

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

26 August 1947

UNITED STATES

v.

Case No. 12-1033

Wilhelm LANG, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 5-6 and 9-13 December 1946, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws of War.

Particulars: In that the accused Wilhelm LANG, Albert August WEIL, Karl MULLER, Ludwig MULLER, Otto PFLUGER, Heinrich BERN, and Otto LECHENS, German nationals, did, at or near LANG-GONS, Germany, on or about 2 March 1945, wilfully, deliberately, and wrongfully encourage, aid, abet, and participate in the killing of three members of the United States Army, believed to be Robert H. FOLSOM, W. L. HOENSHEL, and Henry M. TEBENING, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

SECOND CHARGE: Violations of the Law of War.

Particulars: In that the accused Wilhelm LANG, Albert August WEIL, Karl MULLER, Ludwig MULLER, Otto PFLUGER, Heinrich BERN, and Otto LECHENS, German nationals, did, at or near LANG-GONS, Germany, on or about 2 March 1945, wilfully, deliberately, and wrongfully encourage, aid, abet, and participate in committing assaults upon three members of the United States Army, believed to be Robert H. FOLSOM, W. L. HOENSHEL, and Henry M. TEBENING, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich.

(The name of Karl MULLER actually spelled Carl MULLER, P-Ex 6).

III. SUMMARY OF EVIDENCE: On 2 March 1945, in the late afternoon, three American fliers parachuted to safety in the vicinity of Lang-Gons, Germany. Two of the fliers landed in a field to the left of the road leading to Niederkleen, Germany, and the other flier landed in the vicinity of the airport located some distance from Lang-Gons. One of the fliers who landed in the field was brought to Niederkleen Strasse where he was assaulted, beaten and abused by accused PFLUGER and Ludwig MULLER, who also tried to incite the people present to kill the flier. Among others present, were accused WEIL, LECHENS and LANG.

Engel, local policeman, and one Koster, a member of the home guard, were also present. Accused Carl MULLER, FLUGER, LECHENS and LANG, among others, were present in the area of the airport when Engel killed the flier who had landed there. One flier was apparently killed by Engel half way between the airport and Lang-Gons, Germany. Later that same evening, the accused LANG was present when the other flier was killed by Engel. It appears that WEIL was a few hundred meters away en route home when the shooting occurred. Engel was allegedly beaten to death by Russians and Poles shortly after the Americans took Lang-Gons. Koster committed suicide while in custody at Wiesbaden.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Wilhelm LANG

This accused died on 6 March 1947 from natural causes (Death Report, Post Hospital, Dachau, 6 March 1947, attached hereto).

2. Albert August WEIL

Nationality:	German
Age:	37
Civilian Status:	Farmer; Burgemeister of Lang-Gons
Party Status:	Nazi Party since May 1932
Military Status:	German army from 1941 to 1944
Charges:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	25 years, commencing 13 December 1946

Evidence for prosecution: The accused was burgemeister of Lang-Gons, Germany on 2 March 1945 (R 14, 142; r-Ex 10). The accused stated in his pre-trial statement that he was in his office when he heard some people about that there were parachutes in the air. He heard that one parachutist had landed near Niederkloen Strasse so he went there on his bicycle. He saw an American flier in the middle of a crowd and saw two German officers there. One officer told a soldier to take the flier to the airport. The accused did not notice any mistreatment of the flier. The accused then saw Engel and accused LANG, local policeman, Koster and some soldiers accompany the flier down the road toward the airport. The accused then returned to his office. At approximately 1830 or 1900 hours Koster came to the accused's office and said that Engel wanted the accused to send a cart to pick up the dead bodies of two

fliers. Koster told the accused that Engel had shot the two fliers while trying to escape. The accused and Koster went to farmer Volten and the accused told him to get his cart and to go Niederkleen road to pick up two bodies. The accused and Koster then went to Niederkleen road where they met Engel. Within a few minutes accused LANG appeared with the flier whom the accused had seen during the afternoon. The accused told accused LANG to be sure and deliver the flier to the airport to the military authorities and make sure nothing happened to him. The accused saw that Volten had arrived so he started to go home. The accused also stated in his pretrial statement that after he had gone about 300 meters from the scene he heard a shot fired (R 142; P-Ex 10).

The evidence further shows that the accused told Koster to say nothing about his return to the scene a second time. He wanted Koster to say that a soldier had come to him and told him to have the bodies picked up (R 137; P-Ex 7).

Evidence for Defense: The accused testified that at about 1700 hours 2 March 1945 he was in his office in Lang-Gons. He heard there were parachutes in the air. He looked out of the window and saw three parachutes. He heard that one parachutist had landed on Niederkleen road so he went there on his bicycle (R 236). He saw one flier in the center of a crowd with two high ranking German officers (R 146, 236). He heard one of the officers tell a soldier to take the flier to the airport (R 146, 237). The accused saw a soldier pull the flier off of the motorcycle belonging to an air force sergeant (R 237). He saw Engel and accused LANG arrive and the German officers then left. He saw Engel search the flier (R 238), but he did not see any mistreatment of the flier nor did he hear any threats uttered by anyone. He heard that two more fliers had landed. He also heard Engel say he wanted to go along with the flier (R 240). He then returned to his office in Lang-Gons (R 239).

The accused further testified that Koster came to his office that evening and told him that Engel had killed two of the fliers while trying to escape and that Engel wanted a cart to pick up the bodies. He and Koster went to the house of one Volten (R 241) and he directed him to get his cart and pick up the bodies of the fliers. The accused and Koster then walked up the street to

Niederklöben road where they met Engel (R 197, 242; F-Ex 7). Shortly thereafter, the accused LANG came down the road with the flier whom the accused had seen in the afternoon (R 243). The accused ordered accused LANG to turn the flier over to the air force (R 244), or words to that effect (R 215). The accused heard Volten's cart coming down the road so he left for home. On his way home the accused heard a shot come from the direction of Niederklöben road (R 244). He denied any connection with the killing of the three fliers (R 246) and denied he was present when the last one was killed (R 197, 198, 244). He admitted that he did not tell the American authorities that Engel had killed the three fliers (R 253); that during an investigation in October 1945, he told the investigating authorities that he did not hear a shot fired on 2 March 1945; and that he did not tell the truth during this investigation to avoid being placed in custody (R 259). In police matters, the accused could not give Engel orders (R 198).

Sufficiency of Evidence: The findings of guilty are not warranted by the evidence. The evidence does not satisfactorily establish that the accused encouraged or participated in committing assaults upon or the killing of the three members of the United States Army. There is no evidence of any violation of the laws of war by the accused. The mere presence of the accused at the scene of the crime is not sufficient for the findings of guilty. There is no convincing proof that the accused was present or had anything to do with the killings.

Petitions: A Petition for Review was filed by defense counsel, Captain Emanuel Lewis, 17 February 1947. Petitions for Clemency were filed by his wife, Ilse Weil, 18 December 1946; the magistrates of Lang-Gons, 18 December 1946; Dr. Wahl, 2 and 16 December 1946; Ulfonso Schoer, Wilhelm Müller, Karl Bopf, Konrad Rompf, Wilhelm Rompf, Karl Ludwig Weiss, 17 December 1946; Anton Karl Brueckel; Konrad Ebel, Karl Rompf, Otto Luedge, Karl Konrad Boller, Wilhelm Schneider, Wilhelm Zoerb, Ludwig Ernst Weil, Karl Müller, Karl Simon, Wilhelm Volte, Karl Boller, Wilhelm Bink, 16 December 1946; Johannes Müller II, 18 December 1946; and Paula Schmidt, 27 December 1946.

Recommendation: That the findings and sentence be disapproved.

3. Carl Müller

Nationality:	German
Age:	62
Civilian Status:	Merchant; Acting Burgomeister of Lang-Gons from 1941-1944
Party Status:	Nazi Party since May 1933
Military Status:	None
Place:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentences:	10 years, commencing 13 December 1946

Evidence for Prosecution: The accused arrived at Niederkleen road in his car at the time one of the captured fliers was standing there with Engel. Koster, accused LANG and other persons (R 80, 135; P-Ex 6). He arrived just before Engel. Koster and other accused took the flier down Niederkleen road in the direction of the airport (R 80). He continued in the same direction in his car and at the road leading to the airport Engel and Koster got in the car (R 7, 135; P-Exs 1,6). They drove to the airport and in the area of the airport they came upon the flier who had landed there. Engel and Koster got out of the car and walked toward the flier who had his hands behind his head. A few minutes later the flier (apparently the one who landed at the airport) was shot and killed ostensibly by Engel. The accused then went closer to the scene of the killing and shortly thereafter he drove Koster back towards Lang-Gons for the purpose of telling the burgomeister to send a car to pick up the body of the flier (R 135; P-Ex 6).

Evidence for Defense: The accused testified that at about 1700 hours 2 March 1945, while proceeding down Niederkleen road in his car on a business trip, he saw a captured flier about 400 meters outside the village (R 295) together with Engel, Koster and accused LANG (R 296). Engel, Koster and several soldiers marched the flier down Niederkleen road in the direction of the airport (R 296, 297). He continued on his business trip and drove about 200 meters down Niederkleen road where Engel and Koster stopped him and got into his car (R 174, 297). He drove to the area of the airport and saw a flier accompanied by soldiers about 300 meters from his car (R 298, 299). Engel and Koster

alighted and went in the direction of the flier (R 299). He further testified that he then engaged in a conversation with some soldiers and just as he was about to continue his trip he noticed that the flier was standing still, surrounded by people (R 299, 300). He drove his car in the direction of and to within 30 to 40 meters of the flier and surrounding crowd, got out and walked toward the scene and at a distance of about 8 to 10 meters heard that Engel had shot the flier (R 300). He testified that he heard no shot since the motor of his car was running. At Koster's request he drove him toward the burgomister's office (R 301). However, he did not take him all the way there but dropped him off in the vicinity thereof. He then went home (R 302). He admitted that he did not continue his business trip, though he left Koster at 1730 hours. This trip was completed three days later by horse and wagon (R 303).

Sufficiency of Evidence: The findings of guilty to Charge I and the Particulars thereunder are not warranted by the evidence. The mere fact that the accused drove the killer to the scene of the crime is not of itself sufficient to warrant the findings of guilty. There is no showing that the accused knew what was going to happen or what was likely to happen. Nor is there any showing that by anything the accused did he knowingly encouraged or aided in the killing. His presence near the scene of the crime is not alone sufficient for the findings of guilty.

Petitions: Petitions for Review were filed by Dr. Burger, German defense counsel, 27 December 1946; and defense counsel Captain Emanuel Lewis, 17 February 1947. Petitions for Clemency were filed by accused's wife, Marie Muller, 27 December 1946; Karl Muller, Jr., his son, 9 December 1946; K. Boppler, 17 December 1946; Mr. Zeiss, 12 December 1946; Mr. Wahl, 16 and 17 December 1946; Mr. Scheub, 17 December 1946; Mr. Beck, 15 December 1946; Mr. Binsch, 16 December 1946; Anna Bunkle, 17 December 1946; Karl Weller II, 16 December 1946; Otto Ludege, 17 December 1946; Norbert Greenbarum, 30 October 1946; Erich Schmidt, 17 December 1946; and Karl Stahl and Bernhard Wagner, 16 December 1946.

Recommendations: None the findings and sentence be disapproved.

4. Ludwig MILLER

Nationality:	German
Age:	29
Civilian Status:	Office clerk
Army Status:	unknown
Military Status:	Panzer unterofficer (sergeant in tank corps)
Place:	NG Charge I; NG-Charge II
Findings:	a Charge I, a Charge II
Sentence:	15 years, commencing 13 December 1946

Evidence for Prosecution: On 2 March 1945, this accused was present on Niederklaen road where one of the two captured fliers who previously had landed in the field was standing (R 32, 33, 75, 76). Also present at the scene at the time were accused LANG, PFIUGLER, LLECHENS (R 33), and Koster, a member of the home guard (R 33, 76). As shown by the testimony of three witnesses and the extrajudicial sworn testimony of two others, this accused slapped the flier on both cheeks and beat him (R 34, 64, 100, 101, 133, 134; P-Exs 4, 5). As a result of the beating, the flier's face became swollen and his nose bled (R 133; P-Ex 4). At the time, he yelled that the flier should be killed and lynched (R 78, 134; P-Ex 5). Three high ranking German officers arrived at the scene in a car (R 78, 100). The accused continued to yell and shout, as a result of which one of these officers warned him to keep quiet (R 78). A witness who was also present admonished the accused and told him to conduct himself as a soldier and a noncommissioned officer (R 101). The evidence further indicates that about this time the policeman Engel arrived on the scene (R 79). Engel, together with Koster, accused PFIUGLER, LANG, LLECHENS and the accused then walked the flier down Niederklaen road in the direction of the airport (R 34, 36, 70). However, this accused only walked a portion of the way with the group (R 36, 47). This flier was later killed by Engel (R 7; P-Ex 1).

Evidence for Defense: The accused, in his testimony, denied slapping or beating the flier and denied being present when any of the fliers were killed (R 146, 147). He testified that on 2 March 1945, at the edge of the village of Lang-Gons, he saw an American flier seated on the rear seat of a sergeant's

motorcycle. Approximately 100 people had gathered at the scene. A German general who was present ordered the accused to take the flier off the motorcycle and stated that the flier should walk to the airport. Thereupon the accused took the flier by the sleeve (R 145). Then the general ordered an air force soldier to take the flier to the airport. The accused walked about 50 meters with the flier when someone came up from behind and hit the flier on the left cheek. He then left the scene and returned home with his fiancée (R 146). The accused denies that he said the flier should be killed (R 162, 163).

Sufficiency of Evidence: The evidence clearly shows that the accused beat one American flier and by the remarks he made that he vigorously attempted to incite the people present to kill the flier. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendations: That the findings and sentence be approved.

5. Otto FRIEDL

Nationality:	German
Age:	49
Civilian Status:	Town Night Watchman
Party Status:	Nazi Party member
Military Status:	Unknown
Facts:	MG Charge I; MG Charge II
Findings:	G Charge I; G Charge II
Sentence:	20 years, commencing 13 December 1946

Evidence For Prosecution: On 2 March 1945, this accused was present on Niederkloen road where one of the captured fliers who previously had landed in the field was standing (R 33, 35, 77, 142; P-Ex 10). Accused LANO, LECHENS, Ludwig MULLER and other persons were there at the time (R 33, 77, 133, 142; P-Exs 4, 10). Koster and Engel were also there (R 33, 36, 133; P-Ex 4). Thereupon the accused said to Engel, "Don't be long. Go ahead and shoot." He also shouted that the flier should be dipped in water and strung up and shot (R 34, 62, 133; P-Ex 4). He then pushed the flier causing the victim to stumble backwards (R 77) and he also shoved and beat him (R 133; P-Ex 4). The accused,

together with Engel and Koster, and accused LANG, LECHENS, and LUDWIG MULLER walked the flier down Niederkleen road in the direction of the airport (R 34, 36, 133; P-Ex 4). This group with the exception of accused Ludwig MULLER went into the field where one of the other fliers was standing in the custody of unidentified German soldiers (R 36, 52). They proceeded with these two fliers in the direction of the airport (R 37, 53). Engel thereupon killed one of the fliers (R 135; P-Ex 6). This occurred at about 1800 hours (R 38).

Evidence for Defense: The accused, in his testimony, denied hitting the flier or uttering any remarks directed at him. He also denied any connection with the killing of the fliers (R 357). He further testified that on 2 March 1945 he saw a flier on Niederkleen road some 300 or 400 meters from the village; that he also saw Engel, accused LANG and Ludwig MULLER there (R 352, 354, 355); and that he saw accused LECHENS come across the field armed with a rifle (R 357). He left the scene, and on the way home, accused WEIL passed him (R 239, 355, 357). At about 1600 or 1700 hours on 2 March 1945 the accused was seen passing a house in the village (R 375, 376). The accused was not present when Engel killed the flier near the airport (R 320).

Sufficiency of Evidence: The evidence is clear that the accused assaulted, abused, and beat one flier and made highly inflammatory remarks for the purpose of inciting the crowd to kill or lynch the flier. The accused also went with the group to round up the other fliers, which when considered together with his remarks indicated that he intended to assure that the fliers were killed. Engel killed the three fliers. However, Engel received direct encouragement from the accused as to the killing of at least one of the fliers.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, Captain Emanuel Lewis, 17 February 1947. Petitions for Clemency were filed by the police office of Lang-Guns, 17 December 1946; Chris Rothenhaefer and three other persons, 27 December 1946; Marie Goerlich, 18 December 1946; Wilhelm Bern III, Karl Boller II, Wilhelm Volte, Karl Voerner, Wilhelm Bank, 16 December 1946; Ludwig Rothenhaefer, Otto Artz, Leonhard Wappeler, Heinrich Brueckle III, Wilhelm Volte IV, Wilhelm Maeller, Karl Klotz, Wilhelm Klotz, Karl Schmidt IV and Erich

Schmidt, 17 December 1946.

Recommendation: That the findings and sentence be approved.

6. Heinrich DEHN

This accused was served, but not tried.

7. Otto IESMENS

Nationality:	German
Age:	41
Civilian Status:	Mechanic and Locksmith
Party Status:	Member of Alert Group of SA
Military Status:	Unknown
Place:	NG Charge I; NG Charge II
Findings:	U Charge I; U Charge II
Sentence:	10 years, commencing 13 December 1946

Evidence for Prosecution: On 2 March 1945, the accused was present on Niederkleen road where one of the captured fliers who previously had landed in the field was standing (R 33, 63, 99, 134; P-Ex 5). Present at the time were accused LANG, PFLUGER, Ludwig MULLER and other persons (R 33, 142; P-Ex 10). Engel and Koster were also there (R 33, 36). The accused was armed with a rifle (R 100). He was present during the time this flier was abused, assaulted and beaten by accused PFLUGER and Ludwig MULLER (R 33, 34, 100, 133, 134; P-Exs 4, 5). The accused, together with Engel, Koster, accused LANG, Ludwig MULLER and PFLUGER, walked the flier down Niederkleen road in the direction of the airport (R 34, 36, 133; P-Ex 4). This testimony is contradicted by other prosecution witnesses (R 68, 94, 104). This group, with the exception of Ludwig MULLER, went into the field to the place where the other flier who had previously landed in the field was standing in the custody of unidentified German soldiers (R 36, 52). They left with these two captured fliers in the direction of the airport (R 37, 53). Engel shot one of the fliers (R 135; P-Ex 6). This occurred at about 1800 hours (R 38).

Evidence for Defense: The accused testified that on 2 March 1945, he went to Niederkleen road and saw a captured flier standing there (R 385, 387). He had seen two of the fliers coming down with their parachutes so went to help capture them. He had his rifle with him and when he arrived Engel was already

there (R 386, 387, 388). When Engel, Koster and accused LANG walked away with the flier the accused went home. As the army personnel and the police were in charge of the flier he had no further duties in the matter (R 388). The reason he was armed with a rifle was because he was a member of the alert group of the SA (R 387). On 2 March 1945, between 1600 and 1700 hours, the accused was seen passing a house in the village. He was going towards the village and coming from Niederkloen road carrying his rifle (R 400, 401). The accused was not present when Engel killed the flier near the airport (R 310).

Sufficiency of Evidence: There is no evidence that the accused encouraged or participated in committing assaults upon or the killing of the three members of the United States Army. The only evidence produced by the prosecution is that the accused was temporarily present during some mistreatment of one flier. His mere temporary presence near the scene of the mistreatment is not sufficient to warrant the findings of guilty.

Petitions: Petitions for Review were filed by defense counsel Captain Emanuel Lewis, 17 February 1947; and Dr. Burger, German defense counsel, 27 December 1946. Petitions for Clemency were filed by Maria Kumpf, Wilhelm Bopf VI and Franz Henn, 27 December 1946; Parns Wahl, 14 December 1946 and 23 May 1946; Albert Jung, 18 December 1946; Mayor's office, Hesse, 18 December 1946; Heinrich Blasser, Johannes Ruhl, Heinrich Jung, Friedrich Wilhelm Muller, Johann Wilhelm Jung, Wilhelm Kumpf II, 17 December 1946; and Katherine Lockens and four other persons, 28 December 1946.

Recommendation: That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Examination of the entire record discloses that the Court erred in its findings of guilty as to accused Albert August WEIL, Carl MULLER and Otto LECHENS. Evidence establishing mere presence at the scene of a crime is not sufficient to warrant findings of guilty of encouraging and participating therein (Quarton's Criminal Law, Vol. 1, par. 246). Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused Ludwig MULLER and Otto FLUGEL.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences as to accused Ludwig MULLER and Otto FUGLER be approved and as to accused Albert August WEIL, Carl MULLER and Otto LECHENS be disapproved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

FLOYD M. LUNDBERG
Major JAGD
Post Trial Branch

Having examined the record of trial, I concur,

this _____ day of _____ 1947.

C. E. SHELIGH
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes