

MFR 04019357

Memorandum for the Record

Subject: Interview of Dr. Ulrich Von Jeinsen
Location: Law Offices, Hannover, Germany
Interviewed by: Michael Jacobson (9-11 Commission)
Also present: Caroline Sheldon, Attorney, US Embassy, Berlin, Germany
Interview Date: February 19, 2004
MFR Date: February 24, 2004

Prepared By: Michael Jacobson

The interview was conducted in Hannover, Germany, at the law offices where Dr. Von Jeinsen works. Dr. Von Jeinsen is an attorney with the law firm of Gohmann, Wrede, Haas, Kappus & Hartmann.

Background

Von Jeinsen stated that he is a lawyer, specializing in international tort law, with a focus on aviation matters. He has been involved in most of the aviation accidents in which there have been German victims. He's also a member of the American Trial Lawyers Association.

Involvement in 9/11-Related Cases

He was asked whether he would be interested in assisting the families with the 9/11 cases under a "lawyer's care" program. This was a difficult lawsuit to manage from the very beginning. There were potentially 15,000-20,000 plaintiffs, since any relative of the victims of the attacks can join the suit as a co-plaintiff. The co-plaintiff, Von Jeinsen noted, plays a significant role under German law. They have the same rights in the proceedings as the prosecutors. They can see the files, and even ask for evidence. The vast number of plaintiffs was particularly a difficult issue in a case like this, where so much sensitive information was involved. Von Jeinsen got in touch with one of the family organizations, and they were willing to serve as the representative for all of the family members in the proceedings (note: although as noted below, not all of the family members agreed to this arrangement). He has worked primarily with Stephen Push.

He agreed to help the family organization, on a pro bono basis. He contrasted this with another lawyer working with the plaintiffs, who is representing Ness Motley, whom he said is only involved for the money. Ness Motley does represent some of the families not represented by the family organization. Von Jeinsen has been working with Andreas Schultz, another lawyer for the family organization. Schultz is receiving some money from German legal aid, but only a fairly limited amount.

One of their primary jobs has been to be present in the court room for all of the proceedings. They were involved in both the Mzoudi and Motassadeq trials. They also traveled to Seattle to observe Ahmed Ressam, the individual arrested prior to the Millennium, who was planning to conduct an attack at LAX.

He and the families he represents were very happy with the outcome of the Motassadeq trial. They have been very frustrating with the Mzoudi case, and will be even more frustrated when Motassadeq is released (which he expects to happen).

BKA Fax

On December 10, 2003, the prosecution released a document to the Court, which Von Jeinsen referred to as "a little piece of nothing." The document was from the BKA, and the reporting was that someone had said that there were only 4 individuals in Germany who had prior knowledge of the attacks. Mzoudi was not one of the individuals listed. For Von Jeinsen, this document was "nothing." To his and his clients' surprise, the Court then said to the defense that they should ask a second time for Mzoudi's release. The defense "laughed" but did it anyway. This time, the request was granted and Mzoudi was released. Everyone was surprised by this turn of events.

Von Jeinsen said that until the point when the BKA sent "the fax" to the Court, the trial was going well. In October 2003, the defense filed a motion with the Court asking that Mzoudi be released from custody. The defense originally requested that Mzoudi be released, based on the testimony of BFV head Fromm. After Fromm testified, the defense argued that the planning occurred in Afghanistan, and not in Germany. The Court said that they considered this argument "crazy" and that it didn't matter where it was planned, and only whether Mzoudi was a part of it. Von Jeinsen does not think that Fromm's testimony was that important.

On October 28th, the Court issued its interim ruling, denying the defense's request. In this order, the Court was summarizing its impression of the case to that point. They were saying that it seemed to be enough to convict him.

From October 29th-December 10th, nothing had happened in the case. Everyone thought that Mzoudi would be convicted. 15 years is the maximum under German law for aiding and abetting, Von Jeinsen noted.

Von Jeinsen tried to receive something neutralizing the BKA fax of December 10th. The fax, in his opinion, is "B.S." He repeated that after the fax was sent to the Court, he immediately called Mr. Snell and asked for help. Von Jeinsen was hoping that the Commission could provide the Court with some information which would demonstrate the inaccuracy of the reporting in question. Von Jeinsen noted that Mr. Snell was very polite and tried to be helpful, but in the end was not able to provide him or the Court with information. He thinks that Mr. Snell was not allowed to do so. Von Jeinsen reported all of this to the families. They families also tried to work their contacts to see whether they could do anything about the fax, but nothing happened. Both he and the families he represents are frustrated.

In January 2004, the President of the BKA testified in the Mzoudi trial. He said that he had something in his files neutralizing this fax. It would prove that Mzoudi was

guilty. However, he was not allowed to disclose this information. This completely annoyed the Court, and now Mzoudi is free.

In the Motassadeq trial, the BKA had classified information which they allowed the prosecutors to look at. There is then an obligation on the prosecutor to produce everything. Hamberger announced that he had seen the information, and told Motassadeq and the Court that there was nothing in Motassadeq's favor in there.

As far as why this BKA fax, which contains multiple levels of hearsay would be admissible, Von Jeinsen said that everything is admissible in German Court. Everything is a part of the picture. It's a mosaic.

U.S.-German Relations

Von Jeinsen tried to provide additional context for the problems between the U.S. and the Germans which surfaced in the Mzoudi trial. There was a *NY Times* article which annoyed Von Jeinsen. There was a quote in the article, basically calling the Germans "crazy", and pointing out that Motassadeq had received only 1.5 days of jail time for each victim of the attacks. Von Jeinsen thinks that the point of the article was that the Americans considered the Germans and their system of justice "weak." At the same time, the issue about German opposition to the war was in the media. The bottom line was that the Americans were not happy at what could be achieved in Germany (note: Von Jeinsen was implying that this may have been part of the reason why the Americans would not provide additional information for the German legal proceedings).

As a side note, Von Jeinsen said that under German law, they could not have individuals in GTMO-type custody. This would be absolutely violating these individuals' rights.

Understanding the Court's reaction to the fax

In trying to understand why the Court took this action, Von Jeinsen said that he thinks that the Court was annoyed about what had been presented as evidence to that point. Germany proceedings are investigative, and the Court plays a crucial role in that investigation. The Court was annoyed about the evidence that was not available to the Court for consideration. As a side note, Von Jeinsen said that the same issue arose in the Motassadeq trial. The defense requested access to various witnesses, including Ramzi Binalshib, as well as high level FBI officials. In Von Jeinsen's opinion, it was obvious that the FBI agent who was sent to testify was of "lower knowledge" than they would have liked.

Under the German system, the Government (Chancellor and the Ministers of Interior and Justice) have the right to say that information should not be disclosed. They could say that it would not be in the interests' of Germany to disclose information provided by the Americans. This, in fact, occurred in the Motassadeq trial, and the defense appealed. In that case, the defense lost their appeal. Mzoudi, however, had

much better lawyers. Von Jeinsen was concerned from the beginning that the evidence against Mzoudi was weak. There was stronger evidence in the Motassadeq case. They had him transferring money to one of the plotters, and hiding the residence of others while they were in Afghanistan and in the U.S. It was obvious that Mzoudi was connected to this group, but it could not be proved that he was aiding and abetting them. It also could not be seen that he was a part of a terrorist organization.

Credibility of witnesses in trials

The prosecution had a former Iranian intelligence officer as a witness. However, noone believed him. The Iranian didn't convince either the Court or Von Jeinsen. He had a "fantastic" story. He was a man who alleged to be a spy on both sides. He wanted money from the U.S. for his information (\$1.2 million), and came across as someone who was just prostituting himself. They did confirm some of his story, such as the fact that he was affiliated with Iran. Maybe this witness was right, and there are al-Qa'ida leaders in Iran, which might be a story in itself. This witness just announced himself, and this was how he came to everyone's attention. It would not have made any difference if they had had more time to prefer for his testimony.

Nickels is someone who came to be in their group, but was eventually excluded. As long as the others talked about jihad in general terms, they spoke in German. When they started talking about it in more real and practical terms, they switched to Arabic around him. Both Nickels and the librarian were very credible.

Von Jeinsen was asked to comment on the credibility of witnesses in the trials. Von Jeinsen first referred to the librarian with whom al-Shehhi allegedly had a disturbing conversation ("something big will happen in the U.S."). The defense tried to make her seem unbelievable, but it did not work.

The individual who testified to the "this is our pilot" comment, was also a very credible witness. On the other hand, a number of the Arab students who testified were less than credible. They were all concerned that they would be the next one to go to prison.

Von Jeinsen was told that the reason for these questions was that it was difficult for the Commission to evaluate credibility without having met with any of the witnesses. He suggested that we come back to Germany and meet with them. He thought that some (such as Nickels) would be willing to do so.

Where the blame lies with Mzoudi's acquittal

The judge who handled the Motassadeq trial was very experienced in matters of national security, while the Mzoudi judge was new. The judge's hesitation was compounded by the judge's hesitations in the Moussaoui case. Von Jeinsen said that he does not know whether or not the families are interested in the Moussaoui case. However, Von Jeinsen does not put the blame on the Court. He thinks that the Mzoudi

judge actually made the right decision, in light of the evidence he had before him. The families understand the position of the German government in this case. The Germans did what they had to do. They blame the US Government. The German government did their job and obeyed instructions. The Germans also have a principle, dating to the days of Frederick the Great. They would rather have 25 guilty men go free than one innocent man in prison.

Von Jeinsen was surprised that Mzoudi was accused in the first place. When he read the indictment he was surprised by the weakness. However, he said it still could have been ok. With additional information from the U.S., Mzoudi would be in prison today. The indictment for Mzoudi was written right after Motassadeq was convicted. The prosecutor actually extended the planned charges, after the Motassadeq case was so successful.

As far as the charge of membership in a terrorist organization, Von Jeinsen said that merely because Mzoudi went to Afghanistan does not alone make him a terrorist. Some people go there to fight against Russia or in Kashmir. He was just in Kurdistan, and everyone there was walking around, armed. This does not make all of them terrorists. Not every radical Muslim is a terrorist.

As far as other governments' role in these cases, he recalls a request for the Court to hear from an individual in Syria, but he doesn't recall whether there are others.

Where planning for the attack occurred

Von Jeinsen cannot answer the question as to whether or not the planning for the attack took place in Hamburg or Afghanistan. His focus has been on whether or not Mzoudi and Motassadeq aided and abetted, not on where it was planned. This aspect did not interest him. Aiding and abetting can be done no matter where the attacks are planned.

Von Jeinsen has not seen any evidence that the hijackers were actually planning to go fight in Chechnya. It is significant in his view that Motassadeq hid their location while they were in Afghanistan.

Radicalization of hijackers

Von Jeinsen said that he has no idea when the hijackers were radicalized and by whom. This was not relevant for him.

Possible other members of Hamburg cell

Von Jeinsen has not seen any evidence to indicate that there were other members of this Hamburg cell, aside from the eight. The prosecution did find Mzoudi and Motassadeq, two people close to Atta and al-Shehhi. Von Jeinsen does not know of

anyone else that they are thinking about prosecuting for 9/11 related offenses. However, he noted that he wouldn't necessarily know if they were planning to do so.

He cannot think of any particularly significant piece of evidence which he has seen, on which the Commission should focus.

At the conclusion of the meeting, Von Jeinsen said that he will be in DC and NY on March 7-8, 2004, if we wish to meet with him again.