

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
WAR CRIMES COURT
UNITED STATES FORCES, EUROPEAN THEATER

16 December 1946

UNITED STATES)

V)

Johann Georg SIONSEL and
Walter ZIEHNERT, German
Nationals.)

Case No: 12-2011

REVIEW AND RECOMMENDATIONS OF THE
DEPUTY THEATER JUDGE ADVOCATE
FOR WAR CRIMES

1. TRIAL: The accused were tried at Dachau, Germany, on 20 March 1946, before a General Military Government Court appointed by paragraph 9, Special Order Number 44, Headquarters Third US Army, AFO 403, dated 13 February 1946, as amended by paragraphs 14 and 15, Special Order Number 66, same Headquarters, dated 11 March 1946, and paragraphs 14 and 15 Special Order Number 69, dated 13 March 1946.

2. FINDINGS: The offense involved was: Filas Findings

CHARGE: Violation of the Laws of War.

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Particulars: In that Johann Georg SIONSEL and Walter Josef ZIEHNERT, German nationals, did, at or near INCOLSTADT, Germany, on or about 10 September 1944, wilfully, deliberately, and wrongfully aid, abet, encourage and participate in the killing of Major John R. Reynolds, ASN O-397458, a member of the United States Army Air Forces, then an unarmed, surrendered prisoner of war in the custody of the then German Reich, by shooting him.

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3. SENTENCE: The court, by at least a two-thirds vote of the members present at the time the vote was taken concurring sentenced each accused to death by hanging. The record of trial has been forwarded to the Commanding General, USFET, for final action (paragraph 8d, Letter, Headquarters, United States Forces, European Theater, File AG 000.5 JAC-ACC, 14 October 1946, subject: "Trial of War Crimes Cases").

4. DATA AS TO ACCUSED:

a. Accused SIONSEL is a German national, 52 years of age and a civilian. He is married and has two sons, aged 18 and 24, respectively.

At the time of the offense of which he was found guilty, he was Kreisleiter of Ingolstadt, Bavaria. He had been a member of the National Socialist Party since 1 January 1931. He served for an undetermined length of time with the armed forces prior to becoming Kreisleiter of Schongau, and became Kreisleiter of Ingolstadt on 16 March 1943.

b. Accused ZIEMERT is a German national, 47 years of age and a civilian municipal employe. He is married and has a son age 11 years and a daughter age 9 years. He has been a member of the National Socialist Party since 1936. He was a Kreisleiter in Munich from 1938 until the spring of 1941. He then became Gau-inspektor in Upper Bavaria - East. From 1942 until the end of the war he was Kreisleiter of Rosenheim.

5. RECOMMENDATION: That the sentence as to each accused be approved and executed.

6. EVIDENCE:

a. For the Prosecution: On 10 September 1944, Major John R. Reynolds, an officer of the Air Corps of the United States Army (R. 50, 60, 70, 73) (Pros. Exhibit 1), parachuted to safety near Ingolstadt, Germany (R 7). He was picked up by a police sergeant and a woman driver for the Reich's Air Raod Protection Service (R 7, 8) and taken to the police station at Ingolstadt (R. 9). The flyer was examined at the police station and it was ascertained that he was suffering from superficial injuries in the region of his foot and knee, and slight burns about the forehead (R 10, 17). The injuries received first aid and bandages were applied. One of the flyer's shoes was missing and it was not replaced (R 10). The German Air Force at Manching Field and the Kreisleiter SPONDEL were notified of the flyer's presence at the police station (R9, 10, 11, 23, 34). When the accused SPONDEL was notified by telephone of the presence of the flyer at the police station, the accused stated to the Captain of the protection police: "What is going to happen to that flyer?" the Captain stated: "He will be turned over to the Air Force authorities

in Manching; Manching has already been notified". The accused said in substance that was his business (SPONSTL's) and the police Captain stated: "No, Kreisleiter, my instructions are different. We are to turn them over to the Air Force authorities" (R. 34). The conversation continued in this vein for some time and finally the accused SPONSTL was told that he would have to "..... see Manching about it.." (R. 34). The orders of the police with respect to enemy airmen were to turn them over to the German Air Force authorities (R. 32). Three officers from the Air Field Manching and the two accused arrived at the police station at approximately the same time (R. 10, 12, 24). A discussion was had between the German Air Corps officers and the Kreisleiter SPONSTL in which the accused SPONSTL stated: "I will take that man (deceased) out to Manching", and the German Air Corps Officer said: "That's good, in that case we have nothing to do with it" (R. 11, 13, 24, 25). The accused SPONSTL then gave a receipt for the flyer (R. 11, 12, 26) and departed with him, accompanied by ZIEHNERT (R. 13, 14, 15, 26). The three got into an automobile driven by ZIEHNERT and drove off toward Manching (R. 26).

The automobile and occupants came to a rifle range in the vicinity of the Reichsautobahn (R. 41; (Frox Ex. 2). This road was neither the fastest nor the shortest route to Manching (Frox Ex. 3; R. 43, 44).

The two accused made written statements which were introduced at the trial. ZIEHNERT made two (R. 80, 81). In his first he described in detail how he and SPONSTL set out with the grounded flyer for the Manching airfield. While en route the car stalled and the flyer attempted to escape. He and SPONSTL both fired at him from a distance of twenty or thirty meters, killing him. His second statement was substantially the same as to details except that he denied any knowledge of higher orders to kill grounded flyers and stated that he alone did the shooting in an attempt to prevent an escape, while SPONSTL was not present.

SPONSTL also made two statements. (R. 82, 84). In his first he

ZIEHNERT shot the flyer while he was absent from the scene. He further states that the Gau officials had received orders to shoot grounded flyers. His second statement varied in some details from the first. In this statement he admitted firing one shot at the fugitive American airman while ZIEHNERT fired several.

The accused SPONSEL also made a written report of the shooting to his superiors. This report was destroyed when the Administration Building burned (R 37). The contents of the report were described by the witness SCHILDER (R. 40). This report was similar in nature to the statements except that it showed that ZIEHNERT committed the actual shooting.

Johann FORSTER, a witness for the prosecution, was about 300 meters away at the time he heard a shot fired (R. 50). He walked to the place where the sound came from, and there found the two accused, whom he identified (R. 52) as standing about 10 to 20 meters from the body of the deceased (R. 50, 52). No one else was present, except the two accused, when the witness arrived (R. 50). The body was located approximately 200 meters from the Autobahn, near some bushes (R. 54), and was lying face down (R. 58), 61, 66). Dr. Oswald GRUBER examined the body and found a bullet hole about two inches from the right ear of the deceased and on a line with the lower part of the lobes thereof (R. 48). Death was caused by a shot in the neck (R. 46) fired from a "short distance" (R. 49). SPONSEL had a conversation with the witness FISCHER at the scene of the shooting and stated that the officer had tried to escape and ZIEHNERT had shot him (R. 61, 62). Cartridges were found about eighteen to twenty-two meters from the body (R. 62).

A corpse bearer of eighteen years experience who had handled five cases of death of this type testified in his opinion the shot was fired from about a distance of eighty (80) centimeters (R. 68, 69).

A policeman who had specialized in criminal and security police work since 1919 testified that he had a conversation with SPONSEL at the scene of the death in which SPONSEL stated "I (SPONSEL and ZIEHNERT) shot him while attempting to escape" (R. 71). This witness also

testified that there was "powder smoke near the place where the shot had entered, which, however, was very small, and also the hair around this place was singed" (R. 70, 71). In the opinion of this witness, the shot was fired from a 6.35 caliber pistol from a distance of not over one meter (R. 73).

Prosecution's Exhibits numbered 8, 9, and 10 were tests with small arms conducted by a ballistics expert assigned to War Crimes (R. 90, 91, 92, 93) to show the effect of powder burns at various distances with different powders used in weapons of various calibers.

b. For the Defense:

Hugo ENGELHARD, an Ortsgruppenleiter under the accused Kreisleiter Ziehnert, testified that flyers who made emergency landings were to be turned over to the nearest police station or nearest airfield, according to instructions from ZIEHNERT (R. 98). ZIEHNERT was told about the surrender of an Allied pilot to the airfield at Bad Aibling and approved of the procedure (R. 99). ZIEHNERT never gave the witness instructions to mistreat or kill American flyers (R. 100). ZIEHNERT told the witness that he (ZIEHNERT) had not transmitted BORMANN's order concerning treatment of flyers (R. 100).

Edmund RUF and Wilhelm BILLING (R. 102, 104) testified in substance that at a meeting of Ortsgruppenleiters of Kreis Rosenheim, ZIEHNERT stated that the problem of "shot down flyers" was a matter for the community authorities or of the airfield at Bad Aibling (R. 102, 104), and that they should be turned over to the airfield or community authorities (R. 103, 104). ZIEHNERT never issued instructions to mistreat or mishandle American flyers (R. 103, 105). On one occasion, ZIEHNERT stated that flyers who were forced down should be treated strictly according to the terms of the Geneva Convention. (R. 103).

his own behalf, in substance as follows:

On 16 March 1943 he became Kreisleiter of Ingolstadt and was such on 10 September 1944 (R. 107). On 10 September 1944, around noon, SPONSEL received a call from the airfield at Manching that a parachuted flyer was in the police station at Ingolstadt, and was asked if he (SPONSEL) would be so kind as to bring the flyer to the field, because a German officer was going to the place at once. SPONSEL met ZIEHNERT. SPONSEL then telephoned to the police station and informed the police that he (SPONSEL) had been asked by the airfield "to pick him up" and that SPONSEL would be coming out to get him (R. 107). ZIEHNERT drove SPONSEL to the police station, where SPONSEL greeted the Luftwaffe officer and affirmed the fact that he would take the flyer out to the field. SPONSEL signed a receipt for the flyer, alleging that he had taken custody of the flyer (R. 102, 103). SPONSEL was cautioned by the Luftwaffe officer that the deceased spoke German well and that there was a great danger of his trying to escape. ZIEHNERT was driving, the deceased on his right, and SPONSEL was riding in the rear of the car (R. 110). The car was first driven south, then north toward the Danube river as shown on Prosecution Exhibit 3. ZIEHNERT became lost near the Autobahn and SPONSEL yelled, "Halt ZIEHNERT you've gotten lost, you should have turned to the right." The car stopped suddenly about 15 to 20 meters from the Autobahn (R. 111). SPONSEL and the deceased got out to relieve themselves and when they were finished SPONSEL stated to ZIEHNERT: "You wait here. I will walk over and see if the Command Post has moved in already. Then we can turn him in right here." SPONSEL then proceeded in the direction of the restaurant but stopped when he heard "Halt! Halt!", and a bang (R. 113). SPONSEL ran back the distance of approximately 60 meters to ZIEHNERT and was informed that "He took off", SPONSEL said "Did you shoot?" and ZIEHNERT was then approximately 20 meters from where the deceased flyer was lying (R. 115). The Headquarters at Manching had asked permission from SPONSEL to move to a restaurant toward which SPONSEL was moving at the time of the shooting (R. 115, 116). SPONSEL did not fire a weapon of any kind (R. 116)

Although SPONSTL was armed with a small pistol (caliber 5.3) which contained three rounds (R. 120).

The accused Walter Josef ZIEHNERT elected to testify in his own behalf, in substance as follows: On 10 September 1944 ZIEHNERT was Kreisleiter of Rosenheim who had been visiting children between the ages of 14 and 16 years from the Kreis who were working in the Kreis Of Ingolstadt (R. 130). While in SPONSTL's office, ZIEHNERT learned from a telephone conversation that a flyer "had jumped down" (R. 131). SPONSTL and ZIEHNERT then drove to the police station - ZIEHNERT was driving because SPONSTL did not have anybody to drive him (R. 131.). There were conversations in the police station and finally SPONSTL came out to the car with the flyer and they both got in (R. 132). The car then proceeded to the target range near the Autobahn and here SPONSTL informed ZIEHNERT that he was travelling on the wrong road and the latter applied the brakes, after passing through the underpass (R. 133). SPONSTL and the flyer got out to relieve themselves and the car was then turned around (R. 134). SPONSTL walked away from the automobile. A few minutes later, ZIEHNERT saw the flyer running diagonally towards the bushes. ZIEHNERT tried to follow in the automobile, but stalled the car and then jumped out, pulled his pistol and went after the flyer (R. 135). "Halt or stay here" was yelled by ZIEHNERT, who decided to shoot as soon as the flyer went into the bushes. As the flyer pushed the bushes apart with his hands, ZIEHNERT loaded his pistol, fired three shots - one a warning shot and two at the flyer. The flyer was 20 or 25 meters away at this time (R. 137). SPONSTL was not present at the time the shots were fired. After the second and third shots the flyer collapsed (R. 137), 138). In about one-half or three-quarters of a minute SPONSTL appeared and went to the flyer. ZIEHNERT went to the automobile to get a doctor and finally used the telephone in the rifle range to call a doctor (R. 139). The flyer did run (R. 144).

5. JURISDICTION:

Particulars alleged a violation of the laws and usages of war which were committed before 9 May 1945 by enemy nationals against a member of the United States Armed Forces at a time when a state of war existed between Germany and the United States of America. Accordingly, the court which was specially appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases. (See UNITED STATES v. CLIMENS WIEGAND; UNITED STATES v. RICHARD DRAUZ.)

6. SUFFICIENCY:

There is ample evidence to sustain the finding of "Guilty". Not only does the evidence presented by the Prosecution establish the guilt of each accused, but also the testimony of the accused themselves establishes beyond a reasonable doubt aiding, abetting, or participation in the killing of Major John R. REYNOLDS. The accused both admitted that Major REYNOLDS was shot by one of them, (there was some dispute and question whether both fired at him and which shot took effect) and that he died solely as a result thereof. They both alleged that the shooting was in order to prevent his escape. The court did not believe their version, and while the evidence which must have led to such disbelief is entirely circumstantial it is nevertheless most compelling. The two accused took the flyer from the police for the ostensible purpose of transporting him to a nearby Luftwaffe field. To reach that field they went by a route which was neither the shortest nor fastest way. It led past a rifle range according to their story because they over-shot a road which they intended to take and then because they wished to relieve themselves. Here the flyer allegedly attempted to escape, despite the fact that he had lost a shoe in his original landing and had also suffered some minor burns of his foot. His body, when seen by witnesses who came upon the scene, was some 200 yards from the road upon which the accused had purportedly been driving with him, and from the spot where accused claimed he had made his escape attempt. All the evidence

indicates that one shot which caused his death was made at very close range. It is difficult to see how the court would have done otherwise than disbelieve accused's stories, and a finding of deliberate murder is supported beyond all reasonable doubt.

In a letter from the Deputy Theater Judge Advocate's Office, War Crimes Branch, United States Forces, European Theater, subject: "Case of United States vs. Johann Georg BOMSTLY dated 10 January 1946, this case was referred to trial by General Military Court. The case of Walter ZIHNERT was sent for trial by Third Army by verbal order of the Commanding General, United States Forces, European Theater. The appointment of the General Military Court and proceedings thereof were in compliance with the provisions of letter, Headquarters, United States Forces, European Theater, subject: "Trial of War Crimes and Related Cases," dated 16 July 1945, and pertinent Military Government directives and instructions. The accused were represented by a Captain who is an attorney-at-law with many years trial experience. A fair and impartial trial was had. Challenges for cause were permitted.

There are no errors or irregularities which affect any of the substantial rights of the accused. The trial was held with impartiality and adequate opportunity was given to each accused to present any matters in his defense that he might desire. The petition for review raises no question that were not decided by the court upon the hearing of the evidence presented. Indications that the statements made by the accused BOMSTLY were obtained by duress does not affect the substantial rights of this accused, inasmuch as there is sufficient independent evidence upon which the court could predicate its finding of "guilty". The record further shows that each accused participated in a concerted effort to bring about the death of the American flyer after having obtained the custody of the flyer from the Police under the protest of taking the flyer to the authorities at the airfield Munching. Two-thirds of the members of the court concurred in the findings and sentence.

including death or imprisonment for life in proper cases. The maximum punishment for all war crimes is death, although a lesser punishment may be imposed. The court was presented with facts tantamount to murder, and the sentence of death by hanging was appropriate to the offense charged and the evidence adduced in support thereof. The action of the court under the circumstances does not appear to be unwarranted and the sentences imposed appear to be adequate.

10. CLEMENCY:

Accompanying the record of trial is an anonymous letter signed "Hiram", postmarked Rostheim, asking for clemency on behalf of accused ZIEHNERT. It alleges that ZIEHNERT is (unknown to himself) of Jewish origin, that he is a kindhearted man who has, secretly and at the risk of his own life aided many Jews and other people; that ZIEHNERT is "in the highest degree subject to wake hypnosis or - suggestion", and that if ZIEHNERT did commit the crime it was done by him under such an influence.

There is also a petition on behalf of accused ZIEHNERT, filed by HANS GRUB, a lawyer of Munich, retained by ZIEHNERT's wife. This petition alleges that accused was not a fanatic Nazi, that he had frequently expressed himself as opposed to mistreating and killing prisoners of war, and that accused's act was done in an effort to prevent the prison's escape. A petition from accused's wife, Helen ZIEHNERT is to the same effect, and mentions also that accused is the sole support of her and their two small children. Twenty-four petitions signed by a total of thirty-two German civilians, all of them neighbors or acquaintances of accused, attest his good character.

While no petitions for clemency have been filed on behalf of accused, SPONSL, a petition for review in behalf of both accused has been submitted by Captain Harry SZINGLER, J.C., Assistant Defense Counsel. In it the following significant arguments are made: That the evidence upon which accused were convicted is hearsay; that while it was shown that deceased had suffered burns on his foot and had lost one

witnesses to be able to walk and run; that if the two accused had intended to kill the flyer they would have done so in a secluded spot and not a place open to public view; that the testimony of the witnesses concerning the powder burns observed on deceased's body did not come from experts; and finally, that accused STONSTL's statements were obtained from him by duress. An affidavit of STONSTL supports this last contention.

It is believed that none of the petitions for clemency in behalf of ZIEHNERT present any new evidence, and they they afford no ground upon which a recommendation for clemency may be based. With respect to the petition for review it may be said that the evidence which convicts both accused is not hearsay, but first hand from eye witnesses. It is admittedly circumstantial, which is another thing entirely than hearsay; as stated previously, it was his belief and the court was warranted in accepting it at its face value. Likewise, admitting that Major REYNOLDS could walk, and perhaps even run, in spite of his injuries and the loss of his shoe, these very facts make it highly improbable that he would try to escape, as claimed by accused. With respect to the claim that the accused might better, had they intended from the start to kill the victim, have taken him to a secluded spot, the fact is that it was sufficiently secluded that there were no eye witnesses. A map shows that it was remote from the autobahn, and near to a place which was shielded from view on two sides by trees. While the witnesses who testified as to the powder burns were not all "experts" in the accepted sense of the word, their testimony was first hand, and the court was entitled to apply to it its own knowledge of the effect of bullets on human flesh. Finally, while there is evidence that duress may have been used on STONSTL to obtain one or more of his statements, the fact remains that all the evidence which was necessary for the court to find as it did, is, as is stated in the previous section of this opinion, contained in other parts of the testimony, and is not found in the statements which are thus attacked by defense counsel.

None of the clemency material appears to offer any reason for suggesting a change either in the findings or sentence. Once one accepts the court's findings of guilty of murder, he is compelled to believe that it was deliberate and without justification, and no clemency is recommended.

11. RECOMMENDATIONS:

It is recommended that the findings and sentence be approved as to each accused. Forms of action designed to carry the foregoing recommendation into effect, should it meet with approval, are submitted herewith.

/s/ DAVID F HERVEY
/t/ DAVID F HERVEY,
Attorney
Post Trial Section

Having examined the record of trial, I concur.

/s/ C. E. Straight
/t/ C. E. STRAIGHT,
Colonel, JAGC,
Deputy Theater Judge Advocate
for War Crimes