

Lore of the Corps

Tried by Military Commission and Hanged for Murder: *United States v. Franz Strasser**

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In mid-December 1945, a Signal Corps photographer stamped the following caption on the reverse of a photograph he had taken a few days earlier: “10 Dec 45, 3rd Army. Big Finale—The body of Former Nazi Official Franz Strasser, accused of killing two American Fliers forced down in Germany, swings and twitches at the end of the gallows rope.”¹ What follows is the story of forty-six-year-old Franz Strasser, whose misconduct in December 1944 resulted in his prosecution by a military commission, a conviction for murder, and death at the end of a rope.

On the afternoon of 9 December 1944, an American bomber made a forced landing near Zahdelesdorg, Czechoslovakia. The pilot, co-pilot, and three crew members voluntarily surrendered to the local authorities and “were loaded into a truck for the ostensible purpose of transporting them to Kaplitz,” Czechoslovakia.² Two automobiles accompanied the truck: one contained Nazi Party official Franz Strasser, the Kreisleiter of Kreis Kaplitz,³ and the other car contained Captain Lindemeyer, the Kaplitz chief of police.

When the convoy got to the top of a hill on the road to Kaplitz, Strasser, who was in the lead vehicle, stopped his car. The truck containing the unarmed American fliers also stopped. Strasser then walked back to the truck and shot and killed one airman with his machine pistol. When the driver of the truck tried to protect a second American airman by

allowing him to take refuge in the truck cab, Strasser threatened to kill the driver if he continued to interfere.⁴

Strasser then shot this second American and, when the American was prostrate on the ground, “raked the airman from head to foot with his machine pistol.”⁵ As for the other three airmen? They were shot and killed by Captain Lindemeyer.

On 24 August 1945, Franz Strasser was tried by a military commission sitting in Dachau, Germany.⁶ He was charged as follows:

Charge I: Violation of the Laws and Usages of War.

Specification: In that on or about 9 December 1944, FRANZ STRASSER, Kreisleiter of Kreis Kaplitz, an Austrian National, did at or near Kaplitz, Czechoslovakia, wrongfully and unlawfully kill an American airman, whose name, rank and serial number are unknown, by shooting him with a machine pistol.

Charge II: Violation of the Laws and Usages of War.

Specification: In that on or about 9 December 1944, FRANZ STRASSER, Kreisleiter of Kreis Kaplitz, an Austrian National, did at or near Kaplitz, Czechoslovakia, wrongfully and unlawfully shoot an American airman, whose name, rank and serial number are unknown.⁷

At trial, Strasser pleaded not guilty. He did not deny that he had participated in the shooting of the five American

* The author thanks Lieutenant Colonel (LTC) Virginia Griffin Beakes, Judge Advocate, U.S. Army Reserve, for alerting him to the existence of the Strasser photographs, and Lieutenant General (Retired) Thomas N. Griffin, Jr., U.S. Army, for allowing him to borrow them for this article. General Griffin's father, then LTC Thomas N. Griffin, was the 3d Army Provost Marshal who supervised the execution of Franz Strasser.

¹ 3242 Signal Photo Co., Signal Corps photograph no. 00842-HQ-A9-10 Dec 45-3rd Army (Herod) (Regimental Historian's files, The Judge Advocate General's Legal Center and School).

² U.S. Forces European Theater, Deputy Theater Judge Advocate's Office, War Crimes Branch, Review and Recommendations, *United States v. Franz Strasser*, Case No. 8-27, at 2 (14 Oct. 1945), <http://www.jewishvirtuallibrary.org/jsource/Holocaust/dachautrial/fs17.pdf> (last visited Dec. 7, 2013) (follow Home; The Library; History; Modern Jewish History/World War II; Post-war/War Crimes; War Crimes Trials and Results/Dachau Trials; The Cases/U.S. POW Cases; Other Prisoner of War Cases/Case No. 8-5 (U.S. vs. Harra Kielsing) Tried 24 Oct. 47) (the document is mislabeled on the webpage).

³ In Nazi Germany, a “Kreisleiter” was a “county leader” and was the highest Nazi Party official in a “kreis” or county municipal government. Today, Kreis Kaplitz is in the Czech Republic. In 1944, however, it was part of Germany, having been annexed as part of German-speaking Sudetenland in October 1938.

⁴ *Strasser*, Case No. 8-27, at 6.

⁵ *Id.*

⁶ Headquarters, Third U.S. Army, Special Orders No. 229 (19 Aug. 1945). For more on war crimes trials at Dachau, see JOSHUA M. GREENE, JUSTICE AT DACHAU (2003). Strasser and Lindemeyer were apprehended and charged after the Army conducted an investigation into the deaths of the five airmen soon after 8 May 1945 (Victory in Europe (VE) Day). JACK R. MYERS, SHOT AT AND MISSED: RECOLLECTIONS OF A WORLD WAR II BOMBARDIER 298–99 (2004).

⁷ *Strasser*, Case No. 8-27, at 1.

prisoners. Rather, Strasser admitted that he and Lindemeyer had killed the men, but insisted “that the shooting was justifiable because it was necessary to prevent the escape of the prisoners.”⁸ According to Strasser, he had stopped his car at the top of the mountain to wait for the truck which, because of poor road conditions and the steepness of the incline, was having “difficulty in negotiating the hill.”⁹ Then, after the truck had stopped, and the Americans attempted to escape, Strasser—and Lindemeyer—had shot them to prevent them from fleeing.

Captain Lindemeyer, who had committed suicide prior to the trial, was not in court to give evidence on this point. The whereabouts of the two other participants in the war crime, who had been in the automobile with Strasser on the day in question, were unknown. Consequently, there was no testimony from them to either prove or disprove Strasser’s defense.¹⁰

But the driver of the truck, a man named Pusch, did testify at Strasser’s trial and, unfortunately for Strasser, his testimony was devastating. Pusch testified that Strasser had “signaled to him to stop the truck” at the summit of the hill.¹¹ He also testified that the airmen were unarmed and that they had not attempted to escape. While Pusch did testify that “some shots were fired before Strasser arrived at the truck,”¹² Pusch insisted that Strasser had shot one airman dead and then threatened Pusch with death if he interfered with the execution of the second American flier. After the shootings, Strasser and Lindemeyer discussed their handiwork, with Strasser claiming “credit” for two of the murders; Lindemeyer took credit for killing three of the airmen.¹³

Additional evidence presented by the government supported the theory that Strasser and Lindemeyer had “a previously conceived plan” to kill the American fliers, no doubt in revenge for the suffering inflicted upon the Third Reich by the Allied bombing of Germany. This made sense, as Strasser was a Kreisleiter and Lindemeyer a police official. In mid-1943, the Nazis began insisting that “all bombardment of the civil population was to be regarded as terrorism” and, on 10 August 1943, Heinrich Himmler, the head of the Gestapo, instructed both the Secret Service and police officers that it was “not the task of the police to interfere in clashes between Germans and the English and

American terror fliers who have baled [sic] out.”¹⁴ When other Nazi Party officials similarly announced that the police were not to protect Allied airmen “against the fury of the people,” the result was that “many were lynched by the populace or shot by the police” during 1944 and 1945.¹⁵ With this as background, it seems that the war crimes committed by Strasser and Lindemeyer were very much a reflection of official Nazi policy.

At the end of the one-day trial, having considered the evidence before them, the members of the military commission found Franz Strasser guilty as charged and sentenced him “to be hanged by the neck until dead.”¹⁶ On 14 October 1945, Judge Advocate Major (MAJ) Ford R. Sargent¹⁷ conducted a legal review of the Strasser case for the Commanding General, U.S. Forces, European Theater, who now had to take final action in the proceedings.

Sargent wrote that “the essential facts [in the case] were established by the direct testimony of eyewitnesses.”¹⁸ He also concluded that there were “no irregularities in the proceedings or trial which prejudiced any substantial rights of the accused.”¹⁹ As MAJ Sargent put it, the accused “was given a fair trial, consistent with Anglo-Saxon conceptions, and there is no doubt whatsoever as to his guilt.”²⁰ Since Sargent was willing to state that the evidence went far beyond the reasonable doubt standard applicable to war crimes trials,²¹ it is worth quoting his comments about the appropriateness of the death sentence for Strasser:

The offense in this case was particularly heinous because it involved the cold-blooded murder of absolutely defenseless prisoners of war. No mercy whatsoever was exhibited by the accused. The offense

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.* at 6.

¹² Perhaps by Lindeman or one of the men accompanying him, although this is unclear from the record.

¹³ *Strasser*, Case No. 8-27, at 6.

¹⁴ EDWARD F. L. RUSSELL (LORD RUSSELL OF LIVERPOOL), *SCOURGE OF THE SWASTIKA* 39 (2002).

¹⁵ *Id.* at 40.

¹⁶ *Strasser*, Case No. 8-27, at 1.

¹⁷ A native of Saginaw, Michigan, Ford R. Sargent entered The Judge Advocate General’s Department after graduating from the 11th Officer Course held at The Judge Advocate General’s School, Ann Arbor, Michigan. *THE JUDGE ADVOCATE GENERAL’S SCHOOL, STUDENT AND FACULTY DIRECTORY* 42 (1946).

¹⁸ *Strasser*, Case No. 8-27, at 8.

¹⁹ *Id.*

²⁰ *Id.*

²¹ While the official legal view of the Judge Advocate General’s Department was that “the rule in American municipal criminal law as to reasonable doubt and presumption of innocence was not applicable as such to war crimes trials, in the absence of a suitable prescribed standard, the rule requiring that an accused be presumed innocent until proven guilty and that proof of guilt be established beyond a reasonable doubt was adhered to in war crimes trials” in the European Theater (emphasis added). *REPORT OF THE DEPUTY JUDGE ADVOCATE FOR WAR CRIMES, EUROPEAN COMMAND, JUNE 1944 TO JULY 1948*, at 67 (1948).

closely approximated common law murder. Murder is the unlawful killing of a human being with malice aforethought. The usual penalty among civilized peoples for murder is life imprisonment or death. There are no extenuating circumstances in the instant case to warrant changing the penalty of death imposed by the Commission. The evidence is overwhelming that the offenses were committed by STRASSER in accordance with a preconceived plan to murder five American airmen. The sentence of the Commission and the action of the Reviewing Authority thereon are just, and commensurate with the nature of the offense committed by the accused.²²

Three days later, on 17 October 1945, Colonel Claude B. Mickelwait, the Deputy Theater Judge Advocate, concurred with MAJ Sargent's review and recommended that the sentence be confirmed. General Dwight D. Eisenhower, Commanding General, U.S. Forces, European Theater, accepted the recommendation of his senior military lawyer, and ordered the sentence be carried out.²³



At the time his case was heard by a military commission, Strasser was married and had three children. He testified that his fourth child was "expected in September" and presumably this baby had been born at the time forty-six-year-old Strasser climbed the gallows steps at the Landsberg Punishment Prison on 10 December 1945.



²² *Strasser*, Case No. 8-27, at 8.

²³ *Id.* Claude B. Mickelwait had a lengthy and distinguished career as an Army lawyer. Born in Iowa in July 1894, he later moved to Twin Falls, Idaho and graduated from the University of Idaho in 1916. He entered the Army as a first lieutenant in 1917 and served in a variety of infantry assignments until obtaining a law degree in 1935 from the University of California School of Jurisprudence and transferring to The Judge Advocate General's Department.

With the invasion of North Africa in 1942, Mickelwait was stationed in Casablanca as Judge Advocate, Atlantic Base Section. He subsequently served as Judge Advocate, Fifth Army, in both North Africa and Italy. In March 1944, Colonel (COL) Mickelwait became Acting Theater Judge Advocate of the North African Theater of Operations. Two months later, he was the Judge Advocate of First Army Group in England and, in July 1944, deployed to France as the Judge Advocate of the 12th U.S. Army Group.

In August 1945, COL Mickelwait was appointed Deputy Theater Judge Advocate of the U.S. Forces in the European Theater and in May 1946, he assumed duties as Theater Judge Advocate of those forces. Colonel Mickelwait returned to the United States when he was promoted to brigadier general in April 1947. He was promoted to major general and appointed as The Assistant Judge Advocate General in May 1954. Major General Mickelwait retired from active duty in 1956. *General Promotions—Army JAG, JUDGE ADVOCATE J., June 1954, at 4–5.*

As photographs taken by a Signal Corps photographer show, Strasser received last rites from a Catholic priest just minutes before he was hanged, but whether or not this soothed his conscience will be forever unknown.²⁴

*More historical information can be found at
The Judge Advocate General's Corps
Regimental History Website
Dedicated to the brave men and women who have served our
Corps with honor, dedication, and distinction.
<https://www.jagcnet.army.mil/History>*

²⁴ Short video clips about the military tribunal of Strasser are available at http://www.t3licensing.com/license/clip/49312041_033.do and http://www.ushmm.org/online/film/display/detail.php?file_num=2062.