

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 178

14 July 1947

UNITED STATES)

v.)

Matthias ZIERHUT, et al.)

Case No. 12-581

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 22-23 April 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Matthias ZIERHUT and Johann GILCH, German nationals, did, at or near MUHLDORF, Germany, on or about 15 April 1945, deliberately and wrongfully encourage, aid, abet and participate in committing assaults upon a member of the United States Army, Captain Everett S. LINDLEY, AG, ASN 0815726, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: Captain Everett S. Lindley, an American piloting a fighter plane was shot down near Muhlendorf, Germany, on 15 April 1945. He was soon captured by members of Volkstrum and taken to a village where he was kicked and beaten by several civilians. The unarmed, surrendered prisoner of war was then turned over to two uniformed SA men, the accused, Matthias ZIERHUT and Johann GILCH, who drove him into the country and stopped. ZIERHUT, the driver, dismounted. GILCH ordered the flyer to dismount and when he did ZIERHUT shot at him with a pistol but missed. Up to this time the flyer had not resisted or attempted to escape but immediately after being unnecessarily fired upon jumped a ditch but tried to surrender again by facing his assailants and raising his hands. They fired at him again and one bullet hit him in the left shoulder. He then turned and ran a zigzag course while both accused pursued and fired many times. The flyer turned and attempted to surrender the second time but when the firing at him continued, fled again. In time he became exhausted and was overtaken near a small river bank. There the accused pushed him down the bank out of sight of the surrounding country as the flyer reached the edge of

from ZIERHUT and warded them off. They ran to a barnyard by which the stream flowed. The flyer took up a position on a small bridge near the farmhouse. By this time a group of people came out of the house. The accused entered this group. From the group came an elderly white-haired man, a luftwaffe pilot and a wehrmacht sergeant who indicated that the flyer should surrender to them and that they would protect him. He did not do so until the old man prevented fire from a Volkstrum rifleman who approached from the flyer's rear. The sergeant dressed the wound while the old man kept the accused and others away. He handed the pistol to the sergeant. The luftwaffe pilot and the sergeant delivered the American to nearby Mettenheim Air Field as a prisoner of war. In time the prisoner was liberated by the approaching American Forces and later the accused were arrested by American authorities.

IV. EVIDENCE AND RECOMMENDATIONS:

1. MATTHIAS ZIERHUT (The Christian name actually spelled MATTHIAS, P-Ex 4.)

Nationality:	German
Age:	53
Civilian Status:	Buergermeister
Party Status:	NSDAP 1931; SA Lt. Col.
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment, commencing 23 April 1947

Evidence for Prosecution: The Prosecution introduced into evidence the extrajudicial statement of Captain Everett S. Lindley, an American fighter pilot, which was taken in Paris, France, in affidavit form on 18 June 1945. This instrument showed that he was shot down near Muhlendorf, Germany. That he was captured by the volkstrum, taken to Muhlendorf and beaten by unknown civilians and turned over to two SA men, the accused Matthias ZIERHUT and Johann GILCH, who took him in a car in the general direction of Mettenheim but stopped in the country (P-Ex 3, pp 1, 2, 3, 7). That he was required to dismount and when he did ZIERHUT shot at him but missed. That he had offered no resistance nor attempted to flee up until then but when shot at he jumped the side ditch and raised his

hands, whereupon, both ZIERHUT and GILCH commenced shooting at him. One bullet struck his left shoulder. He then ran a zigzag course while they both continued to fire at him with their pistols. He ran until he became exhausted and was overtaken. When overtaken he realized he would be killed soon unless something was done so he managed to disarm ZIERHUT and acquired his pistol to confront them. Both assailants ran to a farmyard and joined a number of people who suddenly rushed from the house. The pilot took up a position on a small bridge over a stream which ran through the farmyard. Three men from the crowd, an old man, a luftwaffe pilot and an army sergeant, approached him and by signs and otherwise indicated to him to surrender and he would be protected. He did not do so at once as another person had approached from his rear with a rifle. One or more of the three described persons induced the rifleman to leave and required the two SA men and others to desist from their efforts to lynch him. He surrendered and his wound was bandaged. He handed ZIERHUT's pistol to the sergeant who handed it to the old man. The sergeant and the luftwaffe pilot escorted the prisoner in the direction of Mettenheim Air Field. On the way they met a luftwaffe captain and reported the affair. The prisoner was then turned over to a luftwaffe master sergeant who appeared, and by him safely delivered to the air field where the prisoner was treated and properly cared for. Captain Lindley was later liberated by the American Forces (P-Ex 3, pp. 7, 8, 13).

Testimony corroborating the statement of events, as set out above, occurring near the farmhouse was given by Josef Kettner, Jr. and Josef Kettner, Sr. (R 20, 21, 44, 45, 46).

Centa Reindl testified that at 1300 hours on the day in April while she was walking with her husband, a child and a Frenchman near the Kettner home a flyer ran up to them and yelled, "They are trying to shoot me." That behind, ZIERHUT was running, caught up and slapped the flyer's face saying, "I am going to shoot you, you dog." That a fight took place between the flyer and ZIERHUT as they fled but she looked back and saw that the flyer had ZIERHUT's pistol (R 52, 56).

Evidence for Defense: The accused did not offer any testimony but rested when the prosecution rested.

Sufficiency of Evidence: 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.

Recommendation: That the findings and sentence be approved.

2. JOHANN GILCH

Nationality:	German
Age:	59
Civilian Status:	Machinist
Party Status:	NSDAP 1930; SA-S/Sgt. 1935
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	10 years imprisonment, commencing 12 February 1946

Evidence for Prosecution: All of the evidence set out above is applicable against GILCH except that he did not participate in the encounter when ZIERHUT was disarmed (R 57) and GILCH remained passive during the occurrences near the bridge at the farmhouse (R 36, 46).

Evidence for Defense: The accused did not offer any testimony but rested when the prosecution rested.

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

Recommendation: That the findings and sentence be approved.

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 fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.


D. S. PURL
Major, Cml C
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this 24th day of September 1947.

