

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

19 November 1945

UNITED STATES)

vs)

Case No. 12-1145)

Clemens WIEGAND, a German
National.)

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused was tried at Heidelberg, Germany, on 15 and 16 October 1945, before a General Military Court, appointed by paragraph 1, Special Orders No. 278, Headquarters, Seventh U.S. Army, Western Military District, 5 October 1945, as amended by paragraph 27, Special Orders No. 283, 10 October 1945, and paragraph 10, Special Orders No. 289, 16 October 1945, same headquarters.

2. <u>FINDINGS</u> : The offense involved was:	<u>Pleas</u>	<u>Findings</u>
CHARGE: Violation of the Laws of War	NG	G
Specifications: In that CLEMENS WIEGAND, a German National, did, at or near Frankfurt-am-Main, Ginnheim, Germany, on or about 21 November 1944, wilfully, deliberately, and wrongfully, kill ANTHONY B. MARTIN, a member of the United States Army, who was then a surrendered and unarmed prisoner of war in the custody of the then German Reich, by shooting him with a gun.		
	NG	G

3. SENTENCE:

The Court, by at least a two-thirds vote of the members present at the time the vote was taken, convicted the accused and sentenced him to death by decapitation. Said sentence was upheld on review by the Reviewing Authority on 3 November 1945, but the method of execution was changed to hanging. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for final action (paragraph 5 c, Letter, Headquarters, United States Forces, European

Theater, AG 000.5-2 G.M.P., 16 July 1945, subject: "Trial of war crimes and related cases"; Article VII, Ordinance No. 2, Military Government Courts, contained in Handbook, "Military Government Germany, Technical Manual for Legal and Prison Officers, 2nd Edition" p 30).

4. DATA AS TO ACCUSED: The accused was leader of the Ortsgruppe, a subdivision of the Nazi party, for Frankfurt-Ginnheim, a suburb of Frankfurt-am-Main, Germany. He was a school-teacher by vocation. He joined the Sturm-Abteilung ("S.A.") on 1 July 1933, and became a member of the Nazi Party on 1 August 1935. He was a block-leader and assistant in the office of the Ortsgruppenleiter in Ginnheim, Frankfurt-am-Main, from 1937 until he was drafted into the army in August 1939. He became a sergeant in December 1939 and participated in the French campaign. In August 1940 he was discharged from the army and resumed his teaching and his activity with the party in Frankfurt-am-Main. He successively held several positions with the Party, including the leadership of the Air Raid Protection Organization for Ginnheim, and finally was appointed Ortsgruppenleiter in January 1944. He is 46 years of age, is married, and has one daughter. His mother, a resident of Frankfurt-am-Main, was born in the United States, and one brother is a citizen of the United States, resident in New York. Further details are set out in his "Lebenslauf", or life story, contained in the record of trial (Pros. Ex. 23).

5. RECOMMENDATION: That the action of the Military Court and of the Reviewing Authority be confirmed.

6. EVIDENCE:

(a) On 21 November 1944, an American plane was shot down over Ginnheim, Germany. Several members of the crew,

including Anthony B. Martin (R 12; Pros. Ex. 1), parachuted to safety from the burning plane (R 7, 11). Martin landed in a field near Ginnheim (R 7; Pros. Ex. 8, 9, 11). He was captured, and, while being led away with his hands in the air, was shot in the head with a pistol from a distance of about six meters by the accused Wiegand (R 7, 18; Pros. Ex. 23, p 9). Wiegand, thinking he had killed the flier (R 12), then left the scene. Later, upon being informed that the victim was still alive (R 12), Wiegand became "upset", said "He must die", and returned to where the flier lay (R 12). He refused to permit the wounded man to be taken elsewhere (R 12; Pros. Ex. 23, p 10), and helped the German police drive spectators from the scene. He and a Wehrmacht officer then talked to the wounded man (R 12). The Wehrmacht officer then left. Wiegand lit a cigarette and walked about, presumably to see if he was being observed. He then drew his gun, approached the victim, and deliberately fired two shots into his head (R 12; Pros. Ex. 23, p 10). Death resulted from these gunshot wounds within three hours of the time they were inflicted (R 7).

(b) Further detailed evidence will not be set forth here, but the recapitulation contained in the review of the Staff Judge Advocate, Seventh United States Army, dated 27 October 1945, appended hereto, is adopted in its entirety.

7. JURISDICTION:

The Military Court which heard this case was properly constituted and had jurisdiction over the subject matter and of the accused (Letter, Headquarters, United States Forces, European Theater, AG OOO.5-2 GAP, 16 July 1945, subject: "Trial of War Crimes and Related Cases"). Offenses against the laws and usages of war committed prior to occupation are properly cognizable by such specially appointed military courts (Letter,

Headquarters, United States Forces, European Theater, supra). Such courts are tribunals constituted under the common law of war with jurisdiction analogous to that of military commissions. They are, in fact, military commissions except in name. They have, therefore, jurisdiction of offenses against the international laws of war committed prior to or during belligerent occupation (SPJGW 1943/17671) and over individual perpetrators thereof (Articles 2 and 3 of the Geneva (Prisoners of War) Convention, 27 July 1929; Article 23, par (c) of the Annex to the Hague Convention No. IV of 18 October 1907; Change.1, 15 November 1944, par. 345.1, FM 27-10, Rules of Land Warfare). It is beyond question that the offense in the instant case -- the deliberate murder by a civilian of a surrendered enemy soldier -- constituted unlawful belligerency and was a violation of the laws of war properly triable by the military court having custody of the offender.

8. DISCUSSION:

(a) The evidence established conclusively that the accused, a civilian, shot the deceased, a captured combatant, in the head with a pistol and that he later, upon learning that the deceased was still alive, returned to the scene and deliberately killed him by firing two more shots into his head. The accused admits every element essential to establish a war crime (Pres. Ex. 23). He offers no defense, but only an explanation, to-wit: that he was inflamed and embittered as a result of the Allied bombings and by Nazi propaganda that Allied fliers were paid murderers who should be put to death. His statements establish conclusively that his acts in slaying the victim were not involuntary or the result of momentary passion, but were the results of a longstanding and deep-seated hatred of Allied airmen. He does not in his statement raise

the defense of superior orders. He, himself, in fact, as the Ortsgruppenleiter, issued orders. He overruled members of the Gestapo and Wehrmacht when suggestions were made that the wounded man be removed from the scene. He returned after failing to kill the victim with the first shot, and then, after waiting until the crowd had left, after talking to the victim, and after lighting a cigarette and looking about the scene, deliberately shot the airman. These were not acts committed in the heat of sudden passion, but were planned, deliberate and vengeful. The testimony, including the statement of the accused, establishes conclusively all the elements of common law murder. Such a murder, perpetrated, as here, upon a captured enemy combatant by a civilian engaged in unlawful belligerency, constitutes a war crime. Considering in its entirety, this record leaves no doubt whatsoever as to the guilt of the accused.

(b) It is noted that at the outset of the trial the member of the court senior in rank designated the legal officer as presiding officer of the Court. Such designation was contrary to the provisions of the basic regulation relating to such specially appointed military courts (Letter, Headquarters, United States Forces, European Theater, supra), which provides as follows: "The senior member present at each trial will be the President and Presiding Officer of the Court". Although the "Rules of Procedure in Military Government Courts" (Par. 2(3) contained in the Handbook, "Military Government Germany, Technical Manual for Legal and Prison Officers, 2nd Edition," (P 33) provides that "when feasible a Legal Officer shall be designated to preside . . . by the senior in rank", such provisions has been superseded by the contrary direction of the letter above quoted (par 7, letter, supra). The irregularity,

however, did not injuriously affect any substantial right of the accused, and, since the Legal Officer was presumably better qualified because of his legal training to preside, may have resulted in a more just trial for the accused.

(c) Modification of the sentence from death by decapitation to death by hanging is discretionary with the Appointing Authority (paragraphs 216, 222, Section 2, Part. I, Handbook, "Military Government Germany, Technical Manual for Legal and Prison Officers, 2nd Edition"), and in the instant case justified for the reasons stated in the review of the Staff Judge Advocate, i.e., that execution by hanging is in accordance with methods prevailing under our domestic law, and that execution by decapitation, although consistent with German criminal law, might offend the sensibilities of people in the United States.

(d) From an examination of the entire record it appears that no error or omission, technical or otherwise, by the Court resulted in injustice to the accused. The proceedings satisfied all the requirements of a fair trial. The right of confrontation was adhered to; challenges for cause were allowed; military counsel was provided and civilian counsel permitted; competent interpreters were used to keep the accused and counsel informed of what was said and done; objections to testimony were permitted; and a two-thirds vote of the members of the Court present was required for both conviction and sentence. There was substantial compliance with the requirements of the Technical Manual above referred to and with the general principles of international law recognized as applicable to the trial of such cases.

9. CLEMENCY:

(a) There is appended to the record a "Petition for

Clemency", labeled "Legal Form No. 10", dated 24 October 1945, signed by Dr. Munzinger, Defense Counsel, and with supporting statements from eight acquaintances and relatives of the accused. It is not known whether or not the petition was considered by the Reviewing Authority. The petition and supporting statements ask that the death sentence be commuted to confinement in a penitentiary, and, in general, repeat the contentions of the accused contained in his statement (Pros. Ex. 23) that he was misled and inflamed by Nazi propaganda, that he was nervous and ill at the time of the commission of the offense, and that his past record and reputation are good. Two of the supporting statements are from the vicars of Catholic and Protestant churches, respectively, in Frankfurt. The former states that the accused was a member of the congregation "up to the date when he left the church" and "personally made no difficulties before nor afterwards". The latter states that the accused as Ortsgruppenleiter "never made any difficulties" for the congregation. Other statements assert that as a Nazi leader in the community he was personally honest, benevolent and helpful to Party and non-Party members alike. Several say that he was a fanatical Nazi.

(b) It is believed that no valid reasons for the exercise of clemency are contained either in the petition for clemency and supporting statements, or in the "Lebenslauf" (Pros. Ex. 23) of the accused. In fact, in the thirteen-page attempted explanation by the accused there is nothing indicating contrition on his part but only an implied attempt at justification for commission of the homicide. The writer concluded from reading the explanation of the accused that he not only believed at the time that he was morally justified in committing the murder, but continues so to believe. There

cannot be imagined a more wanton killing of a prisoner of war under less extenuating circumstances than is disclosed by the facts in this case. It is believed that if the death penalty is not to be imposed upon this accused then it should not be imposed upon any German national for any killing of unarmed and defenseless prisoners of war. The sentence of the Court and the action of the Reviewing Authority thereon are just and commensurate with the nature of the offense committed by the accused.

10. CONCLUSION

It is accordingly believed that the sentence of the Court should be confirmed. Forms of action prepared to accomplish this result are attached hereto.

JAMES D. MURPHY,
1st Lt. JAGD