

U.S. No. 8.

**8**

Trial against

CHEMENS WEIGAND.

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

19 November 1945

*Add 23 to WCT  
Pg 8.*

UNITED STATES )

vs )

Clemens WIEGAND, a German  
National. )

Case No. 12-1145

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 D. 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, and 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 10, Letter, Headquarters, United States Forces, European

Theater, AG 000.5-2 G.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 (Proc. 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 000.5-2 GAF, 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 (Pros. 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 shall be the President and Presiding Officer of the Court". Although the "Rules of Procedure in Military Government Courts" (Par. 2(5) 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

MILITARY GOVERNMENT COURT  
MILITÄRGERICHT

Order on Review

Verfügung nach Überprüfung

Case No. \_\_\_\_\_  
Strafsache Nr. \_\_\_\_\_

Order No. \_\_\_\_\_  
Verfügung Nr. 1

Whereas one Clemens Wiegand  
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offense of \_\_\_\_\_  
der folgenden strafbaren Handlung Mörder

by the General Military Court at \_\_\_\_\_  
von Oberem Militärgerichte in Heidelberg, Germany  
(Address of Court)  
(Auschrift des Gerichts)

and sentenced to \_\_\_\_\_  
schuldig erkannt und zu death by decapitation

by judgment dated the \_\_\_\_\_ and  
durch Urteil vom 16 October 1945  
(date)  
(Datum)

Whereas the case has now come before me by way of review  
Diese Strafsache ist mir zur Überprüfung vorgelegt

and after due consideration and in exercise of the powers con-  
ferred upon me, I hereby order:  
und nach entsprechendem Studium des Sachverhaltes und

in exercise of the powers conferred upon me, I hereby order:  
In Ausübung der mir übertragenen Befugnisse verfüge ich:

That the findings and the sentence be upheld but that  
Der Schuldspruch und das Urteil werden bestätigt, die Art

the method of execution be by hanging, and the record of trial  
die Methode der Hinrichtung soll Hängen sein, und die Unterlagen der Verhandlung

be forwarded for confirmation of the sentence as so modified.  
wird weitergeleitet werden für Bestätigung des Urteils wie es  
so beschränkt wurde.

Dated this \_\_\_\_\_  
Gegeben am Nov 9 1945

s/ Geoffrey Keyes  
GEOFFREY KEYES

(Signature of Reviewing Authority)  
(Unterschrift der nachprüfenden Behörde)

Lieutenant General, U.S. Army  
Commanding

(Title)  
(Titel)

HEADQUARTERS  
UNITED STATES FORCES  
EUROPEAN THEATER

12 December 1945

In the foregoing case of CLEMENS WIEGAND, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

s/ Joseph T. McNarney  
JOSEPH T. McNARNEY  
Commanding General, U S Forces,  
European Theater.

HEADQUARTERS  
UNITED STATES FORCES  
EUROPEAN THEATER  
Office of the Theater Judge Advocate

UNITED STATES	)	RECOMMENDATION
	)	
v.	)	of
	)	
Clemens Wiegand,	)	THE THEATER JUDGE ADVOCATE
a German National.	)	

I have examined the record of trial, and I concur in principle in the review of the Deputy Theater Judge Advocate and in his recommendation that the sentence be confirmed.

s/ Ed. C. Betts  
ED. C. BETTS,  
Brigadier General, U.S.A.,  
Theater Judge Advocate.

I concur  
s/ H. C. White  
Deputy Chief of Staff.

I concur  
s/ W. B. Smith  
Chief of Staff.

War Crimes Trial Report No.8.

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

APC 633  
CHT/th/Ext 147  
31 October 1945

SUBJECT: Summary of Case No. 12-1145 MARTIN (V).

1. Copy of charge sheet attached.

2. On 21 November 1944, at about 1400 hours, an American airman, ANTHONY B. MARTIN, parachuted to safety from his disabled plane in the vicinity of Frankfurt-am-Main, Ginnheim, Germany. The airman removed his parachute and held up his hands in surrender as the neighboring populace and soldiers gathered. Also present was the Ortsgruppenleiter (District Group Leader of local party chief), CLEMENS WIEGAND. Discussion arose between the soldiers and WIEGAND as to the proper authority to take MARTIN into custody. WIEGAND claimed the prisoner and expressed his impatience with the fact that he was still alive. After further discussion, two soldiers led the airman away. WIEGAND followed and, without warning, placed his pistol behind MARTIN's head and shot him. The victim fell to the ground and was removed to a nearby inclosure. Police officials arrived and asked who shot the airman. WIEGAND replied that the airman shot himself. Civilians were dispersed and WIEGAND and a German Army officer remained with the wounded airman, who was conscious. During this time ALFRED HOFFMAN, a civilian resident of Ginnheim, was behind a nearby hedge, unbeknown to WIEGAND or the officer. He heard the latter briefly interrogate the victim. The officer thereafter left. WIEGAND, believing himself to be alone, fired three shots at the prone airman's head, without provocation. The accused left and summoned a local resident, PHILIPP J. FISCHER, to guard the body. FISCHER remained with the victim until late in the afternoon when he was relieved. In the interim, MARTIN had died. The following morning the Frankfurt city hearse called for the body. HOFFMAN, upon previous direction of WIEGAND, directed the driver, ADAM WISLER, to it. While the body was being carried away, HOFFMAN saw an identification tag on the ground. He examined it and kept it for safekeeping until April, 1945, when he gave it to Dr. FRITZ RAHL who, in turn, gave it to the Burgermeister of Frankfurt-am-Main, WILLIAM HOLLBACH, for transmittal to American authorities. The body was buried in the Haupt-Friedhof Cemetery, Frankfurt-am-Main, on 24 November 1944. On 20 August 1945, the body of the victim was disinterred by Capt. MURRAY M. BRAAF, MC. Two bullet holes were found in the skull. The clothing contained the victim's laundry mark, M-2197. The accused prepared and signed three unsworn statements relative to the shooting. In the first two statements he indicated that the pilot was wounded prior to WIEGAND's arrival and, while he admits shooting the airman when alone with him, he claims the airman attacked him. WIEGAND's

NOV 13 1945

third and latest statement is a full confession, the substance of which is consistent with the statements of the witnesses, and makes no claim of self-defense. He attributes his first shot to "hate" and the other two shots to the fact that he was "excited".

3. ACTION ACCOMPLISHED: CLEMENS WIEGARD was tried on 16 October 1946 by General Military Government Court appointed by the Commanding General, Western Military District, and was sentenced to be hanged. >

Charge Sheet  
Anklageschrift

Place . APC 757.....  
Ort  
Date . 19. September. 1945  
Datum

Name of accused . CLEMENS WIEGAND.....  
Name des Angeklagten

is hereby charged with the following offences:  
wird hiermit wegen der folgenden strafbaren Handlungen angeklagt:

First Charge: . Violation of the Laws of War.....  
Erste Anklage: . Vergehen gegen die Kriegsgesetze.....

Particulars: < 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 un-  
~~Summa~~ charged: armed prisoner of war in the custody of the then German Reich, by shooting him with a gun. >

Einzelheiten: CLEMENS WIEGAND, ein deutscher staatsangehoeriger, wird angeschuldigt in oder in der Naehc von Frankfurt-am-Main, Ginnheim, Deutschland, ungefahr am 21 November 1944, vorsaeztlich, mit Vorbedacht und rechtswidrig ANTHONY B. MARTIN, einen Angehoerigen der Armee Zweite Anklage der Vereinigten Staaten, welcher zu der Zeit ein unbewaffneter Gefangener, der sich ergeben hatte und welcher in Verwahrung des damaligen Deutschen Reiches war, durch Gewehrschuss getoetet zu haben Einzelheiten

Diese Uebersetzung dient ausschliesslich zum Verstaendnis des Angeklagten und dessen Verteidiger.

Particulars: .....

Officer preferring charges

MEADE F. GRIFFIN  
Lt Col, Inf.

Summary

The above charges are referred for trial to the ~~Intermediate~~ Military Court to be held.  
General

to be held

Die Verhandlung wird vor dem Einfachen Mittleren Militargericht Oberen

at ..... on ..... 194 ..  
in (Address of Court) am  
(Anschritt des Gerichtes)

at ..... Uhr stattfinden  
um By Order of Military Government  
Im Auftrage der Militärregierung

+strike out words not applicable  
+Nicht Zutreffendes ist durchzustreichen (Signature of person preferring charges)  
(~~Unterschrift der Person, die die Vorladung zugestellt hat~~)

Copy of above served on accused ..... 194 ..  
Abschrift dem Angeklagten zugestellt am

(Signature of person making service)  
(Unterschrift der Person, die die Vorladung zugestellt hat)

1116

Addendum to  
War Crimes  
Trial Report No. 8.

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

UNITED STATES

19 November 1945

V

Clemens Wiegand, a German  
National.

REVIEW AND RECOMMENDATIONS OF  
THE DEPUTY THEATER JUDGE ADVOCATE

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

Specification: In that CLEMENS WIEGAND, a German National, did, at or near Frank-am-Main, Ginnheim, Germany, on or about 21 November, 1944, wilfully, deliberately, and wrongfully, kill ANTHONY B. MA TIN, 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 e, Letter, Headquarters, United States Forces, European Theater, AG 000.5-2 GAP, 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 schoolteacher by vocation. He joined the Sturm-abteilung ("SA") 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. 5, 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), and Wiegand was heard to call the flier a "gangster" (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 000.5-2 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 (SPJCM 1943/17671) and over individual perpetrators thereof (Articles 2 and 3 of the Geneva (Prisoners of War) Convention, 27 July 1939; Article

23, par (c) of the Annex to the Hague Convention No. IV of 18 October 1907; Change I, 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, unarmed enemy soldier -- constituted unlawful belligerency and was a violation of the laws of war properly triable by a military court having custody of the offender.

8. DISCUSSION:

(a) The evidence established conclusively that the accused, a civilian, shot the deceased, a captured unarmed 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 (Pros. 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 statement establishes 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 falling to kill the victim with the first shot, and then, after waiting until the crows 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. Considered in its entirety, this record leave 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 regulations 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 35) provides that "when feasible a legal officer shall be designated to preside ~~see~~ by the senior in rank", such provision 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 other wise, 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:

There is appended to the record a "Petition for Clemency", labeled "Legal Form No. 10", dated 24 October 1945, signed by Dr. Munsinger, 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. 25) 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 henceforth 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.

HEADQUARTERS  
UNITED STATES FORCES, EUROPEAN THEATER

\_\_\_\_\_ November 1945

In the foregoing case of CLEMENS WIEGAND, a German National, the sentence is confirmed. The Commanding General, Western Military District, will issue appropriate orders promulgating the sentence as confirmed, and will carry the sentence into execution at a time and place to be determined by him.

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DWIGHT D. EISENHOWER  
Commanding General, U S Forces  
European Theater

HEADQUARTERS SEVENTH ARMY  
WESTERN MILITARY DISTRICT  
Office of the Staff Judge Advocate  
APO 758 US Army

27 October 1945

THE UNITED STATES

vs.

Clemens Wiegand

Trial held at Heidelberg, Germany,

on 15 October 1945

before a General Military Court

1. Summary of the Charges, Pleas, Findings, and Sentence.

A plea of not guilty was entered by the court for the accused to a charge alleging the murder of an American aviator on 21 November 1944, near Frankfurt-am-Main, Germany. The accused was found guilty and sentenced to be put to death by decapitation.

2. Jurisdictional Matters.

The charges were duly referred to trial by the Commanding General, Seventh U.S. Army. The court was legally constituted and was vested with full power to hear the case and impose sentence. It has been established to a degree where discussion is unnecessary that a civilian is properly chargeable with a violation of the laws of war. The sentence imposed is legal, being within the power of the court.

3. Summary of the Evidence.

a. For the Prosecution:

On 21 November 1944 during an air-flight over Glimbsheim, an American (R 11) plane was shot down in flames, several people jumping from the burning plane by parachute (R 7, 11, 18). One parachute landed between Glimbsheim Woods and the Brobsheim Wald at about 1400, where a crowd gathered. The aviator, dressed in an American uniform was captured by a civilian who turned him over to a representative of the military. The aviator raised his hands and was being led away when the accused shot him with a pistol produced from his right hip pocket (R 7). The wound, behind the right ear (R 10), was not immediately fatal, and therefore the American was carried a short distance to a sort of enclosure built of upright poles where he was placed upon a pile of straw. The accused, a few minutes later, told the witness Hoffman that he had killed the Flyer, but at that point they were approached by a man who said that "the Flyer was not dead as yet". The accused, seemingly upset, said "He must die", and proceeded to the enclosure where the aviator lay upon the straw. When a vehicle arrived

to take the American away, the accused insisted, over the objections of a member of the secret police, that he remain there. The casual observers were driven away, and only the accused, an officer of the Wehrmacht, and the American remained, under the observation of the witness Hoffman who stood in a nearby hedge. After a few questions, the Wehrmacht officer departed. Wiegand lighted a cigarette and looked around him. Then he stepped forward (R 12) and fired two shots with a pistol aimed at the flyer's head (R 13) from a distance of about two meters. The next morning, Hoffman guided two men and a hearse to the body, which was carried away to the cemetery in Frankfurt (R 17). On the ground Hoffman found an identification tag bearing the name Anthony B. Martin (R 12, Procs. Ex. No.1) and serial number 36802197. On 20 August 1945 a body was disinterred from Grave Number 10, Row 36 in the main cemetery, Frankfurt-am-Main (R 4). Clothing found on the body bore the marking M2197 and 2197 (R 5). An examination of the corpse by a qualified pathologist disclosed a bullet hole in the forehead and one in back of the right ear (R 5, Procs. Ex. 22, 21), both being entrance wounds and either being sufficient to have caused death.

The "Lebenslauf" or life story of the accused was accepted in evidence by the court as Prosecution's Exhibit 23. Therein are detailed the life and experiences of the accused. The accused admitted the facts as recited by the witnesses. He attributed his actions to excitement and hatred born of the allied bombings and to propaganda that labelled allied flyers as lawless persons deserving of death, as paid murderers.

b. For the Defense:

As Ortsgruppenleiter the accused was very busy caring for persons suffering from the bombings. He supervised foodstuffs and was kind to foreign civilian workers. At the time of the incident that was the basis of this trial, the entire civil population was aroused and angry over the allied bombings. The accused was frequently ill.

4. Discussion and Opinion.

a. The evidence is amply sufficient to sustain the findings of the court. The trial was well and fairly conducted; no errors of procedure or of admissibility of evidence appear to the prejudice of the principles of fairness and justice.

b. The sentence is legal and is appropriate to the crime, a deliberate and cold-blooded murder. However, execution by decapitation, while consistent with continental criminal law and perhaps no more medieval in nature than execution by hanging, could not fail to rouse a feeling of revulsion and horror in the minds of our people. It is within your power as reviewing authority to modify or commute the sentence.

5. Recommendations.

I recommend that the sentence be approved but modified to death by hanging and that the record of trial be duly forwarded for confirmation by the Theater Commander. The proper order has been prepared for your signature.

/s/ C. Robert Bard

C. ROBERT BARD  
Colonel, JAGD



MILITARY GOVERNMENT COURT  
MILITÄRGERICHT

Order on Review

Verfügung nach Ueberprüfung

Case No.  
Strafsache Nr. 1

Order No.  
Verfügung Nr. 1

Whereas one Clemens Wiegand  
(Name of Accused) )Name des (der) Angeklagten)

was convicted of the offense of  
wegen der folgenden strafbaren Handlung Murder

by the General Military Court at  
vom Oberen Militaergerichte in Heidelberg, Germany  
(Address of Court)  
(Auschrift des Gerichts)

and sentenced to  
schuldig erkannt und zu Death by decapitation

by Judgement dated the  
durch Urteil vom 16 October 194 5 and  
(date)  
(Datum)

Whereas the case has now come before me by way of review  
Diese Strafsache ist mir zur Ueberprüfung vorgelegt

and after due consideration and in exercise of the powers con -  
worden und nach entsprechendem Studium des Sachverhaltes und

ferred upon me, I hereby order:  
in Ausübung der mir uebertragenen Befugnisse verfuege ich:

That the findings and the sentence be upheld but that  
Der Schuldspruch und das Urteil werden bestaetigt, die Art

the method of execution be by hanging, and the record of trial  
der Hinrichtung soll Hangen sein, und die Unterlagen der Verhandlung

be forwarded for confirmation of the sentence as so modified.  
sollen weitergeleitet werden fur Bestatigung des Urteils wie es  
so beschrauet wurde.

Dated this  
Gegeben am Nov 3 194 5

/s/ Geoffrey Keyes

GEOFFREY KEYES  
(Signature of Reviewing Authority)  
(Unterschrift der nachpruefenden Behoerde)

Lieutenant General, U. S. Army  
Commanding  
(Title)  
(Titel)