

18 July 1947

UNITED STATES)
 v.)
Wilhelm LUETHJE)

Case No. 12-1168

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 23-26 May 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars; In that Wilhelm LUETHJE, a German national, did, at or near CRAMME, Germany, on or about 25 September 1944, deliberately and wrongfully kill a member of the United States Army, believed to be Homer W. GOFF, ASN O-717779, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. EVIDENCE AND RECOMMENDATIONS:

1. WILHELM LUETHJE

Nationality:	German
Age:	55
Civilian Status:	Sergeant or Sergeant Major of the Police
Party Status:	Nazi Party from 1929
Military Status:	Served in World War I and one-half year in World War II
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: On or about 25 September 1944, around noon, an American flyer parachuted to safety in the vicinity of Cramme, Germany. He was taken into custody by the rural guard, searched, and taken to a nearby farmhouse (R 8, 36, 37). The flyer was not wearing shoes but did not appear to be injured (R 9, 37, 38). A crowd gathered but displayed no hostility toward the flyer (R 9, 43). The accused

LUETHJE, who was the highest ranking police official present, took the flyer into custody (R 14). After failing in an attempt to reach the police in Wolfenbittel by telephone from the farmhouse, the accused, together with one Bode, Ortsgruppenleiter, left with the flyer and one of them told a witness, "We are going to Bode's house" (R 10, 14, 15, 40). (Bode's house was a distance of two or three hundred meters from the farmhouse (R 56). Between 1600 and 1700 hours in the afternoon, the Burgermeister saw LUETHJE and the flyer on the street in the village (R 15). The flyer, still without shoes, was walking about four meters ahead of LUETHJE who was armed. LUETHJE told the Burgermeister that he was transporting the flyer from Cramme but did not name his destination (R 16, 22, 29). However, all captured flyers were taken to Wolfenbittel, a distance of eight or nine kilometers via a path through the forest or ten or eleven kilometers by the main road (R 19, 20, 29). About two hours ^{later} LUETHJE reported to the Burgermeister that about two kilometers from the city, on a footpath leading through the forest to Wolfenbittel, the flyer had attacked him by kicking him on the upper thigh and had then attempted to escape; and that he, LUETHJE, had killed the flyer by shooting him in the back. LUETHJE showed the Burgermeister a dirty spot on his trousers leg where the flyer had kicked him (R 19). In extrajudicial sworn testimony the accused admitted that he shot the flyer but stated that the flyer was attempting to escape. He further testified that the name on the bracelet worn by the dead flyer was "Homer Goff" (P-Ex 2). The body was picked up the following day and buried in the cemetery at Cramme but a marker was never erected (R 26, 27). A "Report of Burial" on Homer W. Goff shows that he died in Cramme, Germany, around 28 September 1944 (P-Ex 7). A "Pathologist's Report" on Homer W. Goff shows the cause of death as "Wound of the head, gunshot." In paragraph (31) of this report it is stated: "This man was shot in the back of the head probably with the muzzle of the weapon held close to the head" (P-Ex 3). Witnesses testified that there were members of the rural guard that LUETHJE could have ordered to accompany

him on the transport (R 21, 22, 41, 42); that there was no rumor that there were other flyers in the vicinity on this day (R 41); that it would have been possible to obtain shoes for the flyer but that they were very hard to get (R 43); and that LUETHJE could have ordered someone to take a horse and wagon and transport the flyer to Woldenbittel (R 22). Bode, a witness for the defense, testified on cross examination that he had no idea where LUETHJE was taking the flyer: when the three left the farmhouse (R 61); that LUETHJE did not tell him where he was taking the flyer when he left his (Bode's) house; that LUETHJE did not ask him for transportation to take the flyer to Wolfenbittel; that LUETHJE did not ask him for a man to accompany him on the transport (R 75); and that he and LUETHJE did not discuss getting shoes for the flyer (R 78).

Evidence for Defense: The accused LUETHJE elected to testify under oath in substance as follows; He took the flyer from the farmhouse at about 1300 hours because more and more people were arriving. Before leaving he attempted to call his office in Wolfenbittel. He intended taking the flyer to Wolfenbittel but as they approached the village, a woman told him that she suspected that another pilot was in a field nearby. He locked the pilot in a wooden shack because there was no call in the village. (This shack was a coal shed located at the home of Ortsgruppenteiler Bode (R 52, 53, 60). Then he and Bode, together with two boys, searched the field (R 96, 104). He returned to Bode's home and attempted unsuccessfully to telephone Wolfenbittel (R 97). He decided not to waste more time in trying to call and started on foot with the flyer to Wolfenbittel at around 1600 hours. All vehicles were "laid up" because of a gasoline shortage. He used the path through the forest to avoid passing large crowds of people employed in a factory located on the main road. It would not have been possible to find shoes for the pilot in Cramme (R 98). LUETHJE was armed with a pistol and carried a rifle slung over his right shoulder. About three or four hundred meters into the woods they came to a "puddle of water" on the path. The flyer and the accused were walking side by side. At the

bypassed the "puddle" the flyer, who was one step ahead of LUETHJE, stepped on a "raised portion of the ground", turned, and with his right foot kicked the accused on the upper part of his left leg. The accused fell back and his rifle fell off his shoulder. The flyer ran for a short distance along the edge of the path and then ran sever or eight meters into the woods (R 98-100, 105, 106). From a distance of 20 to 25 meters the accused shot the flyer in the back of the head with his rifle, killing him. He did not intend to kill him and did not aim at him. He only wanted to prevent his escape. The accused waited at the scene about one-half hour hoping that someone would come by who could take a message to the mayor (R 101, 105). He then covered the body with pine branches and returned to the village (R 102).

Bode (Bode) corroborated the story told by LUETHJE concerning meeting the woman, locking the flyer in the shack, and searching the fields for a flyer (R 52, 53, 60, 69, 71). After the search he heard LUETHJE at the telephone in his (Bode's) house say, "I am now going to leave with him." (R 54). About an hour and fifteen minutes after LUETHJE left with the flyer he returned alone to pick up his bicycle (R 56). He had a spot on his trousers "as if to indicate that somebody had kicked there." (R 57, 77). LUETHJE, Bode and one Ahrns picked up

the body the following day using an ox and wagon. The body was lying seven to eight meters into the forest from the path (R 57, 80). Prosecution witnesses testified that there was no gasoline available; that the use of automobiles for the transport of prisoners of war was prohibited; and that all horses were being used for farm work (R 12, 22). Witnesses testified extrajudicially that the route through the forest was the shortest way to Wolfenbittel; that it would have been difficult to secure a horse and buggy because the farmers were very busy; and that on the day of the incident LUETHJE told one witness that the airman had kicked him in the leg and attempted to escape, and had shown him a dirt mark on his leg (D-Ex 1, p. 3; D-Ex 2, pp. 5, 6).

Sufficiency of Evidence: The pathologist expressed the opinion by his report that the victim was shot at close range with the muzzle

chose to walk through the woods rather than to use his bicycle via a road to Wolfenbittel, the distance by both routes being about the same and a long distance to walk. The accused testified that he shot the victim in the head, although not aiming at him, at a distance of 20-25 meters while the victim made an effort to escape. The findings of guilt 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.

IV. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

Legal Member: A member with legal training was designated in the orders appointing the court but did not sit as a member of the court; however, the record indicates that a legally trained officer sat on the court and acted as legal member.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

V. CONCLUSIONS:

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

/s/ Nora G. Springfield
/t/ NORA G. SPRINGFIELD
1st Lieutenant, WAC
Post Trial Branch

Having examined the record of trial, I concur.

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

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

AGO 757
August 18, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Wilhelm LUETHJE (Case No. 12-1168)

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 Wilhelm LUETHJE.

Upon compliance with the Order on Review the certificate below
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:

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

Frankfurt 7175

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

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 29 August 1947, at 0815
(Date) (Hour)

/s/ Lloyd A. Wilson
(Signature and Rank)
/t/ LLOYD A. WILSON
Captain CMP
Asst. Prison Officer

(Organization)

/s/ Joseph H. Williams
(Countersignature and Rank of
Witnessing Officer)

DO NOT
File