

HEADQUARTERS  
EUROPEAN COMMAND  
Office of the Judge Advocate

War Crimes Board of Review No. 1.

5 February 1948

UNITED STATES	:	7708 War Crimes Group	APC 407
v.	:	Fritz DIETRICH	Death by hanging.
Fritz DIETRICH, et al.	:	Fritz DINTINGER	Life imprisonment.
	:	Albert ELI	Life imprisonment.
	:	Karl HUNSICKER	Death by hanging.
Case No. 12-1546	:	Willy STEMMLER	Death by hanging.
	:	Otto ZEITZER	4 yrs. commencing 28 November 1944.

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Report of War Crimes Board of Review No. 1.

BRESEE, DWINELL and COSTELLO

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I The record of trial and accompanying petitions in the case of the above named accused has been reviewed by the War Crimes Board No. 1. The following petitions were received by the Board of Review after the review by the Deputy Judge Advocate for War Crimes and have been considered by the Board:

1. Petition by Luise Dietrich, wife of accused Fritz DIETRICH, dated 13 January 1948;
2. Petition for clemency by accused Fritz DIETRICH, dated 7 January 1948, to which he attached three statements.

II DISCUSSION: The discussion herein is concerned only with the accused Otto ZEITZER.

Charge I: This charge is concerned with the accused, a doctor, being ordered to kill the wounded flyer by injections which were given on two occasions, one immediately following the other but without any apparent injurious effect on the wounded flyer. In finding ZEITZER guilty the court disregarded the evidence of Zimmerman (R 117) and that of Dr. Gutermuth (R 299-303,304);

this does not necessarily exclude the theory of the defense that the doctor rendered all the medical assistance possible. The Prosecution's evidence indicated that the accused was ordered to give an injection to a flyer which would put him to sleep completely (R 320) and did give two strong shots which had little or no effect. It was established that adequate medical facilities available to Dr. ZEITZER or personnel under his control were not available and that he attempted to obtain hospitalization for the wounded flyer and ordered the driver of vehicle to use care and caution with the flyer on his return. From the evidence available the proof sufficient to substantiate the Charge of actively encouraging, aiding and abetting or participating in being responsible for the death of the flyer is materially lacking. It is reasonable to conclude that the accused made a superficial compliance with his orders and as a medical practitioner his oath of office had a superior compelling influence and that he did render all the aid and assistance the circumstances warranted.

III CONCLUSION: The court was legally constituted and had jurisdiction of the accused and the offense. No errors or irregularities were committed during the trial resulting in any injustice to the accused. The Board of Review is of the opinion that the evidence in the record of the trial is legally sufficient to support the findings of the court as to the guilt of all accused with the exception of accused Otto ZEITZER. The findings of guilty with respect to Charge I and its particulars pertaining to accused Otto ZEITZER are legally insufficient. The sentences of the accused Fritz DIETRICH, Fritz DINTINGER, Albert ELI, Karl HUNSICKER and Willy STEMLER recommended for approval by the Deputy Judge Advocate for War Crimes are legal, fair and just. The review of evidence submitted by the Deputy Judge Advocate for War Crimes is complete and fully sets forth all the material facts.

IV RECOMMENDATION: It is recommended that:

a. The findings and sentences as to accused  
Fritz DIETRICH, Fritz DINTINGER, Albert ELI, Karl HUNSICKER and  
Willy STEMLER as the Charges I and II and the particulars there-  
under be approved.

b. The findings and sentence as to the accused  
Otto ZEITZER as to Charge I and its particulars be disapproved.

  
HOWARD F. BRESEE, COL, AGD  
Chairman

  
JOHN S. DWINELL, LT.COL, JAGD  
Member

  
JAMES B. COSTELLO, LT.COL, Cml.C.  
Member