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Sent directly from

CS/R
to CSF

October 2, 1970

that, on the contrary, Caio Prado demonstrated in his interview, as well as in his book, that the conditions for an armed struggle do not exist in Brazil. He concluded that the defendant was an individual and a responsible thinker whose right to express his opinions was guaranteed by the constitution. He added that

Honorable J. W. Fulbright, Chairman, Committee on Foreign Relations, Washington, D.C. 20510

Dear Mr. Chairman:

I refer to my letter of May 21 in response to your inquiry on behalf of Mrs. Robert H. Mattoon about the arrest of Dr. Caio da Silva Prado, Jr., a well-known Brazilian academician who was tried and convicted of "incitement to subversion and violence" because of a magazine interview which he granted in 1967. He was sentenced to 4 1/2 years of imprisonment and at the time of my reply, the sentence was being appealed to a higher court, the Superior Military Tribunal (STM), which has now handed down a decision to reduce the prison term to 1 1/2 years.

In the appeal, 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 no 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, even by the Superior War College itself. Dr. Fragoso argued that the key phrase in the interview upon which the lower court based the conviction, and which reads, "we should not discuss the form of fight but start to fight," could not be considered an "incitement" because the word "fight" does not necessarily mean armed fight. Dr. Fragoso noted in the presentation of their defense.

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that, on the contrary, Caio Prado demonstrated in his interview, as well as in his book, that suitable conditions for an armed struggle do not exist in Brazil. He concluded that the defendant was an intellectual and a responsible thinker whose right to express his opinions was guaranteed by the Constitution. He added that Government officials had recently stated that there are no political prisoners in Brazil and he therefore expected that the STM would lend credence to that statement by acquitting the defendant. However, the conviction was confirmed by a majority of the STM Justices, who nonetheless unanimously agreed that the penalty imposed was too drastic.

The Superior Military Tribunal is composed of 15 justices, 5 of whom are civilians. The President of the Tribunal, a military officer, does not vote unless there is a tie. Of the 14 justices who voted in the case, 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 the penalty be reduced to 6 months. Only one voted for acquittal of Caio Prado. On the whole, the military justices tended to be more lenient than their civilian counterparts.

Each justice explained his vote orally. The general consensus was that although the Constitution provides for freedom of opinion, it also states that subversive propaganda will not be tolerated. The justices understood that the Caio Prado interview contained "incitement" against the social order and therefore the law had been violated.

In the opinion of a U.S. Embassy employee, a lawyer, who attended Caio Prado's public 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.

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Although the results of this appeal did not justify the optimism for acquittal contained in my previous letter, there are still several legal recourses available to Caio Prado. Since the STM vote was not unanimous, the case can be submitted for a second review by the STM. If he loses, he may carry an appeal to the Federal Supreme Court. The full process would take at least 3 months.

I will advise you of any further developments in this case.

Sincerely yours,

CSP/R2

David M. Abshire
Assistant Secretary for
Congressional Relations

EWS

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Clearances: ARA/BR - Mr. Dean
ARA - Miss Brosius

RMD
CSL
ARA - Mr. Little
H - Mr. ~~Barf~~

C. W. Hanson

[Signature]