was the window of the hall, opposite to the door. It looks out on to Via Tè Cannelli. I saw the officer walk from my side to the other side of the street, and I saw him take from the house on the other side three posters, on which were written "Viva (Unità". All three posters were exactly the same. The officer had a blouse over his arm, his shirt sleeves rolled up, blouse on, and a cap in his hand. He had no other distinguishing features. I did not see any distinguishing marks on his arm. I did see the blouse over his left arm. I am sure there was no mark on the right sleeve. He proceeded in putting down the posters. Then as he went down Via Tè Cannelli, ~~he~~ a young man appeared coming from Via IV November. The young man was accompanied by a young girl. He approached the officer and pointed a pistol to the upper part of his body near the heart. I believe the young man asked why the officer had taken down the posters, but I did not hear well. They were close to each other almost body to body. Then I saw the Officer begin to put his pistol out, & then I heard a shot. I saw the pistol in the young man's hand while ~~was~~ firing in my right ear, but he was not in time, as the young man fired. After he was shot, someone, I don't know who, took the pistol away from him. It was a young man wearing a beard, not too long. I saw him from above. He had a beard. On his left sleeve there was an arm-band. I believe against is the man, but I cannot swear. If he had a beard on I could identify him better.

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I don't know if the two men killed each other — it was just an instant. The young man waved to the lieutenant after the shooting, walked in front, & did not move away. Previously I saw him moving towards the lieutenant, pistol in hand, and he had only time to say a few words before he fired. He did not move back before he fired. He must have had enough only to say a word or two before he fired. They were near each other when the officer got his pistol out. I saw the officer fall, he fell with his head pointing towards the middle of the road, feet towards the opposite side. Afterwards the young man stayed there with the body, pistol in hand, & killed one or two people. As soon as I heard the first shot I put my hands to my head, where I was from the window. I believe I heard another, and perhaps 2 other shots. I am certain I heard a second shot. They were one right after the other. I cannot say precisely how long.

XXd

I saw the Lieutenant take the pistol from his holster. I noticed that the officer was wearing — band on his arm. It was a white band, I believe, with certain signs on it. The lieutenant had his jacket over his left arm. He had his shirt sleeves rolled up, and the jacket was over the upper part of the arm. I cannot be sure if the Lieutenant was wearing a cap. I did see a cap, either before or afterwards. He did wear glasses. The Lieutenant was alone, and the other man had a girl with him. After the first shots, the people in the street approached the scene. I was about a half above the street in the archer in this Court. I was at the window to see the Americans pass by in the street. There were some vehicles passing along Via Quattro Novembre — which is close to Via Tè Cannetti. I saw an American

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time when photographs the dead lieutenant. This was sometime later. I had been at the window already about 20 minutes when the shot was fired.

Re-xd

I have attended here to-day because I was summoned.

By the Court

There were people on the corner of Via IV Novembre. That is within a few feet of my house, and of the place where the shooting took place. People were behaving normally, there was no shooting. Before the shot was fired there had been no disturbance in my street — there was complete calm. There were three postmen one in three windows, one in each window. They were the only postmen in those three windows. There were other postmen in the vicinity, but the lieutenant only took down those three. They were new postmen — just appointed recently or the day before. I did see the lieutenant after the pistol was fired and after the shot was fired. I can only say I saw him drawing it out — I cannot say what he did with it. I did not see if he was able to point it.

Further xxd

I cannot say whether the lieutenant fired with the pistol.

Seventh Witness (Sworn)

Major A. Battisby, Deputy Chief Public Safety Officer, Rome. We have employed many Italian officers to work for us. There was one called Giorgio Barbarisi. On the morning of my arrival, this officer was sent to me, by order of Col. Pollock, to conduct me to Col. Pollock. That was at 4·30 a.m. on the 5th. He took me to Col. Pollock, and remained with me till mid-day. In the meantime I had proposed to this officer that he should

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remain
[temporarily, my personal assistant. He accepted, & I addressed a letter to his C.O., asking for him to be relieved for this service. He left me at mid-day for his meal, and I never saw him again. It was within my competence to ask for this officer, & I am responsible for the Carabinieri, Guardia di Finanza, Vice Questo etc. I authorised the Defence officer to see the arrested, which is the same as I issued to Civil police to-day. I never saw him since it - but he was issued with an authorised to leave it.

Xxd

It was not necessary for me to wait for the reply of the C.O., before employing this officer. I wrote a letter yesterday.

No Re-xin

By the Court

The Defence officer was due to return on duty at 2.30 p.m. He would have been on duty as my personal assistant in the office. Till 2.30 p.m. when he was due back, he had nothing to perform, in respect of my office - but I mean a police officer is always on duty.

(Adjourned 1700 hours)

15 July 1944
Court re-assembled at 0920 hours.

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Eighth Witness (Sworn)

Carla Capponi, Foro Traiano 1. I am a student. On 5 June about 2.0 p.m. I was at the office of the newspaper L'Unità, together with my newspaper colleagues. About 3.0 p.m. I left, accompanied by Romita Bentivegna, the accused. I had gone to drink water at a fountain in Via Tre Cannelle.

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Accused accompanied me - I don't know if - had any other motives. In Via Tè Cannelli I saw a man in uniform, who with his right hand was removing posters of L'Unità from the wall. He had a grey-green shirt with rolled up sleeves, a jacket thrown over his left arm, with no head covering. He had no distinctive sign on his arms. I did not see any. Accused said "Halt" to the man. He stopped. Accused asked the reason for his act. The military man did not answer, but asked who accused was. Accused produced himself as a friend of the newspaper L'Unità - an armed friend. Then accused invited the military man to follow him to the newspaper. It was in the nature of a friendly, not a civil conversation. They did not go to the office. The military man put his hand to his pistol - took it out, placed a round in the chamber, and pointed the weapon at Bentivegna. Bentivegna was armed, but he had no gun in his hand. His right hand was in his right trouser pocket - not the hip pocket. I suppose he had his gun in the right pocket. When Bentivegni took out his pistol, I looked round and noticed about 5 metres behind him an individual in civil clothes with a pistol in his hand. I saw Bentivegni point the pistol to the left side of the head of the accused. When I saw the individual behind Bentivegni I threw myself aside and cried "look out". I heard shots immediately following my crying out. Accused did not remove himself from Bentivegni - he just bent his knees and fired, I believe 3 times. I cannot say if the lieutenant fired. I know there were several shots, but I don't know who fired. The lieutenant fell to the ground. Then he raised his upper half of the body and pointed the gun at accused. Accused was leaning down over him trying to help him. The lieutenant did

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not gain the sitting position. He just raised the upper part of his body, raised his hands to his head, and then fell back again. He did not say anything. I thought his gestures were contradictions of death. Accused only leaned down towards the Lieutenant. He still had the pistol in his hand — I believe in the same hand. I then went and accused said "Look for help, look for someone". He said nothing else. I moved to the newspaper, but in the way I met a civilian with a police band coming towards us. There was not a sound. This civilian was the first person I saw. I think that those who had been there had left the place. I noticed the Lieutenant the first time when I reached the point where I could see Via Tito Condotti and Via Condotta, and I then saw him falling down the entire from the third window. I was in company with accused. When I saw persons being arrested, I don't remember if I said anything to accused. I don't think accused said anything. In any case it was a gesture that we were merely considered offensive. Accused showed this by saying "Halt" to the Lieutenant. He said it in a loud voice in an intimidating tone. The Lieutenant was already nervous. I noticed when he was arresting the persons he made a gesture — it is longer way in a hurry. I noticed he was surprised by the "Halt". I believe accused's gun was a 9 calibre Beretta. I have transported arms in Rome for some time, and I became familiar with arms. This particular weapon was handed to an Australian officer. I think it was on the 4.9 or 5th day after the liberation that I ascertained its calibre. I think the liberation was the day after the shooting. It was the accused who gave it. The Australian officer said the Beretta was a good pistol, after we had the question of calibre came up. The conversation was between accused & the officer, but I was present. Accused said it was a 9 calibre. Before that time I did

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not discuss the affair with accused. previous time I did not know what the calibre of the pistol was. I believe the policeman who took my name knew the calibre. It was an Italian civilian wearing a police band. I believe his name was Alessandrini, but I don't remember exactly. (Peretta Giorgio is brought into Court) This is not the man.

Xxd

Accused was wearing the arm band of Volunteers of Liberty. He showed it to the policeman, just as he had showed it to Bartolini. Bartolini did not say anything when he was shown the band. Accused had a document, but not a regular one — he had a false identity document. He had a false document, because he was being looked for by German police, — he had taken part in partisan activities. He told the policeman that the document was false, and that his name was Rosario Bentivegna. Policeman did not take accused to the police station. Policeman did not take accused to the police station. He said accused had the right to have it, still before the band. Accused was connected with the paper or the newspaper office. He was of the Division of Committee of National Liberation. I don't know what happened to the civil in that I had been present. I believe he ran away up the via. Tè Cannelli which runs away to the right. I don't know of other incidents that day that I witnessed myself. I know we feared that the Fascists might perform acts of reprisals, we knew that were still fascists in Rome. We thought that there were still some Germans in Rome. When I went away for help, the accused remained 2 or 3 metres from the body.

No Re-Xtn

By the Court

Both the accused and the Second officer had pistols.

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I don't ~~~ if they both fired. The accused officer was carrying his pistol in a holster. I saw him take his pistol out of the holster. As I have already said, he took his pistol out, put a shell in the chamber, and pointed the gun at accused. Accused already had his hand in his pocket, possibly it was a matter of habit. I saw accused take out his pistol. The lieutenant took out his pistol first and pointed it at accused, before accused had taken out his pistol. It is not correct that the accused pointed his pistol at the lieutenant first, and that the lieutenant then took out his pistol out of the holster. I don't know who the other civilian was who was standing a few metres away. I don't know, but I think he too fired, as I heard shots pass close to me. When accused fired, the lieutenant had his gun in his hand. When the lieutenant fell, his pistol was on the ground on the right of his head. As lieutenant partly raised his body and his arms, the fingers of his hands opened, and the pistol fell to the ground. He had it in his right hand. I cannot say I saw accused fire - it was my impression later he did. I had already walked down to the right. I cannot say I saw him withdraw his pistol from his pocket. I saw him take a step back, but he did not then have the pistol in his hand. Before accused took the step back, the lieutenant had already pointed the pistol at him - at his left side at the height of a ~~~ partly raised arm. ~~~ right later position while accused took a step back. The Australian officer has a different name to remember. I met him at the newspaper, because he presented himself as an Australian communist. The arm-bands, such as worn by accused, were distributed at the office

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of the United to all the patriots, but I don't know by whom. It was an official and by the National Committee of Liberation, not a band of one particular party. Accused was in command of a band, composed of patriots who had entered Rome with the Allies. This was a band for the newspapers. I do not know who ordered the funeral. When I left the office with accused I did not know he was arrested, but I assumed so. That morning I had gone to the office to greet colleagues returned from jail, and I stayed on to help the funeral. When I left the office with the accused I was going for a drink. I have known accused since the end of September. We are quite good friends. I saw him often in course of work. I learnt the calibre of accused's pistol when it passed from him to the Australian officer. The accused had been at Palestrina + Valmontone, where he was operating. I was in Rome up to early May, + then I left. I returned again about 3 or 4 days before the Allies entered. I think the accused came to Rome a little time before the Allies came. I only saw the accused's gun afterwards - immediately afterwards. It was a pistol - the same type as the one I saw given to the Australian. From the command "Halt" to the shooting the lapse of time was just sufficient for them to say the words I have described. I cannot say how long exactly, as I was excited at the time. It was a minute perhaps - I cannot say.

(A good witness).

Ninth witness (Sworn)

Captain Greenhill, Capt. G.S., attached A.M.G. Rome Police. Lt. Col. Pollock delegated to me the investigation of this case, and to ascertain who was responsible for the shooting. I took statements. I took a statement from accused, after cautioning him in accordance with the procedure in

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English la I saw accused at H.Q., Asst.G. Police, in Palazzo Viminale. I told him I was - Captain Priolo and that I was investigating death of prisoner Guardia di Finanza, which occurred about 3.0 p.m. on 5 June. He replied - "Yes, I did it". I cautioned him, and he said "I want to tell you all about it". I said to him that I wanted him to understand that he need not say anything further unless he wanted to; that if he did say anything, it would be taken down in writing and might be used in evidence. I did this through an interpreter. I identify and produce statement made by prisoner after caution, taken down - my own hand, dictated where required and signed in each page by accused. Accused signed the alterations and also the mistakes in spelling that I had made. I made no promise and no threats to accused before taking the statement. I did not affect my shorthand if he made - statement. (Statement accepted and marked Exhibit 1). I produce and identify 3 cartridge cases in an envelope, which were handed to me by a Lieutenant of the Guardia Finanza - I believe his name is Pasqua. They have never left my custody since. I actually received the cartridges from an Ufficio di Pubblica Sicurezza called Parretta. (Envelope containing cartridge marked Exhibit 2). I myself arrived in Rome in the very early morning of 5 June, about 4.30 a.m. I personally posted proclamations in Rome at 6.15 a.m. on morning of 5 June, particularly Proclamations 1 and 2; I posted them in Piazza San Lorenzo in Lucina, just off Corso Umberto. At 11.30 a.m. on 7 June I visited the mortuary at the building Hospital in Rome. I saw the dead body of a Lieutenant of the Guardia Finanza, dressed in the uniform, which is well known to me.

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At 2.45 p.m. I proceeded to the hospital where Dr. Fortunato Mario carried out a post-mortem examination. I saw a wound in the front of the chest, and also a wound in the lower part of the back. The doctor examined the whole body, and there was no other injury apart from these two wounds. Later that afternoon I visited Via Tè Cannuki.

No XXIIIa

By the Court

From my previous experience as London police officer, I thought that the bullet had been fired from close, and that the hole in the back was obviously a hole of exit. It was smaller than the hole of entrance. I saw the doctor ascertain that there was a chest hole right through the body. He did this with a probe. There was only the one wound in the body. I examined the deceased's clothes. He had his jacket on, his breeches, jack boots, shirt, collar and tie. I could see no sign of injury on the jacket, so I undid the jacket and examined the shirt, which showed a hole in front and another in rear. I did not then know the facts of the finding of the body, but I came to the conclusion that the deceased was not wearing his jacket. The shirt was slightly singed and blood-stained round the hole of entrance. The hole in the back was hardly singed at all.

XXd (with leave)

There were four traces of tattooing round the hole in the shirt, indicating the shot was fired close to. In my view from that.

Tenth Witness (Sworn)

Pancetta Giorgio, Agente di Pubblica Sicurezza.
I received orders from A.G. in this case to make inquiries, and to collect signed statements. In the

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course of the 4 shots I came into possession of 3 shells. I identify Exhibit 2, as shells which I received from an officer of the Carabinieri some 10 days after the shooting. I passed them to Capt. Greenhill. I don't remember the name of the officer of the Carabinieri. From the time I received the shells till I turned them over to Capt. Greenhill was only half an hour.

XXXXXX

I took statements from all the witnesses, except Signora Vergilli whom I sent to sign her statement. At 1500 hours on 5 June I went to Via Tè Cannelli. I was going to the office. At the corner of Via Tè Cannelli, standing about 100 ft. away, I saw a body on the ground covered with a sheet. I enquired of the body and on receiving a reply from the body that was groaning from there. I approached, because an officer of the Guardia di Finanza and one of the men of the Guardia di Finanza were standing near the body. I asked the Officer if he needed my help. He said No. I raised the sheet, and saw that the deceased was Lt. Barbisi, whom I had seen in the office that morning. A little distance from the body was the jacket of Barbisi folded. Near the window of the post boxes I saw the cap of Barbisi, also folded. I moved away and joined a group of persons who were there.

[Case for the Prosecution subject to calling Lt. Pasqua to give formal proof of the custody of the shells (Exhibit 2).]

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The Court explained the rights of the accused.

(Adjourned 1245 hours.)

17 July 1944

Court re-assembled at 0910 hours.

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Aw. Addino opr:

The prosecution here on proved accused's act illegal. But the Defence can prove his innocence quite clearly. We shall prove, first, that the incident took place in an atmosphere of war, and that Bentivegna, under orders of Committee of Liberation, had to be in a state of anxiety & unrest. Secondly we shall prove that accused was a volunteer of liberty on duty, charged with the task of guarding the safety of L'Unità and adjacent premises against possible attack by Nazis or Fascists. Thirdly we shall prove that accused was authorised to carry arms. Fourthly we shall prove that the patriots were bound by orders received, and at the material time it was not yet known that the Allies were taking over all police duties. Fifthly Bentivegna and the other unidentified man, removing the posters, was doing a thing that appeared to be hostile to the principles of the patriots — and apparently hostile to the Allies themselves. Sixthly the verbal exchange was principal objectively and subjectively. Seventhly Bentivegna reacted in a most hostile manner to accused's words, and was the first to pass from words to arms. Eighthly accused had no other possible escape from danger, which was actual, immediate, except in the way he did act. Ninthly, on a true view of the facts, the act of accused was, from a psychological point of view, no more than a natural act of self-preservation. Tenthly the act is not punishable by Italian law because the act of defence of the accused was proportionate to the degree of offence offered.

Evidence for the Defence

Accused elects to give evidence on his own behalf and is duly sworn.

Rosario Bentivegna — age 22, unmarried, medical student. From 8th Sept. 1943 I have been engaged in partisan activities, in Rome and the surrounding area. Since 1939 I have engaged in political activities, and in September 1941 I was arrested by the Fascist police on

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security ... ends. I was called up, military service in February 1943, and discharged for my studies in May 1943. In November 1943, I became a member of the Partisan groups (GAP) under auspices of National Committee of Liberation. I was a member of GAP Pisacane. The GAP are very light squads organized by the partisans for action in the city streets. I was the commander of the GAP Pisacane. In January, following the Allied landing, the National Committee ordered me to take charge of the Cassacchia partisans. I returned to Rome in March, when the arrival of the Allies was no longer near, and resumed command of GAP Pisacane. I had to leave Rome to go to partisan zone in early May. I returned to Rome on 2 June to bring a report to my superiors. My command was the military assisting of the Committee of National Liberation, working in concert with Allied military authorities. I was sent to Cassino and Frosinone as GAP commander, and I have carried out activities for liaising information. On 4 June, as the arrival of the Allies was not considered imminent, my command sent me to a Partisan zone. I left at 7.30 p.m. Towards 11.00 a.m. on Via Tiburtina, I saw Allied formations, accordingly returned, considering that my mission was no longer valid. Returning to Rome, I made contact with my Hdq., I made contact with my colleagues of San Lorenzo District. On the night of 4-5 I was ordered to carry out activities for security and order in this district. On morning of 5 June I left my companions of San Lorenzo, and went to search for my commander, that I knew I could find at the seat of my party. I did not notice Allied Proclamations during the morning of the 5th June. I went directly from San Lorenzo to the seat of the newspaper

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L'Unità, which → also the H.Q. group ?, and remained there for 2 days and nights. I did not move from Via Quattro Novembre and its surroundings, except that I went a few metres East. I did not see Allied Proclamations posted in that area. On 5 June I was commander of the guard group surrounding the building of L'Unità. One group superiors gave me this mission. The building is on the corner of Via Quattro Novembre and Via Tre Cannelle, and stretches on to Via Delle Conderia. There were several posters around the building, hailing the arrival of the Allies, the liberation of Rome, the Allied Forces, the newspaper and the Communist party. Posters were of various inscriptions — "Viva L'Italia Libera", "Viva gli Eserciti Alleati," "Viva il Partito Comunista Italiano", and "Viva l'Unità". There were no Nazi or Fascist posters on the building. In the afternoon I was dressed in civil, with my shirt collar open and over my coat. I was wearing thin shoes. I had a very narrow band on my chin and moustaches which ran from the band. I had a red, white and green armband, inscribed VL (= Volontari della Libertà), with several numbers and the stamp of the party. It had been given to me in San Lorenzo by my companions, from whom I departed at that moment. The bands were given by the National Committee of Liberation, the numbers of whom were known by the leaders of the Committee. In the afternoon of the 5th I made frequent visits of inspection around the premises, but did not leave the vicinity. At 3.0 p.m. I made a round of inspection. I went out through the main entrance on Via Quattro Novembre and directed myself towards Via Tre Cannelle. Carlo Coponi went with me. I did not know of the time when he accompanied me. When I arrived via Tre Cannelle I saw beyond the "elbow" of the street

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an individual who, in keeping with custom, was lowering down posters on the last shop window on the building. They are on the part of the wall which faces Via Tè Cannelli (marked by crosses on attached sketch plan). I also mark with a □ the door of the building from which I came out. (Sketch plan attached to Record and marked Exhibit 3). I did not recognise the two individuals. One individual, slightly at the back of the other was removing posters. He seemed to be in uniform, or rather in parts of a uniform. The other was a little in front of the first individual, a metre or so perhaps, and gave me the impression that they were together. I don't think he was removing posters. There was no glass in the shop windows. The second man was dressed in civilian clothes. When I saw them, I approached them telling them to stop doing what they were doing. I addressed them both, but only one of them answered directly to my "Halt". It was the military man who answered. He was without a hat, with a coat over his arm, his sleeves rolled up, and I cannot say whether he wore any signs or not. I did not recognise him as an officer, nor as an officer of any particular branch. Many people in Rome had to wear uniform, because they had no civilian clothes. He was wearing black boots, breeches, a grey green shirt, and a coat over his left arm. He was the same uniform as that worn from sometime by Italian officers and officers of the militia — officers and non-commissioned officers. His coat was folded and had been tossed over the top part of the arm, and covered the upper part completely. I don't know which side out the coat was folded. The military man was very excited. He seemed surprised

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or my "Left" and turned towards me. He turned and addressed me in a most arrogant manner. He said he could do what he liked - in my case that I should say who I was. I replied rather angrily that I was a volunteer officer, and I showed him my card. Both of us were somewhat excited. As I answered him, the military man put his hand on his pistol in his holster (which was attached to his belt, rather towards the back), drew the pistol out, put a bullet into the chamber by cocking the pistol. He pressed the safety catch and pointed the pistol to the left side in the middle of my body. The pistol evidently had a clip in place, but presumably there was no bullet in the chamber. I had my pistol in my right side trousers pocket. I believe it was while he was pulling his pistol I was telling him I was a VL, and that he should follow me to the office of the newspaper. I told him of my rank as commandant of the Jewish troop. He rested his pistol on the right of my chest, with a very threatening air. I had my pistol in my trousers pocket, with my hand on it. My pistol had a bullet in the chamber, without safety catch, and the percussion pin loaded. In that position all that was needed was a slight pressure of the members between my fingers to put the percussion pin in a firing position. While the military man was drawing his pistol I had already done what I have described, in order to be prepared for the unexpected. At this point several things happened in a very short time - I don't know if successive, or whether they were dependent on my

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action. As Lieutenant placed his hand to my head - I heard a woman scream - I took out my pistol - I saw the Lieutenant shoot - even before I struck a blow with my left hand against the Lieutenant's right, deflecting it downwards - I jumped back one step and fired 3 shots. I intended to deflect the Lieutenant's pistol sideways. The pistol stayed in the hand of the Lieutenant till I saw him dying. I don't remember why I fired 3 shots, but I remember that I did. This was ascertained by the expert when he examined my pistol. I cannot be sure that the Lieutenant did not fire - I believe not. I am sure that were other shots besides my three. I heard more than 3 shots - I believe 5. I don't know who fired them, or from where. I got the impression from the whole thing that they were fired by the other man who was with the Lieutenant. My attention at that Carla Capponi was somewhere around from me, a little behind me, and to my left. When I fired, the Lieutenant fell, but the Carbineer in front had already been deceived, and then he fell the pistol, which was found to the right of the back of his head. I sent Carla Capponi to go for help, because it did not seem that the Lieutenant was dead, but after a few minutes he died. At the moment of the shots there were four people in the room of the street, and more of them ran off. After the fall of the Lieutenant, people began to gather and look round. I began, as was my duty, to keep order. I did not recognise the Patriot leader (Carretti Alberto) when he started to give evidence, but I recognised him later when he gave evidence about the conversation. His account of the conversation was accurate but omitted one thing. I told him, as he said, that I had acted in Self-Defence, and I told him that this was not the only reason that I did not hand

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him to come. In p.r. I told him that I [illegible] account for their coming direct suspicions of the newspaper office. It was after point that the officer who questioned me told the Commandant that I could keep the arms, as I was telling the truth. I remember that some officers of the Allied forces came to the scene, saying that they had been — I don't remember exactly. The members of the Allied Forces came first. I remained on the spot about 20 minutes or half an hour. The officer asked me for documents, and I told him that I had only false documents. I showed them to him, and also gave him my name particulars. (Brigadier Colantonio Ovidio is known in the Court). I believe I recognise this officer as one who came up immediately afterwards, but he was dressed in civilian clothes. The Brigadiere came at the same time as the Americans. I left Rome on 7 June for reasons of too most delicate. In the Fascist Army I served only as a medical soldier, therefore knows nothing about arms. I tried to bring help to Badoglio if this was possible.

XXd

Antonello Trombadore was the person who gave me the order to found this building. He had been my young commander when I was with the GAP, and when I was sent to command the Partisans. He was one of the members of the Rome military Committee. I think he gave the order as Commander of the Roman National Front, of which I was a member under the National Committee of Liberation. I am not ashamed to talk with you persons of whose official position I am not sure. After critical time we all had to keep our personalities disguised. In that clandestine period, Antonello Trombadore was sought for by the Nazi-Fascist police, since written for the first time

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that I had a kiss real sense. He I'd been me young communists in the Partisan period. Also at the time he came to which he was in company with Giacomo Pellegrini, one of the leaders of the Italian Communist party. Before I was put me there had been a panel, which was not to decide, - people gathered in front of the building and there was confusion, and I was told to take charge. Miss Capini did not come to call me. She had come to L'Unità to meet her colleagues, and amongst them she found me. I had seen her during the morning, at dinner in another place, and several times during the day. I don't know precisely myself what she was doing when she came over with me. It was probably as I was going out of the door that I got into her company, but I cannot remember. As me told me that someone was trying from position - I saw it with my own eyes. I saw the kiss as I have described. The military men on the veranda of the two house. The military men was the other of the two to the position - the other was a little more to the right. I could not see or make how many position he had been down - I saw later there were four. The military men were blue cloth, but I did not see if he had spurs. He was wearing grey-green breeches. He had a shirt of about the same colour. He did have a belt, but not the ammunition belt that goes over the shoulder - or possibly I did not see it because of his coat. The coat was drawn on the top door of the left arm, and perhaps covered part of the shoulder. I don't know on which shoulder the ammunition belt goes. I did not see any other particulars in that moment, and I don't believe anyone else would. When I called "Halt", the military man turned round, after giving a glance to the other man, and came towards me. He pivoted on his heels as then came towards me. At a certain point we met.

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After a little time he said he would do what he liked, & could do I was. After I spoke to him — with how his pistol, put — later in the character, & pointed the pistol towards my heart. When he did this I believe I said nothing. He said nothing — he had already said something before. When he pointed the gun at my heart I, since things were happening around me which were of importance, put my hand in my pocket resting it on my pistol. With the movement between the first two fingers I raised the percussion cap, and kept my grip ready for the unexpected. I was doing this while he drew his pistol. The instrument of his pistol pointed to my body, hope I took mine out completely. I believe I took mine out at the moment when he actually rested his pistol against my body. At that moment we did not speak to each other. I cannot say how long elapsed from then till the 2 shots were fired from elsewhere. I did not allow him time to fire because I knocked his hand away — as this moment I cannot say whether it was his intention when fired the two shots or not. I gave the blow with my left hand. If the instrument had been I was armed, perhaps he would have had time to shoot. He had time to take his pistol. After he pointed the gun I gave the blow which deflected it. Possibly I was more ready than he, and thought quicker than he did. In other times it might have been possible to take away, but we were in an excited atmosphere on that day. I was suspicious & was aware me: I saw they were acting together, and I thought my life was in peril. I was told that ~~was~~ still Nazi-Fascist elements in Turin, and that one of my companions had been wounded. I was injured that in Piazza Venezia a negro soldier

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had been attacked and wounded in the head, and later in the day I saw him pass our office with a bandaged. My Command had ordered me to be specially alert against acts of sabotage against the Committee of Liberation and the Allies. All the things I had heard and seen made me more patient and meticulous in doing my duty as a guard. My own person was exposed to danger. All the patriots were excited as they could be. The things that happened did, however, disturb the general feeling of happiness amongst the general people of Rome. I have always been anti-Fascist. The Guardia Finanza was not a Fascist organisation, any more than the Carabinieri or the Army. I agree this is strong — but in fact during the last 7 months the Guardia Finanza have done many things to help us — though of course many of the officers were against us. I did not know the officers were against us. I knew that some officers hostile to us in all the organisations. I had no animosity against any one. I fought those who fought me and my principles and my organisation — i.e. against the Nazis & Fascists. When I saw the Lieutenant taking down posters, it was an indication that I was faced with a Nazi or Fascist. During the last 6 months I have myself taken down many Nazi & Fascist posters. Seeing it made me angry. I did not see the uniform. Seeing military dress meant nothing. Patriots were always cut off from our families and supplies & had to use whatever we could lay hands on. The Lieutenant did not tell me who he was or all. I don't know what I should have done if it had been an old man. I only fired at the Lieutenant because he pointed the weapon at me, & this scared him, and not because he was taking down the posters. When the pistol was against

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my heart I dropped myself against the ... vehicle door. I agree it is possible that the third man fired into the air just to frighten me. In fact both my ears were ringing, and I fired. To tell the truth I did not aim at all.

(Adjourned 1245 - 1420 hrs.)

As I said before I always had my hand in my pocket when the lieutenant was preparing his pistol, and with the cartridge between my two fingers I pushed home the percussion cap. Meanwhile the lieutenant drew his pistol and cocked it. The actions of the lieutenant and myself were simultaneous and I cannot give the exact sequence of time or those acts which succeeded each other with such amazing speed. I extracted the pistol, gave a blow to the lieutenant's arm, took a step backwards, and immediately afterwards fired. I cannot say exactly when it was the lieutenant pointed his pistol at me. I have no picture of sequence. All I can say is that he did it. Perhaps the blow of my hand was more rapid than his pulling the trigger. I cannot say whether my blow was heavy or light, it was sufficient to displace the pistol. My firing hand was a limited step back, and I should say I fired before my backward movement stopped. I only tried to displace the arm - I did not try to take his pistol. I agree that a certain point both our pistols were over. The lieutenant's pistol had hardly been pointed long enough when I gave the blow. The lieutenant said nothing. I heard 5 shots altogether - I cannot give the sequence of the shots. I did not say I heard 3 shots followed by 2. (Other witness said it was "tré pin tre"). At no moment I does know that I should have retired to places if the lieutenant had fired. I fired 3 shots, and I heard them clearly. I cannot say if the other 2 sounded higher or lower - I was too excited at the time. I have never said the lieutenant fired the two shots. I said that I believe he did not fire. Even if he had fired I should not have been able to note the fact, I was so excited.

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I did not see the lieutenant because he had fired, but because his thumb was the one immediately to my left & I could have fired myself or someone else. The enemy further away has less possibility of doing injury than the nearer one. The lieutenant's coat covered his left arm from elbow to shoulder. Even when the lieutenant was drawing his pistol & placing the holster in the charger, the coat remained in the same place. He was shooting presumably & kept the coat in the same place, and still had the arm in the same position when he fell. I have myself, when firing the Germans, fired a rifle while holding 2 or 3 other cartridges in the other hand.

(Witness gives a demonstration in Court with a borrowed Constable's coat and pistol).

If you could see my upper arm then, it was because you had special reason for looking. I had no special reason for looking at the lieutenant's arm. I do not remember on which side the lieutenant carried his holster. I had the impression it was on the right and to the back. If I did not see the hand, I may suppose it was not there. I guarantee that I did not see it. If my statement says that I took a few paces back, it may be due to a mistake on the part of the interpreter.

No Question

By the Court

My job was to supervise the discipline of the guard on the building. Generally the duties of the guard were to keep order, to guard cards, remove loiterers, and to keep the street clear. We feared armed attack on the part of armed Nazi & Fascist elements. It was thought on that date that these elements might show themselves openly. We stayed up all night that night, awaiting because we had received news of an attack on Torpignattara. There was never an attack against our building. I did not regard the lieutenant's presence as an indication of an attack - merely as a demonstration. When I made my tour of

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inspection I was at looking for sighting : rifle. I had been on the move all day. It was not strictly a tour of inspection. I was simply going from one place to another. I had no particular destination. My weapon had been given to me by a companion. I had received no specific instructions as to opening fire. I was just invited by Barbisi to accompany me to the newspaper office. I think the time was about 3.0, perhaps 2.45. I don't think it can have been before 2.30. I thought the crowd I had to give me special authority. I mean authority to maintain public order. The band was in the nature of a procession. Any orders were to maintain public order, if other were disturbed by any one whatsoever. I thought I had authority to file in case of necessity. In case of disturbance my duty was to quell it peacefully — if it was an armed attack we would have answered with arms. Five or six, or perhaps ten, minutes after the shooting I moved away a short distance to carry out my duty to preserve order. Up to then the lieutenant's pistol had been lying in the same place. I do not know whether the witness Alberto Castelli arrived before or after I moved away. During the time I moved away from the body the lieutenant's pistol disappeared. I immediately looked for it. At that moment an agent of P.S. had arrived and I handed over to him. He is not in Court. I should know him again. I cannot state precisely where the pistol had gone — or rather be asked, but with no success. I agree it was a serious matter — but I was alone, and I was surrounded by a fairly large crowd. I believe I have been asked about this pistol before. The leaving down of the pistol was not a cause of my firing. It is true it is an indirect cause, but I should not have interfered if the Lieutenant had not touched the pistol. I got the impression that the lieutenant was unhappy at the

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hand up [illegible], and then he was a big man. I took no notice of him because of it. At that moment I was unable to control my emotions, and I don't know what effect it would have had on me if I had seen that the Lieutenant had an arm band. If I had seen an arm band I might have asked him more calmly why he was wearing posters. I don't think people employed by the Allied Forces would be likely to tear down our Communist Party notices. If I had known the Lieutenant was employed by the Allied Forces I should have addressed him in a calmer way. Actually I did address myself to him in a hostile way. I did not think of the effect doing so at the time, because I was very incensed. I would agree that the way things happened we both lost our tempers. I do not agree with the evidence given by Signora Vergini. I do not know her, and she has no reason to concoct a lie against me. I think her observation was bad. I did tell the police that I had knocked away the Lieutenant's pistol with my left hand. I cannot explain why it is not in the written statement, as I regard it as most important. My pistol is a gift from a Companion, and I gave it to an Australian. Arms were not issued by our superiors, we had to use them for ourselves. I had the right to carry pistols — we were fighting and risking our lives. My band was sufficient authority to carry arms, or least wearing of my Allied Radio. I speak of bands issued by the Committee of National Liberation. I did not think the band gave me the right to defy the law. I was defending the law. It was after I entered Via Tè Cannella that I first saw the Lieutenant. He was about 10 metres away — I cannot say exactly. I in fact started work for the Brigata Partisana without any training in

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arms. I fired 2 pistol shots in counter fire then I have had a lot of experience in the use of arms.

Second witness (Sworn)

Colantonio Ovidio, Centro Raccolta dei CC.RR. I am a Brigadiere of CC.RR. Before 8th September last I was in the Internal Company of the CC.RR in Rome. Since 8 Sept. I have not been on duty in Rome with the Fascist Police. I was part of the Patrizi Legion's band. The band operated in Rome and outside. On 5 June about 3.0 o'clock I was in an American jeep, with an American Captain, a Sergeant and a driver — also an American prisoner who had been my guest for some time. At 3.0 o'clock we were in the corner of Via IV Novembre with Via Tè Cavalli. The American prisoner left a statement with me.

(Statement produced and read by the Court. It contains nothing but an unofficial translation of the statement of this witness, and official record is handed to the witness).

We were visiting various allied offices trying to find a uniform for my prisoner. We were in Via Quattro Novembre ready to turn into Via Tè Cavalli — we were stopped by traffic coming towards the turn. I was sitting beside the driver looking into Via Tè Cavalli. I saw a man in uniform with sleeves rolled up, jacket folded on his arm, running down footway. The footway said Viva L'Unità, Viva l'Esercito Alleato, etc. I did not notice any particular signs on the sleeve. Later I recognised him as an officer. I did not notice if there was a band on the jacket. Our disciplinary regulations absolutely prohibit appearing without a coat, whether on duty or not. That is a general application to the police forces. Italian discipline permits it. The band is supposed to be worn on the left arm on the

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blouse, and a shirt. After the officer had taken down 3 prisoners he continued to walk along via Tre Cannelli towards the Stairs. He had not yet reached the Stairs. On the corner of via Quattro Novembre a young man and a young woman appeared, going in the same direction. I recognised them both here in Court (witness points to accused and to Lance Corporal), but the young man then had a light beard. Accused said something about — but I could not hear what because of the noise of traffic — and the officer then made half a turn. There was a brief exchange of angry words, which I could not understand, but could see. The officer then took out a pistol from his holster. I saw him load the pistol, cock it and point it against the accused.

(Court adjourned at 1700 hours).

18 July 1944.

Court re-assembled at 0915 hours.

I saw accused put his hand in his right hand pocket, take out his pistol, with a meagre gesture shielded himself with his left hand, drew back a step, and I heard some shots. By a "meagre gesture" I mean a rapid gesture. I followed Bartolozzi — he was approaching the officer. He did not have a weapon in his hand — he was arm in arm with the young woman. I can definitely exclude that he had a weapon in his hand. The young woman was — the left, the accused was on the right. By "shielded himself with his left hand" I mean he tried to deflect the weapon. I don't believe accused stepped back more than one pace, because they were very near each other. I heard 3 or 4 shots — then there was an echo, and I can say positively how many I heard altogether. When the shooting took place the military men fell backwards. Then he made a gesture — if to rise, and made gestures with his hands. He made contractions with his hands, still trying to rise; then he fell back again, and the pistol fell from his hand, and remained on the ground level with his right shoulder.

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I did not notice how the officer was on ... of the Fire and Guard. I saw the officer tear down 3 posters. I only saw one particularly, which said L apostrophe something – I assumed it was L'Unita. When I saw the posters being torn down I saw 2 or 3 other persons near the officer, walking by. I saw someone near him, backward of him. I did not notice who was the closest person to the officer. Accused and the officer were the persons closest to me. I could not precisely say how many shots were fired. I do know who fired the shots, as it is the same person fired them all. I was dressed in riding breeches and a light coloured jacket – civilian clothes. I had a brassard with the word "Police", and a rectangular piece of cloth, with a star, meaning Section Commander and Squad Leader, on my left breast. I was with 3 Americans. I walked towards the wounded man to see if I could help. When I arrived near him he died. Accused approached me and said "I have not killed him to commit a murder; I did it in self-defence." He also said "Tenente, Lieutenant, I put myself at your disposal, in order that Italy may be saved on all the fronts". I inquire he called me Lieutenant because he saw the star and the band. The Americans with me said that having seen what happened they would have taken care of it all. When the Americans left the scene, they left accused on the spot. They did not speak to accused at all. The Americans spoke amongst themselves in English. I did not see that the officer was acting under the authority of the Allies. On the 5 June I myself surprised some false partisans with bands on their arms who were pillaging a villa. I arrested – members of the German S.S. who wore a band and had regular documents. That was about 9.0 a.m. on the 5th.

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About 13 : 00 I was present at the pitching of the villa.
I was here because on Saturday morning I saw a newspaper article about this case. I read that the witness Castellani had been unable to collect the facts as they took place and had contradicted herself. That was in the "Ricostruzione".
I reported the facts to my superior officer, Maresciallo Maggiore, De Angelis, and I was invited by him to come here to testify. I went to the Maresciallo commanding the Station of the Polizia Giudiziaria. He accompanied me to the Prosecuting Office — this was about 12.0 noon on Saturday.
I found there 2 civilians, one at the table and one at the typewriter. I did see armed patrols in Rome on the 5th.

Xxd

I have been 12 years in the CC.RR. I first met Cernoch on 5 June, after the incident. I had never seen him before. I do not know what party Cernoch belongs to. To go with one a house is not permitted. Badges of rank, only, must be worn on the blouse. I don't know the names of the American captain and the American sergeant-major.
They were just visiting - following the 5th Army. The prisoner said he was leaving for Foggia. I told the story to my Superiors last Saturday. Previously I told it only to my family. He did not mention to me the names of the American Captain or Sergeant. I was convinced that the Americans would have taken care of it all. I don't know the nationality of the accused.
I spoke to him in Italian. The accused was an Italian. On 5 June I had not yet resumed duty with the CC.RR. I am now with the Centro Raccolta. That is a temporary post for disbanded CC.RR. We shall be dispatched from here and given the necessary documents. I don't really know my status at present.

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We were going out in the Jeep to the different Allied commands in order to find a witness for the prisoner. I left the Americans right after the incident, about 1530 hrs. I went to the Band H.Q. We were going from Via Cesare Battisti towards Via Nazionale. We were in front of the L'Unità Building. To turn into Via Tre Cannelle the Jeep had to turn left. We had to stop to let other traffic go past. I saw the Lieutenant turn down 3 persons. He was dead when I arrived on the spot. I got out into the street, walked to the Lieutenant, & found he was dead. When I saw him turning down the persons, we were in the Jeep, stopped - via Ostiense Cavour Nazionale We were still there when the shots were fired. We had to wait for many cars. They were military vehicles. In spite of the traffic I could see all I have stated. I do not know who fired the shots. I left word in Battisby that I wanted to see the Prosecutor. I did not say where I was going back. Immediately afterwards I saw an employee of the Lawyer, and said I could give evidence, & left my name and address. Immediately afterwards I was told by Avv. Nicolai to be here on Monday. I do not say that witness Castellani gave wrong evidence - all I say is that what I read in the newspaper was wrong, and she contradicted herself. The American Captain took down the name of the street. I did not tell the accused who I was.

No Reexam

By the Court

There were 5 persons in the Jeep. I was at the back of the Jeep on the left. In front alongside the driver was the Sergeant-Major. The Captain and the prisoner were in the back. The Captain was on the right, and

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the prison - was on the left side behind me. I was sitting with my feet hanging outside the vehicle. The Captain was a Captain of the Military police, and the Sgt. major was also Military Police. I only know that they belonged to the 5th Army. They were wearing boots, and the prisoner told me he was a Captain, because I could not distinguish ranks. Only the Sergeant major was wearing a hood - the Captain had a field jacket. They came to find me in the via dei Gracchi, where the prisoner knew that I lived. I was in the office of the hotel, and they asked me to get in and accompany them, because me as a guide knew where the different stations were. When the traffic cleared, the car turned left into via Tre Cannelle. In Via Tre Cannelle it stopped, and we got off. I got off first. In the car remained only the driver. I went immediately near to the wounded man, and then I spoke to accused. The Americans remained at the back of me. They were there in the street for everyone to see. I could do nothing because the hood had his handcuffs and I could not be seen. I don't know what the Americans were thinking. Immediately afterwards we went to the Bar at the corner of via Tre Cannelle. As soon as accused said he was staying and wanted to give an explanation, we all went away to the Bar and left accused there. It seemed to me that the Americans did not attach too much importance to the incident - they invited me to the Bar. I agree that I thought their action in doing so was most extraordinary. I also declared that the body had to be removed to hospital. The Captain and the prisoner said they would take care of that. I don't know what steps they took. After we came out of the Bar, accused was still there - and then a civilian came who began to mount guard over the body. He said an Italian police captain would have come.

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I did not attribute any more importance to the matter, because I knew the Americans would take care of it. That is why I did not speak till Saturday. Until Saturday I never saw anything about this case in the newspapers. We had nothing else to do on that day except look for a suitcase of the prisoner. When we came out of the Bar, we went to the place where the incident took place. We stayed a few minutes. Benvisegna was still there. Since I had to go to the office of the Band, for the handing in [illegible], I asked him to excuse me for a while, leaving the others on the scene. I first met the Americans about 1430 hours. As long as I was with them they did not find a suitcase, because the stations we went to had none. The first place was Pincio, Villa Borghesi, and we found [illegible] none there. Then we went to the station of Piazza Cenova Carabinieri, near the Railway Station in Via Castel Pretorio. At these places we found military personnel but no suitcases. I do not know the units who were at these two places. At the second place we found some American soldiers, but they told us H.Q. had not arrived yet. We also went to Piazza Venezia, but we learned at H.Q. we were told there was a H.Q. there, but before going to it the Captain wanted to go to the Bar. So we turned back to the Jeep and went back to the Bar. At the time of the incident we were going to the Bar. I saw the lieutenant pick his pistol or weapon. I saw him fall to the ground. When I arrived there was only weapon and the lieutenant. I saw the lieutenant's pistol in his hand and on the ground. I did not touch the pistol. It was still there when I left. It was still there on the ground after we came from the Bar.

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he were very in the Bar for a while. I believe the
pistol was a Beretta, but I did not examine it. I was
wearing a star and armband. They took the usual
steps that we had received from the Board. The Allied
Command had already advised the Board to be disbanded.
I did not think I was on duty. I don't know whether
my assistant carried handguns. He was wearing an armband -
also a tricolour, but I did not notice the writing on it.
The four that we took were arm bands showing that we had
been active patriots. I did not think accused was in danger
giving himself up as an assassin. That is my personal opinion,
as I saw that he only surrendered himself up. Accused told
me his name. I did not know if it was true or false.
He did not show me any identity card. The young lady
confirmed that he was Beltrigna. I made no inquiries.
I have not seen the American Captain or Sgt. Major since.
I saw my friend the prisoner about 2200 hrs. After some
evening. He stayed for eight or
my house, never running he left. I have not heard
from him since. I did not make any written notes.
I made no note of the names or addresses of the officers.

Further Xxd (with leave)

I did not discuss this case with my prisoner friend
that night. I did not attend to the stand of the case.
I did not take any further interest in the case, because the
American Captain said he would take charge of it. I
had no contacts with my superiors for some days.

Further Re-xd (with leave)

The name of the American Prisoner is L Sergeant John B. (it is
a Jewish name) and according to the letter in my possession
his serial no. is 19072607.

(Adjourned 1215-1330).

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Third witness (Moorm)

Mario Cevolotto, Avvocato, Via Valadier 35, Roma. I am not a communist. I belong to the Democratic Party of Labour. I am the General Political Secretary of the Party. The political directives of the party depend on its organisation and tradition. The tactical direction depend on me. During the 9 months of Nazi domination the Federal Secretary, Bauli, came to meet me, but I was also hiding and only met my activists under cover. They arrested my wife and kept her for 3 days. I am a member of the National Committee of Liberation, being second member in my committee, under Manuccio Luini who was first member, and being also a member of the military Department. This constituted the Command of the different bands, and was composed of a member of each of the 6 parties, for the deliberation of military problems. The military Detachment had contact with Kesselring's H.Q. It was commanded by Col. Montezemolo, who, after he was arrested and shot, by General Odone. After he had our contacts with General Odone, until he was arrested by the Nazis some 7 or 8 days before the Allies entered. General Odone was in direct contact with the Vatican Nunzio, I suppose through radio. On the 5th June the patriots were armed with certain arms that could be found during the period of clandestine activities. I have known many cases of patriots having done posters for any of the parties. I have known accused for many years - his father participated together with his progress for private in my office. The family have always come to me for advice since. (Avvocato was duly warned of the consequences of perjury for the character of the accused in issue). The relations of the accused have always told that accused is intelligent, quick and vivacious, at the same time good and submissive. I, in my relations with him, have judged him to be a very vivacious young man, but fundamentally a submissive

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I don't ever remember seeing accused angry or irritated. I had never any cause to see him annoyed or disquieted. I don't know how he would react when angry — may be difference in age, our relations were rather those of superior and inferior.

Fourth witness (Sworn)

Celeste Carlo Negarville, Piazza di Spagna 51, journalist. I belong to the Communist party. On 5 June I was a member of the Board of the Party and Director of "L'Unità". I knew the accused. At 3.0 p.m. on June 5 I believe I was at the typographical department of "Il Messaggero". I returned to L'Unità office about 3.30 p.m. I noticed in Via Tre Cannelle the body of Bartolini still covered with a sheet. I questioned the men on guard and learnt what happened. I met the accused. He told me that half an hour before he saw a man — (stopped by the Court, on the ground that we cannot give effect to hearsay evidence when the best evidence is available). Accused was a member of the GAP. He did not depend on me — he depended on my companions who dealt with military matters, particularly Antonello Trombadori and Giacomo Pellegrini. On 5 June accused received his instructions from the Military Department of the National Committee of Liberation, of which I was a member. The instructions were to keep order, in case of abandonment of the city by the Germans, armed attack on Germans or Fascists in case of resistance. If the Germans had not left, it would have been the duty of the accused to fight them. These dispositions were in accordance with orders of General Oxilone, who was believed to be in contact with the

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Allies – at least agreements were made upon the cases of General Oddone, but they were valid upon his arrest. (Objection on part of the prosecution on the ground, that Defence is not producing the "Best Evidence").

I can produce a statement of the President of the Council, Bonomi. I don't know anything in writing of the relations between the Committee and the Allies. You can ask Gen. Oddone about this. (Advocate for the Defence indicates that Gen. Oddone will be called). A few days before Gen. Oddone's arrest we were all informed of certain conventional words, which were broadcast over the Radio from Italy to and London. On 5 June I know accused was wearing the arm band of the Volunteers of Liberty, with the letters C L N, and with the stamp of the party. The bands were distributed under the care of the military Detachment. Those depending on military detachment directly were a tricolour band, those depending on the parties were a white band. There were then two bands which were known to the military command, but there were also various other types of band which are closely controlled. Up to the 6th the patriots were armed, up to which date they were on duty. Bentivegna is a sentimental young man, and I believe that for his military efforts he had to overcome his own inhibitions, but he has succeeded in doing so. This activity was not in accordance with his character. I don't say he is impulsive and emotional. I know he valued human life, and that life should not be taken except in a superior cause.

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XXd

I have been Director of l'Unità since the clandestine period, which began after 8 September. I admit that we published news of the strikes that had been admitted and exaggerated by the party - this was what we got from our reporters. It was afterwards found to be inaccurate and a correction was published 2 or 3 days later. We published the correction because we had learned the truth. Our earlier error was based on hearsay of the events. We believed the original story because there were armed attacks by Fascist bands during the night of 4-5 June, and there were known to be Fascist cars on the 5th. We might quite possibly have thought anybody leaving bombs was a Fascist. There were no instructions to fire - people engaged in tearing down posters. I don't remember receiving any communication from Lt. Bartucci's H.Q. with reference to the article on 6 June. Possibly such letter would not come to me personally. Since then we have changed our location 3 times. [Copy of the newspaper l'Unità for 9 June shown to witness] Seeing this, I remember now that we did receive a communication from the H.Q. of the Finance Guard. I did not receive it personally. I saw the draft of the original article the night before. I have the text and to whether an article should be published. It was based on rumors collected in the streets. I did not specify where the reporters were getting the information from. "Giustizia" in the article means that "justice has been done".

Rexd

I don't know who was the reporter who compiled the report. It was evidently a reporter's account, and did not go through the Editor's office. I can explain the error of the compositor that was in the office on 5 June.

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he was first conv. of the clandestine period. It is obvious that my journalistic work was not proper.

By the Court

[This is not noted – as the questions were directed solely to the conduct of the newspaper in publishing without my participation such a misleading article].

Fifth Witness (Sworn)

Dott.ssa Signora [redacted] Bastianina Martini Lanza, Via Orazio 31, Roma – housewife. About 3.0 p.m. on 5 June I was coming from towards La Sediata della Cordonata, accompanied by my husband, on our way to an office nearby, to collect a case that he had forgotten that morning. I noticed a person going in the direction of Via Tre Cannelle, and as he went along the side he was tearing strips of paper from the wall. After a certain point a person intervened and asked him – if telling him – but I did not hear the words. Then the first person turned, and they started conversing in a way that seemed angry. I did not exactly know the first person was dressed. He had military boots, trousers, shirt, carrying something in his arm, other was hand-held. He was not dressed as a civilian – but he was not dressed completely in military clothes. The strips of paper were in a kind of window – in the street on the wall of a house, at the normal height of a person. The other man was in civilian clothes, with long trousers. I had never seen either of them before. I could not distinguish them very well at the distance I was. I was distant a little more than the length of this hall. I was at the time going down the steps. There was another person standing by the man stripping the posters, and there was a woman near the second person. The second man approached

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and stopped when hearing the gunshot. The latter turned and they exchanged words of hostility. I could not hear what they said, but they behaved like two angry roosters. I saw in the hand of the second man an arm pointed — then I became frightened and precipitately climbed the stairs. As I was gaining the first steps I heard shots. In a hurry I continued home. It was the man in the military or semi-military clothes that I saw with the pistol. He made some very rapid motions and extended his arm against the other. During that I turned around and climbed the stairs. My husband accompanied me. I cannot say exactly how many shots I heard — it was more than one, and more than 4 or 5. I thought the man who had his arm extended had fired, and that the other had responded. The first shots were clearer and more staccato, the others were a deeper bark. After that I stayed at home, as I had had enough of that day.

xxd

The distance I was away was not much more than the length of this hall. The military man was standing with his back to the center of the street. He pointed his pistol at the other man whose height, but I could not see on which side. The first shots were clearer than the later ones. The distance from the bottom of the steps to the corner of Via IV Novembre is about the length of this hall, or a little less. I was about half way down the steps when I saw all this. It was the first person, the military man, who pointed the gun. He was holding something in his arm, perhaps a pistol — I did not see exactly. It was in the left arm. He had his sleeves rolled up, and I saw nothing else on his arm. It was when he was leaving the portico that I noticed the coat on his arm. I cannot say later I saw the coat afterwards. The civilian was dressed in grey, and he had a tricolor

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hand saluted, they me in those days. It was nothing anything else special. I could not say how the third man was dressed — I could not say whether he was military or civilian. The military men had a belt on, but I could not say if there was a holster on the belt. I remember the armband of the civilian, which was red, white and green. It caught the eye. I did not see any beard. I did not notice the third man's clothes, because he was not doing anything. They did not give me the impression of being together — the military men and the third person — I thought they just happened to be near each other. I did not report what I saw to the police. I am here because the authority happened to come to my home in connection with another matter, as then transpired later I could testify in this case. That was 10-15 days ago. After the scene I ran up the steps very quickly and I did not look round again.

No Reexam

By the Court

I think I recognise the accused, but I think perhaps he was not then so well shaved as he is now. I think I recognise Carlo Cappai as the girl I saw, but I am not absolutely sure. I recognise the accused as the man who was with the girl. I don't recognise anybody else [illegible] — my attention was not concentrated on the others, but only on these. I am sure that the second man (the accused) had a weapon. I assume he did, because he had the same hand — but I turned round too quickly to see his reaction, when I first saw the military man he was coming towards us, she turned when he was called. Then the two men had

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this evening. I cannot say I saw the military men
pushed the civilians. As he had his back towards me I could
not exactly see where he was pushing. He was not wholly
behind them and we could see the extended arm. I could
see the whole of the civilian's body, but only a third of the
military man's body — by that I mean he was partially turned
round. The third person was some two steps from the military
men, slightly to the back of them. I could not see the lower
part of this body, only the shoulders. I did not notice if he was
armed.

(Adjourned 1730 hours)

19 July 1944
Court re-assembled at 0915 hours.

Sixth Witness (Sworn)

General Odone Angelo, Via Montevideo 22, Rome. I am a
regular officer of the Italian army. My rank is General di
Brigata. I had contacts with the military detachments of the
parties. The parties had representative members in the military
detachment, for the purpose of establishing the behaviour to be main-
tained on the military part, both during the Nazi occupation and
during the time after the Nazis left. At the time when General
Ambrosio was Supreme Commander of the Italian army (in agree-
ment with the Allies) I was second in command, and then when
General Berardi succeeded him I was his Chief of Staff.
Ambrosio was in command from January to March, and Berardi
after that till 29 May. On that date I was arrested by the
Germans and brought to Via Tasso. Precise agreements were made
as to what was to be done with these military bands in the
common interest. The agreements were between me representa-
ing the military part and the representatives of the parties to the
military detachments. The agreements covered the policy in the
event of the Germans evacuating Rome without a struggle,
in which case the agreements provided for the employment of
an attempt against the Germans. In this case this did

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not come about, if agreements provided for the maintenance of public order during the period of change from one occupation to another. When I say Germans, I include also the Republican-Fascist armed forces with offensive purposes against us. By preserving public order I mean ensuring maintenance of normal life against any disturbance. During the period of ~~[illegible]~~ entry by the Allies I was under arrest, and had no contact with the Military front. I can give you a general idea of the orders in the event of a German evacuation. There was nothing in writing, for reasons of security — only small notes were exchanged between me and the various parties. Of my own knowledge I don't know what happened to the military detachments after my arrest. I was arrested on 29 May. I was released, or rather came out, or down on 5 June — simply because the guards had abandoned their posts. Our relations with the parties were excellent. The military clandestine front acted on the orders of the Italian command. I have reason to believe that the Italian command informed the Allied command of what was going on and what was being prepared in Rome. I have reason to believe that the communications of Generals Ambrosio and Roatta were made with the agreement of the Allies. I don't of my own knowledge know of the existence of agreements. I did not have charge of radio communications — so I don't know if passwords were given by Radio Algiers or Radio London. In normal times I have never seen a Fascist Guard on duty with an officer — but it might happen in abnormal times as these were. I don't know the police rules well.

xxd

The military detachments were formed with the object of fighting the Nazis and Fascists, not for the purpose of fighting other enemies of the parties unless they were Nazis or Fascists. It was formed for military purposes, not for public order, and not for carrying out petty

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ventottos. I military detachment or had any one person. ever headquarters — it held its meetings anywhere. I don't know where Hitl. was on 5 June. If I saw a man dressed in officer's clothes, but carrying his jacket, and in his shirt sleeves, with his Sam Browne belt on his shirt, I should regard him as an officer.

Rexd

The fact that I am regarding an officer helps me to recognise another officer in such case. But I believe that the public can recognise an officer by his boots, belt and shirt. An officer without a blouse or cap might be taken for an N.C.O. Before 5 June an officer of the Finance Guard could be distinguished from an officer of the militia, because the latter wore a black shirt. But an officer without a blouse could be mistaken for an officer in the Republican Fascist army.

Seventh Witness (Sworn)

De Tuddo Italo, Via Flaminia 19, Rome. I am a journalist. On 5 June about 1500 hours I was coming from ~~Via~~ Piazza Sant' Apostoli in Via Quattro Novembre. Because of the heat I was walking and pushing my bicycle. Reaching corner of a shoe shop (called Bufferini) I heard some shouts. From the direction of the shouts I saw two persons fighting each other. I was surprised especially to see a military man without a blouse and with sleeves rolled up. My attention was attracted by this. The other person was a civilian. I cannot precisely say how he was dressed. I vaguely remember that he was dressed in something grey. I did not notice whether he had any distinctive marks — many people were wearing khaki dress. I did not know the civilian. He had his back to me. I did not know the military man. It was a very brief scene. I saw the two men quarrelling. I saw the military man produce a pistol,

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put a letter in - character and prior is. " is was pointing more or less in my direction, I thought is was time to get out of the way. I turned my bicycle and went back the way I had come. I could not see what type of weapon it was. I did not see if the civilian was armed or not. It seemed to me that he had his hands motionless, perhaps at his sides - or any rate he was not waving them. I was in a hurry to get out of the way. I jumped on my bicycle and rode off. As I rode down the hill I heard shots - I cannot say exactly how many, but they were numerous, perhaps 5 or 6. I cannot say if they all came from the same weapon. There were a few people in the street. I believe there was a woman there, but I cannot specify who was there. I could not recognise the men or the woman.

xxd

The military man was with out a shout. There was something strange to me - because in the Italian army we are very formal. I did not see the civilian do anything while the military man handed his pistol, but I do not exclude the possibility that he did. A few days ago I started working for "Il Tempo". Previously to 5 June I had been unemployed for 9 months. I do not belong to any political party.

No Rexton

By the Court

I was pushing my bicycle in the street, on the left side, in order to have the traffic facing me. There was normal traffic. I don't remember the traffic particularly - it was normal. I don't remember any stationary vehicle. I don't remember if there was a stationary jeep at the corner - it would have been no novelty. There was nothing on the first corner where I was. If there was a vehicle coming from left into via Tre Cannelli it would not have interested me because I was stopped.

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from certain civilians on the road. I saw a young man come up and I had the impression that he addressed the one in grey-green. I thought the man in grey-green was a military man, but he had no blouse. I did not know him — but I know now his name was Barbisi. The other young man I recognise — the accused, although at the time he seemed thinner and more sun-tanned. Barbisi was in shirt sleeves. I did not notice if he wore any distinguishing marks. Near Barbisi I believe there was a civilian. Accused was followed by a Sojourina. I saw accused and Barbisi talking animatedly. At a certain moment Barbisi took out a pistol and pointed it at accused. I don't know if accused was armed, because at that moment my wife, who was very frightened, invited me to turn back — she had already begun to go up. I did not notice what accused was doing with his hands. As soon as I turned towards the stairs I heard shooting. I heard some 5 or 6 shots. I did feel that the shots had a different tone. My wife and I went up again & entered house.

xxd

I could not tell where the two men were facing. I saw the military man point his pistol at the accused. I then turned round and descended the steps. During the conversation the accused was gesticulating with his hands. I believe the accused was dressed in dark clothes, as I think his shirt collar was open. The young woman was in a light dress. I cannot say exactly how the other civilian was dressed. Three opened to the two groups 2 shots. I believe the first was the louder group. I did not report what I saw to anyone. I first told the story to the Avocato when I met him. I never reported to the police. I met the Avocato about 15 days ago to discuss certain matters about my ho.

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Duttura XXI . ith Issue)

The two men I saw were about the place where the Street makes a big-jog, and becomes narrower.

Eighth Witness (Swom).

Giuseppe Cassia, Salita Santa Nicola da Tolentino, Rome. I am a professor in the University of Rome, in the faculty of Contagious Diseases. I belong to the Democratic Christian Party — now called the Popular Party. I am Rector of the University of Rome, appointed by Col. Poletti. I have known accused many years. I am on friendly relations with his family and parents. I first saw accused 5 or 6 years ago when he was ill. I have always had the impression that he was a young man of conscience, first character. Since his illness I have known him to be a medical student, and have had occasion to see that he was a young man of much discipline, studious, generous, enthusiastic, both in his medical studies and in his political movements. His Ethusiasm sometimes revealed a notable spirit of sacrifice. He was always used to control himself with energy. During the Nazi occupation I frequently saw him. Often he was pursued by Nazis, and on times he would come to my clinic to safeguard his hunger.

NO XXTin

Ninth Witness (Sworn)

Ivanoe Domenico, Via Orazio 31. I am Director of the National Institute Dei Infortuni — a State insurance organisation for insurance of labour accidents. I am husband of the fifth witness. On 5 June about 1500 hours I was going down the staircase of Via Condotta, with my wife, on my way to my office in Via Quattro Novembre 144. While descending the steps I noticed a young man in Fascist uniform who was talking with some young girls of perhaps

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Station. I am telling him what had happened on 5th June, and I mentioned this case. I met the Advocate (Adv. Perris) for the first time that day – he was introduced to me. I knew him by name before that.

No Re-xtion

By the Court

I did not look back till I reached the summit of the stairs. I turned round hastily and saw a group of people who had already gathered at the spot. We were about half way down the steps, when we decided to go home. We went up the stairs as fast as we could. We had went 25-30 stairs before I looked. It would take more than half a minute. By the time we got to the top and I looked back there was already a group of people. On via IV Novembre vehicles were going by. I cannot say whether there was one standing still. The accused arrived from Via Quattro Novembre, coming from my right side. The flying column would meet at his side – I cannot say on which side. I noticed that two because they there were very few people in the street. I don't think accused had anything in his hand before he addressed Barbisio. While the two were having their argument I could see only part of the body of the accused, especially the left part of his body. I did not see anything in the accused's hands during the argument – I saw him gesticulating during the first part of the argument. The Advocate came to see me about the Institute. The conversation about this case was incidental. The Advocate came to me for information, which he had to obtain for a newspaper. It was 15-20 days ago. I could only see part of the body of the accused, because he was hidden by the military men. I think the incident happened about 3.0, perhaps a little later. It could not possibly have been earlier than 2.30.

(Adjourned 1245 – 1430)

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Tenth witness (sworn)

Sonnino Camillo, Via Nazionale 181, Rome — merchant.
On 5 June about 3.0 p.m. I was in a school near the Via Tre Cannelle, where I had been hiding for nine months to escape the Germans, as I am a Jew. That afternoon we were having a dinner in honour of the liberators. We heard some shots, about 3.0 p.m., I cannot say exactly. The school is in Via Tre Cannelle, and from the terrace I could see part of what happened. It is below the crossing of Via IV Novembre, and is looking towards the window of L'Unità and the beginning of Via Cavour. The pistol shots came from outside. I got up and ran to the terrace and looked out. I cannot say exactly how many shots I heard, as I got up once or twice, and I was unable to count. There were definitely more than 3 shots. When I looked out I saw an officer in the Finance, in a shirt with rolled up sleeves, his legs a bit spread out: I did not notice a cap. I also noticed a soldier of the Finance and a civilian. The soldier had a brief case in one hand, and with the other he was putting into the officer's pocket into the holster. The terrace I was on is immediately over a cinema — it is about 5-6 metres high. The civilian disappeared from my sight, because he crossed the street.

(After discussion it is agreed to admit, for what it is worth, the evidence of this witness as to the effect of conversation he had with the guardia di Finanza — see R.16).

I asked the Finance guard what had happened. He answered that an officer of the Finance had been killed. I asked him why he did not bring aid, because it seemed strange that he did not. I did not know whether the officer was alive or dead. He did not answer, or at that moment a priest came and stopped to speak with him. The Finance guard was about a step in front of the civilian. The civilian then turned back around the Finance guard and his-

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appeared from my sight. I saw the Finance Guard was putting
back the pistol into the holster. I was the first to look at it,
then after a few seconds my Father joined me.

Xxd

The School faces three Streets, Via IV Novembre, Via Tè Cannelli,
and Via Cadmata. It is a High School, and I had been for
9 months — my Father also was holding there. The Terrace
faces Via Tè Cannelli immediately above the Cinema Magni-
ale. The first thing I saw when I looked out was the
officer on the ground. I didn't see the accused — because
I did not know him. There were people there. I saw
no one with a pistol in his hand. The officer lying in
the street did not have a pistol in his hand — but I
cannot be positive because the distance did not permit
me to see if the officer had anything in his hand.
The Finance Guard was putting the pistol into his own holster,
not the holster of the officer. I did not report to the police
what I had seen. After words about the officer was that
he had his sleeves rolled up, and coat over his arm,
but I saw nothing resembling an arm band.

No Reaction

By the Court

When I saw the Finance Guard he was in Via Tè Cannelli
outside a tailor's shop where the road narrows. He was
going up the Via Tè Cannelli. I don't know where he
got the pistol from — for all I know it was his own.
When I first saw him he was walking away from where
the officer was lying. He was then some 6-10 metres
from the officer. I was then on the Terrace roughly in
the time it takes to turn the length of this room. The
shots ended whilst I was on the way. I did not see anybody
else with a weapon, and I saw no weapon lying about. I
looked at the dead officer, but my attention was distracted by
the Finance Guard. I did not see a pistol lying in the

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street close to the 2 officer's head. There may have been more than 1 shot but I did not notice one. I stayed there for some time, I cannot say how many minutes. I cannot remember a jeep driving up. I did see an officer — I think he was British by his hat — who approached the body and took photographs. He arrived in a car — I believe a Jeep, but am not sure. I only saw the Officer — I did not see any soldiers with him. It was 5-10 minutes later, maybe 13-14 minutes.

(Case for the Defence).

Prosecuting Officer applies to call a fresh witness who has been discovered since prosecution's case was closed.

Court rules that witness cannot be called in rebuttal under Rule 9. Court invites Defence to state whether they object to witness being called by the Court under Rule 9(E).

Advocate for Defence objects.

Court rules that witness be heard and examined by Court.

Witness called by the Court (Sworn)

Maccioni Antonio, Comma di Finanza, Via Labicana 9, Rome. I am a member of the Finance Guard. I was serving as such on 5 June, though I was not on duty. On the afternoon of 5 June I was walking on Via Tè Cannella when the incident of which I saw happened. I had never seen him before, and did not know him. I cannot say the exact time, but it must have been about 1430. I was walking along Via Tè Cannella going to the Barracks. I was going up the hill in the direction of S. Maria Maggiore. I was coming from Piazza Venezia. I was in the part of Via Tè Cannella that goes up towards the Stairs. At the moment I was passing I saw an un-known officer, with trousers striped with yellow, leaning

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Some poster. The officer was in V. Tè Cannelle. The posters were exposed in certain open windows, on Via Tè Cannelle. I was on the right side, and the posters were on the left side. The officer was 8-10 paces away from me — just across the road. I don't know what corps the officer belonged to, but he had an armband, a white band with black writing, on his left arm. I thought he was a police officer. He wore a yellow band on his trousers, and I imagined he was an officer of the Finance Guard. He had a pistol in a holster on the left side of the braces. He had no hat. He had a jacket rolled with the lining inside out, which he was carrying rolled over his left arm — the lower part of the arm. The arm band was on the other part. His appearance seemed strange, and I was surprised that he was not wearing a hat. I don't think he had been drinking. While I was going on my way I heard a shot. Hearing this I turned round and saw the officer falling back towards the ground, a second with extended pistol continuing to fire. I last saw Bentivegna when I was passing the door of L'Unità. The next time I saw him was when I turned round on hearing the shot. I was just about the turn of the street when I saw this. Before hearing the shot I heard no shouts. After I turned round on the first shot, I heard 3 or 4 more shots. Bentivegna fired them all — he was the only person who fired. I am sure of that. There were 2 or 3 other people there — civilians — but I saw no arms. I don't know whether the Lieutenant got his pistol out, because on the ground I saw no pistol. Seeing the direction taken by Bentivegna I went to report to my superiors, continuing ahead towards S. Maria Maggiore. I could not render assistance to the officer, because a second was still there, pistol in hand, until such time as I disappeared. They prevented my going to help — also

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because I was disarmed. I had no pistol - only. I don't remember if there was a Jeep with Americans in it. I did not say anything, Buttiveglia said nothing to me. The pistol was pointed at the dead man, and I was in that direction too. I could not approach him to ask him anything. When I saw Buttiveglia at the door of L'Unità he was standing there looking into the street. He was alone at that time. I did not see anything in his hands. I could not see if he was armed. I was walking along the street, minding my own business. I said the dressed looked like a "Carabiniere" officer, because I could not distinguish whether he was an officer. He had the trousers, part of which of an officer. The fact that he was wearing the puttees was the thing that made me suspicious.

(Adjourned 1730 hours)

20 July 1944.
Court re-assembled at 0920 hours.

xxd Lt. Sabatino

When I saw the Lieutenant leaving his position I was directly across the street from him. I just turned my head to look at him and continued walking slowly. I did not look at him again till I heard the shots. When I heard the shots I looked round again. I turned back a few steps, and I saw him fall back to the ground. I saw a civilian with a gun in his hand. Before I heard the shots I did not hear anything else - I was absent-minded at the time. I did not say anything to the civilian. I was a little frightened as Buttiveglia looked so threatening. I thought it would be impossible to approach and identify the wounded man and Buttiveglia. I was disarmed and I thought I too might be killed. I made for my barracks, hoping that on the way I should meet an officer, who could help in the identification. Being unable to find any officer in the street, I had to go right to the barracks where I reported the facts to my superiors.

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I was made that day, because that morning I met a fellow countryman on Piazza Vittoria. I was approached by 5 Soldiers who asked me to show them my pistol. I showed it to them, and they saw it in their pocket and ran off. That is why I was arrested that day.

xxd Avv. Peris

That day I came out of hospital and went to a house of friend. Then I ate and went slowly to my barracks. I came from Corso Vittoria, by Piazza Venezia, along Via Quattro Novembre to Via Tre Cannelle. ~~Afterwards~~ After the scene I met no one else on Via Tre Cannelle. I was walking alone. It took about 30 seconds to get out of Via Tre Cannelle. I was walking fast. At some points I ran, but I was stopping because if I could find anyone to bring aid. It is 30-40 metres from the scene of the shooting to the end of Via Tre Cannelle. I covered that in about 30 seconds, but there was traffic and I could not cross. The rest of the street was deserted. The other people I saw were below. There were 3 people in the direction where Barbarisi fell - I am speaking of the incident. I did not approach there then, because I did not know them and did not know their intentions. I did not speak to anyone, and no one spoke to me in Via Tre Cannelle. I was dressed that day as I am now - with nothing in my hand. I was wearing a beret, and not the helmet that day. Immediately after I was disarmed I met a superior of my Squadron. My Legion is at Santa Maria Maggiore. It is about 1 - 1½ km. from Via Tre Cannelle to there. In that distance I met no police officer. It was about 10.0 a.m. when I was disarmed. I was then coming from my barracks. I reported immediately to my superior. They did not give me another weapon. I had no weapon in the afternoon. It would have been useful to have one, as I could have acted in the case of the

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incident of Bart again. If I had found him on the ground and would have testified in my favour. I went to the hospital in the morning for treatment, after I had reported to my superiors about the loss of the weapon. I was being treated for bedbites. The hospital is in Viale del Re. After leaving the hospital I went to my sister's house, in Via Cremieux, to eat. I was there about 11.45. I stayed there about half an hour. I was without my weapon then. Leaving my sister's I stopped for a while in Piazza Navona. I then went to Palazzo Braschi. Then I went through L'Arco Argentino and to Piazza Venezia, returning to Via IV Novembre.

I was 7-8 yards from Barbisi when the incident happened. Barbisi was carrying his jacket rolled on his left arm. I remember it was the left arm, because I saw the hand as well, which is worn on the left arm.

He was wearing a shirt with long sleeves. I noticed the band on the shirt. At first I was confused, but then noticing the yellow stripes - his trousers, I concluded Barbisi was an officer in the Finanza Guards. Before 5 June officers were authorised to wear shirt-sleeves, in public and on duty. I was going to my barracks for reasons of duty. The hospital is called Gallicano.

Lt. Demetrio Aldo (recalled by Court)

There was a holster on Lt. Barbisi's belt. When I saw Barbisi's body afterwards, I did not see his pistol. I looked around on the ground but found nothing. I only arrived some 2 hours after the incident. I am sure by description that the pistol was not in the holster, which I saw was open and empty.

Castelli Alberto (recalled by Court)

As soon as I heard the news I hastened to the scene, on foot. My H.Q. is about 200 yards away. I cannot exactly know how long it took, or how long after the incident I got

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there. I - and the deceased was armed, because he had a belt. I did not see if he had a holster. Where the holster should have been was covered by a coat, and I cannot say either whether there was a holster or, if so, whether there was anything in it. There was no pistol beside the body, either in his hand or on the ground. I did not look for one, but if there was one lying about I should have noticed it, as I walked around the body. Where the incident happened there was no crowd, but there was a crowd in the vicinity. I did see a man on the scene who had a pistol, but I cannot say if it was his own or the deceased's. He was a civilian, but he had an armband, and one with the letters VL. That was the accused. With the accused was a black young lady who had a pistol, but not in her hand - inside the belt. I cannot say if that could have been the pistol of the deceased, as I did not examine it. The pistol was just tucked into her belt. There was a third armed person, but he had a rifle and I don't know if he also had a pistol. So far as I know those were the only armed people on the spot. I saw nothing of a Jeep in the neighbourhood. I saw no American officers on the spot. But there was a group of people on the corner of l'Unità Building, and another group on the opposite corner. There was one member of the Allied forces in the group at the corner. I saw no marks of rank. He raised to his eye something that looked like a camera and took a picture. I had never seen Colantonio Ovidio before. He was evidence Lee. He certainly was not on the scene when I was there - but he may have been in one of the groups at the corner. I don't know if there is a Bar in Via Tè Cannelli. I did not see a Jeep standing anywhere in Via Tè Cannelli. I was on the scene for about 20 minutes approximately.

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By [illegible] NARA, Date [illegible]

Xxd Avv. Nicoli.

There might be a Bar on the upper part of Via Cavalli, and there might have been a pimp there — but I was not beyond the corner where the road makes its sharp turn.

Xxd Lt. Sabatino

I think the pistol the lady had was a Beretta — an Ordnance type, large size. It is the type normally issued by the Italian Army.

Carla Capponi (recalled by Court)

I remained on the scene of the shooting for about 20 minutes. When the Lieutenant fell, the pistol was in his hand. Then he raised his head a bit, thrust his arms forward — then he brought his arms to the height of his head, opened the palms, and the pistol fell to the right side of his head, near his hair. It remained on the side of his body for some time — 5 or 10 minutes. Then I went away from the spot for a bit, by order of the Finance guards who had arrived on the scene to keep public order. Those Finance guards had not been witnesses in this case. I returned later, in the time it took to go up the stairs to his Credenza and return. When I returned the pistol had gone. I cannot say who had taken the pistol. I asked the 3 Finance guards and a policeman in civil dress with an arm band, and none of them could tell me anything about it. There were many civilians there, especially many soldiers. I did not have an arm bit immediately after the incident. But then 3 young men who had mounted guard over the newspaper came to the spot. He and told them to go back to duty, but one of them gave me a pistol. I have already described what this is. Capt. Guenthil. It was a Beretta 9. It is not right that I had a pistol at the time of the incident. (Castelli Alberto is brought into Court). I don't remember seeing this man before.

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I do not see , in Court. Nobody in an official position under the Patriots' Organisation came on the scene and questioned me shortly afterwards. NO — (question misunderstood)
A civilian with an armband did come up and ask questions. It was not Capitano Alberto, but a policeman in civilian clothes who arrived immediately after the incident. I did not take his name. He has not been here to give evidence. I am surprised at that. I should know him again.
It was not Colantonio Ovidio, the Brigadiere who gave evidence here. I recognised him in Court, recognised him as one of the first who arrived on the spot. I don't remember what he did when he arrived. I don't remember if he arrived alone or with anybody. When I remember seeing him he was on foot. Right away I did not notice if there was a car. After a little I did notice a stationary car, from which an officer got off, who took some photographs. He was Allied, but I don't know whether American or British. I cannot remember exactly where it was, but it was very near the ~~incident~~ scene of the incident. The vehicle was a Jeep. I only saw the officer when he took the photograph. I do not say he came out of the Jeep. I only saw him when he turned to take photographs. I approached, but he told me he was a police officer, and I let him take exposure. I did not notice if anyone was in the Jeep. I spoke a little English. I spoke to the officer in English. I don't think the Brigadiere of Carabinieri was dressed in Zemignano. I think he was in civilian clothes.

Xxd Avv. Persio

(Statement of Witness called for, ruled admissible by the Court, and put in & marked Exhibit 4).

No other questions.

Xxd Lt. Sabatino.

I remember that Colantonio Ovidio was in civilian clothes.

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By NARA, Date

Had he been in uniform I should have said more. But I cannot tell you any more as to how he was dressed.

By the Court

The statement was taken in Italian by means of an interpreter. The English was retranslated by the interpreter into Italian. I corrected one or two words and then I signed. It was the English translation. I was frightened. I did not remember the story. My answers were reduced to writing. I am satisfied that the statement does represent what I want to say. I was called before Captain Grunfeld on 24th or 27th. I was not arrested. I was invited to go there, and I accepted the invitation.

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By [illegible] NARA, Date

The Court directed that it would not grant argument for the Defence on the first three points submitted by the Defence in opening, but that the argument should be directed to the remaining seven points. It was agreed that the Advocate for the Defence should address the Court in Italian, the Court calling for interpretation only where any member failed to follow the thread of the argument. An application by the Defence for permission to have the last word was refused. At the request of the Defence the Court adjourned till 0 - hours morning.

(Adjourned 1230 hours).

21 July 1944.
Court re-assembled at 0920 hours.

Lieut. Sabatino
Within the last half hour a new witness has reported to me, who claims to have been an eye-witness.
Court, after hearing the Defence, rules that the witness shall be called examined by the Court.

Alessandro Virgilio di Cesare (Sworn)
I reside at Via Di Pastini 133, Rome. I am a florist.
I came to Court this morning, because I read in the newspaper that you were looking for a photograph taken by an Allied officer, which showed me with a rifle at the scene of the incident. I have no such photograph, but I know that an officer took me at two pictures. I don't know who the officer was, but he was an Allied officer - I cannot say if he was British or American. On 5 June ~~[illegible]~~ at 2.35 I was in front of Via Tre Cannelle 122 and Via IV novembre, just beside shoe-shop of Battaini - that is the same as L'Unità building. I was on duty waiting for my Captain who had ~~[illegible]~~ gone to see another Captain in a nearby building. I belonged to General Berardi's forces. I was a Sergeant Major. I was dressed in civilian clothes with an armband - ~~[illegible]~~ a white band with a black cross centre, marked "Polizia".

67.

DECLASSIFIED
NND 785014
By NARA, Date

It was issued by an Captain on the afternoon of 4th June.
I belonged to a different organisation from the accused. I don't know Castelli Alberto. My organisation did not belong to any one political party. It was composed of elements of the Army. I was mostly in the Army. Our job was to seize the Barracks known — by Captain with 8 men was to seize it on afternoon of 4th and hold it until the Allies arrived. On 5th an Allied officer arrived and took over, & we went away. At 2.35 p.m. I was not on any particular job - I was just waiting for my Captain on the street corner. I was standing with my back to Via Tre Cannelli. I heard 2 or 3 people talking in an agitated way, behind me some 15 metres away. I could not hear what they were talking about — they were men. I turned immediately. When I turned I saw - young man dressed in grey, with his back towards, who was pointing a pistol and firing. As soon as I turned he began to fire. He fired 3 or 4 rounds. He was shooting at a military man without a coat. The military man was facing the civilian with his front facing me. He was 1 - 1½ metres from the civilian. I did not know who either of them were. I would know them again. I recognise Bentivegna in Court — he was the one who fired. I recognise him because afterwards I stopped him. I believe the military man was without a cap. I could not tell what organisation he belonged to. At that moment when I ran to the spot I did not see any arms. I did not see any later. I looked around & I did not see any arms. I did not notice if he was wearing a belt with a holster. I did not look — I only looked around the body. I did not see any arms on the ground around the body. He had no arms in his hand. He appeared to me to be a completely unarmed man. There were

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Some people ran, we many, but ~~a~~ attention was fixed on these two. I cannot say whether any of the others were firing past. Nobody else fired. Bentivegna was alone. I recognise Carla Capponi — She came to me when I was with Bentivegna, as soon as I stopped him. She was coming down from Via Tè Cannelli. I cannot say if she was there at the time of the shooting, nor whether she was with Bentivegna at that time. To me Bentivegna seemed alone. I was a little perplexed, but then I began to turn towards the scene, and I stopped Bentivegna. He was coming towards me with weapon in hand. He was coming away from the scene. I stopped him by asking if he had gone crazy. He said "He was leaving down the posters of L'Unità". He made a gesture to give me the weapon, and then drew back and said "No, I will not let myself be disarmed". I said "That's quite all right — put it back in your pocket". As soon as he put it back Signora Capponi approached us. She was armed with a pistol, carried in a belt. I asked him Bentivegna and then Signora Capponi for their documents. Bentivegna told me his documents were false, because he was being searched for. Signora Capponi had no document. I asked what duties they were performing, & Bentivegna told me he was doing duty for L'Unità, and I took the No. of his contract, 6577. Signora Capponi had no card. Then I accompanied them to the newspaper L'Unità. Before going, I saw there a ~~third~~ person with same hands similar to mine, and I had the people down back from the scene. 2 or 3 companions of Bentivegna participated in this. As soon as I stopped Bentivegna I went towards the body, and at that moment the man died. It was then that I took to see if he had an arm. I don't think anybody reached the body before me. I did not see a pistol near

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his head. If the Land been me there I think I should have noticed it. Before I went to the newspaper office a jeep arrived, and an officer got out and took some pictures. It was some minutes after the shooting, say 1 - 1½ minutes. After taking the pictures the officer went away. I don't think he took any further interest. There were 2 or 3 other people in the jeep. A priest came and knelt beside the body. On the way to the newspaper office I ⟶ met a Benedictine in uniform, and I asked him to take an interest, but he said he had ⟶ to report for duty. When I went away the body had been covered by a sheet. I did not meet Bentivegna since I did not know the circumstances, Bentivegna was wearing an armband, and in my case I am not an agent of P.S. When I got to L'Unità office, I asked who was in charge, and a gentleman called Terenzi presented himself. I made a report to him on what had happened. Terenzi did not give him under arrest. I left them there and came away.

xxd Lt. Schutting.

Bentivegna came towards me, fired in front, and he said "⟶ Roman (or Italian), so die traitors to their country." He said this to the world at large. I did not hear any shots before I turned round. They seemed to be a succession of shots. I cannot say how far up Via Tre Cannelle Lieutenant Cappai was. I did not say anything to the Italian military men. He did not appear to say anything to me. When he fell he tried to get up, but fell back to the same position. I saw him fall in the first instance. I did not notice anything in his hand. He drew his left hand across my sight. I made a report to the Allied Command after I had seen. I first went to

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By [illegible] NARS, Date

Commissioner Andrew Mellon, and I [illegible] with an accompanying letter from the Commissioner to whom it was addressed. I was told by an Attaché [illegible] that the latter coming [illegible] was to arrive there at 1430. He was gone [illegible] 4 days later. Commissioner Andrew Mellon is the District Hd. of Public Security. When I [illegible] into Piazza Venezia, I found Battaglia. I also found a plain clothes Italian police agent, and [illegible] which they typed, and he asked for a typed copy. The Italian typist said she could not type [illegible] Battaglia and the police agent. Between you & the P.S. after [illegible] worked for my interpreter. I gave him my statement, & having [illegible] into the Captain, & would be returned. I asked for a copy & a receipt for it - but the agent said the Captain said they were unnecessary. I [illegible] the following day I called to interpreter asked him to [illegible] in the letter & the returned Captain wrote it was [illegible] to him in which he returned said the Captain thanked me & asked [illegible] again if he needed me.

xxd Aw. Perry

On 5 June, at 2.30 - 3.0 p.m., I was on [illegible] Via Del Corso - Via Clodia Number 12. I was standing still and alone, waiting for my Captain. I was alone for about 10 minutes. I was standing still in the same place, moving a little and turning; looking more or less in the same direction most of the time; watching the Allied troops in Via Clodia Number 1. I saw the [illegible] going by. I was [illegible] by, I was [illegible].

75. REGION IV CASE No 7762

DECLASSIFIED
DNDP 76-0074
By [illegible] NARA, Date

[illegible] heard an [illegible] conversation [illegible] a car and I heard 2 or 3 people, possibly more than 2. I was a Marxist, not [illegible]. After firing Buttivegna stepped on the [illegible] with a [illegible] pistol in hand, and immediately afterwards came [illegible] towards me spontaneously. I was [illegible] 10-15 metres from the scene of the incident. He did not [illegible] me. I was going in a step towards him. [illegible] I saw him at the [illegible] body. As soon as we met we [illegible] spoke. The first thing that I came to my mind was to [illegible] Buttivegna when he came with me to the body.

I was wearing a [illegible] hat with a tricolour strip in the middle. Buttivegna had on a totally tricolour. I was totally armed. I had an automatic rifle. Perhaps Buttivegna [illegible] me a pistol, perhaps not. I asked him for his weapon. He must later than mine Coppini came up. I did not order him to [illegible]. The machine-gun [illegible] Buttivegna [illegible] state of panic, or in a state of "fervo". If it were possible I should have killed him. I did not hear him call his companions by their names. Afterwards [illegible] he showed me his false documents, but he told me about them. He still had not gone to the body of Barbarisi. It was 35-40 seconds from the shooting to the time when I actually met Buttivegna [illegible] the body. I was on the body for 20 to 25 seconds. It [illegible] be more, I don't know how much time. Along [illegible] I cannot remember well how long [illegible] 1½ - 2 minutes. Barbarisi was [illegible] grey-green shirt. I did not notice anything [illegible] dark [illegible] on his sleeves only. I did [illegible] in the bag on offices. I don't remember [illegible] left in the [illegible] I approached the body, in

[illegible] REGION IV CASE # 1182

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NND 765024
By NARA, Date

seemed. — Yes. When I arrive, I see an explosion, but
then in my presence he made the notice. I did not
notice that Barbisio was in uniform. I did not see one.
I did not examine Bentivegna's pistol. I did not take
it in my hands, I don't remember if he showed it to
me. I don't remember if he showed me the missing rounds.
I don't know who picked up the shells from the ground. I
did not touch the body, nor is it near. I bent down
slightly over the body. I did not think of examining the
body. I did not notice if Barbisio had a holster — or a belt.
I did not check up on the posters. There were few people
when Bentivegna and I arrived, on the body. On arrival we
doesn't know any. No one was on the scene before me.
I did not see the body when the body before me — it is
possible that someone did. I did not see any Fascist
Guards approach the body. When Barbisio was hit he
turned [illegible] - his cap fell back. He was lying
[illegible] on the street. There were fascists
[illegible] L'Unità building, on the Lungotevere. It was
[illegible] when shots were heard. Before the shots
I saw nothing. I [illegible] what happened to the
[illegible] after the officer took the photographs. I did not
see if the Jeep came back. I saw the officer
[illegible] Jeep, but I did not notice if he
[illegible] in. I reported to the Commissione Mangia
Napoli in the [illegible] letter. I wrote to A.M.G. I
only then
knew the [illegible] Captain that was to arrive. My
Captain is Pallastrelli, Filippo, he was [illegible] 1917
2 years ago. He was not present at the incident.
The same day or later I accompanied Bentivegna to
the newspaper office. I agree it was only on the
23 that I reported to the P.S. or A.M.G. Up.
to then I had reported only to my Captain. I made

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NND 785014
By [illegible] NARA, Date [illegible]

a written report of [illegible] is to be ready in 3-4-5 days afterwards. I came here to-day because I read in the "Avanti" this morning that there was a hearing and I was the only person concerned. Tonight I had a letter and here I am. But for that article I should not have come.

Avv. Pecci applies for permission to have Accused, Carla Capponi, and Colonnello Allegato, also for permission to call Teresi.

Avv. Salvatino

I object to the case being suspended. But if I am told what they are to be asked, and the hearing is limited to that I should not object. I do not make any distinction between my wife & me. But I insist that we should know beforehand what is to be asked.

(Adjourned 1230 - 1400 hours)

Court rules that at this present stage of this trial it cannot hear further evidence from Carla Capponi or Colonnello. But leave is granted to call the witness Teresi, to be examined by the Court. Accused will have the right to go back into the witness box and make a statement, restricted however to those matters which were dealt with in the evidence of the last witness.

Attilio Teresi, called by the Court, sworn, and examined by the Court.

I live at via Torino 15, Rome. I am on the Commercial side of the newspaper L'Unità. I know the accused. I was in the office of the newspaper working that afternoon. I saw the accused that afternoon. I saw him several times. An incident took place inside my office that afternoon. I was not a witness myself. But the incident was reported.

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NND 765014
By NARA, Date

I was in my office when I heard some shots. I went
from stairs & saw people going towards Via Tè Lemoli,
and I myself went outside and went in that direction.
I saw a young man in shirt sleeves on the ground. I did
not see the accused in the confusion. I did see the accused
later that afternoon, about 20 - 25 minutes after the incident.
I saw him in the office. There were about people there,
including a volunteer of Liberty who was acting for his identi-
fication. I recognize the last witness as the volunteer of
Liberty. I don't remember specially who else was present.
It was agreed to me because I was alone in the office,
and it was agreed to me that someone had removed posters
The volunteer of Liberty brought Accused to me to identi-
fied, and I was able to identify him. The accused
told me that in the street he had seen [illegible] coming from
position from the south; that having noticed this person to
stop, the latter had committed an unspecified crime and
had drawn out his pistol; that in order to defend him-
self he pulled his - that's what I remember. The
volunteer of Liberty was present when accused told this
story. I am quite sure the accused told me this story
that day. The V.L. asked me if I knew accused, and
if I could say that accused was guilty or not. I was
able to identify the accused. The V.L. told me that
as he was passing by he heard some 2 different pistol
shots; he told me that he ran and that he saw
a person on the ground and asked what happened;
that he was accused for this identity, and seeing that
he had false papers, brought him to the office to confirm
his identity. I remember that he did not tell me he
had himself seen the incident. Later he said that
he was passing at some distance.

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DNND 785084
By NARA, Date

Xxd Lt. Sabatino

The V.L. when he came to my office was not particularly excited. I don't think he came in for any purpose other than to identify record. So far as I could see there was no contradiction between the record and the V.L. I don't exclude the possibility that the story might have been told in greater detail. There did not appear to me any contradiction. There was no particular reason why he should have given me a full, detailed account.

No xxtion by Defense

By the Court

I have not in Court here this morning's nor at any time during this trial.

Capt. Greenhill recalled (xd by Court)

I have not see Alessandrini Virgilio here this morning. His name conveys nothing to me. So far as I remember nobody came to my office or left a statement on 23 June. If a statement were left in my office relating to this case, it must come to me. I have searched the office to-day, and can find no such statement. I cannot of course exclude the possibility that such a statement is somewhere in the office — possibly in the wrong file — but I don't think anyone receiving such a statement, and I should certainly have been glad to receive one in this case. I believe there was a military police office in the same building on 23 June. It is of course possible that the person bringing the document may perhaps have taken it to the military police office. It is not a thing that

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By NARA, Date

[illegible] I [illegible] investigations [illegible] police office. Normally a person who has a statement to make with regard to a crime, goes to the police station. But this man came with an Italian State Police officer. Had this man come with an Italian State Police officer I should have had him shown in Rome, and would have taken my own statement in English. (Evidence of Alexandris and Gentner) That does not bring anything to my attention. I have sometimes been consulted in [illegible] incidents like that.

2nd Lt. Sabatino

Then do I have an Italian P.S. agent in my office - called Rodrigues. I don't think I should take a statement like that formally in a case like this. No other Allied Captain took any active part in this case.

2nd Lt. Nicolai

I know the above Pinotta. He was interested in this case, after under my instructions. He was present at the interrogation of the accused. Pinotta may have seen this man come with a statement, but I have not asked him. I have never heard of the Commissario Aragona Rapisti. I do not remember seeing or talking with him.

Accused recalled to make statement

I did not immediately recognize Corrado Alessandri, having no hair, but after a little time when he stood up and walked on the ground. I was to meet Alessandri, because nothing was stated against him. I wanted to see whether my opinion of him would be confirmed in my time. When I saw that he had white "Polizia" on it I put myself at his complete disposal. He took my pistol in his hands, he examined how many rounds were missing from the clip, and he checked that 3 were missing.

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As already stated, he told me [redacted] he & I had 5 shots. When my companion did not return with me, I inferred from him that this - pistol. I and Carlo Lapucci took care of closing those doors. Alessandri gave me those my pistol, which I then kept in my hands. I subsequently passed it on to Major Dodd in the Allied Command, writing a note with Capt. Churchill. Alessandri did bring in a statement, which was read by Pavolini. I believe it was presented to Captain Churchill. As I remember right, the agent Pavolini or the interpreter brought the statement in to Captain Churchill; it was on half sheets, folded and written on both sides.

2nd Visit to Schifino

I don't think I said "Italians, this is how traitors die". I don't remember doing so, and am almost sure I did not. I remember that as the three of us, after a minute or two, began to shoot from the pistol. Many people were near the body, and I with others were trying to keep order and keep the people away. Alessandri was with the first persons to go near the body. I don't know who was. Alessandri handed me a - a companion. I did not see him hand anything afterwards. I don't know what party he belongs to politically.

Read

Alessandri and I drove together by agreement into the [illegible] United Building, and I remember talking to Terenzi. There were quite a lot of people there already.

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By NARA, Date

Aw. Nicholas sums up for the Defence:

You have to consider any doubt in favour of the accused. The Defence put this case forward as an incident of war - but I submit it has to take place in an atmosphere of war, & that affects the reaction of the parties.

Although the Allies had entered Rome, actually had not yet returned to Rome, and it was not even certain that the last German had left.

It is a tragedy why Barbisi should in this day be guilty of an act so hostile to liberty as to stop them from their posts. Accused's motive was prejudice, politically, financially. I don't say that this alone would justify killing, but it justifies accused in being offended, and even in arresting Abbate.

But it is necessary to examine the reaction of Barbisi. This is a question on which there is a conflict of witnesses. You should accept the evidence of Carlo Coppini. You should accept De Fiddo, who was completely independent, also Mrs. and Mrs. Hinsch, whose spontaneous reaction was so clear. Also the evidence of Colantonio. It is not for Counsel that we could not support his evidence with that of his prisoner friend. Maybe there are curious features in his story - that we cannot know other things - but this case which we personally admired. There is no doubt Colantonio's sincerity. There is plenty of corroboration that his trip with the American officer was true. The evidence against the accused is not acceptable.

(Captain Greenhill advised having the missing statement, which he states has been found in the office, in the wrong file. Court asks that efforts be made by the Defence, and may use it in evidence if they find it to do so.

Defence after seeing the document does not wish it in evidence. Document received and marked Exhibit (S).

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By NWW Date

Adv. Niederij continues

The witness Castellano was evidently hostile to us for some reason. You cannot believe her story. For one thing — her story of three bullets would have let Barbarisi. Even the evidence of this witness, Lanza, supports my defence of legitima Difesa.

You must believe that Barbarisi had a weapon and was using it — otherwise there was no possible motive for the killing.

There is some mystery behind the evidence of Alessandri. Why did he appear so late on the scene? If his present story is true, he would have been found by Barbarisi when they intervened Terranji immediately afterwards. The original report, now produced, is conspicuous in my case, and shows that from the outset the case of the accused was that he acted in self defence.

It was quite likely that accused would be shot by the side of Terranji, whether he was friend or foe, — his actions would suggest the latter. I dare doubt that he intended to harm by drawing this pistol.

(Adjourned 1900 hours)

22 July 1944.

Court re-assembled at 0910 hours.

Adv. Niederij continues

The experiences carried out by accused in Court show the extreme rapidity with which the events took place.

Homicide is dealt with in Arts. 575 and 584 of the Code.

There are 2 forms of homicide, intentional and preterintentional.

The idea of self defence requires the notion of intentionally killing but commits latter only "to provide a danger".

Homicide may be (1) voluntary
(2) Preterintentional (involuntary)
(3) Colposo (negligence or imprudence)

Legittima Difesa. Does not apply to homicide alone, but to all acts which might otherwise be criminal.

Aggravating and extenuating circumstances (Arts. 61 & 62) apply to all forms of crime.

80.ET

DECLASSIFIED
DND 785084
By NWM Date

Sinibaldi & Zanutta p. 149 – which explains – who there is meant by "parties" self. Signor. I also refer to an Article by Prof. Stallybrass in "Il Progetto Rocco nel Pensiero Giuridico Contemporaneo", at p. 77.

In order to give a reason you must first ascertain his place in the situation. Nobody could have acted differently.

I ask you to consider the part assigned by Hitler to assisting the Allies in the Partisan movement.

(In answer to a question by the Court it was ordered that in the absence of Bastianini and Grandi their names should be struck out).

The next "case" of Signor Degrelle, as suggested by the writer Ferri.

– Lieut. Salvatore Giuliano.

This "case" must be decided on the facts, not on the basis of the Attorney's Defence. There is considerable conflict of evidence in detail – though the general effect is the same. I shall say where any of the witnesses we have – this is the familiar case of a number of people seeing the same thing happen but giving different descriptions of the details.

The possibilities:-

(1) Accused supported Bandit and fired with him during the disarming action.

(2) Accused hurried Bandit or Bandits who fired in self defence.

(3) Bandit(s) acted under orders, but the latter I think cannot be held to have fired himself.

Accused acted from duress or fear of Bandits, and he shot Lying Carabinieri dead in a cowardly manner. He shot the latter deliberately in a callous way if the last two statements are true. The trial centres round the alleged use of duress, and there the duress was in dispute. The fear that the Bandits were

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(In answer to a point by the Court the Prosecuting Officer stated that he does not intend to plead "aggravating circumstances" under Art. 61 (10)).

As to extenuating circumstances - the accused is wholly faultless, has surrendered only under Art. 62 (1) and (2). Any defence is based on S. 52 - I indicate S. 55 as a possible. S. 52 is directed to deal with emergency, not to extend physical duress, and the emergency must be immediate. I cannot hope I can rely on S. 52 that must be actual necessity. This needs very delicate weighing, and must be viewed subjectively, as it appears to the accused at the time in the light of surrounding circumstances, and not objectively in the cold atmosphere of the law Court - see Art. 59. Art. 52 would provide a good defence, notwithstanding that the Court considered the necessity not immediately present in the circumstances that prevailed at the time - the error would be excusable. The other legitimate defence is covered by Art. 59 (last paragraph). But the accused's error must be a reasonable error - he is guilty of unreasonable error, then it is a case of "culpa", to which we turn to Art. 55. This is considered by the Code specifically in relation to Self-Defence, viz. Art. 55. Art. 55 refers only to cases of alleged Self-Defence - but this case the appreciation is fixed by Art. 59. And the action is limited by the limits set in the section - but certain cases there - power to suspend sentence (see Arts. 163 and 164).

All this is assuming, because I rely on legitimate self-defence, and not on "culpa". Legitimate self-defence is the proper code is my "principal" line. But I also refer to Pessina, Elementi, Vol. II, p. 320 (2nd Edn.), which contains a statement dealing particularly with "legittima difesa putativa". I also rely on "Grundsätzliche Praxis" by

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that a communist party is not important because it is a political party but the accused personally. It does not follow that the man flying down a communist poster is a fascist. Assuming the truth of the accused's statement does his action amount to self-defence. Self-defence means that there is a peril which there is no other way of avoiding, and that the force used is no more than is necessary for the purpose. Because the accused pointed a pistol it does not follow that he was going to fire. In any case the accused had other ways of dealing with the situation, e.g. running with him, seizing his pistol, if necessary firing at his legs. I fully appreciate the atmosphere in Rome on 5 June. Accused had no ground for thinking that deceased was actually going to shoot. Deceased had had an opportunity of shooting at each, and had not shot.

As to Italian law, the only extenuating circumstance the accused could possibly rely on are those in ss. (1) and (2) of Article 62. I say those written of those sections do apply in these parts. The putting out of the pistol by the deceased was not an "unjust act" in the circumstances, since being in uniform he was in authority. I think Art. 59 does not apply — this applies only to an act which is prima facie lawful, e.g. one person giving another a push which unfortunately results in death.

In answer to Court's last question to the Defence, I think that you cannot possibly have legitimate self-defence on both sides. One must always be the aggressor.

By the principles of all civilised states the unlawful taking of human life is a thing that must be punished. If you think no other course was open to accused, you will acquit him — otherwise you must convict.

(The Court adjourned at 1230 hours to consider its judgment).

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Activities of Lt. Colonel

Am G/ACC.
H.Q.
Piazza Venezia,
Rome,
23rd June 1944

Statement of BENTIVEGNA, Rosario, fu Vincenzo, age 22yrs. Medical Student, of Via Torino, No 122, (Apartment on second floor). Rome, who says:.

I have been mentioned that I need not say anything unless I wish, but anything I do say will be taken down in writing and may be used in evidence.

Bentivegna Rosario -

I was a partisan in Roma and in the Country as from 8th September, 1943, when the Armistice was signed. At that time I was a commando, in fact, I still am. I was arrested on 20th September 1941, in Rome by the Fascist Police on Security grounds. I was taken to the Questura in Collegio Romano

Bentivegna Rosario

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and was interrogated because they fou
out that I enrolled on 5th May. Ia
in distributing Anti-Fascist mille
They kept me for four or five days and
released on the condition that if I w
caught again circulating this propaga
within three years I would be
imprisoned. After about eighteen months
again started my Communist activi
During the eighteen months I ~~was stopped again~~ and I took up m
medical studies. In February 19[illegible]
because of my age, I was call
up for the Army and was put into
Sanitary Company, No. 8. and remain
in Rome in the military Hospital a
Celio. I was there until May 1943,
I was released for an indefinite
period. I was still interested in Ant
Fascist and in July 1943, I again
[illegible] Communist

RB.

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Rome. my area was in the Center of
Rome and I was the person in
Command. I held the position unti
15th november 1943, when I became
involved in the G.A.P. which means
Gruppo Azione ~~Patriottica~~ Partigiana, a t
of the Communist Party, and was the
Commander of the "Pisacane Squadr
On 22nd January 1944, when the All
landed at Anzio I was sent to
Centocelle in charge of the Partisan
there. In March I was recalled
Rome and again took up my previous
Command, and have been here ever s
In may, 1944, I was sent out of
Rome in charge of the Partisan
between Rome and the Cassino fro

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4 to Cassino from R.B

was on my return[illegible] when I was ob
by Allied troops near the Pe t
Mammolo about 10 kilometers
outside of Rome on Via Tiburti
and owing to the fighting I ret
to Rome, and took up service
my patriots in the San Lorenzo
district. On the morning of 5th Ju
1944, I was sent to guard th
building of the Unità newspa
in Via 4th November, [illegible] Rome, R
Via Due Cannelle. I arrived there
about 10.30am. at about 3 pm
I walked into Via Due Cannelle a
a tour of inspection and saw
men, one in civilian clothes and o
in uniform, who was carrying

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tearing down posters from the
wall near the steps leading from Via
Tre Cannelle to Via 24th May,
including posters of the Unità
newspaper. I was with a friend
named Carla Capponi, a lady, who
lives in Via del Foro Traiano, 1, Rome.
Baila and I went up to men and
I asked them why they were tearing
down the Posters. The man in uniform
answered arrogantly, "I can do as
I please. Who are you?" I replied,
"I am a member of the Committee of
Liberation" and showed him my
armband, which I was wearing
on my left arm. The one I hand
you is the one I was wearing. At
this moment the man in uniform
pulled his revolver from the back
of his pants a cartridge in the

Medal of Capponi

RB

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struck the revolver in my body near the heart. I had my right hand in my trousers pocket holding a loaded "Barretta" pistol calebre 9 mm (short). At the time the uniformed man put the pistol to my body, the man in civilian clothes fired two shots. I thought they were at me I was not struck by them. I stepped back a few paces, drew out my pistol and fired three shot at the uniformed man. I thought all shots struck him in the body. The uniformed man then fell to the ground. The man in civilian clothes then ran away I cannot remember which way he went. As I saw the man on the ground I then noticed he was a lieutenant of the Guardia Nanonza. my girl frien was killed.

RB

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and she saw all that happened.
There were people also at the windows
of surrounding houses. I did not
know the uniformed man or the man
in civilian clothes. The girl and I
kept the public back. Shortly afterwards
a man, who I would know again
wearing a white armband (red, white and green in centre) with "Police
on it, came up and asked ~~him~~ me what
happened. I told him and he asked
me for my name and documents. I
showed him the Identity Card and
Military License and told him they
were false. However, I gave the man
my real name and address. I
remained there for about ~~five~~ twenty
~~ten~~ minutes, and returned to the
Ufficio building with the girl, Carla,
and the man who had taken
particulars from, and he verified
my identity. I left Rome on

Identity Card

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8.

June 1944 and work in the Viterbo district. I stopped there until 19th June 1944, doing Communist work, and then returned to Rome. I hand you the false identity card and military licence. I gave my pistol, as a present, to an Australian Lieutenant who called at the Unità offices on 6th June 1944. I think his name was "PETTER". He was with the Fifth Army. They all know him at the Unità office. I last saw him about 19th June 1944. Carla had a pistol on her at the time. I do not know whether she still has it or not. I shot the Lieutenant because he had held his pistol to my body. At that

Italian Gov't Copy

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RB

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I thought the Lieutenant was going to shoot me because he appeared very aggressive. At the moment I thought he was a Fascist, but I have since been told he was a patriot so I am sorry that it happened. Carla had nothing to do with the shooting. I carried the fake identity cards and military licence because the Fascists were looking for me because of my Anti-Fascist activities and for no other reason. I have a good character. This statement has been read to me in Italian by Cpl Conti, 267th Regiment, Coy 'L' and it is the truth. Rosario Bentivegna 10/8

Witness: Wm Greenhill. Capt
23/6/44

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A.M.G. H.Q.
Piazza Venezia

25th June, 1944.

Statement of Carla CAPPONI, aged 24 years, single, of Foro Traino, 1, Flat No.12, Rome, who says:-

I live with my mother at the above address. My father died four years ago. I have not been employed since last December because the Fascists and Germans were looking for me.

For the past seven months I have been a Communist and anti-fascist. I fact, I have always been anti-fascist.

I have known Rosario Bentivegna, who lives in Via Torino, Rome, for the past year. He has, so far as I am aware, always been anti-fascist and connected with the communist party. I am engaged to Bentivegna, but not officially because I have not known him long enough.

At about 2 p.m. on 5th June, 1944, I was at the offices of the Unita' newspaper a Communist organ, in Via 4 Novembre, Rome, when I was asked to remain and help to guard the building because we were afraid that Fascist elements might enter the place. Rosario Bentivegna was there in charge of the Guard.

At about 3 p.m. that day, Rosario, asked me to accompany him on a walk round the building. I agreed to. Rosario had a revolver in his right trouser pocket, but I was not armed. The two of us walked into Via Tre Cannelle, nearby, and when we turned into the street, I saw a man in Army uniform, with his coat over his left arm. I do not recollect whether he had a hat on. With him was a man in plain clothes. The man in uniform, I did not know what arm of the Italian services he belonged, was pulling down "patriot" posters, including those of the Unita' newspaper from the wall near where the steps lead up to Via 24 Maggio. I do not know whether the man in civilian clothes was with the uniformed man, but I formed the impression he was. Rosario and I went up to the two men. Rosario asked the uniformed man to stop pulling down the poster and asked why he was doing it. The uniformed man replied "who are you to ask me questions". Rosario was wearing a "national Liberation" arm band on his left arm. Rosario pointed to his arm band and said " I am in charge of the Unita' newspaper guard, and told the man what the arm band stood for. Please come to my office and explain the reason". Both became very excited and shouted at each other. With that the uniformed man took a revolver from his holster, charged the revolver with a cartridge and stuck it at the left side of Rosario. No words passed at that moment between the uniformed man and Rosario.

The other man who was in civilian clothes stood at the back of the uniformed man. I stepped aside having seen the man in civilian clothes who was standing 4 or 5 meters away draw a revolver from his right hand trouser pocket. At the same time I called out "Attention" and moved quickly over to the wall opposite because I thought this man was going to fire. A few seconds I saw Rosario took a step back from the uniformed man and fire three shots at the uniformed man. Almost at the same time the man in civilian clothes fired two shots. I don't know whether he fired at us or in the airm but I had the feeling that one shot passed close to me. I then saw the uniformed man spin round and fall to the ground on his back. In the death spasms the uniformed

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dropped his revolver by his head. At that moment the civilian ran away in the direction of Via Nazionale. With that a man in civilian clothes wearing a police arm band came on the scene from the direction of Via 4 Novembre. He told Rosario that he had seen everything and asked Rosario for his name and address and other particulars. Rosario produced an identity card and said "this is false". Rosario still held the revoler in his hand. However Rosario did give the policeman his proper name and address. The policeman lifted the dead man's coat and then said that the dead man was a Lieutenant of the Guardie di Finanze. A crowd began to gather and persons from the Unita' newspaper were coming to the spot. Rosario told the latter persons to return to the Unita' building.

One of these men, I don't know his name, but they would know it at the Newspaper's office, handed me a revolver and I helped to keep the crowd back. At that time members of the Guardie di Finanze arrived on the scene. I recognised them as such because of their headware. They then took charge and Rosario and I went with the policeman to the "Unita'" newspaper office. I then handed the revolver I had back to the man who had given it to me. A man at the newspaper offices vouched for us to the policeman.

I cannot help you as to the whereabouts of the dead man's revolver because I looked away on the occasion to keep the crowd back and upon looking again at the dead body I saw that the revolver had siappeared. I asked the policeman and later the Guardie di Finanze whether they had picked up and they all replied "no".

I had no hand in the shooting of the Tenente of the Guardie di Finanze, neither did I, at any time, urge Rosario to fire at him. I was more or less an innocent bystander. I had never seen the dead man or the other civilian before in my life. I do not know even now the identity of the civilian.

This statement has been read to me in Italian by Gabriella Barbati and it is the truth.

Carla CAPPONI

T.W.M. Greenhill, Capt.

25.6.44.

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Esplosione 3
H.E. Lunghezza
Colonna

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Judgment.

The Court desires to say at the outset that in arriving at its decision in this case it has not been affected one way or the other by any political considerations. It makes no difference in the mind of the Court that the accused happened to be a member of any political party or that the posters, the tearing down of which was the original cause of the unhappy events which followed, were those of any particular political party or organ. The deceased man was a human being & the accused is to be judged by this Court as a human being.

It has already been stated in this Court that unless the Court is satisfied beyond reasonable doubt that the accused is guilty he must be acquitted. In the present case there is no doubt that the accused killed the deceased: he himself has admitted it. The only question which remains, therefore, is whether in the particular circumstances the killing of the deceased was a lawful or an unlawful act. The accused claims that it was a lawful act on the ground that he was acting in his own defence & he invokes Art 52 of the Italian P.C.

In assessing the validity of this claim by the accused, the Court must be guided solely by the evidence given during this trial. This evidence has been extremely lengthy & voluminous & the Court has attended very carefully to the whole of it. As has already been pointed out, there has been considerable conflict of testimony between the various witnesses with regard to many details of greater or lesser importance. The Court does not propose to set out here in detail its judgment on the accuracy or otherwise of each witness. Having heard all (and weighed)

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the evidence, it has been possible to form a fairly clear view of the main events of what happened. The Court is satisfied that the accused, seeing the deceased leaving down the porters, addressed him in an arrogant & hostile manner: that the deceased replied in an equally hostile manner; pulled out his pistol & pointed it at the accused: that accused thereupon, without waiting, pulled out his own pistol in turn & shot the deceased. In the view of the Court, this is a case in which two excitable & impulsive young men lost their tempers & resorted precipitately & unnecessarily to extreme & the use of firearms.

It remains, therefore, to consider the legal consequences of these events: and action taken by two parties. In doing this we do not forget that the events took place on the 5th June – a day, doubtless, when the atmosphere was fraught with electricity & feelings ran high.

Allowing for this, the Court is satisfied that the action of the deceased in drawing his pistol was unwarranted & amounted to an ~~assault~~ "offesa ingiusta" within Art 52 (2) of the P.C. Having said this, however, the Court is equally satisfied that the re-action of the accused was also unwarranted and exceeded the bounds of defence proportionate to the "offesa". As was said by the Prosecuting Officer, when confronted by the pistol of the deceased, the accused had other means of dealing with the situation without shooting to kill straight away. It does not appear to the least follow that, because the deceased drew his pistol, he had any intention of shooting. There is no evidence to show that he had any such intention & the

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and no witness has suggested that any words were spoken to show that the deceased had any such intention. In any case, it is clear that a number of other courses were open to the accused beside the extreme course which he took.

In these circumstances, the Court rules (i) that the defence put forward under Art 52 of the P.C. has not been fully made out: (ii) that the accused did not commit act under any such error as is envisaged in the last paragraph of Art 59.

Therefore, the case falls to be dealt with under Art 55 and as such is punishable under Art 589.

At the conclusion of the evidence, it was admitted by the prosecution that there was no evidence of aggravating circumstances as alleged in the charge sheet. The Court has, therefore, to consider only whether there are any extenuating circumstances under Art 62 of the Italian Penal Code. On all the evidence, the Court rules that the accused is entitled to the benefit of the extenuating circumstances specified in Art 62 (2). In relation to this point, it has been pointed out to the Court that conflicting opinions have been expressed by high judicial authority in Italy as to whether an accused who is found guilty under Art 55 can properly claim the benefit of Art 62 (2): but the Court decides that in view of this conflict of opinions any doubt must, in this case, be resolved in favour of the accused.

For the above reasons, the Court finds the accused guilty not of the offence charged

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in the charge sheet (namely arts 575 & 61 (c) of the P.C.) but of the lesser - Hence contemplated punishable in accordance with art. 589 by art 55 (with the benefit of art 62(2).

If the Defence so desires that, before imposing sentence, the Court should take into consideration other extenuating circumstances or wishes to make any observations on the proper sentence to be imposed on the basis of the above rulings, the Court will be pleased to hear their submissions. But, before hearing any such submissions by the defence, ~~the Court must~~ ask the Prosecutor if he has any evidence of previous convictions to adduce.

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D e c i s i o n e

Prima di tutto la Corte desidera dic ara~~re~~ pe che nel giungere alla decisione di questa causa, non è stata determinata né dall' uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applidazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 93

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La Corte è convinta che l'imputato,vedendo il decedutox strappare i manifesti,gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato,in seguito a ciò,senza aspettare,tirò fuori ~~xxxxxxxxxx~~ a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte,questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui,senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo ~~In considerazione di ciò~~,la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificata e costituiva una"offesa ingiusta"secondo l'art.52 del Codice Penale. Posto ciò,la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colpevolmente i limiti della difesa proporzionata all' ~~xxx~~ offesa. Come ha detto il Pubblico Ministero, l'imputato,quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione,senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione.In ogni caso,è chiaro che l'imputato aveva a sua disposizione altre vie,oltre a quella estrema da lui scelta.

In tali circostanze,la Corte decide:

1) che la difesa,basata sull'art. 52 del Codice Penale,non è stata completamente dimostrata.

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2) che l'imputato non ha agito sotto qualsiasi errore come contemplato ~~dall'articolo~~

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dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 N° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62 N° 2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

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MEMORANDUM
for
ROSARIO BENTIVEGNA
INCIDENT OF THE 5th JUNE 1944.

On the 5th June, at about 3 o'clock in the afternoon, Rosario Bentivegna, accompanied by the student Miss Carla Capponi, while on guard outside the building of the newspaper "Unità", in Via Quattro Novembre, and wearing the three-colour arm band of the Committee of National Liberation, ~~the~~ met a soldier at the entrance to Via Tre Cannelle, without his military cap and carrying his jacket on his arm, who was impetuously tearing down the advertisements of the newspaper "L'Unità", and also other advertisements relating to the liberation of Rome and free Italy.

Bentivegna told the soldier to halt, but the latter disdainfully turned on him demanding him what right he had to interfere. So Bentivegna showed his three-coloured arm-band of the Committee of National Liberation and he stated himself to be a "volunteer of liberty" on guard for the newspaper, and he invited the soldier to follow him to the newspaper's offices.

But the soldier, instead of accepting the invitation, drew out his revolver, loaded it, and pointed it at Bentivegna.

At that moment, a man in civil clothes, who was beside the soldier in the moment the latter was stopped by Bentivegna, and who was at the same distance from him, on seeing the soldier point his revolver at Bentivegna, shot several times in the direction of the group. In the same instant, Bentivegna, realising that he was seriously threatened by the soldier, stepped back and drawing his own pistol rapidly shot three times at the soldier, who immediately fell to the

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ground and died ~~immediately~~ shortly after.

Some minutes later a police agent arrived, to whom Bentivegna immediately raccounted the facts of the incident, also giving his own exact generalities, despite the fact that at that moment he was without identity documents, only possessing several false ones which he had used in order to hide from the Nazi-Fascist police who had been looking for him during the nine months of German occupation in Rome. It is worth noting that the Nazi-Fascist authorities had placed a reward of one million and a half ~~for~~ on the head of Bentivegna.

Afterwards it was learnt that the dead soldier was a Lieutenant of the "Guardia di Finanza" by the name of Barbarisi, whom Bentivegna had never seen before that occasion.

From statements made by certain companions who spontaneously presented themselves to the "Unità", it was at first believed that Barbarisi was a well-known Fascist spy who had taken part in various ~~execution~~ firing-squads for the execution of Italian patriots, but later it was found out that this identification of Barbarisi was ~~false~~ incorrect, and it appears that the idea had been taken from an Allied Radio communication from Anzio which had given indication, before the liberation of Rome, about a certain individual with a name similar to Barbarisi, a well-known and dangerous spy.

That the incident occurred in the way described above can be proved: -

1) from the statements of Rosario Bentivegna who for his qualities of character and education is absolutely to be relied upon. This is shown also by the attitude of Bentivegna who, instead of trying to avoid to avoid interrogation put himself at the disposal of the

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Authorities, giving as soon as possible his real identity, which he would easily ~~be~~ have been able to conceal, and afterwards presenting himself spontaneously to the Allied police authorities to supply all necessary explanations.

2) From statements made by witnesses:— Miss Carla Capponi, who accompanied Bentivegna and who was present at the development of the episode. Miss Capponi is a completely reliable witness for reason of her high moral qualities.

3) From a written statement, adjoined to the deed here forwarded, made by N.D. Isabella Galletti, who, while in her own home reading a book, heard some voices quarelling down below in Piazzetta delle Tre Cannelle; going to the window she saw two men, one dressed as a soldier and the other wearing the patriotic arm-band, who were having a heated argument, and then she saw that the soldier had pointed his revolver at the other's chest. Then she heard some explosions, but being frightened she left the window, and when she looked out again she saw that the soldier was lying on the ground.

Mrs. Galletti also states that she noticed the advertisements of the newspaper "L'Unità" had been torn down and that the soldier was not wearing either his military cap or jacket which he was carrying on his arm.

4) Other witnesses who can fully explain the circumstances of the fact and whose audition was verbally asked for by Bentivegna's defender, Avv. Corrado Perris, to the officer of Allied police who proceeded to the ~~end~~ carrying out of enquiries and interogations, are: 1) Italo De Tuddo, son of Amelio, aged 28, resident in Via Flaminia 19, Rome, who

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was present at the incident ~~until~~ the moment that Barbarisi had drawn his revolver and loaded it, after which he went away on his bicycle being frightened of being hit by a badly-aimed shot;
2) Mr. Domenico Russo and his wife, Via Orazio 31, Rome: the Russo couple, going up the steps of Via delle Cordonate, saw the soldier accompanied by a civilian, tearing down the advertisements; immediately afterwards they saw a young man arrive, who reproached Barbarisi; they then saw Barbarisi draw his revolver from its case and with this, threaten the young man who was coming towards him.

The defending party could indicate other witnesses able to describe the circumstances of the fact, but he reserves these in case of necessity.

Having learnt the facts of the case it is obvious that no responsibility exists against Bentivegna, who acted for legitimate defence. In fact, one is dealing with a typical case of legitimate defence, in which anybody who might have been in Bentivegna's place would have acted in the same way.

Added to this Bentivegna, on the 5th June at 3. o'clock p.m. could be and had to be legitimately armed as, not only had the proclamation imposing consignment of arms and dissolution of armed squadrons of the various Parties not yet been issued, but armed groups of single parties had been charged with duties of public order.

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ROSARIO BENTIVEGNA'S PERSONALITY.

We will not hesitate to define Rosario Bentivegna as a heroic fighter in the war of Italian-national liberation, because his contribution to the struggle against the Nazi-Fascists, in Rome and its vicinity, is really conspicuous – even exceptional.

Bentivegna, medical student of the 5th year, after the 8th September 1943, felt (that above every other personal interest) was his duty of the moment to fight against the German oppressors and their Fascist accomplices.

He always showed in his activity of partisan, as a member of the Groups of Patriotic Action, of volunteer for liberty, mental and spiritual gifts completely above praise.

Here are some of Bentivegna's most important actions:-

In his activity of partisan, in May 1944 he organised at Palestrina armed groups to leave in the fight against the Germans, he destroyed the enrollment lists at the Municipio of Palestrina, organised several armed actions against groups of Germans (in all six actions), in which besides killing various Germans and capturing 28 prisoners, who succeeded later in escaping owing to the imminence of the entry of allied troops in Rome, he and several other companions having left the place where the prisoners were, took away from the enemy two Radio transmitting and receiving sets, two Diesel motors, food supplies for 500 persons to last for five days.

In his activity as a member of a group of patriotic action in Rome, amongst other things he carried out the following truly exceptional deeds:-

He damaged a German lorry in front of the Royal Opera House,

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together with his group he organised an ambush and killed a German in Via XXIII Marzo; he carried out a bomb dropping in Piazza Barberini; ~~and~~ an attack against S.S. troops outside Regina Coeli prison; an attack against the German Command in Corso d'Italia; a night attack on Via Casilina destroying a German lorry, another night attack on Via Tiburtina destroying another German lorry, another attack against a group of Germans on Via Prenestina damaging a lorry; he destroyed a German telephone switchboard; he destroyed a German lorry at Monte Mario; he made an attempt on the life of Pizzirani, head of the repubblican fascists in Rome; together with his group he killed three fascists (~~they had~~ these fascists had killed a woman, who had gone to the Caserma of the 81st Infantry in Viale Giulio Cesare, to protest that her son had been taken away); he carried out the attack against the fascist column that was going up Via Tomacelli; he set fire to a lorry ~~with~~ loaded with petrol in Via Flaminia (he destroyed another German lorry in Via Cavour); he ~~participated~~ took part personally in the attack against the German column of S.S. in Via Rasella, in which 32 Germans were killed and more than ten others were wounded.

Bentivegna can assume full responsibility of these actions, the larger part of which were communicated by the clandestine newspapers "Tempo" and particularly "Unità", and the Italian Communist party approves them unconditionally as real and true acts of war against the Nazi-Fascists. The same must be said also about the ambush of Via Rasella, that Bentivegna accomplished with absolute disregard of the danger he was exposed to against a column of armed S.S. in full war order.

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Owing to the eccezional personality of Bentivegna and all the modalities of the tragic incident in which Lt. Barbanti was to meet with his death, we are confident in an early ~~resolt~~ release of Bentivegna from prison.

Roma. 5 July 1944.

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ACC 10400/142/197 [2 of 2] Legal Cases 7762
[Qubre - Aug. 1944?];
[Folder, Data, No Dates]; [1943 - 1947]



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By [illegible] NARA, Date [illegible]

Rec'd July 10/44

Advanced Headquarters Allied Control Commission

July 8, 1944.

MEMORANDUM TO: Lt. Colonel John Pollock,
Rome Area Command.

The Secretary of the Communist Party in Italy has submitted the attached Memorandum with regard to the arrest of Rosario Bentivegna. It would be appreciated if I could be informed of the present status of this case in order that I may be in a position to reply to the communication from the Communist Party asking for further consideration of the case.

Samuel Reber
Vice President Allied Control Commission
Political Section

Chief Legal Office 2/

(thro' Capt Ercenbill)

1) I discussed the case with Mr Reber and told him every possible facility will be extended to the accused & his counsel or advocate

2) to also that the defence will be accorded every help in preparing their case by Legal Section Trial Court.

J. Pollock Lt Col.

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PROMEMORIA per

ROSARIO BENTIVEGNA

INCIDENTE DEL 5 GIUGNO 1944.

Il giorno 5 giugno 1944, verso le ore 15, Rosario Bentivegna accompagnato dalla studentessa Carla Capponi, mentre prestava servizio di vigilanza nei pressi del giornale "L'Unità", a Via 4 Novembre, e recava sul braccio la fascia tricolore del Comitato di Liberazione Nazionale, incontrava presso l'imboccatura della Via Tre Cannelle un militare, senza berretto e che portava la giacca sul braccio, che andava strappando con impeto alcuni manifesti del giornale "L'Unità", nonchè altri manifesti inneggianti alla liberazione di Roma e all'Italia libera.

Il Bentivegna intimò l'alt al militare, il quale, con aria sprezzante lo investì domandandogli con quale diritto egli intervenisse. Allora il Bentivegna mostrò il bracciale tricolore del Comitato di Liberazione Nazionale e si qualificò per "volontario della libertà", di guardia al giornale, ed invitò il militare a seguirlo alla sede del giornale.

Ma il militare, anzichè ottemperare all'invito, estraeva la rivoltella, metteva un colpo in canna e la puntava al petto del Bentivegna.

In quella, un uomo in abito civile, che era accanto al militare nel momento in cui questi fu fermato dal Bentivegna, e che era alquanto distante da lui, mentre il militare faceva il gesto di puntare la rivoltella contro il Bentivegna, sparò alcuni colpi in direzione del gruppo. Nello stesso

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istante il Bentivegna, sentendosi minacciato così gravemente dal militare, fece un passo indietro, e, estratta la propria pistola tirò fulmineamente tre colpi contro il militare, il quale cadde immediatamente a terra, e decedette poco dopo.

Qualche minuto dopo accorse un agente di polizia in borghese, al quale il Bentivegna, immediatamente, riferì le circostanze dell'accaduto, e dette le proprie esatte generalità, nonostante che in quel momento egli fosse sprovvisto di documenti di identità, possedendone alcuni falsi che gli erano serviti per sottrarsi alle ricerche della polizia nazi-fascista durante i nove mesi dell'occupazione tedesca di Roma. E' da notare che le autorità nazi fasciste avevano posto sul capo del Bentivegna una taglia di un milione e mezzo.

Si è saputo poi che l'ucciso era un tenente della Guardia di Finanza, Barbarisi, che il Bentivegna non aveva mai veduto prima di quell'occasione.

Per dichiarazioni fatte da alcuni compagni che spontaneamente si presentarono all'"L'Unità", si credette in un primo momento che il Barbarisi fosse una nota spia fascista, che aveva preso parte a vari plotoni di esecuzione contro patrioti italiani, ma successivamente si è chiarito che questa identificazione del Barbarisi era erronea, e pare che l'equivoco sia stato ingenerato da una comunicazione della radio alleata di Anzio che aveva indicato, prima della liberazione di Roma, un individuo dal nome simile a Barbarisi, come nota e pericolosa spia.

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3)

Che l'incidente si sia svolto nel modo sopra descritto è comprovato:

1°) dalle dichiarazioni di Bentivegna Rosario, che per le sue qualità di carattere, di educazione, è assolutamente credibile. E' comprovato altresì dal comportamento stesso del Bentivegna, il quale, anzichè sottrarsi alle indagini dell'autorità si mise a disposizione di questa, dando in un primo momento le sue vere generalità, che avrebbe invece potuto facilmente occultare, e in un secondo momento presentandosi spontaneamente all'autorità di polizia alleata per fornire tutti i chiarimenti opportuni.

2°) Dalle dichiarazioni fatte dalla teste, signorina Carla Capponi, la quale accompagnava il Bentivegna, e che fu presente allo svolgimento del fatto. La Capponi è teste assolutamente insospettabile, sia per le sue altre qualità morali, sia [illegible]

3°) Dalla dichiarazione scritta, allegata al processo inviata dalla N.D. Isabella Galletti, la quale mentre si trovava nella sua casa, intenta a leggere un libro udì voci di un alterco che si svolgeva nella sottostante Piazzetta delle Tre Cannelle; avvicinatasi alla finestra essa vide due uomini, di cui uno vestito da militare, e l'altro con il bracciale dei patrioti che si scambiavano parole violente, e vide poi che il militare aveva puntato la rivoltella sul petto dell'altro; udì poi delle esplosioni, ma si ritirò impaurita dalla finestra, e quando si riaffacciò vide che il militare era stramazzato a terra.

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La signora Galletti afferma egualmente che ha notato che i manifesti del giornale "L'Unità" erano stati strappati, e che il militare non portava nè il berretto nè la giacca, che teneva sul braccio.

4°) Altri testi che possono chiarire in pieno le circostanze del fatto, e la cui audizione venne chiesta verbalmente, dalldifensore del Bentivegna, Avv. Corrado Perris, all'ufficiale della polizia alleata che ha proceduto all'inchiesta e agli interrogatori, sono: 1°) Italo De Tuddo, di Aurelio, di anni 28, residente in Roma Via Flaminia 19, che fu presente al fatto, sino al momento [illegible] Barbarisi impugnata la rivoltella fece l'atto di mettere il colpo in canna, dopo di che egli si allontanò in bicicletta temendo di poter essere colpito da qualche colpo andato a vuoto; 2°) signor Musu Domenico, e miglie; [illegible] Via Orazio 31, Roma: i coniugi Musu [illegible] passando per le scale di Via delle Cordonate videro il militare, accompagnato da un borghese, che strappava i manifesti; subito dopo videro sopraggiungere un giovane, che rimproverò il Barbarisi; videro poi il Barbarisi trarre dalla fondina la rivoltella, e con questa minacciare il giovane che gli veniva incontro.

La difesa del Musu potrebbe indicare altri testi sulle circostanze del fatto, ma si riserva di addurli in caso di necessità.

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Così ricostruiti i fatti, non vi è dubbio che nella specie non sussista alcuna responsabilità alcuna da Bentivegna, il quale ha agito per legittima difesa. Si tratta, invero, di un caso tipico di legittima difesa, in cui chiunque si fosse trovato al posto del Bentivegna, avrebbe agito nello stesso modo.

A ciò si aggiunga che alle ore 8 del 5 giugno il Bentivegna poteva e doveva legittimamente andare armato, in quanto , non solo non era stato emanato ancora il bando che imponeva la consegna delle armi, e che scioglieva le squadre armate dei vari Partiti, ma, i gruppi armati dei singoli partiti erano investiti di funzioni di ordine pubblico.

PERSONALITA' DI BENTIVEGNA ROSARIO

Non esitiamo a definire Bentivegna Rosario un combattente eroico della guerra di liberazione nazionale italiana, perchè il contributo che egli ha dato alla lotta contro i nazi-fascisti, a Roma e nelle vicinanze di Roma, è veramente cospicuo, anzi eccezionale.

Il Bentivegna, studente in medicina del 5° anno, dopo l'8 settembre ha sentito che il suo dovere del momento attuale, al di sopra di qualsiasi interesse personale, era quello di lottare contro i tedeschi oppressori, e i loro manutengoli fascisti.

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Ha dimostrato sempre nella sua attività di partigiano, di componente dei Gruppi di Azione Patriottica, di volontario della libertà, doti di mente e di cuore assolutamente superiori a qualsiasi elogio.

Ecco, alcune delle più importanti azioni compiute dal Bentivegna:

Nella sua attività di partigiano, egli nel maggio del '44 organizzò a Palestrina bande armate che dirigeva nella lotta contro i tedeschi, distrusse le liste di leva al Municipio di Palestrina, operò anche più azioni armate contro gruppi di tedeschi, (in complesso sei azioni), in cui oltre ad uccidere vari tedeschi, appatturare 28 prigionieri, che riuscirono poi a fuggire nell'imminenza dell'entrata a Roma delle truppe alleate, avendo egli ed alcuni suoi compagni allontanarsi dal luogo dov'erano i deteguti, egli tolse al nemico due radio trasmittenti e riceventi, due motori Diesel, proyviste alimentari per 500 persone per la durata di cinque giorni.

Nella sua attività di componente di un gruppo di azione patriottica a Roma, egli, fra l'altro compì le seguenti gesta, che sono veramente eccezionali:

danneggiò un camion tedesco innanzi al Teatro dell'Opera; insieme con il suo gruppo tese un'imboscata e uccise un tedesco in Via XXIII Marzo; eseguì un lancio di bombe a Piazza Barberini; eseguì un attacco alle truppe SS autotrasportate presso le carceri di Regina Coeli; eseguì l'attacco al comando germanico al Corso d'Italia; eseguì un attacco notturno sulla Via Casilina distruggendo un camion tedesco; eseguì un altro attacco notturno a Via Tiburtina distruggendo un altro camion tedesco; eseguì

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un altro attacco a un gruppo tedesco, sulla Via Prenestina, danneggiando un camion; distrusse un centralino telefonico tedesco; distrusse un camion tedesco presso il Buco Torto; eseguì un attentato contro il Pizzirani, capo dei fascisti repubblicani di Roma; insieme con il suo gruppo giustiziò tre fascisti (che avevano ucciso una donna, che era andata a protestare per aver avuto razziato un figlio, al Viale Giulio Cesare, presso la caserma dell'8ª fanteria; eseguì l'attacco alla colonna fascista che si muoveva per Via Tomacelli; incendiò un camion carico di benzina a Via Claudia (distrusse un altro camion tedesco a Via Cavour); eseguì personalmente l'attacco alla colonna tedesca di SS in Via Rasella, in cui trovarono la morte 32 tedeschi e furono feriti più di una diecina.

Di questa azioni del Bentivegna, la maggior parte delle quali è stata comunicata dai giornali clandestini del Tempo, ed in particolare dall'"Unità", il Bentivegna può assumere la piena responsabilità, ed il Partito Comunista Italiano le approva incondizionatamente come veri e propri atti di guerra compiuti contro i nazi-fascisti. Lo stesso deve dirsi anche dell'attentato a Via Rasella, che il Bentivegna ha compiuto con assoluto disprezzo del pericolo a cui si esponeva, contro una colonna di SS armata in pieno assetto di guerra.

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Datax la personalità eccezionale del Bentivegna, e le modalità tutte del tragico incidente, in cui doveva trovar la morte il tenente Barbagisi, [redacted] confidiamo in una sollecita scarcerazione di lui.

Roma, 5 luglio 1944

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By [illegible] NARA, Date [illegible]

CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indicated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indicated by the articles 61 and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 61 N°10 : having committed the act against a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administrative or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

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art.6I Nº IO does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES.The extenuating circumstances which,hypothetically,might be concerned in this case are the follo=wing :

A)Art.62 Nº1 : having acted for motives which have a special moral or social value.

B) Art.62 Nº2 : having reacted when in a state of anger,caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury.It is also required the necessity of the defence,so that the danger or the damage could noh be avoided unless with the defence.Besides that,the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the ne=cessity,it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imp=risonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance,the punishment which would be imposed for the committed crime is increased as far as a third.In no case,the period of imprisonment can exced 30 years (Art.64).

If there is an extenuating circumstance the punishment is dimi=nished of a period not exceeding a third (Art.65).Existing more than one extenuating circumstance,the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum=

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stances ,the Judges decide if are prevailing the one or the others, and will consid r only the prevailing ones. They can also consider them equivalent, so that no augment or dimimution will took place. (art. 69)

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Mod. 17 bis

La difesa ritiene che il Pubblico Accusatore non è riu
scito a dimostrare l'illegittimità del fatto compiuto da
Bentivegna, e la responsabilità dell'accusato. -
Perciò potremmo pregare la Corte di emettere sin d'ora
la Sua decisione. Ma noi vogliamo dare la prova comple -
ta, inequivoca, positiva dell'innocenza di Bentivegna Ro
sario.-

Ci proponiamo, pertanto, di provare:

1°) che il fatto è avvenuto in un momento di guerra guer
reggiata, che il Bentivegna, come tutti i patrioti italia
ni, secondo gli ordini e le disposizioni impartite dal Co
mitato di Liberazione Nazionale, attraverso le organizza-
zioni militari, collegate con il Comando Alleato, doveva
essere in istato di allarme e di difesa,

2°) che Rosario Bentivegna, il 5 giugno alle ore 3 pome-
ridiane, era in volontario della libertà in attività di
servizio, e che egli era stato incaricato di proteggere
la sede del giornale "Unità" e le immediate adiacenze,
contro eventuali attacchi od offese di elementi nazi-fa-
scisti;

3°) che Rosario Bentivegna era autorizzato a portare le
armi;

4°) che i Partigiani erano vincolati agli ordini ricevuti,

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5°) Che il Tenente Barbarisi, e forse anche un'altra persona non individuata, con lo stracciare i manifesti patriottici che si trovavano nelle edicole infisse all'esterno del fabbricato dove ha sede "L'Unità" ha compiuto un fatto che è apparso obbiettivamente ostile ai patrioti del movimento italiano di liberazione ed agli stessi Alleati;

6°) Che la reazione verbale e l'intervento del Bentivegna erano quindi pienamente giustificati, dal punto di vista oggettivo e soggettivo.-

7°) Che il Barbarisi ha reagito a tale intervento in modo violento, prendendo per primo l'iniziativa di passare alle armi.-

8°) Che il Bentivegna non aveva altra possibilità di scampo al pericolo grave, attuale, immediato che minacciava la sua integrità fisica, che non in una reazione altrettanto rigida ed immediata.-

9°) Stabiliti così i fatti, la difesa intende dimostrare, che anche dal punto di vista psicologico, il doloroso episodio può esser spiegato solo come dovuto ad un gesto di naturale difesa, imposto dall'istinto di conservazione.-

10°) Pertanto la difesa vuol provare che secondo la legge italiana, il fatto non è punibile, perchè la reazione del Bentivegna è stata necessaria e propor-

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zionata all'azione offensiva del Barbarisi, e che è applicabile nel caso in esame l'istituto della le - gittima difesa nei suoi vari aspetti, che esime da qualsiasi responsabilità.-

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I N D E X

REPORTS AND STATEMENTS RE: DEATH OF LT. BARBARISI, GUARDIE DI FINANZA.

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H.Q. ROME REGION A.M.G.

3rd July, 1944.

To: Chief, Public Safety Division, H.Q. Piazza Venezia.

From: Capt. T.W.M. Greenhill.

Subject: Death of a Lieutenant of the Guardie di Finanza by shooting, and arrest of culprit.

1. Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia di Finanza, 2nd Company, Caserma Via Salaria, Rome.
Home Address: 195, Via salaria, Rome.

2. In consequence, I saw LT.COL. Carlo Perinetti, CC.RR., upon the matter, but he could not assist other than to inform me that the body was at the Guardie di Finanza Caserma, Via Regina Elena, Rome.

I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 p.m., 5th June, 1944, at Via Tre Cannelle, Rome.

He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologic Anatomy, Rome University, who offered his services, free of charge.

At 2.45 p.m., the same day, Dr. Fontana carried out a post mortem examination of the chest of the dead man.

His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are:

a) Death occurred from 48 to 72 hours before the P.M.
b) Death occurred rapadily from acute aneamia resultant upon the passage of a bullet which passed through the left thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the Chest corresponding to lst left intercostal space and passing in a slightly downward direction and leaving the back at the 5th intercostal space on the paravertebral line.

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c) Bull. of small calibre, probably not more than m.m.
c) Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at Via Tre Cannelle was then visited. Immediately an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the assistance of Vice Brigadiere INSACCANEBBIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. On 23rd June 1944, in consequence of information received, I learned that the assailant was a young man named Rosario BENTIVEGNA of 122 Via Torino, Rome. I instructed Guardia Panetta to effect the detention of this man and bring him to me at this H.Q. Further he was not to make reference to the word "assassinio".

8. At 2.30 p.m. the same day I saw Bentivegna in the office of the Public Safety Division, having been detained at about 1 p.m. in the Via Nazionale by Guardia Panetta.

9. I told the suspect who I was and that I was making enquiries into the death of Lieut. Barbarisi of the Guardie di Finanze, which took place at about 3 p.m. on 5th June 1944, death resulting from a shot in the left side of the chest. I then asked him whether he could help me in the matter. The suspect replied: "Yes Sir, I did it". I then cautioned him and he replied: "I want to tell you all about it". He then made a statement in writing, under caution. The statement is attached.

In short it is a complete admission that he fired three shots directly at the deceased Lieutenant, one of which brought about the death.

He gives as an explanation for his actions that being a communist he saw the Lieutenant in Via Tre Cannelle pulling down posters from the wall, amongst which were posters of the Unita' newspaper, a communist organ. He alleges that he remonstrated with the Lieutenant who thereupon was told not to interfere.

He says that the Lieutenant then drew a revolver, charged it with a cartridge and stuck it in his, Bentivegna's body near the heart.

He alleges that he had his right hand in his trouser's pocket holding a loaded Beretta pistol and that at that moment a man in civilian clothes fired two shots. He thought they were directed to him although he was not struck. Because of the shots he stepped back a few spaces, drew his revolver from

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his trouse pocket and fired three sh s at the Lieutenant. He goes so far as to admit that he thought all three bullets struck the officer.

10. He disclosed the name and address of a girl who was with him at the time of the shooting. She is Carla CAPPONI, aged 24 years, of 1 Foro Traiano. I saw her at this office on 25th June 1944, and obtained a statement, attached, from her. She bears out almost in detail the story told by Bentivegna. I am satisfied, however, that she cannot be cited as an accomplice in the shooting.

11. I also submit statements taken from Anna Roncubi, 15 Via Tre Cannelle and Alberto Castelli, 98E Via 20 Settembre. The former woman alleges she was a witness to the shooting, describes the assailant and the woman who was with the latter. Mr. Castelli, who arrived soon after the shooting, apart from describing the scene, as he saw it, outlines the conversation he had on the spot with a young man, who was holding a pistol in his hand and the fact that the young man admitted the killing. He also speaks of the young lady. Having in mind the statements of the accused and his girl friend, the aofrementioned two persons provide necessary corroboration in connecting the facts.

12. Bentivenga, who is Italian, and has lived his life, to date, in Rome, alleges that he was unaware that the Lieutenant was an officer of the Guardie di Finanza. It is difficult to believe him as the uniform of a Guardie di Finanza is generally known to the Italian people. The Force has all the powers of a Police body apart from being an Arm of the Italian Military Forces.

13. Three pistol cartridge cases of 9.m.m. guage were found at the scene of the crime by Lieutenant Pietro Pasqua of the Nucleo CC.RR. Ludovisi, Via Quintino Sella. They bear identical stamp markings at the base.

14. I have been unable, to date, to trace the whereabouts of the dead man's pistol. Bentivegna says he subsequently gave his pistol away to an Australian Lieutenant, who is yet unkown.

15. I am in the process of obtaining statements to give an account of the passage of the body from the scene of the crime to its subsequent interrment.

16. The charge or charges in this case must arise from the Italian Law. I am advised by Commissario Ernesto Rodriguez

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of the Cen[illegible]al Questura, Via San Vitale who is a Graduate of Law, that there is such an offense as wilful murder, with alternative offences of manslaughter down to assault.

17. As against a plea of self defence, I would draw attention to the fact that nobody alleges, not even the prisoner, that the Lieutenant fired a shot. The prisoner admits that he stepped back a few paces before firing. Not one shot but three shots directly at the officer. I wonder whether it could be said that having stepped back a few paces, his obligation was to run away.

18. Another point in issue is the status of the Lieutenant at the time i.e. a member of the Guardie di Finanza and therefore on duty. This point is not yet clear. One must appreciate the unusual conditions existing on 5th June 1944, which has made the enquiry fraught with difficulties..
However, I am endeavouring to produce evidence showing that he was on duty. Statements will be submitted from time to time as they arise.d.

19. Respectufly submitted for information of legal department.

T.W.M. Greenhill,
Captain
Public Safety Division,
Rome

In the field,
- 3.7.44.

Maj. Hendrickson, Senior Legal Offici
(thro' Col. Poletti)

Referred please

Pollock Lt Col.
Rom Regional P.S.O

3/7/44

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REPORT OF DR. FONTANA

CELIO MILITARY HOSPITAL-ROME

Dissection Room.

At the request of the Allied Military Government I have today, June 7th, 1944 at 2.45 p.m. made the partial autopsy of the body of Giorgio BARBARISI of whose identity nothing further is known.

Queries were made to me by Captain Greenhill of the A.M.G. in regard to:

1) Presumed date of death.

2) Presumed age of deceased.

3) Cause of death.

4) Kind of injuries inflicted and their direction.

5) Type of projectile used.

6) Distance from which shot was fired.

The body of a man of apparently 25 years of age, partially undressed, lies flat on its back on the table of the dissecting room.

On inspecting the corpse green marks of putrefaction are noted on the supra and infra clavicular regions and on the lower regions of the abdomen. There are putrefactive desquamations of large pieces of skin on the limbs and on the back of the body. Rigor mortis has ceased.

On the top part of the left half of the thorax at about 2 centimetres from the sternum, on the 1st intercostal space an oval wound of 8 x 12 mm. with large axis having a perpendicular direction and edges which are clean out, introflexed, ecchymotic and tattoed for a width of 3 mm. is noted. By testing it with a specillum it is seen that the wound penetrated the thoracic cavity.

On the back, in a position corresponding to the left paravertebral line and the 5th intercostal space there is another oval wound of 1 x 1.5 cm. with edges that are ragged, ecchymotic, out-bending and not tattoed. Also here the specillum confirms that the wound penetrated the thoracic cavity. No other traumatic injuries are found anywhere else on the body.

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Upon opening the thorax an abandant quantity of blood(about 2 litres) is revealed, part being liquid and part coagulated in large red clots.

The examination of the passage of the bullet shows that this made a sort of tunnel and that the following partswere affected.

The skin and subcutaneous tissue of the front paries of the thorax- the aponeurosis and left pectoralis majoris muscle, the muscles of the 1st intercostal space, the front part of the left parietal pleura, the upper anterior mediastinum, the arch of the aorta(concave surface) the upper back plarietal pleura, the muscles of the 5th intercostal space, the muscles of the back, the subcutaneous tissue and the skin of the left paravertebral region.

In answer to the queries made, it may be deducted from the above data that:

1) The death occurred from 48 to 72 hours ago.

2) The deceased appears to be 25 years old.

3) Death occurred rapidly owing to acute aneamia caused by a wound inflicted with a firearm with bore through the left half of the thorax with partial injury to the aorta and hemothorax.

The bullet entered in front in a region corresponding to the 1st left intercostal space and following a slightly oblique downard direction came out on a leval with the back section of the 5th intercostal space on the paravertebral line.

4) The bullet was of small calibre, probably of not more than 7 mm.

5) The distance from which the shot was fired was of about 1 to 1½ metres.

THE DISSECTOR
Dr, Mario Fontana
of the Institute of Pathologic Anatomy
at the R. University.

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.M.G.
..oma Vecchia

8th June, 1944.

Statement of CASTELLI, Alberto, aged 36, Via 20 Settembre, 98E, Rome, Lieutenant, Italian Navy, who says:

At about 2.30 p.m. 5th June, 1944, I was standing at the door of the Italian Patriots building in Via Filotta, 24, Rome, when I heard shots. Shortly afterwards a civilian, whom, I do not know, passed by me and said "A member of the Guardie di Finanza has been shot". I said "where", and the civilian, a man, replied "There" and indicated towards Via 4 Novembre. I then walked with one or two of the men standing with me towards Via 4 Novembre and when I reached the corner of Via 3 Cannelle, I saw a drowd gathered at the corner. I walked through the crowd and saw the body of man dressed in the clothes of a Lieutenant of the Guardie di Finanza. I did not know him. I was sure he was dead. The body was lying on its back with feet pointing across Via 3 Cannelle. The head was pointing towards the right pavement. I then saw two Guardie di Finanza, whom I do not know, who were passing to keep back the crowd. They did so. I then saw a man who was near the body with a revolver in his hand. A girl was with him and she had a revolver in her waist band. There was another man there who was wearing a "Patriotic" arm band. The man holding the pistol had a communist arm banc. Red with black marks stamped on it. The girl also had one. I asked the two men and woman what had happened and the man with the communist arm band said "I killed him in personal defence".

I repeated my question and the man replied "He was tearing down some communist notices. I asked him to stop and he drew his revolver and he tried to take my pistol away with that a Guardia di Finanza who was with him fired some shots, so I shot him". I asked who was present and the girl replied "I was". The girl then told me the same story as the communist had told me. She then pointed to the wall and said "You can see the notices are pulled down". I looked and saw some posters were torn, but did not see any torn paper on the ground. I did not look to see. I then asked the communist to give me his revolver, but he refused. I then asked him for personal documents but he could not produce any and stated the reason was because he was guarding the building of the Unita' Newspaper. This building is on the corner of Via 3 Cannelle, and Via 4 Novembre. The man with the "Patrioti" armband was apparently on Police duty because the arm band had "Police" stamped on it. The "patriot" then said "I am waiting for my Captain to come to investigate the matter" with that a woman who was looking out of a window nearby, with a man, said "cover up the body, it is not a nice sight". I said "well throw something down" with that the woman or the man threw down a piece of linen and

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and one of the bystanders picked it up and covered the body. I lifted the linen cover and noticed that the injured man was wearing on his left arm a white arm band with English words on it. I think it was "Civil Police".

I waited and later a man, in plain clothes, arrived on the scene. He was wearing on his left arm a "patriot" armband, and on his left lapel he was wearing the gold bars of a "captain" mounted on a light red background.

As he arrived the man with "patriot" armband said "Here is the Captain". I told the Captain the whole story, including the fact that the man and girld had not any documents to show who they were. With that I walked away.

The Lieutenant was not wearing his coat. His shirt sleeves were rolled up. His coat was lying on the front of his body as though he had been carrying it at the time on his arm. I did not see any revolver on him or lying on the ground near him.

I do not know who the Captain is or any of the other three.

I feel sure I could recognise the girl again and might identify the other three persons.

The communist was about 20 years of age, about 5ft. 7 or 8 ins., medium build, clean shaven, normal face, fairish complexion, black hair, dress: grey clothes, no hat.

The girl was short, medium build, dark brown hair, dress: red designed dress, tight at the waist.

I cannot give a description of the "Captain" or the "Patriot" man, but I might recognise them again.

This statement has been read to me in Italian by Silvano Palumbo and it is true.

(sgd) Alberto Castelli

Witness T.W.M. Greenhill, Capt.
CAP.

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By NLT NARS, Date

ANNEXE 1.

Year 1944 10th June
in Via Tre Cannelle No.15,
Rome.

RONCUBI Anna, married Ricci, parents unknown, born at Copparo (Ferrara) on 15.2.1892, porter of house No.15 in Via Tre Cannelle, is before us, officers and agents of Judicial Police detailed with allied Military police, to be questioned regarding the murder of Sub.Lt. of Finance Guards BARBARISI. She declares as follows:

"On the 5th inst. at about 14.30 o'clock, I happened to be standing at the door of thehouse of which I am porter. I noticed a sub.lt. who had his coat over his left arm, and a man of whom I cannot describe the features, exchanging some words. Immediately after the man, height about 1.70 meters, slim, who was holding a pistol, fired at short range against the officer, wounding him mortally.

The murderere then turned to a woman: age about 20-25, height about 1.50 meters, slim, thin face, straight hair, and ordered her to make me close the house door, and to dispurse onlookers who had assembled. Being frightened, but wishing to see what was happening, I went up to the first floor and looked out of the window. Thus I was able to note that the murderer and his accomplice were still on the scene of the crime, quite near the body, talking to a man of about 50 to whom he was showing a document. The man who was talking to the murderer took out a piece of paper and a pencil, making notes:

In answer to question:
I was not able to notice if the murderer wore an armlet, nor if the woman was armed.

In answer to question:
After about two hours, the body, which had been covered with a sheet provided by Signora Verzini, had Finance Guards sentries placed by it, and at about 18 o'clock it was taken away by a small lorry belonging to Finance Guards.

In answer to question:
I have no more to say".

Read, confirmed and signed by:

Roncubi Anna

Insaccanabbia Francesco
Panetta Giorgio

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By ... NARA, Date ...

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10

AMG. ACC.
Piazza Venezia
Rome.

27th June, 1944.

STATEMENT OF PANETTA GIORGIO, Agent of Public Safety, Questura Centrale, Via Genova, Rome, who says:

On 5th June at about 3 p.m. I was walking along the Via 4th November when my curiosity was attracted to a group of persons who were standing in a circle in the Via Tre Cannelle, apparently looking at something. I went up to the crowd and lying in a horizontal position on the ground I saw the apparently lifeless body of a Lieutenant of Guardie di Finanze.
I now know that the dead man was named BARBARISI Giorgio.

I noticed that the officer was wearing grey-green trousers, with yellow bands down the sides, a grey-green shirt and a belt with an empty revolver holster attached. Near the dead man, I saw his jacket and his service forage cap. He was readily recognised as a member of the Guardie di Finanza.

On 25th June, acting upon the instructions of Capt. Greenhill, AMG. HQ. Piazza Venezia, at about 1 p.m. I arrested a young man named BENCIVEGNA Rosario of Via Torino 122 in the Via Nazionale.

I took him to AMG. HQ. and handed him over to Capt. Greenhill. Later that afternoon I was present when the young man made a written statement, under caution, to Capt. Greenhill, and I heard him admit that he was the person responsible for the shooting of Lieut. BARBARISI.

(sgd) PANETTA Giorgio

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11

LEGIONE TERRITORIALE DEI CARABINIERI REALI
DI ROMA

NUCLEO LUDOVISI

18th June 1944

At 14,30 o'cl. on June 5th unknown persons killed Sub.Lt. Giorgio Barbarisi of Finance Guards, in via Tre Cannelle, with three pistol shots.
Three shells were picked up at the place.
This Command has not made further enquiries as the matter was passed on to the Questura.
The shells were picked up personally by undersigned, who was immediately sent to the spot.

Il Tenente Comandante
PIETRO PASQUA

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By [illegible] NARA, Date [illegible]

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HOME - EGIVE
ALLIED CONTROL COMMISSION
A.F.H.Q. Sec.G24, H.Q. ARMY
Police Headquarters

24th June,1944.

SUBJECT: Murder of Lieutenant of Finance Guards named Giorgio CALDARELLI.

TO : Col. C. POLETTI, Rome.

copies to: General Johnson
Colonel Ames
Major Fielden
Major Hendrickson.

OK

1. About 5 P.M. 5th June,1944 (the day of our occupation of the City) a police Finance Guard, Lieutenant, was shot dead at Via Tre Cannelle, Rome. He was shot in broad daylight through the chest with one bullet, and died almost immediately. There was no clue as to the assailant.

2. Immediate instructions were given to the Questore to proceed with the enquiries in the ordinary way, but I felt the crime was such that immediate investigation was necessary by our Public Safety Division. As you know we had to disarm the overnight partisan police force of 17.000 upwards, and I felt that unless we stamped out this shooting by civilians ruthlessly the position might very soon become out of hand. Moreover, it came to my knowledge from reliable sources that many of the so-called communists and socialists were banding together to wipe up old scores with their fascist and other enemies. In short they were prepared to take the law into their own hands. The same afternoon I saw all the leaders of the various political groups, and warned them in no uncertain terms that we would tolerate no shoting or extreme measures by civilians in this city. They denied that any political parties were involved in the shooting of the Finance Guard, and they were unable to help me in the investigations.

3. I at once withdrew one of my officers from his District of Roma Vecchia, Capt. T.F.N. GREENHILL (B), who served with me as a detective officer, attached to the Criminal Investigation Branch, New Scotland Yard, London. Knowing his record I felt he was the one man who could handle this murder case. Capt. Greenhill at once took up the enquiries and from 6th June until last night he has been on this case day and night. By a process of elimination he has interviewed well over 200 individuals, dealt with over 100 suspects, and during the last three days narrowed the enquiries down to three or four suspects.

4. By 3 p.m. yesterday, 23rd June,1944, he had obtained sufficient evidence to arrest one Rotario [illegible], age 22, medical student, of Via Torino 122, Rome, an avowed member of the

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Communist Party and self-styled partisan.

5. I was present when Capt. Greenhill handled this individual. Bentivegna was properly cautioned and agreed to make a written statement to Capt. Greenhill. In this written statement to Capt. Greenhill, Bentivegna confessed to the shooting of the Finance Guard, his excuse being that the Finance Guard Lieutenant had attempted to pull down certain wall posters including a poster respecting the "Unita'" newspaper, which is the communist organ. The evidence is clear, the confessions is straight forward, and there is no doubt the evidence will show that Bentivegna shot the Finance Guard in cold blood.

6. In the ordinary way such cases could be tried by the Italian Courts by Italian Judges, but I submit that this case is so serious, the poltical issues involved are so great, that we set up a strong Allied Military Court immediately to deal with this alleged murder. This course, I submit, is highly desirable because of the possibility, in the event of it being tried by an Italian Court, of the influences from political ramifications. Left in our hands, it could not then be said, by opposition parties, that political influence had had any effect upon the result.

7. Capt. Greenhill is having all the statements of witnesses etc. typed out, and will have the case ready for presentation within two days.

8. I strongly recommend that a General Court be set up with General Johnson, Colonel Poletti, and the Senior Civilian Judge of the City to hear the case, that the widest possible publicity be given to the trial so that we can stamp out once and for all such actions of violence on the part of civilians.

9. Fortunately this is the only known case of its kind so we have been very fortunate indeed, but an example must be made at once of this individual if found guilty.

J.R. POLLOCK
Lt. Colonel
Chief, Public Safety,
Rome.

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By [illegible] NARA, Date [illegible]

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ALLIED MILITARY GOVERNMENT

HEADQUARTERS
ROME REGION

20th June 1944

TO: :Chief Public Safety Division
FROM :Capt. T.W.M.GREENHILL
SUBJ : Death of Lt of Guardia Finanza

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By NWM, Date

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ALLIED MILITARY GOVERNMENT

HEADQUARTERS

20th June 1944

TO : Chief, Public Safety Division
A.M.G. H.Q.
FROM : Capt. T.W.M.GREENHILL
SUBJECT : Death of Lieutenant of Guardia Finanza
REFERENCE
DATE : 20th June 1944

1; Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia Finanza, 2nd Company, Caserma, via Salaria, Rome.
Home Address : 195, via Salaria, Rome.

2. In consequence, I saw LT.Col. Carlo Perinetti, CC.RR.,upon the matter, but he could not assist other than to inform me that the body was at the Guardia Finanza Caserma, via Regina Elena, Rome.
I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 p.m., 5th June 1944, at via Tre Cannelle, Rome.
He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologie Anatomy, Rome University, who offered his services, free of Charge.
At 2,45 p.m., the same day, Dr.Fontana carried out a post mortem examination of the chest of the dead man.
His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are : 59

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A. Death occurred from 48 to 72 hours before the P.M.

B. Death occurred rapidly from acute Aneamia resultant upon the passage of a bullet which passed through the left half of the thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the Chest corresponding to 1st left intercostal space and passing in a slightly downward direction and leaving the back at the 5th intercostal space on the paravertebral line.

C. Bullet of small calibre, probably not more than 7.m.m.

D. Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at via Tre Cannelle was then visited. Immediatly an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the Assistance of Vice Brigadiere INSACCANEBBIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. Although I have yet to trace a witness of the actual shooting, one has come to light who was on the scene soon after the happening. He is Mr. Alberto CASTELLI, via 20th September, 98 E Rome, a Lieutenant in the Italian Navy. He avers that at about 14,30 hours on 5th June 1944, he was standing at the door of via Pilotta 24, Rome, when he heard shots. He went to the corner of via Tre Cannelle, and upon pushing through a crowd of people in the street, he saw the Lieutenant lying across the roadway on his back, obviously lifeless. Near the body he saw a young man, whom he describes, with a revolver in his hand. He asked the man what had happened and he replied: "I killed him in personal defence", Mr.Castelli pressed him for further information, and the man added: " He was tearing down some communist notices. I asked him to stop and he drew his revolver and he tried to take my pistol away. With that a Guardia Finanza who was with him fired some shots, so I shot him".

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By [illegible] NARA, Date [illegible]

Mr. Castelli says he asked the man who else was present and a girl, whom he describes, standing nearby, replied that she had been. This girl apparently told the same story as the confessed assailant, and drew Mr.Castelli's attention to torn posters on the wall close at hand.

8. Several other witnesses have been interviewed but none can add to the story told by Mr.Castelli, although they could be used to support the latter's evidence.
Neither the Guardia Finanza - alleged to have fired the shots - or the woman have yet been found.
Two interesting points have been disclosed, the finding at the scene of three cartridge cases by Lt.Pietro PASQUA, CC.RR. Ludovisi, and the fact that Barbarisi's holster was empty. The revolver, if he had one, has not yet been traced.

9. However, I have succeeded in contacting an informant and he assures me that the assailant was a man, ROSARIO BENTIVEGNA, of via Torino 122, Rome, who left Rome on 7th June 1944 for the Viterbo district with a group of " Italian Patriots " to carry out guerilla warfare in German occupied territory.
Discreet enquiries are in operation, in via Torino district, to bring about the apprehension of the suspect for interrogation, and in any event my informant will advise me should Bentivegna - assuming he is out of Rome- return here.

10. This is an Interim report, and the return of these papers are requested, after passing through channels, for periodical recording of future developments. Statements, etc., are being retained for translation, etc.

T.W.M. GREENHILL, Capt., C.A.P.O.

In the field.
20.6.44.

57

Nothing to do with administration — merely a relation of police investigation

RAD

File
Genl Courts
RGN.

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Recd. 29-8-1944

LEGAL

Major Hendrickson

Regional Legal Officer
Region IV

Dear Major Hendrickson,

Lt Col D.A.D. Young has been asked by Brigadier Low for a brief note on the "Bentivenga" case, in which after the accused had been sentenced to 18 months imprisonment, he was released on appeal.

Could you very kindly supply such a note direct to Colonel Young, G-2, RAAF as I understand the Brigadier is anxious to get this away tomorrow, if possible.

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By [illegible] NARA, Date [illegible]

PLEAS OF THE ACCUSED

The accused Bentivegna Rosario pleads N.G. to the first charge; pleads ——— to the second charge; pleads ——— to the third charge.

The accused pleads to the first charge; pleads to the second charge; pleads to the third charge.

The accused pleads to the first charge; pleads to the second charge; pleads to the third charge.

FINDINGS OF THE COURT

The accused Bentivegna Rosario is found guilty as stated in the Judgment. ~~/ not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge.~~

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

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

SENTENCE OF THE COURT

The Court sentences the accused Bentivegna Rosario to 18 months imprisonment from date of arrest in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

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

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

REVIEW

Conviction and sentence quashed

Dated 14 August 1944 Signature Richard H. Wilma
Col CAC
For the Acting Chief Commissioner

CONFIRMATION OF DEATH SENTENCE

Dated 194 Signature

DECLASSIFIED
Authority NND 765074
By ltr NARA, Date

22 July 1944

The Court re-assembled at 1705 hours.
The judgment was read in Italian in open Court.
Lt. Sabatino hands in Penal Record of Accused, showing no entries (marked Exhibit 6).

Avv. Perris addresses Court in mitigation.

I ask you to restore Buttiveglia to Italy, which needs him. Remember the part he played during 9 months of oppression. You can impose sentence between 6 months and 5 years, subject to 1/3rd Reduction for the mitigating circumstances you have found. But we ask for the minimum. I invite you to consider Avv. 133. Here you have the minimum punishment of Offence. I also ask for conditional Suspension of sentence under Avvs. ~~[illegible]~~ 163 & 164. You can suspend if the sentence is up to 1 year.

Lt. Sabatino (invited to deal with the question of law)

Avv. 133 deals with a large number of subjects. S.1 in effect says that you must take all aspects of the case into consideration. One of the aspects is the time for this occupied territory. Order is one of the essential things, and you must not do act that tends to create disorder.

The Court retired to consider Sentence.
Sentence was delivered in open Court.

H. G. Lattimer
Colonel
President

I. Campbell Lt Col
[illegible] Major
Members.

55

DECLASSIFIED
Authority NND 765014
By [illegible] NARS, Date [illegible]

[redacted]

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV , LEGAL DIVISION
A.P.O. 394

30 August 1944

L/C/1607

SUBJECT : case of Rosario BENTIVEGNA.

THRU : Regional Commissioner;

TO : Lt. Col. D.A.D. Young, G-2
Roma Area Command.

1. Acting upon the written request of Major Battersbey of our Public Safety Division, I submit herewith, for Brigadier Low's consideration, a brief statement with respect to the manner in which the above case was concluded.

2. In the city of Rome on the the above-mentioned accused, Rosario Bentivegna, was found guilty of a crime defined under the Italian law as "unintentional homicide". In the course of the trial, Counsel for the accused endeavoured to establish a case of "legittima difesa", but the Court after 9 days of most careful deliberation, concluded that a case of "legittima difesa" had not been made. The Court did conclude,however, that there were extenuating circumstances, which materially reduced the decree of the accused's offence. Thus, since the case was tried under the Italian law the sentence machinisms of the Italian law were applied in imposing sentence. Here it should be noted that though the Court finally agreed unanimously on the question of sentence, this was so only because a part of the Court felt that it would be bad policy for the Court to be divided in a case which had had so much publicity. That the sentence was exceedingly if not excessively mild was noted in the record by all Members of the Court. As you probably know the accused was sentenced to 18 months in prison.

3. Acting in strict compliance with the "consolidated instructions for Allied Military Courts" , the accused, through his avvocati , on filed his formal petition for review, in which many reasons (legal and factual) were advanced for the reversal of the trial Courts' findings and sentence.

DECLASSIFIED
Authority JCS ltr, 1/4/74
BY Lewis NARS, Date 5/28/74

Classification changed to Unclassified by Authority of O.S.D. ltr dated May 3, 1972.
Date: 5/31/74.

DECLASSIFIED
Authority NND 785024
By [illegible] NARS, Date [illegible]

1

4. On a decision was handed down by the Chief Legal Officer of the Allied Control Commission, speaking for the Chief Commissioner, in which the Court's findings and sentence were completely reversed and set aside on factual grounds.

In other words the Chief Commissioner found that a case of "legittima difesa" had been established and that accordingly the accused was innocent of any wrong. On the basis of this decision the accused was immediately liberated.

5. The Chief Commissioner's determination was a great dissappointment and in many respects very disturbing ,but then a solder is not entitled to a personal point of view in such matters.

Robert C.Hendrickson,
Major, A.U.S.
Regional Legal Officer.

RCH/PA.

CONFIDENTIAL

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DECLASSIFIED
Authority NND 765014
By NWW, Date

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~~SECRET~~

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV LEGAL DIVISION
A.P.O. 394

L/C/1000.

16 August 1944

SUBJECT : Case of Bentivegna Rosario.

TO : Central Prosecutors Office,
Capt. Sam. Gilreath.

1. The formal decision on the review of the above cause is now before me.

2. Since the reviewing authority holds that a "legittima difesa" was completely established, the accused is entitled to be released forthwith.

3. Accordingly I enclose herewith the formal release with my signature appended.

4. Please see that the prisoner is released without any publicity and take such steps as may seem necessary to prevent any public display on the fact of either accused or his followers.

[signature]
COLONEL [illegible]
MAJOR [illegible]
REGIONAL LEGAL OFFICER.

RCH/GC

Classification changed to Unclassified by Authority of O.S.D. ltr dated May 3, 1972. Date: 5/24/74.

~~CONFIDENTIAL~~

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DECLASSIFIED
Authority JCS ltr, 1/4/74
BY Lewis NARS, Date 5/28/74

DECLASSIFIED
Authority NND 785074
By NARA, Date

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MOD. No. 12
(riveduto)

FORM, No. 12
(revised)

COMUNICAZIONE DI SCARCERAZIONE AVVENUTA

Al capo delle carceri di Regina Coeli

Oggi, il Bentivegna Rosario,
dalle Competenti Autorità per la Revisione del Processo
è stato messo in libertà ~~dal Tribunale Militare Alleato~~ perchè:

+ { gli è stato conceso la cauzione
è stato prosciolto
ha pagato la multa inflittagli
è stato giudicato ad una pena condizionale

Data: 16 Agosto 194 4

(Presidente del Tribunale Militare Alleato)

TRANSLATION

STATEMENT OF RELEASE FROM PRISON

TO: The Head of the Prison of Regina Coeli

Today Bentivegna Rosario
has been set free by the ~~Allied Military Court~~ Reviewing Authority, because he has

+ { been granted bail
been acquitted
paid the fine imposed on him
been sentenced to a suspended sentence

Dated 16 August, 194 4

ROBERT C. HENDRICKSON
MAJOR A.U.S.
REGIONAL LEGAL OFFICER.

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DECLASSIFIED
Authority NND 785074
By [illegible] NARA, Date

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Legal

[redacted]

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV - LEGAL DIVISION
A.P.O. 394

L/C/1000

16 August 1944

SUBJECT : Case of BENTIVEGNA ROSARIO.

TO : Chief Legal Officer, Legal Sub-Commission,
Headquarters - Allied Control Commission.

1. Reference your letter AGO/4083/1/L dated 14 August 1944, subject as above.

2. Receipt is acknowledged of your decision, record and proceedings in the case of BENTIVEGNA ROSARIO.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

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Classification changed to

DECLASSIFIED

380

DECLASSIFIED
NND 785024
By [illegible] NARA, Date

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Rec'd 15 18 44 X ~~SECRET~~ X

AUG 1 1944

L/1017

LEGAL

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.

14 August 1944.

SUBJECT : Case of BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV.

1. The record in the case of BENTIVEGNA Rosario is returned herewith with decision on review endorsed thereon. Please acknowledge receipt.

2. My decision on review, which is made with the approval of the Acting Chief Commissioner, is that the conviction and sentence are quashed.

3. The reasons for this decision are that in my opinion on the facts as found by the court, the defense of "legittima difesa" was completely established. I am satisfied that on this particular day the mere act by a young, excited Italian of drawing and pointing a pistol is sufficient evidence of an intention of shooting to justify immediate action by the accused in self-defense. Beyond this, there was definite evidence that the deceased "placed a round in the chamber." In these circumstances, where a life and death decision has to be taken in a fraction of a second, it is not in my opinion reasonable to expect the accused to deliberate upon the various courses which the court believed to have been open to him: still less is it reasonable to say that the method of defense which he did adopt was not "proporzionata all'offesa."

Richard H Wilmer

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

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

~~SECRET~~

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NND 785074
By NARS, Date

44

legal

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1030 8 August 1944.

SUBJECT : Decision of Court in case of BENTIVEGNA ROSARIO.

TO : "Corriere Giudiziario"
Avv. Lombardi,
Via Montebello N/22.

1. In accordance with your request, I am forwarding herewith the decision of the Court in the famous trial of BENTIVEGNA ROSARIO.

2. I will be only too happy to supplement, at your request, any further information in regard to the case.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

44

47

DECLASSIFIED
NND 785024
By NARA, Date

D e c i s i o n .

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata nè dall'uno nè dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.
La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionev ole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato abbia ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciare guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamant in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto.

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ed ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 Giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una "offesa in giusta" seconda l'art.52 del Codice Penale. Posto ciò, la Corte

DECLASSIFIED NND 765017 By NARA, Date

è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colposamente i limiti della proporzionata all'offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estraesse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.
In tale circostanza, la Corte decide :

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato dall'ultimo paragrafo dell'art 59.

Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art. 589.
Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art 62 del Codice Penale Italiano.

In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie Italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art. 62 comma 2 ; ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato. Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè,-art.575 e 61 N.10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col benificio dell'art. 62, N.2.

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte

DECLASSIFIED
NND 765024
By [illegible] NARA, Date [illegible]

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è pronta ad ascoltare tali argomenti. Ma, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

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DECLASSIFIED
NND 783047
By NARA, Date

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1029

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.

5 August 1944.

SUBJECT : Petition for Review - BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV.

1. I return herewith the Petition for Review in the above case and the Remarks of the Court. You will notice that I have written a note on the two last sentences - sentences which affect neither the verdict nor the sentence of the court.

2. No doubt, you will submit the record for review in due course.

I.G.H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

Encl.

REGION IV CASE N° 7762 43

ASSR

DECLASSIFIED
Authority NND 785034
By NARA, Date

49

~~B O T T I C E L L I.~~

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

L/1007

1 AUGUST 1944.

SUBJECT : Bill for service in BENTIVEGNA case.

TO : Avv. Ruggero di Segni.

1. The bill enclosed in your letter is entirely in order, however it is essential that it be submitted in triplicate to meet our procedural requirements, before it can be approved by the appropriate authorities.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

ENCLOSURES:

Letter from Avv. R. Di Segni to Legal Division dated 27/7/44, Bill from Avv. R. Di Segni , dated 27/7/44 for Lit.4.000,= Re. Bentivegna Case.

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REGION IV CASE № 7762

DECLASSIFIED
Authority: JCS 1/4/74 Ltr.
By: Lewis, NARS. Date: 5/24/74.

387

DECLASSIFIED
NND 785024
By NARA, Date

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JUL 28 1944

AVV. RUGGERO DI SE"NI
ROMA - LUNGOTEVERE ALTO 1
TELEF. 560-809

Legal

Rome, Jr" : 27, 1944

1004

To: Major Hendrickson
Legal Division
Rome Region

Dear Sir,

I enclose herewith the bill regarding the case of Benti= vegna.

I have changed the figure we spoke about, thinking the importance of the case and the responsability would justify it. But will you please decide as you think better.

I thank you,

yours

41

AUG 4 1944

Rec'd Aug 4'44

Legal

AVV. RUGGERO DI SE"NI
ROMA - LUNGOTEVERE ALTO 1
TELEF. 560-809

- August 1944

1004

To : A.M.G.

ROME REGION

LEGAL DIVISION

I enclose the new copies of my bill regarding the Bentivegna case, as requested with your letter dated I August I944.

I return also the previous letter and bill.

Enclosures:
I) Letter and bill dated 27 July I944.
2) Two copies of the bill.

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DECLASSIFIED
NND 785024
By NARA, Date

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1

July 10'44

A.M.G.Superior Cou· Rome Area
Palazzo di Giustiz_a,Rome

1003

Rome ,July 8th 1944

Major Robert C. Hendrickson
C.M.P.,
Regional Legal Officer,
Roma

SUBJECT: A.M.G.v. BENTIVEGNA ROSARIO,di VINCENZO

1. Confirming conversation with Capt.Gazziano the Prosecution is now prepared to proceed with the case on Wednesday July 12th 1944.
2. May arrangements now be made for a Court.
3. Copy charge sheet served on the accused is enclosed herewith.

Howell Jones Capt.
Howell Jones Capt.
Superior Court Prosecuter

Enclosure: Copy charge sheet

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DECLASSIFIED
NND 785024
By NARA, Date

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Form. No. 4

ALLIED MILITARY GOVERNMENT
(GOVERNO MILITARE ALLEATO)

CHARGE SHEET
(FOGLIO D'ACCUSA)

Place (luogo) Rome

Date (data) 8 July 1944

BENTIVEGNA Rosario di Vincenzo — Name of defendant (nome dell'accusato)

Via Torino 122, Roma — Address (indirizzo)

Is hereby charged with the following offenses:
(E' qui accusato delle offese seguenti).

First charge: Responsible of the offence contemplated by Art. 575-61 N°10 Penal Code (Italian Law)

Particulars: For having killed in Rome, on June 5th, 1944, by three shots of pistol the Lieutenant Guardia di Finanza Giorgio Barbarisi.

Second charge

Particulars

TRADUZIONE

Prima accusa: Colpevole del reato di cui agli Art. 575 - 61 N.10 del Codice Penale Italiano

Dettagli: Per aver in Roma, il giorno 5 giugno 1944, ucciso con tre colpi di arma da fuoco il Sottotenente della Guardia di Finanza Giorgio Barbarisi.

Seconda accusa

Dettagli

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

The above charges are referred for trial before an A.M.G. GENERAL COURT, Palazzo di Giustizia, Rome, on 12 July 1944, at 0930 hours. (name and address of Court)

(Le suddette accuse sono riferite a processo davanti alla CORTE GENERALE del G.M.A., Palazzo di Giustizia, Roma, il giorno 12 luglio 1944, alle ore 9,30.)

By order
(Per ordine)

Lawrence Jones Capt

Judge, Summary Military Court or other authorized person.
(Giudice, Tribunale Militare inferiore o altro individuo autorizzato).

FOR RIGHTS OF DEFENDANT SEE REVERSE SIDE OF THIS SHEET.

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DECLASSIFIED
NND 765024
By [illegible] NARA, Date

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Legal file

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1007

6 AUGUST 1944.

SUBJECT : Petition for Review BENTIVEGNA ROSARIO.

TO : Chief Legal Officer, Allied Control Commission.

1. Pursuant to the requirements established by paragraph 6 of Art. 32 of the Consolodated Instructives for Allied Military Courts, I enclose herewith :

a) Petition for Review in the above stated matter with the comments of the trial judges appended thereto.

b) Complete record of case, plus six exhibits.

2. In view of the political atmosphere which has surrounded this case since its inception, the remarks of the trial judges should be carefully noted and considered by the Reviewing Authority.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

[redacted]
Removed for [illegible]

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[redacted]

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

DECLASSIFIED
NND 765021
By NARA, Date

Talked to Col. Pollock about this. He feels that if any harm has been done it is over with. It would have no effect on our courts. Newspapers should be strongly warned by our P.R.O. that they are not to discuss cases in papers as they have done in Bentivegna case.

Recommend I talk to major Lacacos about this.

RAS

File RAS.

DECLASSIFIED
NND 765014
By NARS, Date

55

Rec'd July 18'44

Holdam

P/Q/P/16

Confidential-Urgent.

Office of D.C.P.S.
Rome, 16/7/44.

Lt. Col. J.R.Pollock,
Chief Public Safety, Rome.

Date 18

May I draw your attention to the attached newspaper - L'Unita, dated 14/7/44, page 1, Col.1 and the caption at the right ~~hand~~ top corner of page 1.

The column is one such as would not be permitted in even the most provocative of presses. Two cases are referred to:

(i) That of Bentivegna

(ii) That of Caruso.

The first is under trial and the case is therefore sub-judice.

The second has not yet been brought to trial, yet Caruso is, in this article, already condemned by the paper as the "Assassin of Ardeatina".

I would like to suggest that this article oversteps the bounds of press liberty, and that the caption, if not illegal, is an improper one at a moment when the accused, Bentivegna, is under trial.

Could legal opinion please be obtained, with a view to correction of this type of journalism.

The law books at my disposal do not cover this subject sufficiently.

Major.

Deputy Chief Public Safety.

Copy to:

Director Public Relations.
(For information)

RWB
JG

Maj Leacacos (Rec'd Maj. Hendrickson)
Not much can be done now, but perhaps the Press might be warned of possible injustice to accused persons when case is sub judice to refrain from such comments
Pollock Lt Col

17/7

DECLASSIFIED
NND 765024
By ... NARA, Date ...

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T R A N S L A T I O N

Document: Newspaper.
Date: I4th July I944.
From: Newspaper "L'Unità".
To:

The Case BENTIVEGNA.

The high number of Germans killed in the hardest of the wars, the partisan war in the roads, now they are not in our country, they do not terrorize the Italian population, subject to the enemy joke, they do not fight against the liberators of our democracy, Armies. The 84 Germans strike off the fight by Bentivegna, in 9 months time, they will not kill, they will not pour more brave blood of British, American and French soldiers who fight for the liberation of our Country? This is the mind which rise, to day in the spirit of the Roman Patriots and becomes moved sentiment in the reminding of one of the most shining image of the heroic resistance of Rome.

9 month of terror. The Roman people, under the German heel subject to the brutal domination of Hitlerians and to the sadic torture of their brutal companions, the Fascist; suffers reists and rebels himself. A phalanx of heros encourages the resistance, drives the revolt, the G.A.P.. And among the G.A.P. who are for the popular mind as heros of legend, an image contrasts, harder, clearer better engraved than any else, an image that only his companions know to which very few can give a name, but the enemies of the peuple cannot remind without a frozen trembling of fright. A man, an hero among the heros, from whom also the death seems fright, Rosario Bentivegna. 50 war actions against Germans and Fascists, 84 enemies killed in action, this is the balance of 9 month Bentivegna's war activity.

And when the Germans would be sent out from Rome, thought the Roman workers, will be the heros of resistance to be in charged to destroy what Fascists hve left; to contribute , holding the first rank, to purify the life of our country. And when the Germans went away from Rome, while the Allied Military Authorities had not organized their Control power, the heros of resistance have been in charged by the Committee of National Liberation to mainatain the order, to,watch and reperess all offensive return of Fascists.

Undoubtely & with reason Rosario Bentivenga exchanged man dressed as soldier for fascist or militia-man - who on the 5th (while he was on duty) tore from walls with gesture of hatred & contempt - manifests of Liberation Committee Party and Communist Party - And his impression was strengthened by fact that upon intimation of ceasing stranger took out pistol & aimed against patriot against whom in meantime another fired. 35

In evident state of legitimate defense against aggression that he rightfully thought came from fascists - Bentivenga reacted with same spirit as when he fought in the 50

DECLASSIFIED
NND 765021
By NARA, Date

battles during past nine months.
After aggressor was killed it was made clear that it was not a fascist but ~~fi[illegible]~~ custom officer.

But as the facts happened do not give any relief to the displeasing misunderstanding.

Remains complete and incontestable all the true that Bentivegna has proceeded for self defence, and the Roman citizens truly are surprised because Bentivegna is in prison, accused of murder.

Bentivegna who during 9 months has spent his life, every day for the defence of hiś Country, fighting on the front of liberty to help with the most dangerous and efficient action the advance of the liberator Allied Armies. Bentivegna, the hero of all the battles, closed in the same prison where is Caruso, the dark murderer of Ardeatina Grave! Bentivegna the heroic purifier of the heroic time of Nazi terror, purified him also because he has done his task being in duty.

Bentivegna the hero of antifascism prosecuted by antifascist Authorities.

With reason today the Bentivenga case - troubles the conscience of patriots & of all the Italians. Only one way is to appease or calm this - apply the law with equanimity - with justice & democratic desire to serve population & so acquit & free the heroic patriot.

(2)

The peuple and the Patriots of Rome wait for the liberation of Rosario Bentivegna.

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DECLASSIFIED
NND 765014
By NARA, Date

file Bentivegna

To the President of the Allied Military Court
at the Palace of Justice.
Rome.

In case

To the Direction of the Daily Paper "Risorgimento Liberale",
Via Frattina 89,
Rome.

With reference to the Bentivegna case, part of the town press forces itself to describe the latter as the pure figure of a patriot and almost a heroe. Apart from the fact that the public is more than convinced that he is guilty of a real and proper murder of the poor Lieutenant Barbarisi, it is obvious that Bentivegna is the typical figure of a born delinquent. In fact he has on his conscience the tragic end of 320 persons in the Ardeatine caves: if he had had the smallest amount of heroic sense, he would have had the courage to present himself at the right time to the Germans to confess his guiltiness of the incident of Via Rasella, in order to save the lives of 320 innocent and really heroic patriots.

But he preferred to sacrifice the life of 320 patriots rather than face death himself: can this be called heroism? no; this is the utmost degree of cowardice, and the souls of the 320 persons of the 24th March call out for vengeance against the cowardly Bentivegna, who should be repudiated and disowned by all parties, if they intend really to honour the memory of the 320 martyrs of the Ardeatine cave.

Rome. 14th July 1944

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A public observer.