

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
AFO 407

18 September 1947

WCT Rpt # 518

UNITED STATES)

v.)

Otto Hermann STOLZ.)

Case No. 12-3245

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 15-16 May 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Otto Hermann STOLZ, a German National, did, at or near HUSSELHEIM, Germany, on or about 26 August 1944, deliberately and wrongfully encourage, aid, abet and participate in the killing of six members of the United States Army, believed to be 2nd Lieutenant Norman J. ROGERS, 2nd Lieutenant John N. SEKUL, Flight Officer Valgus THUTENKJIN, Sergeant Thomas D. WILLIAM, Sergeant Elmore L. JUSTIN and Sergeant William A. DUMONT, who were then and there unarmed and surrendered prisoners of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On 24 August 1944, nine American flyers, members of a crew of a disabled B-24 aircraft, parachuted to earth in the vicinity of Hannover, Germany, where they were captured and evacuated to German military control. By varying means of travel all of the captives, save one injured man in the custody of two guards arrived at Husselsheim, Germany, on the morning of 26 August 1944. An air raid occurred at that point during the preceding night. A crowd of German civilians, including the accused STOLZ, stoned and beat the captives in the streets of Husselsheim until the men collapsed. Their bodies, some still alive, were loaded on a cart and hauled by STOLZ to the town cemetery, where further beatings were inflicted by accused and the flyers were shot, resulting in the deaths of six of the group of captive airmen. Eleven of the perpetrators involved in this incident were tried

in the case of United States v. Hartgen, et al., Case No. 12-1497, resulting in seven sentences of death, one prison term of 25 years and two prison terms of 15 years. One of the accused therein was acquitted.

IV. EVIDENCE AND RECOMMENDATIONS:

OTTO HERMANN STOLZ

Nationality:	German
Age:	34
Civilian Status:	Carpenter
Party Status:	SA, Private First Class
Military Status:	Wehrmacht, 17 September 1944 until capitulation
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: About noon on 24 April 1944, 2nd Lieutenant Norman J. Rogers, 2nd Lieutenant John N. Sekul, Flight Officer Halgus Thufenkjian, Staff Sergeant Forrest W. Brininstool, and Sergeants Thomas D. William, Jr., William A. Dumont, Elmore L. Austin, Sidney E. Brown and William M. [redacted], all members of a B-24 bomber crew, while on a bombing mission were forced to parachute to earth in the vicinity of Hannover, Germany. Within an hour these American flyers were rounded up and taken to a small village. Dumont's ankle was broken. Brininstool had a flak wound in his stomach, which caused his hospitalization and early separation from the group. By various means of travel the other eight flyers came to Russelsheim, Germany, early on the morning of 26 August 1944, in the custody of two guards. At the time of their arrival an exodus of large numbers of people from the town was taking place because of an air raid during the preceding night. In the streets of Russelsheim a crowd encountered the flyers. The crowd clamored, shouted, called names and tossed stones and other objects at the airmen. The crowd gradually grew larger. A piece of iron thrown from the crowd hit Lieutenant Rogers on the head and signalled the inception of a free-for-

all (R 6, 8, 11; P-Ex 3 pp. 1-3, P-Ex 4 pp. 1-5). Dumont fell and was immediately beaten to death in the street (R 8; P-Ex 4 p 5). In an attempt to escape such cruelty, the other captive flyers edged along a five-foot wall bordering the street, striving to use the wall as a protection against the crowd (R 8; P-Ex 4 p 5). No guard made any effort to help them (R 6, 17, 27; P-Ex 3 p 2). Accused STOLZ was seen to beat severely the flyers with a wooden stick some 80 centimeters long and 50-60 millimeters in diameter (R 12, 21, 22). He beat them approximately five or six times (R 12, 22). Adams fell (R 8; P-Ex 4 p 5). As Brown went down, he could see others ahead beaten to the ground and he played "possum" (R 8; P-Ex 4 p 5). After a time the crowd dispersed. Dumont's body was picked up and put on a cart (R 6, 8; P-Exs 3, 4 pp. 2, 5). The other victims were also loaded (R 6, 8, 31, 54; P-Exs 3, 4 pp. 2, 5). Some of them were alive though injured (R 6, 8, 34, 40, 46; P-Exs 3, 4 p 5), especially Sekul, Williams, Brown and Adams (R 8; P-Ex 4 p 6). The cart, pulled by STOLZ and pushed occasionally by Hitler Youth (R 33, 42, 45, 55, 61), was moved to the cemetery, where further beatings were personally and exclusively administered by the accused who mounted the wagon to beat. These cudgelings killed some of the flyers who were alive (R 6, 8, 29, 30, 34-36, 53; P-Exs 3, 4 pp. 2, 6).

An air raid alarm sounded and the Germans fled to shelter (R 6, 8, 30, 35; P-Exs 3, 4 pp. 2, 6). Brown and Adams, yet alive, escaped from the cemetery (R 6, 8; P-Exs 3, 4 pp. 2, 6). Later the same day, shots were fired in the cemetery (R 36, 37). Two days thereafter the corpses of the dead flyers, six in number, were buried in a common grave (R 37, 43; P-Ex 6 pp. 138, 140), from which they were disinterred on 28 June 1945 (R 38, 43; P-Ex 6 p 138) by local Nazis under the direction of American authorities (R 38). A certified extract from the record of trial in United States v. Joseph Hartgen, et al., Case No. 12-1497, i.e., expert medical testimony, was admitted into evidence in this case. It establishes that

extensive skull fractures were inflicted upon all victims who were killed, save one. It also established bullet holes in each head (R 43; I-Ex 6 pp. 142-145). Identification of the bodies was possible in four of the six cases because of the presence of identification tags (R 43; I-Ex 6 pp. 139, 140).

Evidence for Defense: STOLZ testified under oath in his own behalf (R 50). He denied beating any of the flyers (R 56, 57, 61) or having a club or weapon in his hands (R 53). At the request of a non-commissioned officer of the German air force (R 52) he attempted to halt the flight of the flyers (R 52), who, he asserted, were running away (R 51, 52). He held his arms outspread in front of one of them (R 53). He insisted that he then left to search for a factory identification picture pass which he had lost (R 53, 54). When he returned to where the flyers were, six bodies were already loaded on a cart (R 54), which Hartgen, who was Deputy Ortsgruppenleiter and Commitment Leader of the clearing detail (R 37, 60, 62), ordered him, as a member of that detail (R 55, 61), to move to the cemetery (R 60). No one struck the bodies while he was pulling the cart (R 56), and neither he nor any one he saw beat them (R 56, 57). Another witness asserted that he saw no one beat the corpses while he was in the cemetery (R 46). STOLZ insisted that most of the flyers were dead before they reached the cemetery (R 55).

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.

V. QUESTIONS OF LAW:

Jurisdiction: 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 sentence be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Richard C. Hagan
/t/ RICHARD C. HAGAN
Major JAGD
Post Trial Branch

Having examined the record of trial, I concur, this 19th day of
September 1947.

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

HEADQUARTERS
EUROPEAN COMMAND

LEGAL FORM NO: 16

AG 383 JAG

AFO 757
NOV 3 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Otto Hermann STOLZ (Case No. 12-3245)

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 entit-
led case as to accused Otto Hermann STOLZ.

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 407, U.S. Army.

BY COMMAND OF GENERAL CLAY:

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

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

Frankfurt 7175

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 14 Nov 1947, at 1112
(Date) (Hour)

/s/ L.H. Johnson Jr., Maj.
(Signature and Rank)

Hq. 1st Mil. Dist.
(Organization)

/s/ Lloyd A. Wilson
Capt. CMP
(Countersignature and Rank
of Witnessing Officer)

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

Order on Review /

Verfügung nach Überprüfung

Case No. 12-5245
Strafsache Nr. 12-3245

Order No. _____
Verfügung Nr. _____

whereas one Otto Hermann STOLZ
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully participating in killing
prisoners of war

wegen der folgenden strafbaren Handlung rechtswidrige Teilnahme an
der Ermordung von Kriegsgefangenen

~~*Suzanny~~

by the ~~*Intermediary~~ Military Court
*General

at Dachau, Germany
in Dachau, Deutschland

(Address of Court)

vom ~~*Einfachen~~
~~*Mittleren~~ Militärgerichte
*Obere

(Beschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang

by Judgment dated the 16 May 1947
durch Urteil vom 16 Mai 1947 1947 and
(Date)
(Datum)

whereas the case has now come before me by way of review and
after due consideration and in exercise of the powers conferred upon
me, I hereby order:

Diese Strafsache ist mir zur Überprüfung vorgelegt worden und
nach entsprechendem Studium des Sachverhaltes und in Ausübung der
mir übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding
General, First Military District, will carry the sentence into
execution at War Criminal Prison No. 1, Landsberg, Germany, at a
time to be determined by him.

Dass der Befund und das Urteil bestätigt werden. Der kom-
mandierende General, Militärbezirk I, wird die Vollstreckung des
Urteils in dem Kriegsverbrechergefängnis No. 1, Landsberg, Deutsch-
land, zu einer von ihm festgesetzten Zeit bewilligen.

Dated this _____
Gegeben am _____ 1947

/s/ LUCIUS D. CLAY
(Signature of Reviewing Auth-
ority)
(Unterschrift der nachprüfenden
Behörde)

/t/ LUCIUS D. CLAY
General USA
Commander-in-Chief
(Title)
(Titel)

*Strike out words not applicable.
*Nichtzutreffendes ist zu durch-
streichen.