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Director				FROM : Amembassy RIO DE JANEIRO		DATE: September 4, 1970	
Dpt. of State				SUBJECT : Superior Military Tribunal Reduces Caio Prado's Penalty			
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The Superior Military Tribunal (STM) decided on September 2 to reduce the penalty imposed by the Second Army Court in São Paulo on Brazilian writer and historian Caio Prado Jr. from 4 1/2 to 1 1/2 years imprisonment. Caio Prado was accused and found guilty of violating Article 33 of the previous national Security Law which punishes "incitement to subversion of the political and social order" and incitement to "fight by violence among social classes," when he gave an interview to the students' magazine "Revisão" in São Paulo in 1967. An editorial writer of the magazine, tried in absentia, was sentenced to the same 4 1/2 year penalty by the São Paulo Court. The director of the magazine was sentenced to 3 years. Both Caio Prado and the editorial writer got the maximum penalty (3 years plus one year and a half for a crime committed through books, pamphlets, etc.). The director also appealed his sentence to the STM and had it reduced, together with Caio Prado's, to 1 1/2 years.

The defense attorney, Dr. Heleno Fragoso, argued that the penalty imposed by the original court was excessive and not based on the evidence presented. He further stated that the interview given by Caio Prado was not more than a synthesis of a book he had written entitled "The Brazilian Revolution." Fragoso said the book is legally sold in Brazil, has been adopted as a reference book by some Brazilian universities, and according to rumors, by the Superior War College itself. Dr. Fragoso pointed out that the phrase in the interview which was picked out by the São Paulo Army Court as the key sentence which determined his conviction, which reads "we should not discuss the form of fight but start to fight," could not be considered an "incitement" because the word "fight"

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does not necessarily mean armed fight. Dr. Fragoso noted that, on the contrary, Caio Prado demonstrated in his interview, as well as in his book, that suitable conditions for an armed fight do not exist in Brazil. He concluded that the defendant was an intellectual and respectable thinker whose right to express his opinions was guaranteed by the Constitution. He added that the Government has recently stated that there are no political prisoners in Brazil and he therefore expected that the STM would confirm that statement by acquitting the defendant.

The STM Ministers confirmed, by a majority, the conviction but unanimously agreed that the penalties imposed both on Caio Prado and the editorial writer were too drastic.

The Superior Military Tribunal is composed of 15 Ministers, 5 of whom are civilian justices. The President of the Court, a military officer, does not vote unless there is a tie. In examining the votes of the STM Ministers in Caio Prado's case, the following is worth noting: of the 14 Justices who voted, 5 favored a reduction of penalty to 21 months; 5 favored reduction to 18 months (the decision which prevailed); 3 voted for a change of classification of the crime from "incitement" to "subversive propaganda" and suggested that their penalty be reduced to 6 months. Only one (a civilian Justice) voted for acquittal of Caio Prado. He also advocated a reduction of penalty for the magazine director to 6 months on grounds that it was he who asked Caio Prado for an interview. It is interesting to note also that most of the military Ministers were more lenient than the civilian Justices. All but one of the civilian Justices voted for conviction of Caio Prado and the rapporteur (also a civilian) was the one who proposed the penalty of 21 months. Each Minister justified his vote orally. The general consensus was that although the Constitution provides for freedom of opinion, it also says that subversive propaganda will not be tolerated. They understood that Caio Prado's interview contained "incitement" against the social order and therefore had violated the law.

Comment

The reporting officer, a lawyer, attended Caio Prado's trial. The existing legal proceedings for a trial of this nature were followed to the letter. The defendants were given freedom to defend themselves and their lawyers suffered no restriction in the presentation of their defense. Dr. Fragoso told the reporting officer that the probable reason the rapporteur had been so strict was that he was substituting for another justice and presumably wanted "to make an impression and thus guarantee his permanent chair on the STM."

Although the results of this appeal did not confirm Fragoso's optimism for acquittal reported in the reference airgram, this is not the end of

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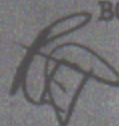
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the legal road for Caio Prado. Since the STM vote was not unanimous, the case can be submitted for a second review by the STM. Losing there, an appeal may be carried to the Federal Supreme Court. The full process would take at least 3 months.

BOONSTRA

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