

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

27 March 1947

UNITED STATES)

vs)

Case No. 12-336)

Ludwig DÖSCH and Ernst TÖNNIES,)
German nationals.)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany
Date: 7 November - 4 December 1946
General Military Government Court
Sentences: As to DÖSCH, imprisonment 4 years, commencing 22 December 1945.
As to TÖNNIES, imprisonment 5 years, commencing 11 May 1945.

ACCUSED

DÖSCH: Married
Age: 35
Former Gestapo
Interpreter

TÖNNIES: Age 33
Former member of
Gestapo

CHARGE I: Violation of the Laws of War.

Particulars: In that Ludwig DÖSCH and Ernst TÖNNIES, German nationals, did, at or near FRANKFURT-AM-MAIN, Germany on or about 10 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in committing assaults upon Staff Sergeant Herbert GEMERS, ASN 17068320, a member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

	<u>Pleas</u>	<u>Findings</u>
DÖSCH	NG	G
TÖNNIES	NG	G
DÖSCH	NG	G
TÖNNIES	NG	G

CHARGE II: Violation of the Laws of War.

Particulars: In that Ludwig DÖSCH and Ernst TÖNNIES, German nationals, did, at or near FRANKFURT-AM-MAIN, Germany, on or about 10 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the coercion of Staff Sergeant Herbert GEMERS, ASN 17068320, a member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich, to induce him to give information of a military nature.

DÖSCH	NG	NG
TÖNNIES	NG	NG
DÖSCH	NG	NG
TÖNNIES	NG	NG

CHARGE III: Violation of the Laws of War	TÖNNIES	Pleas NG	Findings NG
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Particulars: In that Ernst TÖNNIES, German national, did, at or near FRANKFURT-AM-MAIN, Germany, in 1944 wrongfully commit assaults upon unknown members of the United States Army who were then unarmed, surrendered prisoners of war of the then German Reich, and otherwise coerced them for the purpose of obtaining information of a military nature.

TÖNNIES	NG	NG
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CHARGE IV: Violation of the Laws of War

DÖSCH	NG	NG
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Particulars: In that Ludwig DÖSCH, German national, did, at or near ILSEBADEN and FRANKFURT-AM-MAIN, Germany, in 1944, wrongfully commit assaults upon unknown members of the United States and British armies who were then unarmed, surrendered prisoners of war in the custody of the then German Reich, and otherwise coerced them for the purpose of obtaining information of a military nature.

DÖSCH	NG	NG
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2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution: It was shown that 3/Sgt Herbert GEBERS, U.S. Army Air Forces, was shot down over France on 8 February 1944 (Pros. Ex. 1, 2, R 9, 12). Wearing civilian clothes and carrying false papers furnished by the French Underground, he was captured near the Spanish border by the French. He identified himself to the French authorities by giving up one of his dog tags and exhibiting his underclothing on which was the marking "Philadelphia, Pa." On 7 April 1944 he was taken by members of the Gestapo to Gestapo Headquarters, Frankfurt-Am-Main, Germany, where, after a period of confinement, he was subjected to interrogation on 10 June 1944. Accused DÖSCH, a member of the Gestapo who spoke English was the interrogator. He failed to elicit any information from GEBERS except his name, rank, and serial number. GEBER'S dog tags were given up. After threatening GEBERS with death DÖSCH called in accused TÖNNIES. TÖNNIES slapped GEBERS for five minutes, then put him across an armchair and beat him with a rubber hose. In his extrajudicial testimony GEBERS stated he was struck approximately 30 times on the back and buttocks before he gave the desired information (Pros. Ex. 2, R 12). As the statement was typed in German, GEBERS refused to sign and received 10 more blows. First Lieutenant ZUIDEMA, a former prisoner of war confined in the same camp as GEBERS stated in his extrajudicial testimony that

little control of his limbs and his eyesight failed (Pros. Ex. 7, 8, R 27, 28). Accused TÖNNIES admitted being called in by accused DÖSCH and beating the flyer with a rubber hose while DÖSCH asked for information (Pros. Ex. 9A, R 31).

For the Defense: Accused testified in their own defense; DÖSCH stated that his purpose in using force on the flyer was to ascertain whether GEBERS was a prisoner of war or a saboteur (R 152, 153, 154). He stated he was attempting to expedite the transfer of GEBERS to the comparative safety of a prisoner of war camp instead of a concentration camp. TÖNNIES testified that DÖSCH called him to interrogate GEBERS (R 220). He admitted slapping the prisoner and striking him with a rubber hose 8 to 10 times on the buttocks (R 224, 225). He administered the beating because the flyer refused to answer questions concerning his identity (R 224).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused DÖSCH and TÖNNIES. They were tried on three charges and particulars and found guilty on the first charge and particulars. Sufficient evidence was placed before the Court by statements of GEBERS and testimony of the accused DÖSCH and TÖNNIES upon the witness stand to substantiate that charge and particulars.

Defense counsel challenged the sufficiency of the proof to meet the allegation in the first particulars that the flyer was a "prisoner of war" at the time of the commission of the offense. The contention was that the Gestapo was justified in treating the flyer as a spy or saboteur, rather than as a prisoner of war.

The fact that the flyer was, at the time he was captured, disguised in civilian clothes and carrying false identification papers does not conclusively show that he was a spy. At most, it raises a rebuttable presumption that he was a spy. The Hague Regulations defining a spy have been interpreted as follows:

"Under the Hague Regulations spying has a technical meaning. The constituent elements of spying are: (1) the obtaining or seeking to

obtain military information for the belligerent employing him; (2) doing so clandestinely or under false pretences; and (3) doing so in the zone of operations of the other belligerent. Presumptively a soldier apprehended behind enemy lines in disguise is there to seek military information and the burden is on him to show that he has no such intention." (J.A.G.C. Text No. 11, "Law of Belligerent Occupation," pages 90 and 91).

The evidence is sufficient to meet the burden of establishing that the flyer was not a spy and, hence, he should have been treated as a prisoner of war. The first fact which tends to rebut the presumption that the flyer was a spy is his act of identifying himself to the French authorities as an American soldier. He exhibited his Army identification tag and his underclothing on which was the marking "Philadelphia, Pa." The incompleteness of his disguise strongly points to the fact that he was a flyer who came over the occupied territory in uniform, and upon being shot down, donned an outward disguise for the sole purpose of escaping to his own lines. Moreover, the nature of the interrogation by the Gestapo indicates that they did not seriously consider him as a spy. There was no attempt to ascertain whether or not the flyer had collected any information of military value for the purpose of transmitting it to his own lines. The accused themselves acted in a manner inconsistent with a belief on their part that GRIERS was a spy in that they failed to interrogate him from the time he was taken into custody on 7 April 1944 until 10 June 1944, they turned him over to a prisoner of war camp on 29 June 1944, and, above all, they failed to charge and try him as a spy.

There is authority to support the proposition that the flyer was not even presumptively a spy:

"A spy is one who collects or (for success in the search is immaterial) seeks to collect information, and the soldier who dons a disguise for any other purpose than seeking information cannot be classed as a spy." (J. H. Spaight, "War Rights on Land," page 208).

Obviously, the flyer, in this case, in donning a disguise had a purpose other than seeking information; he was attempting to escape to his own lines.

Moreover, "Prisoners of war who escape in civilian clothes or dressed in the uniform of the detaining power are not spies if captured before the escape becomes successful." ("Law of Land Warfare," J.A.G.S. Text No. 7, page 106). The fact that the flyer was apprehended while attempting to avoid capture in the first instance should place him in at least as good a position as a prisoner of war who has escaped from confinement, since he committed no infraction of prison regulations. A soldier who finds himself unintentionally behind enemy lines has as much right to disguise himself to avoid capture and return to his own lines as a prisoner of war has in an attempt to make a successful escape.

There can be no doubt that the court was warranted in finding that the evidence was sufficient to support the allegation in the particulars that the flyer was "an unarmed, surrendered prisoner of war."

The Order of commitment inadvertently stated that the sentence of Ernst TÖNNIES was to commence 11 May 1946 instead of 11 May 1945. This error is correct by letter dated 27 February 1947 signed by prosecution and defense counsel and Colonel R. S. Barden, President of the Court.

6. CLEMENCY: A rather exhaustive Petition for Review was filed on behalf of both accused by defense counsel, Frank L. Walters, undated. The legal points raised therein are discussed in paragraph 5, supra. No Petitions for Clemency have been filed.

7. CONCLUSIONS:

- a. It is recommended that the sentences be approved.
- b. Legal Forms Nos. 13 and 16 to accomplish these results are attached hereto, should it meet with your approval.

/s/ Robert J. Travis
ROBERT J. TRAVIS
Attorney
Post Trial Section

Having examined the record of trial, I concur

/s/ C. E. Straight
C. E. STRAIGHT, Colonel, JAGC
Deputy Judge Advocate

EUROPEAN COMMAND

APO 757
Jul 7, 1947

AG 383 JAG

SUBJECT: Execution of Sentence in the Case of the United States vs.
Ludwig DÖSCH and Ernst TÖNNIES (Case No. 12-336)TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Hq. USFET, file AG 383 JAG-AGO,
subject: "Designation of Prisons for War Criminals," 26 February 1947
and to the inclosed copies of the Order on Review in the above entitled
case as to accused Ludwig DÖSCH.

Upon compliance with the Order on Review the certificate be-
low will be completed and returned to the Deputy Judge Advocate for War
Crimes, 7708 War Crimes Group, APO 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was
carried into execution at War Criminal Prison No. 1, Landsberg, Germany,
on 28 July 1947, at 1500
(Date) (Hour)

/s/ George T. Lagish, Maj. Inf.
GEORGE T. LAGISH, Maj. Inf.
Prison Officer, Landsberg Prison
(Signature and Rank)

(Organization)

/s/ Lloyd A. Wilson
(Countersignature and Rank
of Witnessing Officer)
LLOYD A. WILSON, Capt., CMP

Do not
File