

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WIA CRIMES GROUP
EURCHEN BARRACKS

12 May 1947

UNITED STATES

vs

Case No. 12-1961

Richard FRANKÉ,
alias Rijort FRANKÉ,
a German national

REVIEW OF RECOMMENDATIONS

1. TRIAL DATA

ACCUSED

Tried at Lehnau, Germany
Date: 11-12 March 1947
Intermediate Military
Government Court
Sentence: Imprisonment for
2-1/2 years commencing
5 June 1945

57 years of age
married, 3 children
Occupation: Farmer

CHARGE: Violation of the Laws and
Usages of War

Facts

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Findings

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PARTICULARS: In that Richard FRANKÉ,
also known as Rijort FRANKÉ, a German
national, did, at or near RIESTEDT,
Kreis SANGERHAUSEN, Germany, on or
about 18 July 1944, wilfully, deliberate-
ly and wrongfully encourage, aid, abet
and participate in committing an assault
upon an unknown member of the United
States Army, who was then and there a
surrendered and unarmed prisoner of war
in the custody of the then German Reich.

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2. RECOMMENDATIONS: That the findings and sentence be approved.

3. EVIDENCE:

For the Prosecution. Prosecution's Exhibits P-1, P-2, and P-3
were received in evidence (B 9, 10, 11 and 12). These Exhibits are,
respectively, catechistical sworn statements of Josef KIRCHMANN, Felix
FRANKÉ and Alvin REICH WDT, by which it was shown that near Riestedt,
Germany, on or about 18 July 1944 an American flyer, a Lieutenant,
parachuted down into a wheat field and was loaded into a wagon.

Affiant Josef KACZMAREK stated that (P-1), accused, SCHLEMSTETT, SCHMIDT and BRUNDT arrived and SCHLEMSTETT, with the help of accused and SCHMIDT, (P-2) threw the flyer out of the wagon, hit and kicked him. That they then tied the flyer to the wagon with a chain, the wagon started towards the town, the flyer fell to the ground and they kicked him while he was dragged along the ground. That they then released the flyer and forced him to walk, that he fell down every few steps and every time he fell they beat and kicked him. That during all this procedure BRUNDT stood by with a pistol. Affiant (a Pole) then went back to work having been told to do so. Affiant Felix FRANKE, driver of the wagon, stated that, (P-2), accused and SCHLEMSTETT threw the flyer out of the wagon and started to beat him, that they took off his jacket and boots and tied him to the wagon with his "life jacket" and forced him to trot alongside the wagon towards town. That the flyer then slipped the life jacket over his head and then his hands were tied. That affiant was busy holding the horses back because they were excited and did not see very much more but he saw the flyer fall down once after he was hit by SCHLEMSTETT. That accused and SCHMIDT beat the flyer and SCHLEMSTETT kicked him and beat him with "the chain". That BRUNDT walked beside the wagon with his pistol. The following is quoted from P-2:

"Q. We will read you the statement of Felix FRANKE. Is that the truth?

A. It is the truth."

This affiant, Alvin REICHERT, stated that SCHLEMSTETT took the flyer's clothes and money, that BRUNDT took them and gave them to the Wachtmeister.

For the Defense. Accused FRANKE testified that he is a farmer and was in his garden when the flyer landed and followed the crowd to the place where the flyer was (P 14, 15), that when he was 800-1000 meters distant he saw the wagon with 30 to 40 people around it, including REICHERT (sic), that he did not see affiant KACZMAREK taken out later (P 17). That when he arrived at the wagon affiant FELIX FRANKE

was sitting in the driver's seat and the flyer was in the wagon, that he did not see him mistreated, that SCHLEMSTETT and SCHMIDT were there (R 17), that after remaining a few minutes he went to the place where the flyer had landed, remained there five, six or seven minutes, then returned to the wagon and saw KUHLMUDE was searching the flyer (R 16, 17, 18). That there was a big crowd around the wagon, that he was two or three meters away from the wagon and that the wagon was not moved while he was there (R 18). Asked if he saw BRANDT (affiant) there, he replied "no" and added that the name is not BRANDT, but BERNT (R 19). He then testified that SCHLEMSTETT struck the flyer, whose hands were not tied (R 19). That the flyer did not have on his jacket or coat but an overcoat of lighter material which was put on the wagon while the flyer was being searched. That he was not there when the flyer was taken off the wagon and that KACZMAREK's statement is not true (R 20). That he did not see BERNT (BRANDT) there and that he only saw KACZMAREK after he had left the spot and was on his way back to his garden, at which time KACZMAREK was coming from the village (R 21). That affiant KACZMAREK would make false statements against him because on one occasion he "bowled" him out for careless driving resulting in a collision and reported it to KACZMAREK's employer (R 22), that affiant Felix FRANKE would make false statements against him because on several occasions he "bowled" him out for not returning borrowed articles (R 24). That KACZMAREK and FELIX FRANKE were good friends and ran around together (R 24, 25).

On cross-examination he testified that he was a Landschutzmán, a member of the rural guard, as were BERNT and SCHMIDT, the latter the leader thereof, and that his duties included working during the blackout and checking Poles and that when ordered by the Leader, he was required to assist in keeping order in the event of an unusual occurrence (R 26, 29, 30, 31). He denied that he was a policeman (R 31). He testified that BERNT, SCHMIDT, SCHIMMELDT and SCHLEMSTETT

were Landwachtmän, that REICHERDT did not beat the flyer, but that SCHLEMSSTETT did. That SCHMIDT pushed him around and that Berni was not present and that he did not see any weapons on the flyer (R 34, 35).

On examination by the Court he testified that he did not go into the village and did not see whether the flyer rode or walked (R 35).

On recross-examination he testified that Felix FRANK was driving the wagon (R 35).

On redirect-examination he testified that he was first arrested 30 April 1945, released 15 May 1945, re-arrested 4 June 1945 and that in the interval he was at Reiztant and that SCHLEMSSTETT was then there (R 37, 38).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the person of the accused and of the offense.

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused. The evidence adduced, as reflected in paragraphs 3 hereof, is regarded as ample to sustain the findings and sentence.

At pages 6, 9 and 11 of the record Defense Counsel objected to the introduction of Prosecution's Exhibits 1, 2 and 3 on the ground that they were ex parte statements and that no opportunity was afforded for cross-examination of the witnesses. At page 7 the record shows that the Prosecution had been authorized to proceed without the production of witnesses who were in the Russian Zone. Such procedure is authorized by Sec. 270, b, 4, and Sec. 263 of the Manual for Trial of War Crimes and Related Cases.

While the Prosecution's case did not identify accused with the alleged plans, the very nature of Defense's interrogation of accused conceded that the Report FRANK mentioned in P-1 and P-2 was identical with the accused (R 21, 22, 23).

After the reading of prosecution Exhibit 3, Defense moved that it be stricken on the ground that the document did not show that the affiant had studied the statement of affiant FRANK (pros. Ex. 2) or that he knew its contents (R 11 and 12). This reviewer is of opinion that it was within the province of the Court to receive the exhibit in evidence (Manual for Trial of War Crimes and Related Cases, Paragraph 270 c, (2), page 107).

The Prosecution laid foundation for impeaching accused (R 29, Pros. Ex. 4) but did not follow through by offering the exhibit in evidence, to show inconsistent statements, 20 Am. Jur., Evidence, #458, pp 404-5; Manual for Courts Martial, #1240, pp 133-4.

6. CLEMENCY: There are no petitions for clemency nor petitions for review.

7. CONCLUSIONS:

a. It is recommended that the findings and sentence be approved.

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

/s/ Henry C. Chiles

HENRY C. CHILES
Attorney
Post Trial Section

Having examined the record of trial, I concur.

/s/ C E Straight
C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757

SUBJECT: Execution of Sentences in the Case of the United States vs.
Richard FRANK alias Rjfort FRANK (Case #12-1961)

TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, AG, DSPET, File AG 383 JAG-100,
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 Richard Frank alias Rjfort FRANK.

Upon compliance with the Order on Review the certificate be-
low will be completed and returned to the Legal Advisor Advocate for War
Crimes, 7708 Aer Crimes Group, APO 17, U.S. Army.

BY COMMAND OF GENERAL OLIF:

Wm. E. BISHOP
Brigadier General, USA
Adjutant General

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

Frankfurt 2-2310.

DO NOT FILE

EXECUTION OF SENTENCES

The sentence covered by the above described Order on Review
was carried into execution at War Criminal Prison No. 1, Landsberg,

Germany, on 24 June 1947, at 0800
(Date) (hour)

/s/ Wm. E. Bishop
(Signature and Rank)
Brigadier General, USA, Adj. Gen.
Prison Officer
War Criminal Prison Landsberg
(Organization)

/s/ Wm. E. Bishop
(Counter-Signature and Rank)
of Witnessing Officer
Brigadier General, USA, Adj. Gen.
Prison Officer.